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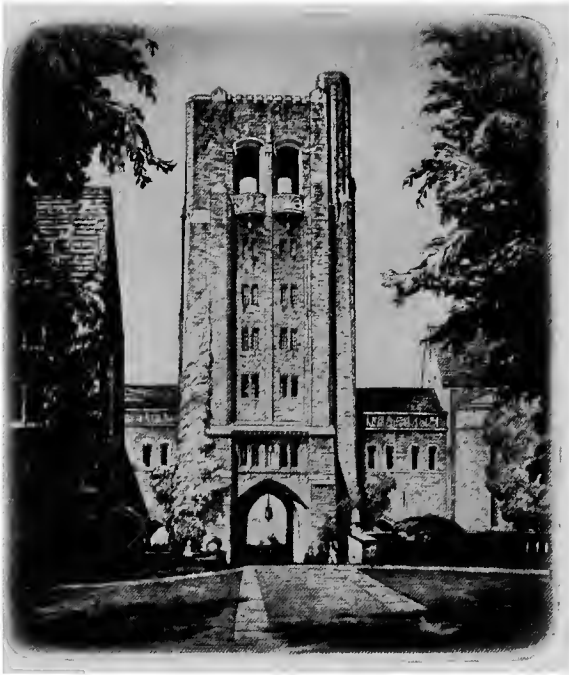
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PRITCHARDS'
DIGEST OF
Admiralty and Maritime Law.

THIRD EDITION.

VOL. II.

WILLIAM
TARN

PRITCHARDS'

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Admiralty and Maritime Law.

THIRD EDITION

BY

JAMES C. HANNEN,

OF THE INNER TEMPLE, BARRISTER-AT-LAW,

AND

W. TARN PRITCHARD,

Author of the first Edition.

INCLUDING CASES ON

Average, Carriage of Goods, and Marine Insurance

BY

J. P. ASPINALL AND GORDON SMITH,

BARRISTERS-AT-LAW, AND

W. BENNING PRITCHARD,

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WITH

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By ALGERNON JONES, *French Advocate,*

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MORTGAGE.

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1. Generally.*

1. A registered ship or any share therein may be made a security for a loan or other valuable consideration; and the mortgage creating such security shall be in Form I. in the schedule, or as near thereto as circumstances permit. See the M. S. Act, 1854 (c. 104), s. 66.

2. A mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or any share therein, nor shall the mortgagor be deemed to have ceased to be owner of such mortgaged ship or share, except in so far as may be necessary for making such ship or share available as a security for the mortgage debt. *Ibid.* s. 70.

3. Under sect. 69 of the M. S. Act, 1854 (c. 104), the only effect of an omission to register a mortgage of a ship is to postpone the mortgagee's claim to that of a subsequent mortgagee or transferee whose mortgage or transfer is registered before

it. Therefore the non-registration of the mortgage affords no answer to the claim of the first mortgagee to freight earned by the ship as against a purchaser of the cargo, without notice of the mortgagee's title. *Keith v. Burrows*, 1 C. P. D. 722; (overruled, 2 C. P. D. 163; 2 App. Cas. 636, on other grounds).

4. Under the 66th section of the M. S. Act, 1854, and the 3rd section of the M. S. Act Amendment Act, 1862, the court will look behind the register to the real character of transactions between co-owners, and treat as a mortgage that which is on the face of it an absolute transfer, if it should appear that such was the intention of the parties. *The Innisfallen*, 1 A. & E. 72; 35 L. J. Adm. 110; 2 Asp. 470.

5. *Semble*, the Court would in some cases recognize an agreement by which a person might be for some purposes an absolute owner, and for others a mort-

* (1) As to the legal history of the right to mortgage ships, see Maude & Pollock, 4th ed. 54, n.; and Maclachlan on Merchant Shipping, 3rd ed. pp. 41—52.

(2) Foreigners are allowed to be mortgagees of a ship. See Instructions to Registrars.

(3) A bond had as a bottomry bond may be good as a mortgage of the vessel, but if the laws of the state where it is made require a P.

mortgage to be put on record and the mortgaged property to be passed to the mortgagee, these provisions must be complied with, or such a bond is bad as a mortgage. *Greely v. Smith*, 3 W. & M. 236. [AMERICAN.]

(4) Where a tender of the debt was made to the mortgagee, in pursuance of an agreement, it was held that interest should not be cast on the debt after the tender. *McNiel v. Call*, 19 N. H. 403. [AMERICAN.]

gagee, if such an agreement were clearly proved and definite. *The Innisfallen*, 1 A. & E. 72; 35 L. J. Adm. 110; 2 Asp. 470.

6. Under the 70th section of the M. S. Act, 1854, a mortgagee not in possession cannot maintain an action of restraint. *Ibid.*

7. A bill of sale of a ship, though in form absolute, may operate at law only as a mortgage. *Gardner v. Cazenove*, 1 H. & N. 423; 26 L. J. Exch. 17. See also *Whitfield v. Parfitt*, 4 De Gex & Sm. 240; 17 L. T. 161; *Myers v. Willis*, 17 C. B. 77; *Langton v. Barton*, 5 Beav. 9.

8. Evidence as to the meaning of the expression "legal mortgage," when applied with reference to ships, whether implying "a first mortgage," or "a registered mortgage executed with all legal formalities" considered. *Thompson v. Clerk*, Q. B. Nov. 7, 1862; 1 Asp. 256.

9. Under the circumstances, held, upon the construction of certain instruments, that, taken together, they did not operate as a mortgage, but as an absolute sale, to which was attached a conditional right of repurchase, to be exercised on the happening of a given event. *Shaw v. Jeffery*, 13 Moore, P. C. C. 432.

10. A bottomry bondholder is under no obligation to communicate the existence of the bond to the mortgagees of the ship, and is not affected by the owner concealing it from them. *The Helgoland*, Swabey, 491.

11. A mortgagee cannot set up as a defence to a bottomry bond the laches of the bondholder enforcing it, unless the mortgagee's position has been thereby prejudiced. *Ibid.*

12. A bottomry bond when due must be enforced within a reasonable time, and a voluntary agreement by the holder and the owner of the ship to postpone payment destroys the lien on the ship as against a mortgagee. *The Royal Arch*, Swabey, 282.

13. The title of mortgagees is, in questions of bottomry and similar cases, equivalent to that of the owners. *The Mary Ann*, 10 Jur. 255; L. R. 1 Adm. & Ecc. 10. See also *The Feronia*, 2 *ibid.* 65; 37 L. J. Adm. 60; 3 Asp. 54; and No. 21.

14. A mortgagee is not entitled to arrest a vessel for the purpose of enforcing bail for her safe return to this country. Motion on behalf of a mortgagee for such purpose rejected. *The Highlander*, 2 W. Rob. 109.

15. A master, who was also co-mort-

gagee, brought an action for his wages in the Admiralty Court under the provisions of 7 & 8 Vict. c. 112 (repealed by M. S. Repeal Act, 1854 (c. 120), s. 4); the original owner being a bankrupt, the other mortgagee, who was in possession of the vessel, was allowed to appear in the action, and, besides the wages, the whole accounts between the mortgagees were investigated and settled. *The Westmoreland*, 4 Notes of Cases, 172; *The Repulse*, 5 *Ibid.* 348.

16. A master was not debarred from suing for his wages under the 7 & 8 Vict. c. 112 (repealed by the M. S. Repeal Act, 1854 (c. 120), s. 4), upon the ground that he was a co-mortgagee of the vessel at the time. *The Repulse*, 2 W. Rob. 40.

17. *Semble*, in the Court of Admiralty, prior to the Judicature Acts, in cases of account between master, also mortgagee, and his co-mortgagee, a question of unliquidated damages could not be investigated by the registrar and merchants, but must be assessed by a jury. *Ibid.* 5 Notes of Cases, 362.

18. In an action against ship and freight by a master for his wages, the mortgagee in possession, on appearing to the action and giving bail in the amount of the action, is entitled to a release of the ship, notwithstanding that the master has become liable in respect of bills of exchange drawn by him upon the charterers for ship's use, and that the charterers have become bankrupt. *The Ringdove*, Swabey, 310. But see No. 19, and tit. MASTERS, c. 7, s. 3, p. 1126.

19. In his accounts against the mortgagee, the master is entitled to security for the amount for which he is personally liable in respect of necessaries. *The Limerick*, 34 L. T. 708.

20. The mortgagee having a *prima facie* right to the freight is not required to bring it into court, as in the case of an ordinary holder of freight. *The Ringdove*, Swabey, 310.

21. A master's claim for wages and disbursements, whenever earned or made, takes priority over the claims of the mortgagees. *The Hope*, 28 L. T. Adm. 287; see also tit. LIENS, p. 831.

22. Where the owner of a ship, which is mortgaged, charters her before the mortgagee takes possession, the mortgagee cannot interfere to prevent the execution of the charter-party unless it will materially injure or impair the value of his security, and if the vessel be arrested in an action of mortgage by the

mortgagee, the court will release her on the application of the charterer, unless such injury is shown by the mortgagee. *The Fanchon*, 4 Asp. N.S. 272.

23. Where shares in a ship are mortgaged, possession being retained by the mortgagors, and the managing owner, duly appointed by all the co-owners, including the mortgagors, charters the ship for a foreign voyage, and she loads and is about to proceed on the voyage, the mortgagee, even though he takes possession of his shares before the sailing of the ship but after the making of the charter-party, cannot arrest the ship or demand bail in an action brought by him to compel payment of his mortgage debt, provided the performance of the charter-party is not prejudicial to the security; and the court will, upon the application of the co-owners, release a ship so arrested, and will condemn the mortgagee arresting in costs. *The Maxima*, 4 Asp. N.S. 21.

24. A mortgagee, though entitled to intervene in an action by material men, is not entitled to the release of the vessel on merely giving bail for the payment of the claim of the material men in case such claim should be found to take priority of the mortgage. *The Acacia*, 4 Asp. 226. [IRISH.]

25. A. sold shares in a vessel to B., and then mortgaged the vessel to C. for an amount exceeding the value of the vessel. C. had no notice of B.'s purchase and duly registered the mortgage. B. then registered his purchase, and instituted a suit *in rem* claiming an account and sale against his co-owner A. C. intervened and claimed a release of the vessel: *held*, that he was entitled thereto, and to costs from the time B. became aware of his claim. *The Eastern Belle*, 3 Asp. N.S. 19.

26. Application of the mortgagee of a vessel, to be allowed to bid as a purchaser on the sale of the vessel and part of the cargo under the decree of the court, granted. *The Wilsons*, 1 W. Rob. 173.

27. Ship mortgaged, and subsequently sent to obtain a cargo of guano. *Held*, that the expenses of outfit, and of the voyage, had priority over the claim of the mortgagee. *Alexander v. Simms*, 18 Beav. 80.

28. In the absence of any special agreement the mortgagee of the ship has not as such a right to any portion of the cargo. *Ibid.*

29. A ship was mortgaged for payment

of a sum, with interest at £10 per cent., in six months; the principal not having been paid at that time, *held*, that interest continued payable at the same rate. *Morgan v. Jones*, 8 Exch. 621; 22 L. J. Exch. 232. See *Price v. Great Western Railway Company*, 16 M. & W. 244.

30. A mortgagor of a ship, who remains in the ostensible ownership, has an implied authority to confer a right of lien for repairs necessary to keep her seaworthy. *Williams v. Allsup*, 10 C. B. N.S. 417; 30 L. J. C. P. 353. See for facts, No. 125.

31. Notwithstanding an undertaking as to damages the Court of Chancery is exceedingly guarded in granting injunctions in cases affecting the property in ships. *De Mattos v. Gibson*, 1 Johns. & H. 83; 3 L. T. N.S. 121; 30 L. J. Ch. 145; 7 Jur. 282.

32. A man may give a valid security on merchandise at sea belonging to him, although at the time he is ignorant of the particulars of which it consists. *Ex parte Kelsall*, De Gex, Cases in Bankruptcy, 352.

33. A power of sale is not essential to a mortgage. *Dickinson v. Kitchen*, 8 El. & Bl. 789.

34. A mortgage made while the ship is at sea of cargo to be after acquired is valid. *Langton v. Horton*, 1 Hare, 549.

35. It is not necessary to send notice of a mortgage to the master if possession be taken on the earliest opportunity. *Feltham v. Clark*, 1 De G. & Sm. 307. See for facts, No. 148.

36. Mortgages and other securities in contravention of 5 Geo. 4, c. 113 (the Act for the Abolition of the Slave Trade) are void. See sect. 39.

37. In August, 1874, a shipbuilder having overdrawn his account with his bankers offered to give them a security over a ship which he was then building. This offer was declined in the first instance, with the intimation, however, that circumstances might arise which might render it desirable for the bank to have the security offered, whereupon he promised that whenever he was required to give it he would do so. Two months later his account being still largely overdrawn, the bankers requested him to give them the promised security. Accordingly he deposited with them the builder's certificate of the ship, which was still unfinished, and the following day they put a man in possession. At the same time, in consideration of £770

then advanced to him, he assigned to the bankers a trade debt of £2,384:2s. 8d. as a further security for the general balance of his account. Two days afterwards he filed a petition for liquidation. *Held*, that the transaction between him and his bankers was neither a fraudulent preference nor an act of bankruptcy. *Winter, Ex parte, Softley, In re*, L. R. 20 Eq. 746; 44 L. J. Bank. 107; 33 L. T. 62; 24 W. R. 68.

38. *Held*, also, that the deposit of the builder's certificate was a good equitable mortgage of all his property and interest in the ship, and that, although unfinished, it did not require registration under the Bills of Sale Act, 1854. *Ibid*.

39. Whether a ship not yet finished, and therefore incapable of registration under the M. S. Acts, is properly called a ship or not, it is a thing capable of assignment by certificate in the usual way. *Ibid*.

40. For cases as to what property passes under a mortgage, see tit. OWNERS, Pt. I. c. 8, s. 6.

2. Jurisdiction of Admiralty Division.

41. See tit. JURISDICTION, Pt. I. c. 6, p. 638.

42. The arrest necessary to found the jurisdiction of the Admiralty Division of the High Court over claims by mortgagees of foreign ships under 3 & 4 Vict. c. 65, must be in a cause over which the court has jurisdiction: a mere *de facto* arrest is not sufficient. *The Evangelistria*, 46 L. J. Adm. 1; 3 Asp. N.S. 264; 35 L. T. 410; 25 W. R. 255.

43. The Admiralty Division has jurisdiction independently of the Judicature Acts to, and will, on the intervention of the representative of a foreign state or by consent of the parties, entertain a cause of possession or mortgage of a foreign ship belonging to such state, so far as to ascertain the true position of the claimants and the nature of their title, and will, where it is for the advantage

of all parties, order a sale of the ship. *Ibid*.

3. Jurisdiction of Admiralty Court before the Judicature Acts.*

44. Whenever any vessel was under arrest of the High Court of Admiralty, or the proceeds of any vessel were in the registry of that court, that court had jurisdiction to take cognizance of and decide all claims of any person in respect of any mortgage of such vessel. 3 & 4 Vict. c. 65, s. 3; and see No. 52, *infra*.

45. This section was not intended to confer on the Court of Admiralty a jurisdiction (with respect to the claims of mortgagees) different from what it before exercised, but to be remedial in enabling the court to exercise its ordinary jurisdiction for the benefit of the suitors, to the full extent which justice required. *The Fortitude*, 2 W. Rob. 217; 8 Jur. 24; 2 Notes of Cases, 515.

46. The 3 & 4 Vict. c. 65, s. 3, does not extend to all questions arising out of a deed of mortgage, but is confined to the ship itself being mortgaged. A vessel only, and not the freight, having been arrested in a suit for wages, the mortgagees of 48-64ths of the ship obtained a warrant, purporting to arrest the ship and freight. An appearance, under protest to the jurisdiction of the court, as far as regards the freight, having been given for the master, the owner of the remaining shares of the ship, the protest sustained. *Ibid*.

47. The mortgagees of 48-64ths of a ship claimed the balance of proceeds thereof in the registry. The claim was opposed by material men (over whose claims the court, in the then state of the law, had no jurisdiction). The court directed the proceeds to be paid to the mortgagees on the production of their deed, with costs out of the proceeds. The payment of the proceeds as decreed was subsequently opposed by a party alleging himself to be the sole owner and imputing misconduct to the mortgagees. The court, without hearing counsel, stated that it could not enter into the

* (5) For the jurisdiction of the High Court of Admiralty in cases of mortgage before 3 & 4 Vict. c. 65, see *The Neptune*, 3 Hagg. 132; *The Fruit Preserver*, 2 Hagg.

182; *The Portsea*, 2 Hagg. 84; *The Exmouth*, 2 Hagg. 88, n.; *The Dowthorpe*, 2 W. Rob. 83.

question of the conduct of the mortgagees, and directed the proceeds to be paid out to them as before decreed. *The New Eagle*, 10 Jur. 623; 4 Notes of Cases, 462.

48. Every registered mortgagee has power absolutely to dispose of the ship or share in respect of which he is registered, and to give receipts for the purchase-money; but if there are more persons than one registered as mortgagees of the same ship or share, no subsequent mortgagee, except under the order of some court capable of taking cognizance of such matters can sell the ship or share without the concurrence of every prior mortgagee. See the M. S. Act, 1854 (c. 104), s. 71.

49. In an action for an account brought by a second against the first mortgagee of a vessel, *held*, that the first mortgagee who had sold the vessel under the 71st section of the M. S. Act, 1854, was not an express trustee of any part of the proceeds for the second mortgagee, so as to prevent the Statute of Limitations enuring. *Banner v. Berridge*, 18 Ch. D. 254; 50 L. J. Ch. D. 630; 4 Asp. 420.

50. *Held*, further, that though the first mortgagee might be a constructive trustee of any surplus proceeds, evidence could not be given to show a surplus after six years from the time of the first mortgagee receiving the proceeds without acknowledgment of a surplus. *Ibid.*

51. *Held*, however, that the statute would be avoided—(1) by an acknowledgment that there was a pending account which would imply a promise to pay; (2) by an express promise to pay anything found due. *Ibid.*

52. The Court of Admiralty had jurisdiction over any claim in respect of any duly registered mortgage, whether the

ship or the proceeds thereof were under arrest of the court or not. See the Admiralty Court Act, 1861 (c. 10), s. 11.

53. Where an action had been brought to enforce a mortgage under the Admiralty Court Act, 1861, and the ship had been arrested, the court would, where no prejudice to third parties could arise, enforce the equities against the mortgagees, under the M. S. Act Amendment Act, 1862. *The Cathcart*, 2 Asp. p. 500.

4. Registration.

1. Generally.*

54. A registered ship or any share therein may be made a security for a loan or other valuable consideration, and the mortgage creating such security shall be in the Form I. in the schedule, or as near thereto as circumstances permit. See the M. S. Act, 1854 (c. 104), s. 66.

55. On the production of such instrument the registrar of the port where the ship is registered shall record it in the register book. *Ibid.*

56. Every such mortgage shall be recorded by the registrar in the order of time in which it is produced to him for that purpose; and the registrar shall, by memorandum under his hand, notify on the mortgage that it has been recorded by him, and the date and hour of such record. *Ibid.* s. 67.

57. No registered mortgage of any ship or of any share therein shall be affected by any act of bankruptcy committed by the mortgagor after the date of the record of such mortgage, notwithstanding the mortgagor at the time of his becoming bankrupt may have in his possession and disposition, and be reputed owner of such ship or share; and such mortgage

* (6) When a registered ship or share therein was mortgaged under previous acts (before 8 & 9 Vict. c. 89), the instrument of mortgage was in the form of an absolute bill of sale, indorsed with a conditional defeasance, and took effect, *inter partes*, from the time it was registered, but depended, for priority over other incumbrances, upon the order in which it appeared, if at all, on the certificate of registry. Under the existing statute a special form of instrument is appropriated to this purpose. This instrument, when duly executed by the registered owner, passes the property to the mortgagee, in the meantime as against the mortgagor, and when registered as against third parties. See Maclachlan on Merchant Shipping, 3rd ed. p. 39.

(7) As to the duties of English consuls in respect of mortgages under certificates of mortgage, see Instructions to Consuls from the Board of Trade, anno 1856, p. 16.

(8) In the state of the law prior to the Merchant Shipping Act, 1854, it was doubted whether a distinction did not exist between mortgages for the security of an antecedent debt and other mortgages. See *Douglas v. Russell*, 4 Sim. 524; 1 Myl. & K. 468; *Lester v. Payne*, 11 Sim. 348, 2nd ed. p. 58.

(9) *Quere*, whether a mortgage of a ship executed exclusively for the benefit of parties interested under a prior mortgage, and confined wholly to the proceeds of sale to arise under the prior mortgage, would require registration? *Parr v. Applebee*, 7 De G. M. & G. 591 *et seq.*

shall be preferred to any right, claim or interest of the assignees of such bankrupt to such ship or share. See the M. S. Act, 1854 (c. 104), s. 72.

58. A claimant of a ship, as against an execution creditor, proved a previous mortgage of the ship to him by the owner for a loan, with a proviso in the mortgage postponing until a date subsequently to the seizure of the ship the power of sale vested in the mortgagee by the M. S. Act, 1854 (c. 104), s. 71, and that such mortgage was duly recorded in the register book, but there was no indorsement on the certificate of registry, according to the requirements of 4 Geo. 4, c. 41, ss. 35, 43, and of 3 & 4 Will. 4, c. 55, ss. 34, 42, since repealed. *Held*, that the mortgage was not invalid, either as a fraud against creditors, or as not being in accordance with the M. S. Act, 1854, on the ground of the postponement of the power of sale. *Dickinson v. Kitchen*, 8 El. & Bl. 789.

59. A mortgagee claimed under a special contract which did not contemplate a sale by him until two months had elapsed after a demand of payment. *Held*, that in such a case the circumstance of the mortgagee being registered as absolute owner is not conclusive as to the rights of the parties. *European and Australian Royal Mail Company v. Royal Mail Steam Packet Company*, 4 Kay & J. 676; 5 Jur. N.S. 310.

60. A vessel registered by the owner as *The City of Bruxelles* was registered by the mortgagee as *The City of Brussels*. The identity being established, *held* that the misdescription did not affect the validity of the registration by the mortgagee. *Bell v. Bank of London*, 3 H. & N. 730; 28 L. J. Exch. 116.

61. *Held*, under 8 & 9 Vict. c. 89, s. 34, and 8 & 9 Vict. c. 88, ss. 13, 14 (since repealed, but containing provisions similar to those of the 19th section of the M. S. Act, 1854), that a boat under fifteen tons burthen may be transferred without bill of sale, even though it had been registered, the registration being unnecessary. *Benyon v. Cresswell*, 12 Q. B. 899; 12 Jur. 1086; 18 L. J. Q. B. 1.

62. The mortgagee of a vessel duly sold the vessel under a power of sale contained in the mortgage deed. By

mistake a discharge of the original mortgage was indorsed on the mortgage deed and registered. On the vendor of the vessel subsequently presenting his bill of sale for registration, registration was refused, on the ground that the property in the vessel had passed to the mortgagor. The mortgagee and the vendee of the vessel having instituted a suit praying that the vendee might be pronounced the sole owner of the vessel, *held*, that the court had jurisdiction under the 3 & 4 Vict. c. 65, ss. 3 and 4, and the 11th section of the Admiralty Court Act, 1861, to entertain the suit, and decree made in the terms of the prayer. *The Rose*, 4 A. & E. 6; 42 L. J. Adm. 11; 1 Asp. N.S. 567.

63. A mortgagee of a ship, with notice of a prior equitable mortgage, registered his mortgage. *Held*, that the prior mortgagee was postponed to him. *Coombs v. Mansfield*, 3 Drew. 193.

63a. The defendant executed in Spain a mortgage of the M., a Spanish vessel, of which he was master. The mortgage was not registered under the Merchant Shipping Acts. The vessel having come to Queenstown, the transferee of the mortgage commenced an action in the Chancery Division, Ireland, for an account of foreclosure and sale, and an injunction to restrain the defendant from removing the M. out of the jurisdiction, and duly served the defendant with a copy of the writ. The court granted an interlocutory injunction until the hearing. *Clavering v. Aguire*, L. R. 5 Ch. D. 97. [IRISH.]

64. As to how far equitable claims unregistered will now be enforced, see tit. OWNERS, Pt. I. c. 4.

2. Elsewhere than at the Home Port.

(a) Certificate of Mortgage.*

65. Any registered owner, if desirous of disposing, by way of mortgage of the ship or share in respect of which he is registered, at any place out of the country or possession in which her port of registry is situate, may apply to the registrar, who shall thereupon enable him to do so by granting a certificate of mortgage. See the M. S. Act, 1854 (c. 104), s. 76.

* (10) As to the regulations to be observed by the registrar in respect of certificates at the port of Shanghai, constituted by the order a port of registry, see the China and

Japan Maritime Order in Council, 6th Aug. 1874.

(11) And as to consular fees for registration, see Order in Council, 1st May, 1865.

66. Previously to any certificate of mortgage being granted, the applicant must state to the registrar, to be by him entered in the register book :—

- (1) The names of the persons by whom the power mentioned in such certificate is to be exercised, and the maximum amount of charge to be created, if it is intended to fix any such maximum :
- (2) The specific place or places where the power is to be exercised, or, if no place be specified, then that it may be exercised anywhere, subject to the provisions thereinafter contained :
- (3) The limit of time within which such power may be exercised.

Ibid. s. 77.

67. No certificate of mortgage shall be granted so as to authorize any mortgage to be made at any place within the United Kingdom if the port of registry of the ship be situate in the United Kingdom, or at any place within the same British possession if the port of registry is situate within a British possession, or by any person not named in the certificate. *Ibid.* s. 78.

68. Certificates of mortgage shall be in the form marked M. in the schedule, and contain a statement of the several particulars directed to be entered in the register book, and also an enumeration of any registered mortgages, or certificates of mortgage affecting the ship or shares in respect of which the certificates are given. *Ibid.* s. 79.

69. Powers of certificates of mortgage shall be exercised in conformity with the directions contained therein. *Ibid.* s. 80, sub-s. 1.

70. A record of every mortgage made thereunder shall be endorsed thereon by a registrar or British consular officer. *Ibid.* sub-s. 2.

71. No mortgage *bond fide* made thereunder shall be impeached by reason of the person by whom the power was given dying before the making of such mortgage. *Ibid.* sub-s. 3.

72. Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no mortgage *bond fide* made to a mortgagee without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given. *Ibid.* sub-s. 4.

73. Every mortgage which is so regis-

tered on the certificate shall have priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register book ; and if there be more mortgages than one so endorsed, the respective mortgagees claiming thereunder shall, notwithstanding any express or constructive notice, be entitled one before the other according to the date at which a record of each instrument is endorsed on the certificate, and not according to the date of the instrument creating the mortgage. *Ibid.* sub-s. 5.

74. Subject to the foregoing rules every mortgagee whose mortgage is registered on the certificate shall have the same rights and powers, and be subject to the same liabilities, as he would have had and been subject to if his mortgage had been registered in the register book instead of on the certificate. *Ibid.* sub-s. 6.

75. The discharge of any mortgage so registered on the certificate may be endorsed thereon by any registrar or British consular officer, upon the production of such evidence as is hereby required to be produced to the registrar on the entry of the discharge of a mortgage in the register book ; and upon such indorsement being made the estate, if any, which passed to the mortgagee, shall vest in the same person in whom it would, having regard to intervening acts and circumstances, if any, have vested, if no such mortgage had been made. *Ibid.* sub-s. 7.

76. Upon the delivery of any certificate of mortgage to the registrar by whom it was granted he shall, after recording in the register book, so as to preserve its priority, any unsatisfied mortgage registered thereon, cancel such certificate, and enter the fact of such cancellation in the register book ; and every certificate so cancelled shall be void. *Ibid.* sub-s. 8.

77. Upon proof at any time to the satisfaction of the commissioners of customs that any certificate of mortgage is lost, or so obliterated as to be useless, and that the powers thereby given have never been exercised, or if exercised, upon proof of the several matters done thereunder, the registrar may, with the sanction of the commissioners, either issue a new certificate or direct such entries to be made in the register book, or such other matter to be done as might have been made or done if no such loss or obliteration had taken place. *Ibid.* s. 82.

78. The registered owner for the time being of any ship or share therein, in

respect of which a certificate of mortgage has been granted, specifying the place or places where the power thereby given is to be exercised, may, by an instrument under his hand in form O. in the schedule, or as near thereto as circumstances permit, authorize the registrar by whom such certificate was granted to give notice to the registrar or consular officer, registrars or consular officers, at such place or places, that such certificate is revoked, and notice shall be given accordingly, and all registrars or consular officers receiving such notice shall record the same, and exhibit the same to all persons applying to them for the purpose of effecting or obtaining a mortgage under the certificate, and after such notice has been so recorded the certificate shall, so far as concerns any mortgage to be thereafter made at such place, be deemed to be revoked and of no effect, and every registrar or consular officer recording any such notice shall thereupon state to the registrar by whom the certificate was granted whether any previous exercise of the power to which such certificate refers has taken place. See the M. S. Act, 1854 (c. 104), s. 83.

79. By the 81st section of the M. S. Act, 1854 (which contains, with reference to a sale abroad, the same directions as the 80th section with reference to mortgages abroad), it having been enacted that "the power" shall be exercised in conformity with the directions contained in the certificate, it follows that any attempt to exercise the power in a manner not in conformity with the directions contained in the certificate would be *ultra vires*, and pass no interest. *Orr v. Dickenson*, 1 Johnson, 9; 5 Jur. N.S. 672; 28 L. J. Ch. 516. See also *Ex parte Matthews*, 2 Ves. 272; *Thompson v. Smith*, 1 Mad. 395.

80. O., the registered owner of a ship registered at Prince Edward Island, executed in compliance with the provisions of the M. S. Act, 1854, a certificate of sale authorizing the defendant M., at Liverpool, to sell the ship for not less than £1,300. On receipt of the certificate, and before the arrival of the ship, M. sold her to the defendant D. for £900. The registrar at Liverpool having refused to register the bill of sale as not corresponding with the power mentioned in the certificate, the sum of £900 was struck out of the bill of sale, and the sum of £1,300 substituted. The plaintiff, O., subsequently revoked the certificate, but the

defendant D. nevertheless, afterwards, caused the bill of sale to be registered. *Held*, that the power had not been duly executed, that therefore D. had acquired no legal title to the ship, that therefore the registry was void, and, the ship having been sold by arrangement pending suit, that the plaintiff was entitled to the proceeds of the sale. *Orr v. Dickenson*, *supra*.

81. Shipbuilders in America mortgaged a ship, and then, with the consent of the mortgagee, sent her to England for sale. The mortgage was duly registered in America, but by agreement with the mortgagee was not indorsed on the certificate of registry, and the purchaser had no notice of such mortgage. *Held*, by the Court of Appeal, that the right to the ship acquired under American law must be recognized, but that the purchase, having taken place in this country, must be governed by English law. *Held*, further, that in this case the mortgagee had so acted as to suppress the mortgage, and to make the shipbuilders his agents for sale, and that his legal title must be postponed to that of the purchaser. *Hooper v. Gumm*, *McLellan v. Gumm*, 2 Asp. 258, 481; 13 L. T. N.S. 187; L. R. 2 Ch. 282; 36 L. J. Ch. 605.

3. Transfer.

84. A registered mortgage of any ship or share in a ship may be transferred to any person. The transfer shall be in form K. in the schedule. On the production of such instrument the registrar shall enter in the register book the name of the transferee as mortgagee of the ship or shares therein mentioned, and shall, by memorandum under his hand, record on the transfer that the same has been recorded by him, and the day and hour of such record. See the M. S. Act, 1854 (c. 104), s. 73.

85. The plaintiffs were the registered transferees of a mortgage on the defendant's vessel, expressed to be given as security for payment of a sum of money on a given day. At the time of such transfer, and on a subsequent occasion, other arrangements were made postponing the date of payment. Subsequent to the date expressed in the mortgage, but before the money became due under the above-mentioned arrangements, the plaintiffs instituted a suit under the 11th section of the Admiralty Court Act, 1861, and arrested the vessel. *Held*, that the court under the 3rd section of the M. S. Act

Amendment Act, 1862, must take into account the equities subsisting between the parties, and that the registered transfer must be read in connection with the subsequent agreements, and be modified thereby; that accordingly no default had been made by the owner, and the plaintiffs were not entitled to arrest the vessel, which must be released, and the plaintiffs condemned in costs and damages. *The Cathcart*, L. R. 1 A. & E. 314; 2 Asp. 500.

86. A British ship was transferred by the registered owner in England to the plaintiffs by mortgage duly registered. The ship sailed to N. O. in L. By the law of that state transfers of chattels, without delivery of possession, are not recognized. The defendants (who were British subjects, with a branch firm at N. O., and were aware of the mortgage) commenced actions against the owner for moneys due, and obtained a writ of attachment, under which the ship was seized. The mortgagees intervened, and gave bonds to the defendants, who thereupon released the ship. To a bill praying that defendants might be restrained from taking proceedings on the bonds, a demurrer was allowed. *Liverpool Marine Credit Company v. Hunter*, 2 Asp. 508; L. R. 4 Eq. 62.

87. *Held*, prior to the M. S. Act Amendment Act, 1862 (c. 63), s. 3 (see No. 96), that a contract to assign by way of equitable mortgage the mortgagor's interest in a ship, if not made in the form prescribed by the M. S. Act, 1854 (c. 104), was not valid, the M. S. Act, 1854, not giving the court power to enforce against the owner of a ship the same equities it could enforce against the owner of any other property. *The Liverpool Borough Bank v. Turner*, 1 Asp. 21; 1 J. & H. 159; 29 L. J. Ch. 287; 7 Jur. N.S. 150; 2 De G. F. & J. 502; 3 L. T. N.S. 84; 6 Jur. N.S. 84; 29 L. T. 827.

88. As to the mortgagee's power of sale of the ship, see cap. 5.

4. Transmission.

89. If the interest of any mortgagee in any ship or share becomes transmitted in consequence of death, bankruptcy or insolvency, or of the marriage of any female mortgagee, or by any lawful means other than by a transfer according to the provisions of this act, such transmission shall be authenticated by a declaration of the person to whom such interest has been

transmitted, made in the form L. in the schedule, and containing a statement describing the manner in which, and the party to whom, such property has been transmitted; and such declaration shall be made and subscribed, if the declarant resides at or within five miles of the custom-house of the port of registry, in the presence of the registrar, but if beyond that distance, in the presence of any registrar, or justice of the peace, and shall be accompanied by such evidence as is herein required to authenticate a corresponding transmission of property from one registered owner to another. See the M. S. Act, 1854 (c. 104), s. 74.

90. The registrar, upon the receipt of such declaration, and the production of such evidence, shall enter the name of the person entitled under such transmission in the register book as mortgagee of such ship or share. *Ibid.* s. 75.

5. Discharge.

91. Whenever any registered mortgage has been discharged, the registrar shall, on the production of the mortgage deed, with a receipt for the mortgage money indorsed thereon, duly signed and attested, make an entry in the register book to the effect that such mortgage has been discharged; and upon such entry being made the estate, if any, which passed to the mortgagee, shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had ever been made. See the M. S. Act, 1854 (c. 104), s. 68.

92. There is no provision in the M. S. Acts which authorizes the registrar to erase entries of mortgages on their being discharged; but an entry to this effect may be made under sect. 68 of the Act of 1854. *Chasteauneuf v. Capeyron*, 7 App. Cas. 127.

93. The discharge of any mortgage so registered on the certificate (elsewhere than at the home port) may be indorsed thereon by any registrar or British consular officer, upon the production of such evidence as is thereby required to be produced to the registrar on the entry of the discharge of a mortgage in the register book; and upon such indorsement being made the estate, if any, which passed to the mortgagee, shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if

no such mortgage had been made. See the M. S. Act, 1854 (c. 104), s. 80, div. (7).

94. A mortgage of a vessel was made to G., who transferred it to B., and the mortgage and transfer were duly registered. Subsequently G. paid off B., and B. endorsed on the mortgage a receipt "in discharge of the within written security," and the registrar at the request of B., with the consent of G., entered the discharge of the mortgage. Afterwards it being explained to the registrar that a re-transfer had been intended he made a marginal note that the receipt was signed in error, a re-transfer being intended. *Held*, that whatever might be the equities between G. and the mortgagor, the original mortgage was at an end under sect. 68 of the M. S. Act, 1854, when the entry of discharge was made, and was not revived by the marginal note. *Bell v. Blyth*, L. R. 6 Eq. 201; L. R. 4 Ch. 136; 37 L. J. Ch. 526; 38 L. J. Ch. App. 178; 3 Asp. 182.

95. Where an entry on the register has been made by mistake, the proper course is to apply to the Admiralty Division of the High Court for an order to rectify the mistake. *The Rose*, L. R. 4 A. & E. 6.

6. Effect of Non-registration.

96. See tit. OWNERS, Pt. I. c. 4.

7. Equitable Claims unregistered.*

97. The expression "beneficial interest" whenever used in the second part of the principal act (the M. S. Act, 1854), includes interests arising under contracts and other equitable interests, and the intention of that act is declared to be that, without prejudice to the provisions contained in the said act for preventing notice of trusts from being entered in the register book, or received by the registrar, and without prejudice to the powers of disposition, and of giving receipts, conferred by the said act on registered owners and mortgagees, and without prejudice

to the provisions contained in the said act relating to the exclusion of unqualified persons from the ownership of British ships, equities may be enforced against owners and mortgagees of ships in respect of their interest therein, in the same manner as equities may be enforced against them in respect of any other personal property. See the M. S. Act Amendment Act, 1862 (c. 63), s. 3.

98. The law as to the effect of a transfer of a ship which is in form absolute, but is in reality only intended as a security for an advance, is not altered by the M. S. Act, 1854, and the provisions of s. 66 of that act do not prevent the owner who has executed a bill of sale absolute in its terms from showing, as before, that it was intended to operate as a security only. The M. S. Act Amendment Act, 1862 (c. 63), s. 3, is a statutory declaration that this is the true interpretation of the act. *Ward v. Beck*, 32 L. J. C. P. 113.

99. *Held*, prior to the amending act, that an equitable title of a mortgagee would not prevail against the legal title of registered owners. *McLarty v. Middleton*, 1 Asp. 114.

100. A registered mortgagee of a ship deposited with a creditor the instrument of mortgage thereof, and subsequently became bankrupt. *Held*, that such deposit took the ship out of the order and disposition of the bankrupt, and constituted the creditor an equitable mortgagee of the ship. *Lacon v. Liffen*, 32 L. J. Ch. 25.

101. A., the guardian of an infant the registered owner of a vessel, procured advances from F. for the repair of the vessel. Subsequently A. mortgaged the vessel to F. in a manner that amounted to a sale. F. at the time had notice that A. was acting as guardian of the infant. In a suit instituted by the infant for an account, *held*, that A. had no power under the M. S. Act, 1854 (c. 104), s. 99, to sell or mortgage the ship on behalf of the infant, and that F. was not entitled to any other lien upon the vessel than the outlay for necessary repairs. *Michael v. Fripp*, L. R. 7 Eq. 95; 38 L. J. Ch. 29; 3 Asp. 162.

102. See No. 81. See also tit. OWNERS, Pt. I. c. 4.

* (12) See an article entitled "On equitable interests in ships," by Lindley, L. J., in the May Number of the Law Magazine for

the year 1862. Maude & Pollock, 4th ed. p. 55.

5. Sale of Ship.*

103. Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase-money; but if there are more persons than one registered as mortgagees of the same ship or share, no subsequent mortgagee shall, except under the order of some court capable of taking cognizance of such matters, sell such ship or share without the concurrence of every prior mortgagee. See the M. S. Act, 1854 (c. 104), s. 71.

104. A power of sale is not essential to a mortgage. *Dickinson v. Kitchen*, 8 El. & Bl. 789.

105. On the application of the respondents, mortgagees of a vessel, in a pending appeal, the Privy Council ordered the unlivery of the cargo and the sale of the vessel, such unlivery and sale having been decreed by the Court of Admiralty. *The Jeff Davis*, L. R. 2 P. C. 19; 5 Moore, P. C. N.S. 25.

106. The court ordered, at the suit of a mortgagee of three-fourths of the shares of a vessel, that a decree of sale should issue on notice being given to the owner of the one-fourth share. *The Fairlie*, 37 L. J. Adm. 66.

107. An interdict having been obtained before a Scotch court, to restrain a mortgagee from selling a ship, and the mortgagee objecting to the ship, then at L., being chartered for a voyage, order granted to have an account taken of the amount due to the mortgagee, including cost of suit due to him, and an allowance to be estimated for the custody and management of the ship; and in default of payment, the ship to be sold, and the proceeds applied in extinction of the debt due to him. *Samuel v. Jones*, 1 Asp. 282; 7 L. T. N.S. 760. [SCOTCH.]

108. A ship was mortgaged for a nominal sum, to secure an unascertained balance, with power to sell by auction, and in case of not being sold, the mortgagee to have the control and benefit until his claims were satisfied. A sale by the mortgagee by private contract before balance ascertained, and while an investigation before arbitrators as to the amount was pending, held, an un-

authorized and wrongful sale (reversing the judgment below), and an account of the value of the ship at the time of such sale ordered to be taken, and the amount thereof paid to the mortgagor. *Brouard v. Dumaresque*, 3 Moore, P. C. C. 457.

109. When a mortgagee enters into possession of the mortgaged property with a view to a sale, he is bound to act with the same care and prudence, and to make the same efforts which a prudent proprietor would make in order to have the sale conducted to the greatest advantage. *Marriott v. The Anchor Reversionary Company (Limited)*, 2 Giff. 457; 3 L. T. N.S. 538; 7 Jur. N.S. 155; 30 L. J. Ch. 122.

110. The 8 & 9 Vict. c. 89, s. 45 (now repealed, but which contained provisions similar to those of the 70th sect. of the M. S. Act, 1854), does not apply to the case of a mortgagee in possession. L., the owner in possession, mortgaged the ship to A., who afterwards took possession, and sold to W. Held, that A., by taking possession, became the legal owner of the ship. *Woods v. Read*, 15 L. T. 90.

111. Upon such sale W. took possession, and then mortgaged the ship to A. again, but A. did not appear to have taken possession under the mortgage. Held, that W. was the legal owner by virtue of the 8 & 9 Vict. c. 89, s. 45. *Ibid.*

112. The plaintiff, as third mortgagee, instituted a suit against a ship of which the defendant was first mortgagee in possession, and caused her to be arrested. The defendant, to obtain the release of the ship, paid into court the sum of £500 in lieu of bail. The defendant then sold the ship for an amount insufficient to satisfy the sum secured by his mortgage. The plaintiff, when the cause was ripe for hearing, abandoned the suit, and the £500 was paid out to the defendant. The court condemned the plaintiff in costs, and ordered him to pay to the defendant interest on the £500 paid into court. *The Western Ocean*, L. R. 3 Adm. & Ecc. 38.

113. See also Cap. 6, *infra*, and No. 99.

* (13) Upon an entry of a discharge of a mortgage in the register book the property

reverts without any reconveyance. Instructions to Registrars of Ships.

6. *User of Ship.*

114. *Semble*, a mortgagee of a ship under the M. S. Act, 1854 (c. 104), s. 70, has power to use as well as sell the ship. *European and Australian Royal Mail Co. v. Royal Mail Steam Packet Co.*, 4 Kay & J. 676; 5 Jur. N.S. 310; *De Mattos v. Gibson*, 1 Johns. & H. 85; 3 L. T. N.S. 121; 30 L. J. Ch. 145; 7 Jur. N.S. 282.

115. A second mortgagee, although he cannot take possession as against a first mortgagee, has against all other persons the right to do so. *Keith v. Burrows*, 1 C. P. D. 722; 45 L. J. C. L. 876; 3 Asp. N.S. 280.

116. A mortgagee claimed under a special contract which did not contemplate a sale by him until two months had elapsed after a demand of payment. *Held*, upon construction of the agreement, and having regard to the circumstance that the ship would otherwise remain useless in that interval, that he was at liberty to use the ship. *European and Australian Royal Mail Co. v. Royal Mail Steam Packet Co.*, 4 Kay & J. 676; 5 Jur. N.S. 310.

117. In such a case the circumstance of the mortgagee being registered as absolute owner is not conclusive as to the rights of the parties. *Ibid.*

118. A mortgagee who uses a mortgaged vessel in an adventure or speculation, which turns out to be a losing one, is not only not entitled to charge the loss against the mortgagor, but must himself be charged with the value of the property at the time of his taking possession. *Marriott v. The Anchor Reversionary Co. Limited*, 2 Giff. 457; 3 L. T. N.S. 539; 7 Jur. N.S. 155; 30 L. J. Ch. 122.

119. A mortgagee of a steamer took possession of her, and used her for the purposes of a speculation which resulted in a loss, and he subsequently sold her disadvantageously. *Held* (affirming *Stuart, V.-C.*), that he must himself bear such loss, and be charged with the value of the vessel at the time he took possession of her. *Ibid.* 7 Jur. N.S. 713; 30 L. J. Ch. 571; 9 W. R. 726; 4 L. T. N.S. 590.

120. In assessing damages due to a mortgagee (the ship being an insufficient security) for wrongfully depriving him of the vessel, the principle upon which the damages are to be measured is, that the mortgagee is entitled to have the ship delivered to him in the exact condition in which it was on the day when he claimed possession, with every expense reimbursed to him, and interest in the meantime.

De Mattos v. Gibson, 1 Johns. & H. 79; 3 L. T. N.S. 121; 30 L. J. Ch. 145; 7 Jur. N.S. 282.

121. He is not, if he has announced no intention of using the ship, but a determination to sell, entitled to be reimbursed the probable profits arising from a charter-party, which he would otherwise have concluded. *Ibid.*

122. In estimating damages due to a mortgagee wrongfully kept out of possession of a vessel, the mortgagor is not entitled to any benefit which may have accrued during such time, owing to the increased value of the ship by reason of any rise in the current rates of freight. *Ibid.*

123. When a mortgagee of a ship is improperly restrained by injunction from using the vessel, the plaintiff giving the usual undertaking as to damages, the court, in dealing with the undertaking, will take into consideration the loss of profit arising from non-user. *Ibid.*

124. But such an injunction having been granted against a mortgagee who had not suggested loss by non-user as part of his case against the injunction, the court limited the amount of damage to the expense of keeping the ship, and, the security being insufficient, the deterioration she had consequently sustained. *Ibid.*

125. A mortgagor of a ship being allowed to remain in possession and to use her, placed her, on her being condemned as unseaworthy, in the hands of a shipwright to be repaired, who, not being able to obtain his money for the repairs which he had done, retained possession of her, claiming a right of lien upon her. In trover brought against him by the mortgagee, *held*, that the mortgagee having allowed the mortgagor to remain in possession and use the vessel, amounted, in the absence of an express authority, to an implied one that he was to use the vessel in the ordinary way, and have repairs done when necessary, and consequently that he, having such authority to have her repaired, the shipwright was entitled to hold her as against the mortgagee until his debt was paid. *Williams v. Allsup*, 10 C. B. N.S. 417; 4 L. T. N.S. 550; 8 Jur. N.S. 57; 30 L. J. C. P. 353.

126. *Held*, also, that the M. S. Act, 1854 (c. 104), s. 70, which enacts, "that the mortgagor shall not be deemed to have ceased to be owner of the mortgaged ship, except in so far as may be neces-

sary for making such ship available as a security for the mortgage debt," did not conflict with this view. *Ibid.*

127. The owner of a steamer, under circumstances which were held to show acquiescence by the plaintiffs, mortgagees of the vessel, entered into an agreement with the defendants under which the defendants were to work the steamer until further notice. The defendants at the time had no notice of the mortgage. Subsequently the plaintiffs gave notice, and required the delivery of the vessel at S. The defendants were running the vessels under agreement between T. and S., and at the time of such notice the vessel was at T. On its arrival at S. it was handed over to the plaintiffs, but was shortly after seized in a suit instituted by the crew for wages due from the defendants. To obtain the release of the vessel the plaintiffs paid the wages due. *Held*, that the plaintiffs were not entitled to any remuneration for the use and occupation of the vessel from the time of the notice till the delivery at S.; but that as they had paid the wages of the crew under compulsion of law, they were entitled to recover the amount so paid. *Johnson v. The Royal Mail Steam Packet Co.*, L. R. 3 C. P. 38; 37 L. J. C. P. 38; 3 Asp. 21.

128. The plaintiffs also claimed damages for the detention of the vessel in the suit for wages, on the ground that the delivery of the ship to them, subject to the lien for wages, was not a delivery of it in law. *Held*, that there had been no act of conversion or detention by the defendants, and that the plaintiffs could not recover this portion of their claim. *Ibid.*

129. Where a mortgagor of a ship does some act which prejudices or injures the security of the mortgagee, the declaration in the 17 & 18 Vict. c. 104, ss. 70, 71, that the mortgagor is to be deemed the owner, ceases to have any binding effect against the mortgagee, and he may exercise the powers given to him by the mortgage, subject to this qualification: every contract entered into by the mortgagor in possession is a contract which derives validity from the declaration contained in the statute of his continuing to be the owner. Such contract would, however, enure for the benefit of the mortgagee, on his giving notice to the party who is to pay the mortgage under that contract.

Collins v. Lamport, 11 Jur. N.S. 1; 34 L. J. Ch. 196; 13 W. R. 283.

130. R., the registered owner of a vessel, mortgaged it to L., and subsequently entered into a charterparty with C. to load a cargo for P. After part of the cargo had been taken on board, R. became bankrupt, whereupon L. took possession of the vessel, and refused to permit further cargo to be taken on board, or the intended voyage to be commenced. C. moved for an injunction to restrain L. from dealing with the ship, so as to interfere with the charterparty. *Held*, that as long as the mortgagor's dealings with the ship were consistent with the mortgagee's security, and as long as the mortgagees were not in possession, the mortgagor had authority to act as owner, and to execute any contracts to enable him to obtain the full benefit of his property. Injunction granted accordingly. *Ibid.*

131. Where a beneficial charterparty has been entered into by a mortgagor in possession of a ship, the mortgagee cannot object to the charterparty being carried out upon the ground simply that the effect of carrying out the charterparty will be to remove the ship out of the jurisdiction of the court, and to render it difficult for him to enforce his mortgage security. *The Fanchon*, 5 P. D. 173; 4 Asp. 272.

132. The mortgagees of a ship having seized and advertised it for sale, the mortgagors brought an action against them for redemption, and moved for an injunction to restrain the sale, whereupon, the mortgagees undertaking not to proceed with the sale, a decree was taken by consent in the action directing an account of what was due on the mortgage for principal and interest, and for redemption on payment by the mortgagors of the amount certified. *Held*, that the mortgagees were justified in seizing the ship, and that in taking the account directed they were entitled to be allowed expenses incurred by them in taking and holding possession of the ship, advertising it for sale, and effecting insurances on the head of "just allowances." *Wilkes v. Saunton*, 7 Ch. D. 188; 47 L. J. Ch. 150.

7. Bankrupt Mortgagors.*

133. No registered mortgage of any ship or of any share therein shall be affected by

* (14) Mortgages, when duly registered, were expressly excepted from the effect of

any act of bankruptcy committed by the mortgagor after the date of the record of such mortgage, notwithstanding such mortgagor at the time of his becoming bankrupt may have in his possession and disposition and be reputed owner of such ship or share thereof; and such mortgage shall be preferred to any right, claim, or interest in such ship or any share thereof which may belong to the assignees of such bankrupt. M. S. Act, 1854 (c. 104), s. 72.

134. London sub-mortgagees of shipments at C. and H. K. sent thither notices by the next direct mail, there being another and earlier mail by a different route by which the notices might possibly have reached their destination sooner. Before this could take place by either mode of transmission the sub-mortgagees became bankrupt. *Held*, that the notice was sufficient to take the goods out of their reputed ownership. *Ex parte Kellsall*, De Gex, Cas. in Bank. 352.

135. G., by deed dated Nov. 11, 1857, assigned the cargo with which the E. was then laden, and which thereafter should be placed on board. On Jan. 3, 1858, notice of the deed was sent to the master, but it never reached him. From the 1st to 12th Feb., the E. received part of the cargo of another ship belonging to the same shipowner (G.) On the 12th Feb. the vessel sailed, and on March 1st G. was declared bankrupt. On the arrival of the E. the master was served with a copy of the notice. *Held*, that there was no distinction between the part of the cargo put on board before the assignment and the part put on board afterwards. *Acraman v. Bates*, 6 Jur. N.S. 294.

135a. *Held*, further, that there was no default in not giving notice of the deed of Nov. 11, 1857, and that therefore the property passed under that deed. *Ibid*.

136. A debtor mortgaged without any present consideration a ship to one of his creditors, leaving himself scarcely any assets, and at the time of the mortgage both the mortgagor and creditor knew that the former was practically bankrupt, although he did not actually become so until shortly afterwards. In a suit in-

stituted by the mortgagee against the ship, the assignee in bankruptcy intervening: *Held*, that the mortgage was executed in contemplation of bankruptcy, and was void as being a fraudulent preference. *The Heart of Oak*, 39 L. J. Adm. 15; 3 Asp. 317.

137. The plaintiffs advanced £5,000 to W. & Co., M.'s agents in England, to be secured by "the proceeds of ships and deals coming" to W. & Co. from M. On the arrival of the vessel S., W. & Co. collusively sold it to L., in order that L. might mortgage it to Y. L. and Y.'s names were entered on the register as owner and mortgagee respectively. W. & Co. having stopped payment, the plaintiffs claimed a charge on the S. and obtained an injunction restraining W. & Co., L. and Y. from selling or otherwise dealing with the vessel. *Held*, by the Lord Chancellor, that (assuming the S. formed part of the plaintiffs' security), as Y. had no notice of the plaintiffs' equitable title, and had acted *bona fide*, the injunction must be dissolved. *Baring v. Harris*, 2 Asp. 194.

138. A., a merchant at G., acted as agent for L., a merchant in L., and also for M., another merchant in the same place, L. and M. having also dealings together. A. was accustomed to send to L. monthly accounts of sales of coal which L. had sent to G., giving him credit for the proceeds, and debiting him with commission and other expenses. In 1854 L. applied to M. to make him advances, which he agreed to do, provided L. would give orders to A. to remit him out of the proceeds of the sale of L.'s coals the sum he might advance. A., having a general account with M., instead of actually remitting these advances to him, entered to his credit the amount which he was instructed from time to time by L. to remit, and in the course of his business remitted bills to M. for collection, including some drawn on L. In March, 1856, M. requiring further security for any future advances he might make, L. gave him a mortgage on a ship for them, he having previously given him security on the ship for two sums which had been advanced

the reputed ownership clauses contained in the Bankrupt Act, 6 Geo. 4, c. 16, s. 72, and the Bankrupt Law Consolidation Act, 12 & 13 Vict. c. 106, s. 125, continued the exception. The Bankruptcy Act, 32 & 33 Vict. c. 71, contained no express provisions on the subject, nor does the Bankruptcy Act, 1883

(c. 52).

(14a) By sect. 4 of the Bills of Sale Act, 1878, the expression "bill of sale" is not to include transfers or assignments of any ship or vessel, or any share thereof. See also sect. 3 of the Bills of Sale Act, 1881.

to him. In August, 1856, L. assigned the equity of redemption in the ship to the plaintiff, and on the 2nd September he became bankrupt. On the 4th Sept. the plaintiff sent to G. to take possession of the ship, tendering to M. £900, being the amount he thought due to him. The ship, which had previously been advertised for sale, was sold by M. to the defendants, who were registered as owners. Some of the bills drawn by A. on L. and remitted to M. were dishonoured, but the amounts credited to M. by A. remained undiminished and undisturbed. Upon the plaintiff filing a bill to have the sale of the ship set aside, and for an account, *held*, that as M. had consented to substitute for the remittance a credit in the general monthly account, and as the bills remitted were not in respect of those particular items, but indiscriminately for collection, he had no right to select any particular item of credit, and attribute the dishonoured bill to that item, so as to prejudice third parties. *M'Larty v. Middleton*, 9 W. R. 861; 4 L. T. N.S. 852.

139. *Held*, that M. was not justified in selling the ship on the 19th September, as nothing was due to him at that time beyond the £900; he was, therefore, liable to pay the plaintiff the value of the ship beyond that sum. *Ibid*.

140. Mortgages of ships having been deposited with bankers in security of an overdrawn account ten days before the mortgagors were adjudged bankrupts, *held* that the bankers had a lien on the proceeds of the ships. As by the M. S. Act no valid assignment could be made without the production of the mortgages, they were not in the order and disposition of the bankrupt. Bill of sale executed as a security for the debt eight days before bankruptcy *held* invalid, being an act of bankruptcy, upon the authority of *Bittlestone v. Cooke*, 6 Ell. & B. 307; *Hutton v. Crutwell*, 1 Ell. & Bl. 15, distinguished; *Lacon v. Liffen*, 1 Asp. 262.

141. By the law of Jersey the hypothec of moveables, unattended with possession, is not recognized, and registration of a debt is material only as it affects immoveable property. Successive mortgages were made to two different persons for advances to build a ship. The instruments were registered on the same day, the mortgagor having become bankrupt.

Held, that (after the claim of the shipwrights) the mortgagee's claims ranked together as liens on the vessel, and not according to date. *Hayley v. Bartlett*, 1 Asp. 90.

See also No. 151, *infra*.

8. Bankrupt Mortgagees.

142. A registered mortgagee of a ship deposited with a creditor the instrument of mortgage thereof, and subsequently became bankrupt. *Held*, that such deposit took the ship out of the order and disposition of the bankrupt, and constituted the creditor equitable mortgagee of the ship. *Lacon v. Liffen*, V.-C. S. Affirmed on appeal by the Lord Chancellor, 32 L. J. Ch. 25; 11 W. R. 135; 7 L. T. N.S. 411.

9. Priority.

1. Mortgages *inter se*.*

143. If there is more than one mortgage registered of the same ship or share, the mortgagees shall, notwithstanding any express or constructive notice, be entitled in priority according to the date at which each instrument is recorded in the register books, and not according to the date of the instrument. See M. S. Act, 1854 (c. 104), s. 69.

144. Whenever the certificate for mortgages elsewhere than at the home port contains a specification of the place at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no mortgage *bond fide* made to a mortgagee without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given. *Ibid*. s. 80, sub-s. (4).

145. Every mortgage which is duly registered on the certificate shall have priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the registry book; and if there be more mortgages than one so endorsed, the respective mortgagees claiming thereunder shall, notwithstanding any express or constructive notice, be entitled according to the date at which a record of each mortgage is endorsed on the certificate, and not according to the date of the

* (15) As to the priority of mortgages under the system of registry adopted before the present act, see *Ex parte Jones*, 2 Tyr.

671; S. C. 2 C. & J. 513; Maude & Pollock, 4th ed. p. 57.

mortgage. See M. S. Act, 1854 (c. 104), s. 80, sub-s. (5).

146. Subject to the foregoing rules every mortgagee whose mortgage is registered on the certificate shall have the same rights and powers, and be subject to the same liabilities, as he would have had and been subject to if his mortgage had been registered in the register book instead of on the certificate. *Ibid.* sub-s. (6).

147. No registered mortgage of any ship or share shall be affected by any act of bankruptcy committed by the mortgagor after the date of the record of such mortgage, notwithstanding such mortgagor at the time of his becoming bankrupt may have in his possession and disposition, and be reputed owner of, such ship or share; and such mortgage shall be preferred to any right or interest in such ship, or share, which may belong to the assignees of such bankrupt. *Ibid.* s. 72.

148. The owner of a vessel made a mortgage of it and of the cargo in London to A., whilst the vessel was on a whaling voyage to the South Seas, subject to two prior mortgages thereof, and the third mortgagee forthwith gave notice of his mortgage to the prior incumbrancers. The master of the vessel afterwards putting into Sydney transhipped the oil taken on the voyage to another vessel consigned to consignees in London, who honoured his bill of exchange on them upon having a lien on the consignment. The mortgagor induced B. to advance him £1,000 on a mortgage of the cargo so transhipped and consigned without notice of any other charge thereon, except the lien of the consignee. B. gave notice of his mortgage to the consignee. A., as soon as he knew of the consignment (but subsequent to B.'s notice), gave notice to the consignee of the mortgage to him; and after such notice the consignee, after satisfying his own lien, paid over the balance of the proceeds of the oil to B. *Held*, that A. having done all he could towards possession, was entitled to priority over B. *Feltham v. Clark*, 1 De G. & Sm. 307.

149. Registered first mortgagees of a ship, with power of sale, took from the mortgagor, by an unregistered document, a declaration that the mortgage should be a security, not only for the mortgage debt, but for such sums as might, for the time being, be due from the mortgagor. Subsequently another incumbrancer took a registered mortgage, expressed to be sub-

ject to the first mortgage, but not referring to the unregistered charge, of which, however, the last mortgagee did not deny having had notice when he took his security: *Held*, that the unregistered document was not merely a further charge but a new security, and that the 8 & 9 Vict. c. 89, s. 34 (since repealed), excluded it from priority over the last mortgage. *Parr v. Applebee*, 7 De G. M. & G. 585.

150. A mortgagee of a ship, with notice of a prior unregistered equitable mortgage, registered. *Held*, that the prior mortgage was postponed to him. *Coombs v. Mansfield*, 3 Drew. 193.

151. On the 15th July, A., owner of an unfinished ship, mortgaged it to B. On the 5th August, A. registered, on the 6th B. registered. *Held*, that A.'s assignees could not maintain trover for the ship. *Bell v. The Bank of London*, 3 H. & N. 730; 28 L. J. Exch. 116.

152. Although the M. S. Act, 1854, contains no provision negating the validity of a mortgage made otherwise than according to the terms of the act, the whole scope of the act is to that effect, and an equitable mortgage is still invalid. *Liverpool Borough Bank v. Turner*, 1 Johns. & H. 159; 1 Asp. 21; 29 L. J. Ch. 287; 7 Jur. N.S. 150; 2 De G. F. & J. 502; 3 L. T. N.S. 84; 6 Jur. N.S. 84; 29 L. T. 827.

153. See also No. 94, p. 1138.

2. Other Liens.

154. *Held*, that the equity of redemption in a vessel mortgaged under the 8 & 9 Vict. c. 89 (since repealed), was not saleable, and therefore, where the mortgagee was in possession before the seizure of the vessel by the sheriff at the suit of a creditor, that the verdict in an interpleader issue had been rightly entered for the mortgagee against the creditor. *Wood v. Reed*, 40 Legal Observer, C. B. 17.

155. A., owner of forty-eight shares in a ship, gave a power of attorney to B., the other part owner, empowering him to sell A.'s shares. The ship sailed under the command of B. A. afterwards mortgaged his shares in the ship when at sea to the plaintiffs, who had no notice of the power of attorney, and the mortgage was entered on the register. Subsequently B. sold the ship abroad to C., who had no notice of the mortgage by A. The ship was registered *de novo* abroad, and arrived in London. The plaintiffs took possession

of the ship. The defendants afterwards also took possession. *Held*, that the plaintiffs (the mortgagees) had the better title to A.'s shares. *Cato v. Irving*, 16 Jur. 161; 18 L. T. 345; 5 De G. & Sm. 210; 21 L. J. Ch. 675.

156. A. was owner of seven-eighths of a ship, and B. was owner of the other one-eighth. A. mortgaged his share. A. and B. sent out the ship for a cargo at their joint risk in the same proportions as they had in the ship. The ship brought home a cargo, and then the mortgagee took possession and claimed to be entitled to seven-eighths of the cargo, without making any deduction for the expenses of the outfit and voyage. A. had assigned all his property to a trustee for the benefit of his creditors. *Held* (affirming a decree of the Master of the Rolls), that the expenses of the voyage were to be paid out of the proceeds of the cargo before any division took place, and that B., the joint owner, was entitled to one-eighth of the residue of the proceeds, the remaining seven-eighths of the residue being payable to the trustee of A., to whom he had assigned his property, there being no contract between A. and his mortgagee respecting the cargo. *Alexander v. Simms*, 18 Beav. 80; 23 L. J. Ch. 721.

157. An instrument under seal executed by the master (who was also owner) for the repayment of money borrowed for repairing the vessel, and thereby stipulating that the vessel should be and remain a security by way of bottomry for the repayment thereof, and that as well his executors, &c., as the said vessel, should be bound in the penal sum of so much, operates as a mortgage of the vessel, so that the party takes possession, after which his right is not defeasible by a

subsequent execution at the suit of another creditor. *Ladbroke v. Crickett*, 2 T. R. 649.

158. Assignee of freight for a particular voyage, *held* entitled to preference over the mortgagee of ship and freight generally, who had not taken possession. *Brown v. Tanner*, 2 Asp. 381; L. R. 2 Eq. 806.

159. Mortgagees having commenced an action against a vessel, material men with a possessory lien intervened, and the vessel was sold. The claim of the material men exceeded the amount of the proceeds. *Held*, that the mortgagees were entitled to their costs up to date of sale out of such proceeds. *The Sherbro*, 5 Asp. 88.

160. See also, as to the priority of mortgages over other liens, tit. LIENS, p. 822 *et seq.*

10. Liability.*

161. A mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or any share therein, nor shall the mortgagor be deemed to have ceased to be owner of such mortgaged ship or share, except in so far as may be necessary for making such ship or share available as a security for the mortgage debt. See the Merchant Shipping Act, 1854 (c. 104), s. 70. See also No. 97.

162. The Act 6 Geo. 4, c. 110, s. 45 (providing that no mortgagee should be deemed owner, &c., substantially re-enacted by the Merchant Shipping Act, 1854, s. 70) was intended for the protection of the mortgagee, and not in restriction of his rights. *Dean v. McGlire*, 4 Bing. 45, cited with approval in *European, &c. Co. v. Royal Mail, &c. Co.*, 4 K. & J. 685; 5 Jur. N.S. 310. See also *The Fruit Preserver*, 2 Hagg. 182.

* (16) In the case of a transfer by way of mortgage under the law (8 & 9 Vict. c. 89, since repealed), prior to the M. S. Act, 1854, the collector and comptroller were required to state on the entry in the book of registry, and also on the certificate of registry, that such transfer was made only as a security for the payment of debts, or by way of mortgage, and in that case the mortgagee would not be deemed the owner (s. 45), nor would his rights be affected by any act of bankruptcy on the part of the mortgagor (s. 46).

(17) A mortgagee who is in possession of a ship, and holds himself out as absolute owner, is liable for repairs. *Tucker v. Buffington*, 15 Mass. 477; *Miles v. Spinola*, 6 Hill. 218; 4 Hill. 177. [AMERICAN.]

(18) *Aliter*, if he is out of possession. *M'Intyre v. Scott*, 8 Johns. 159; *Phillips v. Ledley*, 1 Wash. C. C. 226. [AMERICAN.]

(19) Unless the repairs were made on his credit or by special contract with him. *Ring v. Franklin*, 2 Hall, 1; *Birkbeck v. Tucker*, *ibid.* 121; *Tucker v. Buffington*, 15 Mass. 477; *Star v. Knox*, 2 Conn. 215. [AMERICAN.]

(20) A mortgagee of a ship in possession is liable to the master for his wages, if the voyage be performed for the benefit of the mortgagee. *Champlin v. Butler*, 18 Johns. 169. [AMERICAN.]

(21) See also, as to the liability of mortgagees, 3 Kent's Commentaries, 134—136.

163. The 8 & 9 Vict. c. 89, s. 45 (now repealed, but which contained provisions similar to those of the 70th section of the M. S. Act, 1854), does not apply to the case of a mortgagee in possession. *Woods v. Read*, 15 L. T. 90.

164. When the transfer is not expressed to be by way of mortgage, the protection which the Ship Registry Act intended to afford the mortgagee against the creditors of a bankrupt shipowner is not obtained, and the vendee, appearing on the registry to be owner, may be subject to all the liabilities which belong to him in that character. *Langton v. Horton*, 5 Beav. 19.

165. *Semble*, the owner of a vessel abroad may lawfully hypothecate, or authorize the hypothecation of his vessel, for charges relating to the outward cargo; and if he do so before bankruptcy, and before the mortgagees of the ship have taken possession, the assignees and mortgagees would be bound. *The Edmond*, 1 Lushington, 58; 2 L. T. N.S. 195; 29 L. J. Adm. 76. See further as to bot-tomry, tit. BORTOMRY, p. 100.

166. In a cause of necessities the trans-feree of a mortgage, though in possession of a ship when the necessities are sup-plied, is not liable for them unless the master in ordering them was acting as his agent. *The Troubadour*, 2 Asp. 475.

167. A subsequent mortgagee is liable for repairs previously done to the mort-gaged vessel. The institution of a suit as a cause of necessities does not estop the plaintiff from pleading and proving subsequently that his claim is in respect of repairs; but the title of the cause must be amended. *The Skipwith*, 2 Asp. 20.

168. A mortgagee of four sixty-fourth shares of a vessel condemned in the costs, but not damages occasioned by a wrong-ful arrest of the vessel. *The Egerateia*, 38 L. J. Adm. 40; 3 Asp. 241.

169. Funds were advanced by the pur-suers in a foreign port to the attorney and agent of mortgagees in possession, to be disbursed for the service of the vessel. In an action against the mortgagees for the advances and disbursements, *held*, that they were liable to the pursuers for the funds so supplied, although it was not proved that the whole advances had been actually applied for the service of the vessel. *Havilland v. Thomson*, 3rd Series, vol. 8, p. 313. [SCOTCH.]

170. *Semble*, mortgagees are constituted mortgagees in possession, and as such are liable as owners, if the voyage was for

their behoof, and if they selected and ap-pointed the master. *Ibid*.

171. Mortgagees of a ship are not, as owners, liable for her repairs. The re-ceipt of money, the proceeds of the sale of shares in a ship by mortgagees, does not deprive them of their character of mortgagees. *Harries v. Handy and others*, 3 Ir. Jur. Exch. 290.

172. A mere mortgagee of a ship, who does not take possession, is not liable for supplies for the use of the ship previous to a re-transfer. *Twentyman v. Hart*, 1 Stark. 366; *Irving v. Richardson*, 2 B. & Ad. 193; 1 M. & Rob. 153; *Chinnery v. Blackburne*, 1 H. Bl. 117, n. Nor for wages and disbursements of the master. *Jackson v. Vernon*, *ibid*. 114; *Annett v. Carstairs*, 3 Camp. 354.

173. Unless a contract, express or im-plied, can be proved against him. See *Castle v. Duke*, 5 C. & P. 359; *Baker v. Buckle*, 7 Moore, 349.

174. Until a mortgagee takes posses-sion he is protected from all the statutory consequences of being on the register; but when he does take possession and make use of the vessel for the purpose of rendering his security available, he is an owner within the meaning of the statute, and becomes subject to the liability at-tached to that character. *De Mattos v. Gibson*, 1 Johns. & H. 84; 3 L. T. N.S. 121; 30 L. J. Ch. 145; 7 Jur. N.S. 282.

175. The mortgagee of a ship *held* liable for furnishings in a home port made on the authority of the master or owner, the mortgagee having taken the possession and management of the vessel. *Russell v. Baird*, 1 D. 931. [SCOTCH.]

176. B. accepted two bills of exchange, drawn upon him by A., and the latter executed in favour of the former a bill of sale of a ship, it being agreed between the parties that if A. neglected to provide for the bills when due, B. should be at liberty to indemnify himself by sale of the vessel. The bills were not paid by A., but by B., who thereupon took upon himself the management of the vessel by directing the master as to subsequent freight, voyages, &c. *Held*, that from the time when B. took upon him such direction he was owner, and not mort-gagee. *Ex parte Howden*, 2 Mont. D. & D. 574.

177. See further as to the effect on the liability of the mortgagee of his taking possession of the ship, caps. 5 and 6, pp. 1139—1141.

178. As to the mortgagee's liability for user of ship, see cap. 6, p. 1140.

11. Right to Freight.

179. The first registered mortgagee of a ship, by taking possession of her before the freight is completely earned, obtains a legal right to receive the freight, and to retain thereout not only what is due on his first mortgage, but also the amount of any subsequent mortgage which he may have acquired on the freight in priority to every equitable charge of which he had no notice; and it makes no difference that a subsequent incumbrancer was the first to give notice to the charterers of his charge on the freight. *Liverpool Marine Credit Co. v. Wilson*, 7 Ch. 507; 41 L. J. Ch. 798; 26 L. T. 717; 20 W. R. 665.

180. The mortgage of a ship carries with it the right to receive the freight earned by the ship; and although the mortgagee cannot recover back from the mortgagor freight which he has allowed the mortgagor to receive, he may at any time intercept the freight by giving notice to the mortgagor, consignee or charterer that he intends to exercise his right of property and to require the freight to be paid to him. *Wilson v. Wilson*, L. R. 14 Eq. 32; 41 L. J. Ch. 423; 26 L. T. 348; 20 W. R. 436.

181. A mortgagee of a ship does not, ordinarily speaking, obtain by the mortgage alone, a transfer by way of contract or assignment of the right to freight. The mortgagor remains the *dominus* of the ship with regard to everything relating to its employment or non-employment, or to any rate of freight to be earned by its employment, until the mortgagee takes possession. The mortgagee, on taking possession, becomes the owner, and it is by virtue of that ownership and not by virtue of any antecedent contract or right that he is entitled to receive the freight, which by contract or otherwise is lawfully payable. *Keith v. Burrows*, 9

App. Cas. 636; 46 L. J. C. P. 801; 37 L. T. 291; 25 W. R. 831.

182. Where an entire ship is in mortgage, in order to defeat the right of the mortgagor to receive the freight, the mortgagee must take possession of her before the completion of the voyage; but where the mortgagor of certain shares is ship's husband, if the mortgagee join with the owners of the other shares in the ship in the appointment of a new ship's husband before the completion of the voyage, the mortgagor loses all right as ship's husband to receive the freight. *Beynon v. Godden*, C. A. 3 Ex. D. 268; 39 L. T. 82; 26 W. R. 672.

183. The plaintiff, or first mortgagee of a British ship and her freight under a mortgage executed in England, commenced an action against the owners and second mortgagees, claiming an account. Finding that the freight was in the hands of a firm of foreign merchants, who claimed to retain it on account of a debt due from the second mortgagee, the plaintiff obtained leave to join the foreign merchants as defendants, on the ground that the plaintiff's claim was based upon an English contract. *McStephens v. Carnegie*, 4 Asp. 215.

See further as to the right to freight, tit. GOODS, CARRIAGE OF—, Pt. VII. p. 467.

12. Mortgagors and Mortgagees as Parties to Actions.

See tit. PRACTICE.

13. Accounts.

See tit. REGISTRAR AND MERCHANTS.

14. Assignment by Mortgage of Freight.

See tit. GOODS, CARRIAGE OF—, Pt. VIII. c. 2, and c. 3, s. 2, pp. 597—601; and *ibid.* No. 162, p. 486.

15. French Law.*

* (22) By a law of 10th Dec. 1874, French ships are made subject to mortgage (*hypothèque*), it adds a fresh paragraph to Art. 191, and amends Art. 233 of the Code of Commerce. See also as to mortgage by French law, tit. BOTTOMRY, notes 169, 238, 248, 282, pp. 151—159.

(23) The French courts will adjudicate upon a mortgage of a foreign ship made in con-

formity with the law of the ship's flag. *Barbaressos v. Nicolaidides & Co.*, Cas. Cir. 25th Nov. 1879; Grenoble, 11th May, 1881; Journ. de Droit Inter. Privé, 1880, p. 580; *ibid.* 1881, p. 428.

(24) The French courts will not recognize an unregistered sale (or *semble*, mortgage) of a ship, or shares in a ship, as against creditors of the apparent owner. L. L. 1878, II. 101.

NECESSARIES, REPAIRS AND SUPPLIES.

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1. Generally.*

1. Those are commonly called material men whose trade it is to build, repair, or equip ships, or to furnish them with tackle and provision necessary in any kind. *The Neptune*, 3 Hagg. 142.

2. By the law of England the master of a ship has no power to bind the ship or owner, except within special limits for repairs and supplies becoming necessary from the exigencies of the voyage.† This is an essential principle of bottomry. *The*

* (1) As to the personal responsibility of owners, charterers and mortgagees, for repairs and supplies ordered by the master, see Abb. Sh. 12th ed. p. 20 *et seq.*; Maclachlan on Merchant Shipping, 3rd ed. p. 105; Maude and Pollock on ditto, 4th ed. pp. 55—63; and the Mercantile Law Amendment Act, 1856 (c. 97), s. 8.

† (2) The decisions of the United States courts fully support this view, and even go further, for it has been held in more than one case that the person who supplies goods or money cannot recover against the ship, and consequently not against the owners, if it appears that the master had no necessity to pledge the ship's credit by reason of his having funds in hand to supply the ship's wants; there is a duty on the material man to make inquiries as to the master's authority before making advances. *Thomas v. Osborn*, 19 Wallace, U. S. Sup. Ct. Rep. 22; *Pratt v. Read*, *ibid.* 359; *The Eledona*, 2 Benedict, U. S. Dist. Ct. 2nd Dist. Rep. 31; *Gager v. Babcock*, 48 N. Y. Rep. 154. [AMERICAN.]

(3) The general rule of law to be deduced from the various American cases seems to be that even in a foreign port a master cannot pledge his owner's credit if the owner himself, or his agent, be present. See Parsons on Shipping, vol. 2, pp. 8, 9, 10 and 17, and the cases there cited.

(4) The general rule never seems to have

been really disputed. Several cases have been decided which have been distinguished on the ground that the owner has ratified the master's authority. See *Provost v. Patchin*, 9 N. Y. Rep. 235, and the cases there cited.

(5) The master of a ship has authority, in a foreign port, to procure all supplies and repairs reasonably fit and proper for the safety of the ship and the due performance of the voyage. *The Ship Fortitude*, 3 Sumner, 228. [AMERICAN.]

(6) Material men have a lien for repairs to a ship in a foreign port, whenever those repairs are apparently reasonable and proper, although not absolutely necessary. *Ibid.*

(7) All that is required on their part is good faith, and reasonable ground for action. *Ibid.*

(8) A master acting with reasonable diligence, discretion and skill, upon the advice of competent persons at a foreign port, in making repairs, will be protected, even though a more judicious course might possibly have been adopted in the judgment of other more skillful persons. *Ibid.*

(9) The plaintiffs should exhibit an account of the items of expenses for repairs, supplies, &c., that the court may judge whether they were necessary for effectuating the objects of the voyage. *The Bridgewater*, Olcott, Adm. 35. [AMERICAN.]

Boddingtons, 2 Hagg. 425. See also tit. *BOTTOMRY*, cap. 6; and as to the master's authority generally to contract for his

owners, tit. *MASTERS*, c. 5, p. 1120, and tit. *OWNERS*, Pt. II.

3. In law both the owner and the

(10) The authority of the master to procure supplies and repairs to his ship when in a foreign port is not confined to such supplies and repairs as are absolutely or indispensably necessary, but includes all such as are reasonably fit and proper for the ship and the voyage. *The Ship Fortitude*, 3 Sumner, 228. [AMERICAN.]

(11) A master may charge the owner for the necessary supplies for the usual employment of the vessel, but not for superfluities or luxuries. *Pratt v. Tunno*, 2 Brevard, 449. [AMERICAN.]

(12) *Primâ facie* the supplies of material men to a foreign ship are to be deemed to be furnished on the credit of the ship and the owners. *The Brig Nestor*, 1 Sumner, 75. [AMERICAN.]

(13) Workmen and material men having a lien on a vessel may enforce it before the vessel is finished or sold. *Davies v. A New Brig*, Gilpin, 473; *Harper v. The New Brig*, *ibid.* 536; *Read v. The Hull of a New Brig*, 1 Story, 244. [AMERICAN.]

(14) A suit against the owners of a ship for supplies furnished to the master in a foreign port cannot be maintained without proof that the supplies were necessary. *Whitten v. Tisdale*, 43 Maine, 451. [AMERICAN.]

(15) The owner of a vessel is liable for necessary supplies furnished by order of the master, and if he seeks to escape such liability he must show by satisfactory proof that the credit was given to others; he may show that credit was given to the master alone for such supplies, or that there was a special promise taken from him and relied on, and thus exempt himself from liability. *Abbott v. Baltimore and Rappahannock Steam Packet Co.*, 1 Maryland Ch. Decis. 552. [AMERICAN.]

(16) A painter was in the habit of painting the ships built by a builder, and kept a general account against him. *Held*, that he trusted the builder, and had no lien for the painting of one particular vessel. *Scott v. Propeller Plymouth*, 6 McLean, 463. [AMERICAN.]

(17) Work done upon a vessel in the dry dock, in scraping her bottom preparatory to coppering her, is not of a maritime character, and compensation for such labour cannot be recovered in a Court of Admiralty. *Bradley v. Bolles*, 1 Abb. Adm. 569. [AMERICAN.]

(18) There is no remedy in a Court of Admiralty, either *in rem* or *in personam*, for the breach of an executory contract for personal services to be rendered to a vessel in port, in loading or unloading her cargo. *Cox v. Murray*, *ibid.* 340. [AMERICAN.]

(19) Neither costs of advertising a vessel for sea, nor portage, nor commissions for procuring freight, wages of stevedores or

lightermen, are liens on the ship, *suable in rem*. *The Joseph Cunard*, Olcott, Adm. 120. [AMERICAN.]

(20) A person employed to visit a vessel at anchor from time to time, to see to her safety, ventilate her, try her pumps, and the like, cannot maintain a suit in Admiralty to recover his compensation for such services. *Gurney v. Crockett*, *ibid.* 490. [AMERICAN.]

(21) But if, in the course of such employment, a necessity arises that such keeper should get the ship under way, and navigate her from one anchorage to another, this is a maritime service for which he may recover in a Court of Admiralty. *Ibid.*

(21a) A person who lends money to be employed in the repairs of a vessel, or to furnish her with supplies, has the same privilege against the vessel that material men have. He is considered as giving credit both to the ship and to the owners. The ship is hypothecated to him for his security, and he may maintain in the Admiralty Court either a libel *in rem* against the vessel, or a libel *in personam* against the owners. See *Davis v. Child*, *Davies*, 71. [AMERICAN.]

(21b) Whether this principle be supposed to have been borrowed from the Roman law, or to have had an independent origin in the commercial usages of the middle ages, it appears to be equally unquestionable in one case as in the other. *Ibid.*

(21c) As to claims and proceedings by material men in the American courts, see 2 Parsons on Maritime Law, 548; 1 Conkling's Adm. Prac. (2nd ed.) 73; Dunlap's Adm. Prac. (2nd ed.) 70; and for forms of libel and answer on such a claim, see *ibid.* pp. 503—507. [AMERICAN.]

(22) Where the master of a vessel, in a port of a state to which she does not belong, had taken her on shares, agreeing to victual and man her, he was *held* to have no right, as between himself and his owner, to obtain provisions upon the credit of his owners. *Webb v. Pierce*, Sprague, 192. [AMERICAN.]

(23) But third persons ignorant of any special agreement had a right to trust to the apparent authority of the master; and if they did so in good faith, the owner would be bound personally for necessary supplies and provisions. *Ibid.*

(24) Provisions and groceries furnished for the use of a steamboat create a lien on the boat under statute 1833, though the boat was let by charterparty, and the articles were furnished the lessee for use on the boat. But some one, if not all of the owners, must be made a party to the proceedings. *Greenlaw v. Potter*, 5 Sneed. (Term.) 390. [AMERICAN.]

(25) The lien given by statute on ships attaches from service in the suit, not from the

master may be responsible, not jointly, but separately, to the material man, who may bring his action against either of them. *The Alexander*, 1 W. Rob. 357.

4. When goods are furnished for the use and benefit of a foreign ship the presumption is that the ship is liable, and to rebut this presumption it must be distinctly proved that credit was given to the individual only. *The Perla*, Swabey, 354; 4 Jur. N.S. 742.

5. Where no special contract as to the article purchased is proved, the purchaser takes at his own risk. *The Flecha*, 1 Spinks' Eccl. & Adm. Rep. 444.

6. The master of a Belgian passenger vessel employed an engineer in London to supply his vessel with a new screw propeller, which did not produce the increased speed in the vessel, nor the decreased consumption of fuel represented by the plaintiff. *Held*, that in the absence of a special contract the ship was liable. *Ibid*.

7. It is contrary to all principle that a master could legally execute a bottomry bond on one vessel for debts arising from supplies and necessaries furnished to other ships. *The Osmanli*, 3 W. Rob. 212.

8. A ship cannot be made liable to arrest for a general balance of account by merely appropriating the receipts and payments in such a manner as to show a balance for which the ship would be liable. *The West Friesland*, Swabey, 454; S. C. on appeal, *ibid*. 456; 13 Moore, P. C. C. 186; 5 Jur. N.S. 658; 8 W. R. 423; 2 L. T. N.S. 613; and see, as to the appropriation of payments, *Devaynes v. Noble (Clayton's case)*, Tudor's Leading Cases in Maritime Law, p. 1.

9. In the case of a sale of a ship abroad by the master, *held*, that the purchasers, if they had acquired no legal title by the purchase, had no claim or lien in respect of the moneys laid out by them in the repairs. *Ridgway v. Roberts*, 4 Hare, 106.

10. When a ship is arrested for a spe-

cific demand, the amount cannot be referred to the registrar, unless it appears that something in any event is due. *The West Friesland*, 5 Jur. N.S. 658; Swabey, 454; S. C. on appeal, *ibid*. 456; 13 Moore, P. C. C. 186; 8 W. R. 423; 2 L. T. N.S. 613.

11. A claim for advances pronounced against with costs upon the ground that the demand was fictitious and fraudulent, and the result of a conspiracy between the master and the party pretending to have made the advances. *The Helena Sophia*, 3 W. Rob. 277; 7 Notes of Cases, 492.

12. A shipwright is not entitled to be paid for the use of his dock while he detains a ship under a lien against the will of the owner. *Somes v. British Empire Shipping Company*, 31 L. T. 196; 4 Jur. N.S. 893; 27 L. J. Q. B. 397; El. Bl. & El. 353; affirmed by House of Lords, 6 Jur. N.S. 761; 8 W. R. 707; 30 L. J. Q. B. 229.

13. The Act of 7 Geo. 1, c. 21, s. 2, making void all contracts with reference to ships in the service of foreigners trading to the East Indies after being repealed by implication (see *The India*, 33 L. J. Adm. 193; 2 Asp. 193; 12 L. T. N.S.) was expressly repealed by the Stat. Law Rev. Act, 1867, c. 59.

14. In relation to the rights and remedies of persons having claims for repairs done, or supplies furnished to or for ships, every port within the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney and Sark, and the islands adjacent to any of them, being part of the dominions of her Majesty, shall be deemed a home port. See the Mercantile Law Amendment Act, 1856 (c. 97), s. 8.

14a. The 8th sect. of the Mercantile Law Amendment Act, 1856, is to be construed as a remedial enactment, intended to enlarge and not restrict the rights and remedies therein referred to. *The Isabella*, 2 Asp. 416. [IRISH.]

15. A mortgagee in possession is not

time when the debt was incurred. *Fisher v. White*, 8 Cal. 418. [AMERICAN.]

(26) A party claiming a lien on a vessel for the value of materials furnished by him towards the building of the vessel, on the request of the person building the vessel, must prove that the materials were actually incorporated into the vessel. The mere fact that the materials were ordered and actually delivered at the yard where the vessel was building is not enough to cause the lien to

attach. *Hiscox v. Harbeck*, 2 Bosw. (N. Y.) 506. [AMERICAN.]

(27) The Admiralty has jurisdiction to enforce against the ship the lien of a shipwright having the ship still in his custody. Dunlap's American Admiralty Practice (2nd ed.), 70.

(28) The lien of material men attaches also to the freight as well as the ship. *Drinkwater v. The Freight and Cargo of the Spartan*, Ware, 149. [AMERICAN.]

liable for necessities supplied to the ship unless the master in ordering the necessities is acting as the agent of such mortgagee. An allegation that the defendant was in possession of the vessel at the date of the supplies, and was personally liable for them, is not a good reply to an answer of the defendant claiming to be a mortgagee prior to the date of the supply. *The Troubadour*, L. R. 1 A. & E. 302; 2 Asp. 475. See also tit. MORTGAGE, pp. 1145, 1146.

16. Bill for payment of necessities, drawn by the master while abroad upon the owner, and dishonoured. Subsequent sale by the owner. *Semble*, the vessel cannot be arrested in respect of the claim for necessities. *Castrique v. Imrie*, 8 C. B. N.S. 1.

17. A ship, after an absence of four years and a-half engaged in the transport service, arrived at the port of P., where she received orders from the Transport Board to proceed to D., upon which the master borrowed money to pay seamen's wages (P. being a port of discharge), and to pay for articles supplied for the ship's use there. In an action against the owner for the money so advanced, the plaintiff was nonsuited, but, finally, the Court of Exchequer set aside the nonsuit, and ordered a verdict to be entered for the plaintiff, but for such sum as should, on a reference, be found due for the seamen's wages, it appearing that the seamen refused to proceed on the further voyage without being paid their wages to P. *Robinson v. Lyall*, 7 Price, 592.

18. A claim by a person having paid wages to the ship's crew at the request of the master on account of the ship, is in the nature of a wages claim, and entitled to the same priority. *The William F. Safford*, 2 L. T. N.S. 301; 29 L. J. Adm. 110; 1 Lushington, 69.

19. The registered owner of a ship handed her over to his sons to enable them to get a living, he retaining the bare ownership, but not receiving any of the earnings nor interfering with the management. *Held*, that he was not liable for repairs to the ship not ordered by him. *Fuller v. Grand*, Mitch. Mar. Reg. April 1, 1865.

20. An advance of freight to enable a

master to pay his ship's disbursements, does not give the charterer a claim against the ship, which will take precedence of a claim of a mortgagee; nor does an advance for a similar purpose made by an insurance company. *The Turlianis*, 32 L. T. Adm. 841.

21. In his accounts against the mortgagee, the master is entitled to security for the amount for which he is personally liable in respect of necessities. *The Limerick*, 1 P. D. 292, 411.

21a. But *held*, by the Court of Appeal, that the master was not entitled to have retained in court the amount of the penalty under a bond which he had given for payment of damages arising from a collision by his default, although by giving such bond he had obtained the release of the vessel. *Ibid*.

2. As affecting Cargo.*

22. If the master of a ship orders repairs for such ship, or borrows money on a bottomry bond in order to execute the repairs, he is the agent alone of the owner of the ship and not of the owners of cargo, in ordering such repairs and borrowing money. *Benson v. Duncan*, 14 Jur. 218.

23. A ship being in need of repairs, part of the cargo was sold, and three bottomry bonds were granted by the master. *Held*, that a claim made by the consignees of that part of the cargo which was sold to be repaid out of the funds in court could not be sustained. *The Constancia*, 10 Jur. 845; 4 Notes of Cases, 677.

24. Cargo was sold at I. to pay the expense of repairs there to a foreign ship bound from L. to S. On the vessel's return to L., the shippers arrested her. *Held*, that they were not entitled to do so, nor to be considered in the light of material men, but must seek their remedy from the foreign shipowner abroad. *The Bravo*, June 27th, 1853.

25. As to the right of the owners of cargo sold to deduct such amounts from the freight in their hands, see tit. GOODS, CARRIAGE OF—, p. 588.

* (29) If the owner of the cargo is on board of a vessel at the time of a disaster requiring that money shall be obtained by the master to enable the vessel to prosecute the voyage, he is bound to advance funds;

and if he does so, he is entitled to satisfactory security, and an extra and adequate compensation for the advance. *Ross v. The Ship Active*, 2 Wash. C. C. 226. [AMERICAN.]

3. Jurisdiction.*

1. *Of the Admiralty Branch of the Probate, Divorce and Admiralty Division of the High Court of Justice.*

26. For provisions transferring to the Admiralty branch of the Probate, Divorce and Admiralty Division of the High Court of Justice the jurisdiction of the High

Court of Admiralty, see tit. JURISDICTION, p. 638.

2. *Of the High Court of Admiralty before the Judicature Acts.†*

(a) *Generally.*

27. The High Court of Admiralty shall have jurisdiction over any claim for the

* (30) The Court of Admiralty had, as will be seen from this chapter, no jurisdiction since the time of Charles II. in regard to necessaries, repairs or supplies, until the passing of 3 & 4 Vict. c. 65, which gave it jurisdiction over foreign ships only, and in respect of necessaries only, and those furnished only on the high seas or in British ports. This jurisdiction was subsequently extended under the Admiralty Court Act, 1861, s. 5, to any British ship elsewhere than in the port to which she belonged when no part owner was domiciled in England or Wales. By the 4th section of this last act, however, jurisdiction was given to the court over other matters than necessaries, *i. e.*, over any claim for the building, equipping, or repairing of any ship, which, or the proceeds of which, were under arrest of the court at the time the action was brought, so that this last kind of action extended to all claims for repairs or supplies to ships, but could only be brought when the court already had the ship under arrest or had sold the ship and was holding the proceeds. Vide *supra*, Nos. 27, 39, 50, and 58. The Admiralty Division now has the same jurisdiction as the Court of Admiralty had as above.

† (31) Before the Admiralty Court Act, 1861 (c. 10), material men had not, according to the common law of England, which was binding on the Admiralty Court, any lien upon an English ship in specie in respect of such repairs or supplies, though in most of the continental countries governed by the civil law such a lien was recognized. *The Neptune*, 3 Hagg. 136, 139; *The Vrow Mina*, 1 Dodson, 235; *The Alexander*, *ibid.* 280; *The Zodiac*, 1 Hagg. 325; *The Vibia*, 1 W. Rob. 6.

(31a) In England the same law was for a long time recognized in its maritime courts, until after a long contest it was finally overthrown by the courts of common law and the House of Lords in the reign of Charles II. See 1 Rol. Abr. 533; Cro. Car. 296, 1 Hagg. 320, 325; *The Pacific*, 2 Asp. 22, and cap. 5, p. 1166, Nos. 189 and 190. The practice, however, of the Court of Admiralty, of paying material men out of proceeds of sale of a ship continued until the decision of the Judicial Committee of the Privy Council affirmed such a practice to be illegal. See *The Neptune*, 3 Knapp, P. C. Rep. 94, and *The New Eagle*, 10 Jur. 623; 4 Notes of Cases, 426; overruling *ibid.* 3 Hagg. 129; *The John*, 3 C. Rob. 288; and *The Maitland*, 2 Hagg. 254.

(32) As to the jurisdiction of the Irish Court of Admiralty under this head, see tit. JURISDICTION, Pt. I. c. 24, p. 684.

(33) Qui in navem extruendam vel instruendam credit vel etiam emendam privilegium habet. Dig. lib. 42, 5, 26. Quod quis navis fabricandæ vel emendæ vel armandæ vel instruendæ causâ vel quoquo modo crediderit vel ob navem venditam pstat, habet privilegium post fiscum. Dig. lib. 42, 5, 34.

(34) The material man who supplies a foreign ship with necessaries has, by the general maritime law, on the specific ship a lien, which may be enforced in Admiralty by a proceeding *in rem*. *The Brig Nestor*, 1 Sumner, 73; *The General Smith*, 4 Wheaton, 443; *Gardner v. The Ship New Jersey*, 1 Peters, 223; *Johnson v. The Schooner McDonough*, Gilpin, 101; *Ex parte Lewis*, *etc.*, 2 Gall. 483; 1 Conkling's Adm. Prac. (2nd ed.), p. 302. [AMERICAN.]

(35) He also has the personal security of the owners and master, unless the master takes care by express terms to confine the credit to the ship and owners. *Ibid.*

(36) Every ship is considered foreign when she does not belong to the same state where the repairs or necessaries are furnished. *Peyroux v. Howard*, 7 Peters, S. C. Rep. 351. [AMERICAN.]

(37) When repairs or necessaries are furnished in the port or state to which the ship belongs, no lien on the ship is implied unless it is recognized by the local or municipal law of that state, in which case it may be enforced in Admiralty. *Ibid.*

(38) Workmen, and material men, and persons building a vessel, or furnishing it with repairs or necessaries, in a port or state to which she belongs, have no implied lien on the vessel, and cannot enforce one by suit *in rem* in the Admiralty unless such lien be given by a state law. *Davis v. Brig, Gilpin*, 479; *Peyroux v. Howard*, 7 Pet. 324; *The General Smith*, 4 Wheat. 438; *Phillips v. The Scattergood*, Gilpin, 1; *Boon v. The Hornet*, Crabbe, 426; *Tree v. The Indiana*, *ibid.* 479; *Harper v. A New Brig*, Gilpin, 536; *The Calisto*, Daves, 29; *Davis v. Child*, *ibid.* 71; *Bark Chusan*, 2 Story, 455; *Perkins v. Pike*, 42 Maine, 141. [AMERICAN.]

(39) As to ships of other states as well as foreign ships, a lien exists by maritime law for materials furnished. *Sarchet v. The Sloop Davis*, Crabbe, 185; *Tree v. The Indiana*,

building, equipping, or repairing of any ship if at the time of the institution of the cause the ship, or the proceeds thereof, are under arrest of the court. The Admiralty Court Act, 1861 (c. 10), s. 4.

28. The jurisdiction conferred by this act on the High Court of Admiralty may be exercised either by proceedings *in rem* or by proceedings *in personam*. *Ibid.* s. 35.

29. In the interpretation and for the purposes of this act (if not inconsistent with the context or subject) the following terms shall have the respective meanings hereinafter assigned to them; that is to say, "ship" shall include any description of vessel used in navigation not propelled by oars. *Ibid.* s. 2.

30. The Court of Admiralty has no jurisdiction under 3 & 4 Vict. c. 65, nor under the Admiralty Court Act, 1861 (c. 10), to entertain a claim for repairs done in a foreign port. *The India*, 9 Jur. N.S. 418; 2 N. R. 42; 32 L. J. Adm. 185.

31. Sects. 4 and 5 apply only to British ships. *Ibid.*

32. The Court of Admiralty has no jurisdiction under the 4th section of the Admiralty Court Act, 1861, to adjudicate upon a mate's claim for wages paid by him to the crew, nor for necessary disbursements in foreign parts. *The Victoria*, 37 L. J. Adm. 12.

33. An action for necessaries against a

Spanish barque in which the claim was for £110, was instituted in the Admiralty Court. On motion by the plaintiffs for leave to proceed, so as to free themselves from liability for costs, on the plea that it was necessary to institute the action in the higher court in order to arrest without delay, the court held that it had no power to grant the application after the suit had been instituted, but intimated that the plaintiffs should make an application to the court at the hearing of the cause for a certificate for costs. *The Lloreta*, 40 L. J. Adm. 50; 20 L. T. 447; 1 Asp. N.S. 19.

34. A material man has not by supplying necessaries a maritime lien, but only a statutory lien, against the ship. (*The Skipwith*, 10 L. T. N.S. 43, not followed.) *The Pacific*, 2 Asp. 21; *The Two Ellens*, L. R. 3 A. & E. 345; L. R. 4 P. C. 161; and see tit. LIENS, p. 826, No. 153.

35. To obtain that lien he must have arrested the ship. *The Pacific*, *supra*.

36. In the months of November and December, 1861, and January and February, 1862, the plaintiffs furnished a vessel with necessaries. On the 12th December the defendants became mortgagees of the vessel, and duly registered the mortgage. On the 4th February, 1862, the plaintiff arrested the vessel in a suit in respect of the necessaries. Held, that the plaintiff's claim in the Admiralty Court accrued at the date of the

ibid. 479; *Davis v. A New Brig*, Gilpin, 536; *The Calisto*, Daveis, 29; *Davis v. Child*, *ibid.* 71; *Bark Chusan*, 2 Story, 455; *Lane v. Brig President*, 4 Wash. C. C. 453; *The St. Jago de Cuba*, 4 Wheat. 409; *North v. Brig Eagle*, Bee, 78. [AMERICAN.]

(40) The statute of Maine conferred on mechanics and material men such a lien on domestic vessels as the general Admiralty law had previously allowed to them on foreign vessels. *The Young Mechanic*, 2 Curtis, C. C. 404. [AMERICAN.]

(41) The local law of Maine does not give to material men a lien on one vessel for the price of materials furnished for it and another vessel, though both are of the same size and model, but only in such case for what was used in the vessel proceeded against. *The Kiersage*, *ibid.* 421. [AMERICAN.]

(42) The courts of the United States have not jurisdiction in Admiralty to enforce liens for labour and materials furnished in constructing vessels. *People's Ferry Company of Boston v. Beers*, 20 How. (U. S.) 393. [AMERICAN.]

(43) A Court of Admiralty has no jurisdiction to admit against principals, owners of a vessel, a libel filed by their agent, alleging

an expenditure of money by him on or about the vessel, and praying for an account and payment of the money due to him. *Mintwin v. Maynard*, 17 How. (U. S.) 477. [AMERICAN.]

(44) The court has no jurisdiction over a claim for repairs made on a canal boat not built for use, nor used, in tide water, though the repairs were made where the tide ebbed and flowed. *Boon v. The Hornet*, Crabbe, 426. [AMERICAN.]

(45) Although the giving of credit for materials furnished to a foreign vessel may so far discharge the lien as to exclude the material man from bringing a suit *in rem* to enforce it, or from his being a privileged creditor, still he is entitled, upon petition, to be paid out of remnants and surplus remaining in the registry. *Lane v. Brig President*, 4 Wash. C. C. 453 (American); but see as to proceedings against remnants and surplus proceeds, 2 Parsons on Maritime Law, 548. [AMERICAN.]

(46) The lien of material men attaches to the freight as well as to the ship. *Drinkwater v. Freight and Cargo of the Spartan*, Ware, 149. [AMERICAN.]

arrest of the vessel, and must therefore be postponed to that of the mortgagee. *The Pacific*, 2 Asp. 21.

36a. A foreign vessel was in an English port, and the owner, being temporarily in England and in want of funds for the purchase of necessaries, made an agreement with the plaintiffs, by which, in consideration of their advancing him by cash or acceptance £600 for necessaries supplied to the vessel, he undertook to return the amount with interest and charges, on the vessel's return from her voyage, and authorized the plaintiffs to cover the amount so advanced by insurance on ship, &c., at owner's cost. The owner subsequently became bankrupt, and his assignees sold the vessel to N. and others. In an action *in rem* for such necessaries, brought after the sale of the ship, *held*, by the Court of Appeal, that this agreement was not a bottomry bond; and that the plaintiffs had no lien on the ship for the necessaries so supplied; for that before 3 & 4 Vict. c. 65, s. 6, English law gave no maritime lien on a foreign ship for necessaries supplied to her, that that section did not give any maritime lien, but only a right to seize the ship on the institution of an action, and there being no lien, and the ship having changed owners since the supply of the necessaries, the plaintiffs were not entitled to recover against the vessel. *The Ella A. Clark*, Br. & L. 32, overruled; *The Two Ellens*, L. R. 4 P. C. 161, explained; *The Heinrich Bjorn*, 10 P. D. 44; 52 L. T. N.S. 560.

37. The powers of material men to enforce their lien differ under the English and Irish Admiralty Court Acts. *Hamilton v. Harland*, 41 L. T. 741 [IRISH]. *The Acacia*, 4 Asp. 254.

38. See, as to powers of Commissioners of Admiralty to institute actions as to naval stores, &c., the Admiralty Suits Act, 1868, c. 78.

(b) *As to Necessaries.*

(aa) *Under 3 & 4 Vict. c. 65.*

39. The High Court of Admiralty has jurisdiction to decide all claims and demands whatsoever . . . for necessaries supplied to any foreign ship or sea-going vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county or upon the high seas at the time when the . . . necessaries were furnished, in respect of which such claim is made. 3 & 4 Vict. c. 65, s. 6.

40. Before this act foreign ships could not be subjected to actions *in rem* under any circumstances for necessaries supplied. It therefore happened that great inconvenience, and sometimes danger, to ships took place, by the want of anchors, cables, or provisions. It was to remedy those evils that the statute was passed—to remove, on the one hand, the pressure of immediate want, and on the other, to give the British merchant or broker his remedy for such advances. *The Comtesse de Frégeville*, 1 Lushington, 332; 4 L. T. N.S. 714; *The Ocean*, 2 W. Rob. 371; *The Wataga*, Swabey, 166.

41. One of the reasons for the jurisdiction conferred on the Court of Admiralty as to necessaries by 3 & 4 Vict. c. 65, s. 6, is, that the law of this country might in that respect be assimilated to the general law of the maritime states of Europe, which gives a lien to persons who furnish necessaries to a vessel in port, or on the high seas. *The Flecha*, 1 Spinks' Eccl. & Adm. Rep. 441.

42. The 3 & 4 Vict. c. 65, s. 6, is remedial, and is therefore to be construed liberally. *The Alexander*, 1 W. Rob. 296; 1 Notes of Cases, 188; *The Wataga*, Swabey, 167.

43. The 3 & 4 Vict. c. 65, which revives the ancient jurisdiction of the court with regard to necessaries supplied to a foreign ship, was never intended to alter the law, but merely to give a new remedy, rendered necessary in the peculiar cases of foreign ships, and confined to that necessity. *The Alexander*, 1 W. Rob. 360; 6 Jur. 241; 1 Notes of Cases, 380.

44. The master of a foreign vessel lying in the port of Q., being without funds or credit, by means of a bill of exchange drawn upon a firm of ship-brokers in L., procured the advance of a sum of money for necessaries for the ship. The bill of exchange was accepted and paid, but the acceptors, not having received the amount of the bill from the shipowners, instituted an action against the ship for the amount of the bill. *Held*, that the court had jurisdiction to entertain the action. (*The Wataga*, Swabey, 165, and *The Onni*, Lushington, 154, followed.) *The Anna*, 1 P. D. 253.

45. The 3 & 4 Vict. c. 65, s. 6, applies to foreign ships in colonial as well as in British ports. *The Wataga*, Swabey, 166; 28 L. T. 192; 5 W. R. 155; *The Onni*, 1 Lushington, 154; *The Anna*, 1 P. D. (C. A.) 253; 46 L. J. P. D. & A. 15; 3 Asp. N.S. 237.

46. *Semble*, Simon's Bay is on the high

seas within the meaning of the 3 & 4 Vict. c. 65, s. 6. *The Wataga*, Swabey, 168.

47. Claimants for necessaries have not the same rights of suit in the Admiralty Court as those possessed of a maritime lien. See *The Heinrich Bjorn*, *supra*, No. 36a, overruling *The Ella A. Clark*, otherwise *Golden Age*, 8 L. T. N.S. 119; and *The Skipwith*, 10 L. T. N.S. 43.

48. Moneys for necessaries had been advanced partly when the ship was lying in a foreign port, and partly when she was in a port in England. The court ordered payment of both sums out of the proceeds of the ship, the suit being undefended and the owners not opposing the motion. *Semble*, otherwise the court would have had considerable difficulty in making the order. *The Afina Van Linge*, Swabey, 514; 1 L. T. N.S. 339.

49. The right to sue under 3 & 4 Vict. c. 65, s. 6, for necessaries supplied to a foreign ship, is not affected by the Admiralty Court Act, 1861, s. 5 (*semble*, as to the jurisdiction of the court). *The Ella A. Clark*, otherwise *The Golden Age*, 8 L. T. N.S. 119. As to the relative priority of such claims, see tit. LIENS, p. 826, and *ibid.* in Addenda.

50. The Court of Admiralty has no jurisdiction under 3 & 4 Vict. c. 65, to entertain a claim for necessaries supplied in a foreign port. *The India*, 9 Jur. N.S. 418; 2 N. R. 42.

51. A vessel built and registered at New Brunswick in Nova Scotia, *held* not to be a foreign vessel within the meaning of 3 & 4 Vict. c. 65, s. 6, and therefore that the Court of Admiralty had no jurisdiction under this act over a claim in respect of necessaries supplied to her. *The Ocean Queen*, 1 W. Rob. 457; 1 Notes of Cases, 271.

52. Necessaries were supplied to a foreign ship prior to the passing of 3 & 4 Vict. c. 65. Subsequently proceedings were taken against her under the 6th section of that act. *Held*, that the court had jurisdiction to entertain the claim. *The Alexander*, 1 W. Rob. 288; 1 Notes of Cases, 188; 5 Jur. 1067. See also tit. JURISDICTION.

53. This act (3 & 4 Vict. c. 65) confers on the court a jurisdiction as to necessaries supplied to a foreign ship, to be employed in every lawful mode which the court has the power to exercise for enforcing payment, viz. by proceedings *in rem* or *in personam*. *Ibid.*

54. The jurisdiction conferred on the Court of Admiralty by the 3 & 4 Vict. c. 65, s. 6, is not affected by the fact that

the necessaries were furnished on personal credit. *Ibid.*

55. Money advanced to discharge a debt incurred for necessaries does not found a claim for necessaries under 3 & 4 Vict. c. 65, s. 6. *The N. R. Gosfabrick*, Swabey, 345; 31 L. T. 345; 6 W. R. 871; *Beldon v. Campbell*, 17 L. T. 257; *Frost v. Oliver*, 1 E. & B. 301; 2 L. J. Q. B. 353.

56. A foreign ship having been arrested at the suit of a bondholder, money was advanced to the master to enable him to pay seamen's wages. *Held*, upon an unopposed motion, that such money was recoverable against the ship as necessaries under 3 & 4 Vict. c. 65. *The Henry Reed*, 32 L. T. 166; 7 W. R. Adm. 180.

57. But *quere*, if the motion had been opposed. *Ibid.*

(bb) *Under the Admiralty Court Act, 1861.*

58. The High Court of Admiralty has jurisdiction over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shown to the satisfaction of the court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales. The Admiralty Court Act, 1861 (c. 10), s. 5; see *The Masonic*, 5 L. T. N.S. 460.

59. But if in any such cause the plaintiff do not recover £20, he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said court. *Ibid.*

60. The jurisdiction conferred by this act on the High Court of Admiralty may be exercised either by proceedings *in rem* or by proceedings *in personam*. *Ibid.* s. 35.

61. Sects. 4 and 5 apply only to British ships. *The India*, *supra*, No. 50.

62. In the interpretation, and for the purposes of this act (if not inconsistent with the context or subject) the following terms shall have the respective meanings hereinafter assigned to them; that is to say, "ship" shall include any description of vessel used in navigation not propelled by oars. The Admiralty Court Act, 1861 (c. 10), s. 2.

63. In order to oust the jurisdiction of the Court of Admiralty over a claim for necessaries, the objection that the owner of the ship is domiciled in England or Wales must be taken before judgment

pronounced. *Ex parte Michael*, L. R. 7 Q. B. 658.

64. Where it is not so taken prohibition will not be granted. The Admiralty Court Act, 1861 (c. 10), s. 65.

65. In an Admiralty cause, instituted in the Court of Passage to recover a claim for necessaries supplied to a vessel in the Port of Liverpool, the defendants in their answer alleged that at the time the necessaries were supplied the vessel belonged to the Port of Liverpool, and that at the time of the institution of the suit a part owner of the vessel was domiciled in England or Wales. These allegations were objected to by the plaintiffs as irrelevant, and the assessor of the Court of Passage ordered them to be struck out. On appeal to the Court of Admiralty the decision of the assessor was reversed, on the ground that the County Courts Admiralty Jurisdiction Act, 1868, does not confer upon the Court of Passage a more extensive jurisdiction as to any claim for necessaries, than that exercised by the Court of Admiralty. *The Dowse*, L. R. 3 A. & E. 135.

66. The 5th section of the Admiralty Court Act, 1861, applies to British and Colonial ships exclusively. *The Ella A. Clark*, 9 Jur. N.S. 312; 8 L. T. N.S. 119; 1 N. R. 525.

67. *Semble*, the words "owner" or "part owner," domiciled in England or Wales (in the Admiralty Court Act, 1861, s. 5), refer to owner at the time when the necessaries were furnished, and not to owner at the time of the institution of the cause. *Ibid.*

68. The term "domiciled" in the Admiralty Court Act, 1861, s. 5, is used in the ordinary legal sense, and if the owner of a ship is only temporarily absent from this country, an action for necessaries cannot be maintained against his ship.

The Pacific, 10 L. T. N.S. 541; 10 Jur. N.S. 1110; 33 L. J. Adm. 120; B. & L. 243.

69. The jurisdiction conferred on the High Court of Admiralty by sect. 5 of the Admiralty Court Act, 1861 "over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs," does create a statutory but not a maritime lien. *The Two Ellens*, L. R. 3 A. & E. 345; L. R. 4 P. C. 161; *The Pacific*, 2 Asp. 21; *The Heinrich Bjorn*, *supra*, No. 36a; and see tit. LIENS, p. 826; and *ibid.* in Addenda.

3. Of County Courts having Admiralty Jurisdiction.

70. See tit. JURISDICTION, p. 680.

4. Of the City of London Court.

71. See tit. JURISDICTION, p. 681.

5. Of the Liverpool Court of Passage.

72. See tit. JURISDICTION, p. 681.

6. Of Vice-Admiralty Courts.

73. Sub-sect. 10 of sect. 10 of the Vice-Admiralty Court Act, 1863, does not confer on Vice-Admiralty Courts any jurisdiction to enforce claims for necessaries by way of maritime lien, and Vice-Admiralty Courts have no such jurisdiction. *The Rio Tinto*, 9 App. Cas. 356; 53 L. J. P. C. 54; 5 Asp. 224.

73a. Material men supplying necessaries to a British ship in a possession in which a Vice-Admiralty Court is established, do not acquire a maritime lien. *Ibid.* 9 App. Cas. 356; 5 Asp. 224.

73b. See tit. JURISDICTION, p. 688.

4. Necessaries.

1. Generally.*

74. The principle upon which the owner of a ship is made responsible for

* (47) The master's power to borrow money for the use of the ship, and make the owner liable, is now grounded on reasonable, and not on absolute, necessity. *Edwards v. Havell*, C. P. Nov. 4, 1854; 2 C. L. R. 1343; 2 W. R. C. P. 12; Abbott on Shipping, 12th ed. p. 103.

(48) *Held*, by a majority of the judges, that if a seaman, in consideration of an advance note, is supplied with clothes on account and receives the balance in cash, the advance note may be enforced against the shipowner by the person so obtaining it. *McKane v. Joynson*, C. P. May 22, 1858; W. R. 658; and see C. B. N.S. 218.

(49) Advances made at B. by an agent to the master of a vessel owned at S. Verdict

against shipowner for amount claimed. *Cresswell, J.*, in directing the jury, said that, as regarded borrowing money in such a case for the use of the vessel, the only question was, whether the circumstances were such as to constitute him the agent of the owner in order to procure the advances. *Williamson v. Page*, Northern Circuit, Liverpool, Aug. 27, 1844; see 1 Car. & K. 581; Harrison's Digest, 3381; Shess's Tenterden, 104.

(50) *Held*, that advances made to a master for necessary repairs of a ship could not be recovered from a party in whose favour a bill of sale had been executed in consideration of money lent to the shipowner, but which bill of sale, although entered in the

necessaries furnished to him by order of the master is this, that in the employment of the ship the master is the agent of the owner, and his character and situation furnish a presumption that he has authority from the owner to take all measures that may be necessary for rendering the employment of the vessel efficient and beneficial to his employer. *The Alexander*, 1 W. Rob. 356; 6 Jur. 241; 1 Notes of Cases, 380.

75. The court would not make the owners of a foreign ship liable for the supply of any articles for which, under similar circumstances, if resident here, they would not be responsible in a court of common law. *Ibid.* 1 W. Rob. 360; *The Sophie*, *ibid.* 369.

76. In all cases in which the owners of a ship are sought to be made liable in contract for necessaries supplied on the order of the master, or in tort for the negligence of the crew, the question of liability does not depend on the title to the ship. The real question is, whether the owners who are sought to be charged were the employers of the master who made the contract, or the masters of the persons who were guilty of the negligence. *Per the majority of the court in Hibbs v. Ross*, L. R. 1 Q. B. 534; 35 L. J. Q. B. 193; 2 Asp. 397; 7 B. & S. 655.

77. A further question sometimes arises whether the owners may not have clothed the master with apparent authority so as to be precluded from disputing his authority. *Ibid.*

78. The liability of an owner to pay for repairs and equipments ordered by the master, depends not upon the ground of ownership but upon the ground of a contract made with the vendor by a person who was the owner's agent, for the purpose of ordering such repairs and equipments. No contract of a master can bind the owner, unless such authority has been actually given to him, or unless the owner has by word or deed held out the master as his master, and thereby induced the vendor to supply the articles upon the credit of the owner. *The Great Eastern*, L. R. 2 A. & E. 88; 3 Asp. 58.

79. A vessel was chartered by the

owners to one D. By the terms of the charter-party the master, officers and crew were to be appointed by the owners (subject to the approval of the charterer), to be under the control of the owners, and to be dismissed by them. An action was brought against the owners for necessaries supplied to the ship by the master's orders. *Held*, that the owners were liable, on the ground that they had held out the master to third parties as their agent for the ship. *Ibid.*

80. In order to constitute a demand against the owners it is necessary that the supplies furnished by the master's orders should be reasonably fit and proper for the occasion. *The Alexander*, 1 W. Rob. 363; 6 Jur. 241; 1 Notes of Cases, 380; and Abb. Sh., 12th ed. p. 92, therein cited.

81. In a claim for necessaries the *onus* of proof rests with the material man. The principle of law in casting this *onus* on him is founded on great and important principles of justice. *Ibid.*

82. It is not sufficient to aver that the goods supplied were necessary. They must be necessary at the time and under the then existing circumstances, in the sense the law requires. *Ibid.*; *The Sophie*, 1 W. Rob. 369; 1 Notes of Cases, 393; *The Helena Sophia*, 3 W. Rob. 270; 7 Notes of Cases, 492. See also *Carey v. White*, 1 Bro. Par. Cases, 284.

83. The rule is to inquire what a prudent owner would do if he were present. *Webster v. Seekamp*, 4 B. & Ald. 354; *The Alexander*, 1 W. Rob. 361; 6 Jur. 241; 1 Notes of Cases, 380.

84. In an action against a shipowner for goods supplied and money lent to the master at a foreign port, the *onus* is on the plaintiff to prove that the goods and money supplied were necessaries. *Mackintosh v. Mitcheson*, 4 Exch. 175; 18 L. J. Exch. 385; *Carey v. White*, 1 Bro. Par. Cases, 284; *Rocher v. Busher*, 1 Stark. 27.

85. Where, on a claim by material men, it appears that they had agreed to look to the agent of the owners of the ship for payment, they have no claim on the vessel. *The Isabella*, 2 Asp. 416.

86. In an action for necessaries where

registry as an absolute one, was understood to have been granted merely as collateral security for the loan, a memorandum to that effect having been signed. *Myers v. Willis*, 17 C. B. 85; affirmed 18 C. B. 836.

(51) The court must look to see what was the intention of parties when they executed the bill of sale, and it was clearly not intended that the defendant should become

absolute owner, that he should have a vessel worth several thousand pounds in consideration of £1,000, and take upon himself liability for the acts of the master. Formerly the registration of ownership was conclusive of liability, but it is now settled that contracts in such cases must depend upon the ordinary law of principal and agent. *Ibid.*

the defendants denied liability on the ground that the sum sued for was in respect of matters covered by a contract to repair the vessel, the court, before judgment, directed an inquiry, under Ord. xxxiii., as to what sum, if any, was due. *The Sully*, 48 L. J. P. D. 56.

87. The defendants, as agents for a Colonial Navigation Company, ordered a vessel in Scotland, and advanced considerable sums on her account. The defendants appointed the master, with instructions to take her to New Zealand, and there receive the instructions of the company. The vessel was originally registered in the name of the defendants, but before sailing was transferred to that of S. to secure advances. During the voyage the master, to pay for necessary repairs, granted bills on the defendants. Subsequently the vessel was again transferred into the name of the defendants, and by them sold on their own account. In an action by the holder of the bills against the defendants, *held*, that the defendants, at the date of the repairs, were employers of the master and responsible for his legal contractions for the ship, and were, therefore, liable for the amount of the bills. *Miller v. Potter*, Cases in the Court of Session, 4th Series, Vol. 3, p. 105. [SCOTCH.]

88. The plaintiffs supplied necessaries to a vessel in a foreign port, in ignorance that agents for the ship were at the port with funds; they had, however, the means of knowing, and the master was aware of it. *Held*, that they could not recover against the shipowners. *Gunn v. Roberts*, L. R. 9 C. P. 331; 43 L. J. C. P. 233; 2 Asp. N.S. 250; 30 L. T. 424; 22 W. R. 652.

89. A master obtained clothes for his crew from the plaintiff, and gave them an undertaking in his own name for the price. The seamen were paid their wages less the deductions for clothes, and the master, in his account of disbursements, took credit for the sums against the men's names for the clothes. In an action against the owners for the price of the clothes, plaintiff nonsuited. *Curran v. Wood*, 2 Asp. 441.

90. In a claim for necessaries, the defendants assuozied, the pursuers having failed to prove that the supplies were necessaries. *Drain & Co. v. Scott*, Cases in the Court of Session, 3rd Series, Vol. 3, p. 114. [SCOTCH.]

91. A creditor claimed to prove against the estate of an arranging trader in respect of necessaries supplied to a vessel

alleged to be the trader's property. *Held*, that the claim could not be sustained, as at the time when the necessaries were supplied the trader had no beneficial interest in the vessel. *Re An arranging Trader*, L. R. 1 Eq. 216; 2 Asp. 520. [IRISH.]

92. The master of a ship has authority to bind the owner as to all repairs that are necessary for the purpose of bringing the ship to the port of destination, but in all cases where practicable he must first communicate with the owner. *Beldon v. Campbell*, 17 L. T. 257; 6 Exch. 886.

93. A shipowner is not only liable for necessary repairs done to a ship by the master's order, but for such as are fit and proper for the vessel on her voyage, and such as a prudent owner, if present himself, would order. *Webster v. Seekamp*, 4 B. & A. 352.

94. In an action against the registered owner of a vessel for necessary repairs ordered by the master, it must be proved that the master acted as the owner's master, or with his knowledge. *Pearson v. Nell*, 2 Asp. 213.

95. Whether or not the owner is liable in an action for necessary repairs ordered by the master is a question of contract, not of ownership. If the repairs were done on the master's credit alone, the owner is not liable. *Ibid*.

96. The declaration stated an agreement by defendants to repair plaintiff's ship for a reasonable price to be charged by them to plaintiff, and upon completion to re-deliver the ship to the plaintiff upon payment of such price so to be charged. Averments, that the repairs were completed, and plaintiff was ready and willing to pay defendants such price as aforesaid, whereof defendants had notice. Breach, that defendants did not charge a reasonable price, but demanded an exorbitant sum as the price of the repairs, and gave notice to plaintiff that they would not re-deliver the ship until payment thereof, and detained the ship after she was completed until payment of the exorbitant sum. Plea, no tender of a reasonable price, or of any sum in respect thereof. Replication, waiver of the tender. *Held*, on demurrer; that the declaration was good, and the plea bad, for by the terms of the agreement, as stated in the declaration, the defendants were bound to deliver their bill of reasonable charges, and plaintiff was relieved from the necessity of making a tender. *Held*, also, that the replication was good, and not a departure

from substance. *Watson v. Pearson*, 1 Asp. 335.

97. *Quare*, might it not have been otherwise in the case of an implied contract only? *Ibid*.

98. The master of a vessel waiting in a river, wind-bound, at a place two days' post from the owner, may borrow money on the credit of the owner, in order to procure provisions necessary for keeping the vessel well found, so as to be able to take advantage of the first fair wind. *Edwards v. Havill*, 22 L. T. 87; 14 C. B. 107; 17 Jur. 1103.

99. The master ordered provisions for the ship, but sailed without paying for them, though having money from the owners for the purpose. The owners held liable. *Speerman v. Degrave Gallway*, 2 Vern. 643.

100. The master has authority to provide necessaries. If, therefore, a person trusts him for things not necessaries, he trusts him for that which it is not within the scope of his authority to provide, and has, consequently, no right to call on his principal for payment. *Carey v. White*, 1 Bro. Parl. Cases, 284.

101. Sailors injured in weighing anchor were taken ashore by the master, who engaged the plaintiff to supply them with board, lodging, and medicines, and then proceeded on his voyage with fresh hands. Held, that such supplies were not necessary for the due prosecution of the voyage, and that therefore the owner was not liable. *Organ v. Brodie*, 10 Exch. 449; 24 L. J. Exch. 70.

2. Meaning of the Term.*

(a) Generally.

102. The term "necessaries" is not to receive the same liberal construction as is given to supplies furnished in cases of bottomry. *The Comtesse de Frégeville*, 4 L. T. N.S. 714; 1 Lushington, 332; 1 Asp. 106.

103. The term "necessaries" does not include things required for the voyage as contra-distinguished from necessaries for the ship. *Ibid*.

104. In this respect there is a distinction between the ship and the voyage, and "necessaries" mean repairs primarily indispensable, such as anchors, cables, sails. Provisions also may be included. *Ibid*.

105. The statute 3 & 4 Vict. c. 65, s. 6, does not apply to ordinary mercantile accounts between owner and agent. *Ibid*.

106. The term "necessaries," where used in the statutes giving the Admiralty Court jurisdiction over such claims, has the same meaning as is given to it by the Common Law Courts, and signifies whatever the owner of a vessel as a prudent man, if present under circumstances in which his agent in his absence is called upon to act, would have ordered. *The Riga*, 3 L. R. Adm. 516; 41 L. J. Adm. 39; 26 L. T. 202; 20 W. R. 927.

107. Premiums paid by a shipbroker at the owner's request to procure insurance on freight are necessaries. *Ibid*.

108. Charges paid by a shipbroker at the owner's request for entering, reporting, and piloting a ship, and for tonnage and light dues, and for noting protest, are within the term. *Ibid*.

109. Advances at the owner's request for travelling expenses of the master, and goods supplied for the ship's use, are necessaries. *Ibid*.

110. Brokerage charges made by a ship's broker for acting as ship's agent, and for negotiating a charter-party, may be necessaries within the meaning of the statutes, but must be proved to come within the definition. *Ibid*.

111. Premiums for insurance are not necessaries within the meaning of 3 & 4 Vict. c. 65, s. 6. *The Heinrich Bjorn*, 8 P. D. 151; 52 L. J. P. D. 83; 5 Asp. 145.

112. The technical meaning of the term

* (52) These cases were determined under sect. 6 of 3 & 4 Vict. c. 65, and not under the 4th section of the Admiralty Court Act, 1861, which relates to the building, equipping or repairing of any ship, and is not limited to necessaries only.

(53) The owner is responsible only for necessaries furnished for his ship, and it is for a jury to decide what are necessaries. *Burquin v. Flinn*, 1 M' Cord, 316. [AMERICAN.]

(54) A barge may be necessary to a steamer, and as such its hire to the boat will be regarded as a material furnished for the equipment of the boat. *Gleim v. Steam-*

boat Belmont, 11 Miss. 112. [AMERICAN.]

(55) Neither costs of advertising a vessel for sea, portage nor commissions for procuring freight, wages of stevedores or lightermen, are liens on the ship, suable *in rem*. *The Joseph Cunard*, Olcott, Adm. 120. [AMERICAN.]

(56) In supplying coals to a steamer at the order of the master, who was also sole owner, held, that to confer a maritime lien it must be proved that a supply of coals was necessary to the vessel at the time. *The Sultana*, 19 Howard, 359; *The Barque Laura*, *ibid*. 22. [AMERICAN.]

“necessaries” strictly applies to anchors, cables, rigging, and matters of that description. *The Sophie*, 1 W. Rob. 368; 1 Notes of Cases, 393.

113. The term “necessaries” includes necessary work and labour. Ship arrested by stevedore, and claim sustained by Admiralty Court. *The Waban*, May 24, 1855.

114. It is absolutely necessary, except when the order is given by the owner, to prove not only that the articles supplied were necessaries, but that they were actually wanting for the service of the ship at the time when they were supplied. *The Sophie*, 1 W. Rob. 369; 1 Notes of Cases, 393; *The Helena Sophia*, 3 W. Rob. 270; 7 Notes of Cases, 492; *Mackintosh v. Mitcheson*, 4 Exch. 175; 18 L. T. 385; *The Alexander*, 1 W. Rob. 361; 6 Jur. 241; 1 Notes of Cases, 380; *The Ocean*, 2 W. Rob. 368; 4 Notes of Cases, 31.

115. The court will not put a restricted meaning on the term necessaries in 3 & 4 Vict. c. 65, s. 6, so as to confine it to things absolutely and unconditionally necessary for a ship in order to put to sea. *The Perla*, Swabey, 354; 4 Jur. N.S. 742.

116. *Semble*, whatever is necessary in a passenger steamer to put the machinery in perfect working order is a necessary within the meaning of that act. *The Flecha*, 1 Spinks' Eccl. & Adm. Rep. 441.

117. A new screw propeller for a passenger steamer is a necessary within the meaning of that act. *Ibid.*

118. In one sense an anchor and cable are necessary, for a ship cannot in safety sail without them; but it does not therefore follow that at all times, or at any particular time, a new anchor and cable, or several, are necessary for the use of the ship. *The Alexander*, 1 W. Rob. 361; 6 Jur. 241; 1 Notes of Cases, 380; 1 W. R. 360.

119. It is not sufficient to aver that they were necessaries, they must be necessary at the time and under the then existing circumstances. *Ibid.*

120. In the case of an anchor and cable supplied to a vessel a less degree of evidence might suffice to prove the existence of a necessity than would be required in the case of a loan of money. *Ibid.*

121. The rule for estimating what are “necessaries” is, to inquire what a prudent owner would have ordered if he had been present. *Webster v. Seekamp*, 4 B. & Ald. 354; *The Alexander*, 1 W. Rob. 346.

122. An anchor and chain cable were supplied to a foreign ship, and she was arrested in an action for necessaries. The plaintiff failed in proving that the anchor and cable were necessary under the circumstances, and it was proved the ship was furnished with proper anchors and cables, and that the articles supplied were never used. Plaintiff held not entitled to recover against the ship. *Ibid.* 366.

123. Articles supplied for the equipment of a vessel building in a foreign port are not necessaries within the meaning of the 3 & 4 Vict. c. 69. *The Ocean*, 2 W. Rob. 368; 4 Notes of Cases, 31.

124. Coals supplied at intervals to a foreign steamer for several voyages held to be necessaries, and the amount due for the same to be recoverable under 3 & 4 Vict. c. 65, s. 6. *The Twentje*, otherwise *The West Friesland*, Swabey, 454; 5 Jur. N.S. 658; *ibid.* on appeal, Swabey, 456; 8 W. R. 423; 13 Moore, P. C. C. 186; 2 L. T. N.S. 613; *The Comtesse de Frégeville*, 1 Lushington, 333; 4 L. T. N.S. 714; 1 Asp. 106.

125. Butcher's meat is a necessary, within the meaning of 3 & 4 Vict. c. 65, s. 6. *The N. R. Gosfabrick*, Swabey, 345; 31 L. T. 345.

126. A claim for money advanced to a master to pay averages, dismissed with costs, such advances not being “necessaries” within the meaning of the 6th section of the 3 & 4 Vict. c. 65. *The Aaltje Willelmina*, L. R. 1 A. & E. 107.

127. Copper sheathing is a necessary. *The Perla*, Swabey, 353; 4 Jur. N.S. 472. See also *Webster v. Seekamp*, 4 B. & Ald. 352; and *The Turliani*, 2 Asp. N.S. 603.

128. The guarantee of a party to bring home a medical man who sails in charge of emigrants is binding, and the expense of his return passage will be allowed as a set-off in a suit for materials instituted by him. *The Thorny Close*, 5 Jur. 251. [IRISH.]

129. The expenses of an agent coming to London to assist the master in his defence of a damage suit are not necessaries. *The Bonne Amelie*, L. R. 1 A. & E. 19; 35 L. J. Adm. 115; 2 Asp. 32.

130. But the French owners having executed an act of abandonment of the vessel, the court decreed payment of those expenses out of the proceeds of the sale of the vessel. *Ibid.*

(b) *Money.**

131. The meaning of the term "necessaries" may be enlarged so as to include money expended on necessaries, but in such a case satisfactory proof must be adduced that the necessaries were wanting, and that the money was *bond fide* advanced for the purpose of procuring them. *The Sophie*, 1 W. Rob. 368; 1 Notes of Cases, 398; *The Masonic*, 1 Asp. 169.

132. In an action for necessaries, part of which consisted of money supplied to the master, who was also part owner, proof required that the money was applied in the purchase of necessaries. *Ibid.*

133. A party advancing money to procure necessaries, *held*, entitled to the same rights as a claimant in respect of necessaries supplied by him. *Ibid.*; see also *The Masonic*, 5 L. T. N.S. 460; *The Asta Van Linge*, Swabey, 515.

134. Money advanced for purchase of butcher's meat for the crew comes within the description of necessaries. *The Bonne Amelie*, L. R. 1 A. & E. 19; 35 L. J. Adm. 115; 2 Asp. 321.

135. The defendant, master and sole owner, borrowed money to enable him to procure the release of his vessel, which was detained by the shipwright under his possessory lien for certain necessary repairs executed upon her. *Held*, that the amount of the loan could be recovered in a suit for necessaries. *The Albert Crosby*, L. R. 3 A. & E. 37.

136. Sums of money paid for insurance on freight, for harbour dues, and for travelling expenses of master, *held*, recoverable as necessaries. *The Riga*, L. R. 3 A. & E. 516; 41 L. J. Adm. 39; 1 Asp. N.S. 246; but as to the insurance see *The Heinrich Bjorn*, 8 P. D. 151; 52 L. J. P. D. 83; 5 Asp. 145.

137. A vessel was chartered for a voyage to two named ports to be consigned to charterer's agents. On arrival at the first port it was arranged between the

master and the agents that the vessel should not proceed to the second port, but the cargo should be forwarded in other vessels. The agents disbursed sums for this purpose, and the master drew on the owners in favour of the agents for the sums disbursed. The owners refusing to accept, *held*, that the agents had no authority to allow the deviation; that the master had no authority to allow it, as necessity was not proved; and that therefore the owners were not liable for the expenses incurred. *Strickland v. Neilson*, Cases in the Court of Session, 3rd Series, Vol. 7, 400. [SCOTCH.]

138. A claim for re-exchange does not lie against a drawee of a bill for refusal to accept. But, *quære*, where a master as agent for the shipowners draws on them in a foreign port for necessary disbursements, and the owners refuse to accept, does a claim for re-exchange then lie against them *quod* drawers? *Ibid.*

139. A charterparty made in Great Britain provided that £1,000 should be advanced at Calcutta on account of freight. £800 was advanced at Calcutta by the charterers' agents, to whom the cargo was consigned and delivered, and the master drew a bill for that amount on the charterers in favour of the agents. This bill was indorsed to the pursuers, who, on the nonpayment of the bill, brought an action against the shipowners, alleging that the advance of £800 was a necessary advance to the ship made on the bill, without which it would not have been made. *Held*, that the advance was not made on the bill, but was made under the terms of the charterparty, and that the shipowners were not liable. *North Western Bank v. Bjornstrom*, *Ibid.* Vol. 4, 24. [SCOTCH.]

140. *Quære*, if necessary advances are made to a master in a foreign port upon a bill drawn by him on strangers, and the person making such advances indorses the bill away, will the indorsee have a right of action against the shipowner? *Ibid.*

* (57) A person who lends money to be employed in the repairs of a vessel, or to furnish her with supplies, has the same privilege against the vessel that material men have. See *Davis v. Child*, *Daveis*, 71. [AMERICAN.]

(58) The plaintiff must show that it was necessary to borrow the money, and must prove the actual application of it. *Bogle v. Atty. Gow*, 50. [AMERICAN.]

(59) The Admiralty Court has jurisdiction

where the master of a vessel borrows money to repair damages done to it on the high seas. *The Rainbow*, *Bee*, 116. [AMERICAN.]

(60) The relation between the master of a vessel and his owners is not such that they thereby become liable as acceptors of a bill of exchange drawn on them by him in a foreign port, for supplies furnished to the vessel. *Bowen v. Stoddard*, 10 Met. 375. [AMERICAN.]

141. *Semble*, if persons furnish necessaries or make disbursements for a vessel in a foreign port, on condition that they be repaid before the departure of the vessel, and third parties supply the master with funds to make such repayment, and take a bill drawn by the master on the owners in their favour to secure their advance, such third parties have a right of action against the owners for the money so advanced. *Drain & Co. v. Scott*, Cases in the Court of Session, 3rd Series, Vol. 3, 114. [SCOTCH.]

142. Where funds have been advanced in a foreign port to the attorney and agent of the owners, to be disbursed for the service of the vessel, the owners will be liable, although it may not be proved that the whole advances were actually applied for the service of the vessel. *Havilland v. Thomson*, *Ibid.* Vol. 3, 313. [SCOTCH.]

143. The master of a ship has authority to borrow money, but only in a case where a ready-money payment is absolutely necessary, as for port or light dues, &c.; and in all cases where practicable he must first communicate with the owner, and in no case can he bind the owner for money lent for the purpose of paying a debt already incurred. *Beldon v. Campbell*, 17 L. T. 257; 6 Exch. 886.

144. The master hired a steam tug to tow his vessel into port, and after the services were completed borrowed money to pay for the towage. *Held*, that the owner was not liable to repay the sum so borrowed. *Ibid.*

145. Money advanced to discharge a debt incurred for necessaries does not found a claim for necessaries under 3 & 4 Vict. c. 65, s. 6. *The N. R. Gosfabrick*, Swabey, 345; 31 L. T. 345; 6 W. R. 871.

146. A claim in respect of money advanced to the master to procure his release from gaol, where he had been imprisoned for a debt incurred for necessaries supplied to the ship: *held*, not recoverable as necessaries. *Semble*, the master is not necessary to the ship. *Ibid.* 344.

147. It appeared by the pleadings that a Monte-Videan vessel, on her arrival at Malaga, was placed by the master, according to the law of Monte-Video, under the control of his consul, who appointed as consignee P., who furnished necessary disbursements under an agreement with the consul and master that the amount thereof was to be repaid to P. before the ship was allowed to sail, and, by the law of Malaga, P. had a maritime lien against

the ship for such disbursements. The master obtained from H. funds to pay off P. *Held*, that such payment by H. did not found a claim as for necessaries or supplies within the meaning of 3 & 4 Vict. c. 65, s. 6, nor the Admiralty Court Act, 1861, s. 4. *The India*, 32 L. J. P. D. & A. 185; 2 N. R. 42.

148. Disbursements on account of wages made to crew while in a foreign port, money to pay which, *inter alia*, was raised on bottomry, disallowed on reference of account of such bond to registrar and merchants. Objection to such report overruled, on the ground that it was a premature payment that might never become due, and, if so paid, might (as in this case it did) fall on the owners of cargo, who were not properly liable for it. *The Cognac*, 2 Hagg. 393.

148a. The master of a vessel has power, incidental to his appointment, to borrow money, but only in cases where ready money is absolutely necessary, that is to say, where certain payments must be made in the course of the voyage, such as the payment of port dues, or lights, or any dues which require immediate cash settlement. *The Hemisphere Borealis*, 5 Jur. N.S. 377. [IRISH.]

149. The master of a vessel has no authority to borrow money after work has been done for the purpose of paying the debt due for it, unless a very strong case of necessity exists which may justify him in doing so. *Ibid.*

150. A claim in respect of money advanced to the master to pay averages, *held*, not recoverable as necessaries under 3 & 4 Vict. c. 65, s. 6. *The Aaltje Willemina*, L. R. 1 A. & E. 107.

151. A firm in England, having accepted and paid a bill of exchange drawn on them by the master abroad to procure necessaries, may sue the ship in the Admiralty Court as for necessaries. *The Onni*, 3 L. T. N.S. 447; 1 Lushington, 154.

152. Money advanced to the master of a foreign vessel on bills upon the owner, and afterwards covered by an assignment of freight, *held* not recoverable under 3 & 4 Vict. c. 65, s. 6. *The Armadillo*, 1 Notes of Cases, 75.

153. Moneys obtained by means of a bill of exchange to procure necessaries, are necessaries within 3 & 4 Vict. c. 65, s. 6. *The Anna*, 45 L. J. Adm. 98; affirmed on appeal, 1 P. D. 253; 46 L. J. P. D. 15; 34 L. T. 895.

154. An advance of money to pay a bottomry bond, for which the ship was

arrested, such advance being made under a contract to pay off claims outstanding on the ship, and outfit her for a new voyage, in consideration of receiving brokerage and the prepaid freight for the new voyage, is not within 3 & 4 Vict. c. 65, and cannot be recovered in the Admiralty Court. *The Onni*, 1 Lushington, 154.

155. A foreign ship having been arrested at the suit of a bondholder, money was advanced to the master to enable him to pay seamen's wages. *Held*, upon an unopposed motion, that such money was recoverable against the ship as necessaries under 3 & 4 Vict. c. 65. But *quere*, if the motion had been opposed. *The Henry Reed*, 32 L. T. 166; 7 W. R. Adm. 180.

156. Owners are personally responsible for money advanced, though without their authority, to the master abroad in the course of a foreign voyage; but the lender, to entitle him to recover, must prove the actual existence of the necessity for such advances. *Carey v. White*, 1 Bro. Par. Cases, 284; *Rocher v. Busher*, 1 Stark. 27; *Evans v. Williams*, Abb. Sh. (12th ed.), 93.

157. A loan to the master of money constitutes a debt for which an action lies against the owner. *The Salacia*, 32 L. J. Adm. 43.

158. The money must be advanced to the master expressly for the use of the ship, otherwise, although expended for that purpose, the owner will not be responsible for it to the lender. *Thacker v. Moates*, 1 M. & Rob. 79.

159. The money so supplied to a master must not be understood to be an indefinite supply of cash, which the master may dissipate, but only such as is warranted by the exigency of the case, as for the payment of duties or other necessary purposes. *Rocher v. Busher*, 1 Stark. 27; *Boyce v. Attorney-General*, Abb. Sh. (12th ed.), 96; *Robinson v. Lyall*, 7 Price, 592.

160. It is not sufficient to prove the advance of a much larger sum than was necessary for the use of the ship and an application of part of that sum to such uses, and that the residue was placed to the private account of the master. *Palmer v. Gooch*, 2 Stark. 428.

161. A less degree of evidence might suffice to prove the existence of a necessity in the case of the supply of an anchor and cable than would be required in the case of a loan of money. *Webster v. Seekamp*, 4 B. & Ald. 354; *The Alexander*, 1 W. Rob. 361; 6 Jur. 241; 1 Notes of Cases, 380.

162. A part owner of a vessel is liable for money lent to the master in order to pay harbour dues. *Snowdon v. Chadwick*, 15 L. T. 92.

163. A charter-party contained a clause "that sufficient money should be advanced to the master for disbursements, not exceeding £200." The party to whom it was addressed having advanced to the master, when abroad, a larger sum for the use of the ship, *held*, that he was entitled to recover the full amount against the owners. *Vaughan v. Fitzhugh*, 3 Jur. 1002.

164. Disbursements for victualling the crew, to discharge which, *inter alia*, money was raised on bottomry, allowed, on reference of accounts to the registrar and merchants, and confirmed by the court. *The Cognac*, 2 Hagg. 385.

164a. The insurance of a ship is not a necessary within 3 & 4 Vict. c. 65, s. 3. A foreign vessel was in an English port, and the plaintiffs made advances for necessaries to the owner, who was temporarily in England, he undertaking to return the advances with interest on the return of the vessel from her voyage. The plaintiffs were authorized to cover the amount advanced by insurance on ship, &c., out and home at owner's costs. In an action *in rem* for the advances, *held*, by the Court of Appeal, that this agreement was not equivalent to a bottomry bond; that 3 & 4 Vict. c. 65, s. 6, did not give a maritime lien for necessaries, but only a right to seize the ship on the institution of an action, and that, therefore, the plaintiffs could not recover against the vessel. Judgment below (8 P. D. 151; 52 L. J. P. 83; 49 L. T. 405; 32 W. R. 279; 5 Asp. 145) reversed. *The Ella A. Clark*, Br. & L. 32; *The Heinrich Bjorn*, 10 P. D. 44.

3. Claims by Agents.*

165. It might be a question whether an

* (61) A Court of Admiralty has no jurisdiction over a claim against the owners of a vessel made by their agent for money paid by him for or about the vessel, and praying

for an account and payment of the money due to him. *Mintwin v. Maynard*, 17 How. (U. S.) 477. [AMERICAN.]

(62) A special agent of the charterer of a

agent accepting an agency, on condition of being repaid his advances out of the freight and average apportionments, could proceed against the ship for disbursements and advances. *The Helena Sophia*, 3 W. Rob. 272; 7 Notes of Cases, 492.

166. If it be proved that there was an agent of the ship ready to make all necessary payments on the personal credit of the owners, and to repay whatever might have been previously disbursed, it is doubtful whether an action, under the act of parliament, could be maintained against the ship on account of advances made for her service, and on the credit of the vessel. *Ibid.*

167. An agreement between the agent of a ship and a broker, whereby, on certain terms, the latter undertook thoroughly to refit the ship, *held*, not to affect a third party who had supplied necessaries to the ship without any knowledge of this agreement. *The Perla*, 4 Jur. N.S. 741; Swabey, 353.

168. The agent, also part owner, may recover against the ship for necessaries supplied. *The Tventje*, otherwise *The West Friesland*, 8 W. R. 423; Swabey, 454, 456; 5 Jur. N.S. 658; 13 Moore, P. C. C. 186; 2 L. T. N.S. 613.

169. A ship cannot be made liable to arrest for a general balance of account merely by appropriating the receipts and payments in such a manner as to show a balance due for necessaries. *Ibid.*

170. An agent appropriating in his accounts with his principal, sums received to the payment of specific items, is estopped from disputing the payment of those items. *Ibid.*

171. The agents of a foreign vessel received freights payable in London, and out of the proceeds paid expenses incurred there, and from time to time made out accounts, in which they placed the sums so paid and received respectively to the debit and credit of each successive voyage. Coals had, on six occasions, been supplied to the ship upon orders given by the agents, and they debited each voyage with the price of the coals so supplied. In the result of the six accounts for coals £1:4s. 6d. was due to the agents. In taking an account of all the agents' dealings with the ship there appeared to be a balance in their favour of £195:8s. 7d.

Held, on appeal, that in order to obtain a charge on the ship, the agents were not entitled to select from the accounts the items which consisted of charges for coals, and to attribute the balance specifically to those items. *Ibid.* See also, as to the appropriation of payments, *Devaynes v. Noble*, Tudor's Leading Cases in Maritime Law, p. 1.

172. The 3 & 4 Vict. c. 65, s. 6, looks to an immediate necessity, not to the liquidation of a mercantile account, where credit is given by the agent in the ordinary course of business. Therefore where the agents and brokers of a French ship received the freights and paid the dock dues, pilotage, and clearance charges, together with £186:3s. for coals supplied to enable the vessel to leave London, and the balance of their account amounted to £81:15s. 6d., *held*, that they were not entitled, in respect of the balance, to arrest the ship in a suit for necessaries. *The Comtesse de Frégevill*, 4 L. T. N.S. 713; 1 Lushington, 329; 1 Asp. 106.

173. An advance of money to pay a bottomry bond, for which the ship is arrested, such advance being made under a contract to pay off claims outstanding on the ship, and outfit her for a new voyage, in consideration of receiving brokerage and the prepaid freight for the new voyage, cannot be recovered in the Admiralty Court under 3 & 4 Vict. c. 65, s. 6. *The Onni*, 3 L. T. N.S. 447; 1 Lushington, 154.

174. A charter-party contained a clause "that sufficient money should be advanced to the master for disbursements, not exceeding £200." The party to whom it was addressed having advanced to the master, when abroad, a larger sum for the use of the ship, *held*, that he was entitled to recover the full amount against the owners. *Vaughan v. Fitzhugh*, 3 Jur. 1002.

175. The following persons shall be liable to pay light dues for any ship in respect of which light dues are payable; (that is to say,) the owner or master, or such consignees or agents thereof as have paid or made themselves liable to pay any other charge on account of such ship in the port of her arrival or discharge, and in default of payment such light dues may be recovered in the same man-

ship cannot charge expenses, advances or liabilities incurred for the ship by him in that capacity, against the owners or the ship,

on any implied obligation of the owners to him. *The Joseph Cunard*, Olcott, Adm. 120. [AMERICAN.]

ner as penalties of the like amount may be recovered by virtue of the principal act. The Merchant Shipping Act Amendment Act, 1862 (c. 63), s. 45.

176. Every consignee and agent (not being the owner or master) hereby made liable for the payment of light dues in respect of any ship may, out of any monies in his hands received on account of such ship, or belonging to the owner thereof, retain the amount of all dues so paid by him, together with any reasonable expenses he may have incurred by reason of such payment or liability. *Ibid.* s. 44.

177. Cargo having been sold, and the proceeds paid into court, the court ordered that out of such proceeds *pro ratâ* freight should be paid to the shipowners. On an application by the ship agents, *held*, that they were entitled to be paid out of such *pro ratâ* freight their charges for necessaries. *The Soblomstein*, L. R. 1 A. & E. 293; 36 L. J. Adm. 5.

178. The master has a possessory lien on the cargo for its share of general average expenses, but a ship agent has no such lien upon ship, freight or cargo, nor a right of action *in rem* against any of them. *Ibid.* 2 Asp. 436.

179. Although the agent of a foreign ship who pays money for necessaries, or incurs liability for them, can sue the ship, he cannot sue the ship to recover the balance of an account. *The Underwriter*, 1 Asp. N.S. 127.

180. *Quere*, although the fact of an agent being also a part owner, does not prevent his recovering against the ship for necessaries supplied, can he so recover when he is concerned in the particular voyage for which the necessaries have been supplied? *Ibid.*

181. It was stipulated by charter-party that cash for disbursements not exceeding £250 should be advanced by charterers' agents out of freight. The agents who had no funds of the charterers in hand, refused to advance the money until the master engaged to reimburse them at the port of discharge out of freight earned. *Held* (Lord Cowan dissenting), that the agents having no funds were not, under the circumstances, bound to advance the money, that therefore it was not advanced under the charter-party, but under the agreement

entered into with the master, which agreement was not *ultra vires*, and that the owners and master were liable to the charterers' agents for the sum advanced. *Benn v. Porret*, Cases in the Court of Session, 3rd Series, Vol. 6, 577. [SCOTCH.]

182. A ship's agent was appointed by the master on his arrival at Bristol. He had no previous knowledge of either master or owner, but made no inquiries as to how he was to be repaid his advances for necessaries. He allowed the vessel to be placed in the hands of a shipwright to be repaired, and when her value was by this means increased, caused her to be arrested. *Held*, that he was not entitled to be paid his claim in priority to the shipwright. *The Panthea*, 25 L. T. Adm. 983.

183. As to advances by agents on bottomry, see tit. BOTOMRY, p. 133.

4. Claims by Part Owners.

184. An agent, also part owner, may recover against the ship for necessaries supplied. *The West Friesland*, Swabey, 456; 5 Jur. N.S. 658; 13 Moore, P. C. C. 186; 2 L. T. N.S. 613; 8 W. R. 423.

185. One of several co-owners of a ship, who acts as ship's husband, is only entitled to charge the cost price of supplies to the ship furnished by him in the course of his business. *Ritchie v. Cowper*, 28 Beav. 344.

186. A part owner, W., was registered as managing owner, without the knowledge of C., another part owner. W., without the knowledge or consent of C., obtained from the plaintiff necessaries for a voyage not authorized by C. *Held*, that C. was not liable for such necessaries. *Frazer v. Cuthbertson*, 6 Q. B. D. 93; 50 L. J. C. L. 277.

187. A co-partner in the ship may sue the ship for such advances made by him, but not if he is interested in the particular voyage for which the ship is supplied. *Ibid.* *The Underwriter*, 1 Asp. N.S. 127; 25 L. T. N.S. 279.

188. See, as to accounts between part owners, tit. OWNERS, Pt. VIII. c. 5.

5. Lien.

1. Generally.*

189. The general maritime law of Europe does not require a bond of hypothe-

* (63) The material man who supplies a foreign ship with necessaries has, by the general maritime law, a lien on the specific

ship, which may be enforced in Admiralty by a proceeding *in rem*, and he also has the personal security of the owners and master,

cation to give a maritime lien on the ship for advances. But by the law of this country, since the reign of Charles II., such an instrument is absolutely necessary for such purpose. *The Vrow Mina*, 1 Dodson, 235; *The Alexander*, *ibid.* 280; *The Zodiac*, 1 Hagg. 325; *The Vibilia*, 1 W. Rob. 6; *Watkinson v. Bernardiston*, 2 P. Wms. 367; *The Neptune*, 3 Knapp, P. C. C. 94; *Ex parte Shank*, 1 Atkins, 234; *Justin v. Ballam*, Salk. 34; *The Maitland*, 3 Hagg. 254; *Life of Sir Leo-line Jenkins*, Vol. 1, p. 76.

190. Similarly as to ordinary repairs, *Buxton v. Snee*, 1 Vesey, 154; *Hoare v. Clement*, 2 Show. 338; *Abb. Sh.* 143; *Cradock's case*, 2 Brownlow, 37; *Leigh v. Burleigh*, Ow. 122; *Wilkins v. Carmichael*, 3 Dougl. 101; *Smith v. Plummer*, 1 B. & A. 575; *Wood v. Hamilton*, decided in Dom. Proc. June 15, 1789; *Ruitt v. Mitchell*, 4 Camp. 146; and *Wood v. Meir's Crs.*, Jan. 31, 1810; 1 Bell, 527, n. 3; 2 *ibid.* 98, n. 1. [SCOTCH.]

191. A statutory lien, however, is now given in respect of such claims. See the Admiralty Court Act, 1861 (c. 10), ss. 4 and 5, and 3 & 4 Vict. c. 65, s. 6.

192. The Admiralty Court Act, 1861, s. 5, does not create a maritime lien for necessities at the time the necessities are supplied, and a ship does not become chargeable with a debt for necessities until a suit is actually instituted. *Johnson v. Black*; *The Two Ellens*, 41 L. J. P. C. 33; 40 L. J. Adm. 11; L. R. 4 P. C. 161;

L. R. 3 A. & E. 345; 1 Asp. N.S. 208; 8 Moo. P. C. N.S. 398; and see Nos. 35, 36, and 36a, pp. 1153, 1154.

193. No maritime lien attaches to a British ship in respect of coals or other necessities supplied to it in a possession in which a Vice-Admiralty Court is established. *Laws v. Smith*, or *The Rio Tinto*, 9 App. Cas. 356; 50 L. T. 461; 5 Asp. 224.

194. Vice-Admiralty Courts have not (apart from the statute) more than the ordinary Admiralty jurisdiction, *i. e.*, as it existed before 3 & 4 Vict. c. 65, enlarged it. The Vice-Admiralty Act, 1863 (c. 24), s. 10, does not create a maritime lien with respect to necessities supplied within the possession. *Ibid.*

195. A material man who supplies stores and materials for the equipment of a British ship has no maritime lien thereon, and cannot therefore enforce his claim against the ship in the hands of a subsequent purchaser, even though such purchaser had notice at the time of the purchase that the claim was still unpaid. *The Aneroid*, 2 P. D. 189; 47 L. J. Adm. 15; 36 L. T. 448.

196. Claimants for necessities have the same rights of suit in the Admiralty Court as those possessed of a maritime lien. *The Ella A. Clark*, otherwise *Golden Age*, 8 L. T. N.S. 119; Br. & L. 32; overruling *The Gustaf*, 6 *ibid.* 660; *The Alexander*, 1 W. Rob. 294.

196a. But now held (overruling *The*

unless the master takes care by express terms to confine the credit to the ship and owners. *The Brig Nestor*, 1 Sumner, 73; *The General Smith*, 4 Wheaton, 443. [AMERICAN.]

(64) A right to proceed *in rem* may exist, although there may be no maritime lien upon the *res* against which the claim is made. There is no maritime lien for necessities supplied to a ship in her home port, and yet, by the United States rules of practice for Courts of Admiralty, the material men may proceed *in rem* against the ship. *Wolf v. The Scow Selt*, 2 Asp. N.S. 107. [AMERICAN.]

(65) *Semble*, that the lien of material men for necessities supplied to a ship in her home port—that is, their right to be paid out of the *res*—attaches only on the seizure of the ship under Admiralty process. *Ibid.*

(66) Shipwrights have a lien on ships for repairs if actual possession be retained, and the money for the repairs be due, but the debt must be due before the lien can be claimed, and a usage to give credit is equivalent to an express contract. In the case, however, of an agreement to put the ship in thorough repair, the shipwright is not pre-

vented from claiming for the work partly done. Where the possession is parted with the lien is lost, though the mere giving up the ship's register would not be a delivery of possession. Cross on Liens, p. 311 *et seq.*

(67) A wharfinger has a lien on a vessel for wharfage, but if a vessel is under arrest on legal process, and in custody of the law, he cannot enforce his lien by a detention of the vessel, he must apply to the court for its allowance, and it will be ordered to be paid in concurrence with other liens standing in the same rank of privilege. *The Phebe*, Ware, 354; 1 Conkling's Adm. Prac. 2nd ed. p. 304. [AMERICAN.]

(67a) *Semble*, a wharfinger's lien is to be regarded as a common law lien, depending on possession, and not as an Admiralty lien, conferred by the maritime law, and existing independently of possession, though likened to a material man's lien. See 1 Conkling's Adm. Prac. 2nd ed. pp. 79, 305; *Ex parte Lewis, &c.*, 2 Gall. 483; *Johnson v. The Schooner McDonough*, Gilpin, 101. [AMERICAN.] See also notes 41, 46, p. 1153.

Ella A. Clark), that necessities supplied to a foreign ship in an English port do not create a maritime lien. *The Heinrich Bjorn*, 10 P. D. 44.

197. A person had repaired a ship, and on the owners becoming bankrupt obtained possession of the proceeds. *Held*, that he must account to the assignees for such proceeds, and come in under the commission for the debt due to him for the repairs. *Ex parte Shank*, 1 Atkins, 234; Abb. Sh. (12th ed.), 147.

198. A shipwright who has taken a ship into his own possession is not bound to part with the possession until he is paid for the repairs, any more than a tailor, smith, or artificer in regard to the object of his particular trade. *Ex parte Bland*, 2 Rose, 91; *The Vibilia*, 1 W. Rob. 6; *The Neptune*, 3 Hagg. 139; *Franklin v. Hosier*, 4 B. & A. 341.

199. So, also, as to an engineer who has supplied machinery to a vessel while in his possession, even though he has agreed to take bills in payment, and discounted one of them. *Ex parte Willoughby, In re Westlake*, L. R. 16 Ch. D. 604.

200. Unless there be a special agreement to give credit for a certain period or such an usage in the trade as is equivalent to a special agreement. *Raitt v. Mitchell*, 4 Camp. 146.

201. A shipwright in the river Thames has no lien on a ship taken into his dock to be repaired without an express agreement for that purpose, because by the usage of the trade the credit is always given to the owner. *Ibid.*

202. It is otherwise where the shipwright deals for ready money. *Ibid.*

203. As to the effect of agreeing to take bills in payment, see *Ex parte Willoughby, In re Westlake*, 16 Ch. D. 604; *Gunn v. Bolckow*, L. R. 10 Ch. 491.

204. But a shipwright who has once parted with the possession of the ship, or has worked upon it without taking possession, and a tradesman who has provided ropes, sails, provisions, or other necessities for a ship, are not by the law of England preferred to other creditors, nor have any particular claim or lien upon the ship itself for the recovery of their demands. 1 Maddock, 61; 14 Petersdorff's Abr. 652.

205. A shipbuilder, who gave to a person for whom he was building a ship, shortly before the actual completion thereof, the builder's certificate required by the Register Act, in order that his customer might obtain a certificate of

registry in his own name (which was accordingly done), *held*, to have thereby declared that the general property of the ship was vested in his customer, but not to have thereby lost his right to retain the possession until the residue of the stipulated price was paid. *Woods v. Russell*, 5 B. & A. 942.

206. A shipwright is not entitled to be paid for the use of his dock while he detains a ship under a lien against the will of the owner, notwithstanding his having given previous notice of his intention to make such a charge. *Somes v. British Empire Shipping Co.*, 31 L. T. 196; 4 Jur. N.S. 893; 27 L. J. Q. B. 397; El. Bl. & El. 353; aff. by House of Lords, 6 Jur. N.S. 761; 8 W. R. 707; 30 L. J. Q. B. 229.

207. A mortgagor of a ship being allowed to remain in possession and to use her, placed her, on her being condemned as unseaworthy, in the hands of a shipwright to be repaired, who, not being able to obtain his money for the repairs which he had done, retained possession of her, claiming a right of lien upon her. In trover brought against him by the mortgagee, *held*, that as the mortgagee had allowed the mortgagor to remain in possession and use the vessel, this amounted, in the absence of an express authority, to an implied one that he was to use the vessel in the ordinary way, and have repairs done when necessary; and consequently that, he having such authority to have her repaired, the shipwright was entitled to hold her as against the mortgagee until his debt was paid. *Williams v. Allsup*, 4 L. T. N.S. 550.

208. A vessel was placed in a slip, belonging to a firm of shipbuilders, for repairs. The shipbuilders afterwards moved her into the public wet dock adjoining their slip and there completed the repairs. While in the wet dock the vessel was under the control of the harbour master, who directed her movements, but the master was on board of her the greater part of the time, as he had been while she was in the slip, and at night there was a ship-keeper. During the time she was in the dock the vessel was moored by hawsers to pawls, which were inside the premises of the shipbuilders. *Held* (reversing the judgment of the Court of Session), that the removal of the vessel from the slip into the wet dock was no abandonment by the shipbuilders of their possession, and that their lien was not lost. *Barr v. Cooper*, Cases

in the Court of Session, 4th Series, Vol. 2 (H. L.), 14; 3rd Series, Vol. 11, 651. [SCORCH.]

209. A sailmaker being, prior to the vessel's arrest under a decree of the Court of Admiralty, in possession of the sails of a ship for the purpose of repairing them, has a lien on the sails to the amount of repairs he has effected, and under the general law he would be justified in retaining possession of them till his debt is paid, as against the owners or others seeking to dispossess him. As against the authority of the court, however, he has no right to detain them when the ship is in possession of its officer under a warrant from the court. The court can protect the just rights of the sailmaker. Monition against the sailmaker to deliver up the sails to the officer decreed accordingly. *The Harmonie*, 1 W. Rob. 178.

210. A foreign ship, being at the time on a slip in the building yard of C., was arrested for necessaries supplied by D. On affidavit from D. that the amounts claimed would exceed the present value of the ship, and that the vessel was rapidly deteriorating, the judge ordered her removal from the building yard, and appraisal and sale without prejudice to the claim or lien of C. for rent and other charges on the proceeds of the sale. *The Nordstjernen*, Swabey, 260.

211. By an agreement made in 1861, but not executed till the 11th April, 1862, shipbuilders agreed to build a schooner for F. On the 12th April the agreement was assigned to the plaintiff to secure £500, then already advanced to the shipbuilders to complete her and to secure future advances to a certain stated amount, and the vessel herself was assigned to the plaintiff, as a lien for such advances and interest. On the 19th May the agreement between the builders and F. was put an end to, and on the 20th they entered into a new contract with the plaintiff to complete and sell the vessel to him for £1,160, of which the advanced £500 was to be taken as part payment. No registration of the vessel took place; but on the 20th May the builders certified, according to the provisions of the M. S. Act, that they had built the schooner for the plaintiff. The advances did not appear to have been laid out exclusively upon the vessel. The vessel was unfinished on the 2nd June, when the builders were adjudicated bankrupts, and the defend-

ants chosen their assignees. On a bill to enforce the lien under the agreement of the 12th April, *held*, that the lien under it was discharged, if not by the cancellation of the agreement with F., yet by the fact that the £500 thereby secured was merged into and taken as part payment of the purchase-money under the agreement of 20th May, but that, under the memorandum of the 20th May, the plaintiff was entitled to a lien on the unfinished ship for the £500. *Swainston v. Clay*, 1 Asp. 343; 32 L. J. Ch. 338, 503; 9 Jur. N.S. 401; 4 Giff. 187.

212. A mercantile house at N. directed a house at Q. to contract for the building of a ship, for which they (the N. house) would send out the rigging. The Q. house entered into a contract with some shipbuilders accordingly. The N. house then directed their correspondent at L. to send out the rigging. He accordingly purchased the same, and delivered it to the master appointed by the N. house to the new ship, who, it was held on the balance of evidence, delivered it to the Q. house. *Held*, that the Q. house were entitled to retain such rigging as against the L. correspondent, on account of their lien on it for advances to the builders, and payment of custom-house expenses, although, previously to the delivery, they had obtained an assignment of the ship to themselves from the builders, and had registered it in the name of one of the partners in their house; and that even if such delivery to the Q. house were questionable, the delivery by the L. correspondent to the master, the agent of the N. house, vested the property in the N. house, and ousted the L. correspondent's claim. *Rogerson v. Reid*, 1 Knapp, P. C. C. 363.

213. The builder of a vessel has a lien thereon for the price of it, but that lien does not involve a power of sale. *The Thames Iron Works Co. v. The Patent Derriek Co.*, 29 L. J. Ch. 714.

214. For cases of lien as affecting jurisdiction, see p. 1153.

215. For cases as to lien generally, see tit. LIENS, p. 808.

216. As to claims in respect of money paid to discharge a claim for necessaries, see p. 1161.

2. Transfer.

217. In an action for building and equipping a vessel, the defendants pleaded that the alleged causes of action became

vested in a trustee for the plaintiffs' creditors, under a composition deed. The plaintiffs in reply alleged that they assigned the causes of action prior to the execution of the deed, and that they were suing as trustees for their assignees. *Held*, that they might sue as trustees, although subsequent to the assignment they had executed the composition deed. *Held*, also, that though the assignment of the causes of action was prior to the arrest of the vessel and the institution of the suit, it carried with it the inchoate right to proceed against the vessel. *The Wasp*, L. R. 1 A. & E. 367; 2 Asp. 552.

218. A ship was transferred when at sea to a vendee resident in the port where she was registered, and money was paid by the vendee's agents, under the sentence of a foreign court, for salvage, wages, provisions, and sundry ship's disbursements. *Held*, that the salvage and mariners' wages were a lien on the ship, but

not the sums paid for disbursements. *Richardson v. Campbell*, 5 B. & A. 203, n.

219. A party advancing sums of money to salvors in respect of their claim for salvage has no claim in the Admiralty Court against the sum awarded to them in respect of such salvage. *The Louisa*, 6 Notes of Cases, 531, 532; and see M. S. Act, 1854 (c. 104), ss. 182, 233.

220. In a cause of bottomry no appearance was given for the owners, and actions for wages, &c. were entered against the ship. The court allowed the bondholder to pay the claims, which were the subject of those actions, on giving security for the protection of the owner's interests. *The John Fehrman*, 16 Jur. 1122.

See also No. 147, and tit. LIENS, c. 2, p. 811.

3. Discharge.*

221. The lien on ship for necessaries supplied continues, notwithstanding the

* (68) A shipbuilder having a lien for building or repairs of a vessel may release the same, or waive his dependence thereon, and the consignee may be liable. *Pritchard v. Muir*, 2 Brevard, 371. [AMERICAN.]

(69) The lien of seamen for wages, and of material men for repairs, &c., cannot be divested by any casualty. It attaches to different parts of a wreck as well as to the entire vessel. Where parts of a wreck are saved by the owners, they may be proceeded against *in rem*, and the proceeds of the sale will be applied to discharge the liens—1, of seamen; 2, of material men. *The Tackle, &c. of The America*, 1 Newb. Adm. 195. [AMERICAN.]

(70) The taking by the material man of a negotiable promissory note, payable at four months, for the amount of his debt, as conditional payment, would be *prima facie* a presumptive extinguishment *sub modo* of the debt, and if it had been actually negotiated, whether paid or not, the creditor could have had no right to recover his debt, as the debtor would still be responsible to the holder of the note, and he ought not to be twice liable for the same debt. The receiving of such a note is direct proof that credit is given to the personal responsibility of the owner, and presumptive proof that no credit is given to the ship, or, in other words, that there is a waiver of any lien on the ship. *The Brig Nestor*, 1 Sumner, 86; see also *Leyland v. Ship Medora*, 2 Woodbury and Minot, 92; *The Chusan*, 2 Story, 456. [AMERICAN.]

(71) Where such a note had been given to the material man, and had not been paid, but was still outstanding, and had never been surrendered, and it did not appear that

it had not in fact been negotiated, *held*, that the material man could not enforce his claim in Admiralty. *Ramsay v. Allegre*, 12 Wheaton, 611. [AMERICAN.]

(72) A material man does not lose his statutory lien on a vessel engaged in our internal commerce by taking a promissory note on time, which he offers to deliver up at the hearing. *Raymond v. Schooner Ellen Stewart*, 5 McLean, 269. [AMERICAN.]

(73) The lien is not extinguished by giving credit for a fixed time, nor by allowing the ship to depart on her voyage without payment. *The Nestor*, 1 Sumner, 73. [AMERICAN.]

(74) Nor by the fact that the master and owners are personally liable for the supplies, as the party may trust to the credit of the ship, the master, and the owner. *Lane v. Brig President*, 4 Wash. C. C. 453. [AMERICAN.]

(75) A ship was libelled in a Court of Admiralty on a bottomry bond while lying at a wharfinger's wharf, and sold by the authority of the court. It appeared that there had been a personal contract between the wharfinger and the shipowner for the payment of a specific rate of dockage of the ship, and an order drawn on the ship's agent for payment thereof quarterly. *Held* (in accordance with a series of authorities to the effect that when the parties enter into a personal contract for a specific sum, it is a discharge of the implied lien, resulting by operation of law, but questioning the principle), that such a contract amounted to a waiver of the lien. 1 Conkling's Adm. Prac. 2nd ed. p. 303. [AMERICAN.]

(76) A person supplied stores to a ship on

sale of the ship, if there has been no laches in enforcing the lien. *The West Friesland*, 5 Jur. N.S. 658; Swabey, 454; S. C. on appeal, *ibid.* 456; 13 Moore, P. C. C. 186; 8 W. R. 423; 2 L. T. N.S. 613; *The Ella A. Clark*, otherwise *Golden Age*, 8 L. T. N.S. 119.

222. 3 & 4 Vict. c. 65, s. 6, does not give a maritime lien on a foreign ship for necessaries. *The Ella A. Clark* overruled *The Heinrich Bjorn*, 10 P. D. 44. See also *The Two Ellens*, L. R. 4 P. C. 161.

223. If in the exercise of its jurisdiction facts should be disclosed to the court showing that other persons have equitable claims on the vessel, which would be prejudiced by the demand set up, it will administer the law in equity, and decide between them, whether or not such circumstances should operate to prevent the material men from recovering against the ship. *Quere*, whether a ship having *bond fide* passed into other hands would be liable to such a demand? *The Alexander*, 1 W. Rob. 288, 295, 297; 5 Jur. 1067; 1 Notes of Cases, 185. But see *The Rio Tinto*, No. 193, p. 1166, and tit. LIENS, p. 826.

224. A. supplied necessaries to a foreign ship, and took in payment from the master a bill of exchange, which was dishonoured. He then sued the master on the bill of exchange, and caused him to be arrested. *Semble*, A. was not thereby deprived of his remedy against the ship, the necessaries still remaining unpaid for. *The N. R. Gosfabrick*, Swabey, 345; 31 L. T. 345.

225. A Greenock ship having been repaired at Hull by order of the agents of the owner, at the instance and under the direction of the master, the account for such repairs was made out to "Captain

Coward (the master) and owners of ship *Jeanie*," attested by Coward, and addressed to the agents for payment, which was not, however, demanded for some months. In the meantime the owner paid the agents for the repairs. The agents became embarrassed in their circumstances, upon which the shipwright applied for payment to the owner. *Held*, that the owner was still liable, for he could be discharged only by positive agreement, or by necessary inference that the shipwright had abandoned that security. *Stewart v. Hall*, 2 Dowl. 29; 1 Bell, 525, note 5.

226. For cases as to the effect, on the claimant's lien, of the taking of a bill of exchange in cases of bottomry, see tit. BOTTOMRY, p. 140. Salvage, *The Chieftain*, 4 Notes of Cases, 459. Wages, *The William*, 2 Hagg. 136; *The Simlah*, 15 Jur. 865; *Reed v. White*, 5 Esp. 122; *Griffith v. Hicks*, 15 L. T. 349; *Whitwell v. Perrin*, 4 C. B. N.S. 412; and Nos. 222—225, *supra*.

227. For cases of discharge of liens generally by laches, see tit. LACHES, p. 800.

4. Priority.*

228. A mortgagee brought an action to realize his security, and a shipwright with a common law possessory lien on the ship intervened. The ship was sold, and the proceeds were only sufficient to satisfy the claim of the shipwright. *Held*, that the mortgagee was entitled to his costs up to the date of sale out of the proceeds in priority to the material men. *The Sherbro*, 52 L. J. P. 28; 48 L. T. 767; 5 Asp. 88.

See also tit. LIENS, p. 825.

the order of one of several owners, who acted as ship's husband, and took such part owner's note in payment, and gave a receipt in full. *Held*, that all the owners were liable, the note not having been paid. *Schemerhorn v. Loines*, 7 Johns. 311. [AMERICAN.]

(77) When labour is performed upon a ship there is a legal presumption that it was done for the benefit and at the request of the owner, and an implied promise to pay arises; but where there is a special promise by the master, and credit is given to him alone, and he has been paid, the owner is not liable. *James v. Birby*, 11 Mass. 34. [AMERICAN.]

(78) Exclusive credit given to a master is a

waiver of the material man's lien. *The Nestor*, 1 Sumner, 73; Dunlap's Adm. Prac. (2nd ed.) p. 68. [AMERICAN.]

(79) As to the effect on the material man's lien, by the French law, of a sale of the vessel and the permitting her to sail on a voyage, see tit. LIENS, p. 834.

* (80) When the funds in court are insufficient to pay all the claims, the court will generally, on motion for that purpose, give permission to claimants secondarily entitled to pay off unopposed claimants primarily entitled, on proof of such claims, and without prejudice to the interests of the owners of the ship. See tit. LIENS, p. 811.

OWNERS.

PART I. TITLE AND REGISTRATION.

II. GENERAL AND SUNDRY RESPONSIBILITIES OF OWNERS AND THEIR REPRESENTATIVES.

III. UNSAFE AND UNSEAWORTHY SHIPS.

IV. PASSENGER SHIPS.

PART V. DECK AND GRAIN CARGOES AND DANGEROUS GOODS.

VI. EXEMPTIONS FROM, AND LIMITATION OF, LIABILITY OF SHIPOWNERS.

VII. COMPULSORY PILOTAGE.

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1. As against a wrongdoer, the owner of a ship is *prima facie* owner of the goods on board. *Brancker v. Molyneux*, 3 Scott, N. R. 332; 3 M. & G. 84.

2. Possession of a ship, under a transfer void for non-compliance with the Register Acts, is a sufficient title in trover against a stranger for parts of the ship wrecked. *Sutton v. Buck*, 2 Taunt. 302.

3. Until the title is impeached it is not necessary in the first instance to examine the title of a person in actual *bond fide* possession and ownership of a vessel. A party proceeding to disturb possession must succeed by the strength of his own title. *The John*, 2 Hagg. 308.

4. The receipt from the underwriter of payments as for a total loss on capture, in which, however, restitution had been afterwards obtained upon terms, *held*, not to preclude the assured from suing and endeavouring to obtain restitution on a

subsequent capture of the same vessel. *Robertson v. Hamilton* (1811), 14 East, 522.

5. Certain shipbuilders in America built several ships, mortgaged them there, sent them to England for sale, sold them there, and paid the mortgagees in America. The mortgages were duly registered in America; but notice of the mortgage having been indorsed on the certificate of registry in one case, and having impeded the sale, it was agreed that no such notice should be indorsed in future. Another ship was accordingly sent over and sold; the shipbuilders received the purchase-money and failed, leaving the mortgagee unpaid. *Held*, that the rights to the ship acquired under American law must be recognized; but that the purchase having taken place in this country must be governed by English law: that a ship is not an ordinary chattel, which passes by delivery, and that there is no market overt for ships: that the purchaser of a foreign ship is bound to make

* (1) A ship built in the United States for alien residents abroad becomes their property without any documentary title. It

passes like any other chattel. *The Active*, Olcott, Adm. 286. [AMERICAN.]

inquiries as to title: that in this case the mortgagee had so acted as to suppress the mortgage, and to make the ship-builders his agents for sale, and that he could not maintain his claim against the purchaser. *Hooper v. Gumm, McLellan v. Gumm*, L. R. 2 Ch. 282; overruling *V.-C. W.*, 13 L. T. N.S. 187.

6. *Semble*, the court would in some cases recognize an agreement by which a person might be for some purposes an absolute owner, and for others a mortgagee, if such an agreement were clearly proved and definite. *The Innisfallen*, L. R. 1 A. & E. 72.

See also Nos. 202, 202a, *infra*.

2. Jurisdiction.

1. Admiralty Branch of P., D. and A. Division.

(a) Generally.

7. See tit. JURISDICTION, Pt. I. c. 1, p. 638.

2. High Court of Admiralty before Judicature Acts.*

(a) Generally.

8. The Court of Admiralty had (prior to its abolition by the Judicature Acts) jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages, or bottomry. See 3 & 4 Vict. c. 65, s. 4.

9. By 3 & 4 Vict. c. 65, s. 4, the Court of Admiralty had ample authority and jurisdiction to determine which of the parties litigant is entitled not only to the possession of a ship, but to the full right of property in her. *The Segredo*, otherwise *Eliza Cornish*, 1 Spinks' Eccl. & Adm. Rep. 42.

10. In all cases of bottomry, salvage, and wages, the Court of Admiralty possessed an undoubted power to decree a sale of the vessel proceeded against, unless the demand of the successful suitor were satisfied. The jurisdiction of the court therein was confirmed by the municipal law of this country, and by the general principles of the maritime law, and the title conferred by the court in the exercise of this authority was a valid title against the whole world, and was so recognized by the courts of this and of all other countries. *The Tremont*, 1 W. Rob. 164.

11. The mortgagee of a vessel duly sold the vessel under a power of sale contained in the mortgage deed. By mistake a discharge of the original mortgage was indorsed on the mortgage deed and registered. On the vendee of the vessel subsequently presenting for registration his bill of sale, registration thereof was refused, on the ground that the property in the vessel had passed to the mortgagor. The mortgagee, the vendee of the vessel, instituted a suit praying that the vendee might be pronounced the sole owner of the vessel. *Held*, that the court had jurisdiction under the 3 & 4 Vict. c. 65, ss. 3 and 4, and sect. 11 of the Admiralty Court Act, 1861, to entertain the suit, and decree made in the terms of the prayer. *The Rose*, L. R. 4 A. & E. 6; 42 L. J. Adm. 11; 1 Asp. N.S. 567.

12. The Court of Admiralty has refused to entertain a cause of possession impeaching the sentence of a foreign Court of Admiralty. *The Martin of Norfolk*, 4 C. Rob. 293.

13. The Court of Admiralty has jurisdiction to entertain an action by the majority of shipowners against an individual owner, to restore possession of the ship's register, in order that the vessel

* (2) It was anciently held to be within the jurisdiction of the High Court of Admiralty to examine and pronounce for the title of ships on questions of ownership. It was not till some time after the Restoration that the court was informed by other courts that the jurisdiction belonged exclusively to them. After that time the court was very cautious not to interfere at all in questions of disputed title, until its jurisdiction was restored to it by 3 & 4 Vict. c. 65, and subsequent statutes. *The Aurora*, 3 C. Rob. 133; *The Warrior*, 2 Dods. 289.

(3) Though it entertained jurisdiction in

causes of possession when the title was not disputed, or where a mere cobweb title was set up. *The Warrior*, 2 Dods. 288; *The Guardian*, 3 C. Rob. 93; *The Fruit Preserver*, 2 Hagg. 181. See also *In re Blanchard*, 2 B. & C. 244; *Baxter v. Blanchard*, 3 D. & R. 177; *The Sisters*, 4 C. Rob. 275; *The Pitt*, 1 Hagg. 243; *The John*, 2 Hagg. 305.

(4) See the subject of the ancient jurisdiction of the English Courts of Admiralty elaborately considered by Mr. Justice Story in *De Lovio v. Boit*, 2 Gallison, 464. [AMERICAN.]

may sail on her voyage. *Anon.*, 2 Chit. 359; 3 D. & R. 178, n. See also p. 1212.

14. As to the jurisdiction of the court in reference to forfeiture of ships for concealment of British character, illegal assumption of British character, unqualified ownership, false declaration of qualification, and use of improper certificate, see Pt. II. c. 18, p. 1172.

15. As to the jurisdiction of the court as between part-owners, see Pt. VIII. p. 1180.

16. As to the jurisdiction of this and other courts to issue an order prohibiting the dealing with any ship or share, see cap. 3, s. 25, p. 1205.

17. As to the jurisdiction of the court—To decree sale of a ship or share in case of an unqualified owner becoming entitled, see cap. 3, s. 26, p. 1205. To decree, in cases of damage, a sale of the vessel and distribution of the proceeds among the several claimants, see Pt. II. p. 1218. To transfer possession of the ship to the major interest, *ibid.* p. 1415. To take bail for the safe return of the ship on the application of minor interests, *ibid.* p. 1418. Over mortgages of ships, see tit. MORTGAGE, p. 1129.

(b) *Foreigners.**

18. The Court of Admiralty had power to inquire into title in cases in which British subjects laid claim to a ship coming to this country in the possession and as the property of foreigners. *The Experimento*, 2 Dodson, 38, 42.

19. When foreigners were alone concerned, it was with the greatest reluctance that the court entertained causes of possession, as being questions not properly belonging to the *jus gentium*, but depending on the municipal regulations of different countries with which the court could be but imperfectly acquainted. *The See Reuter*, 1 Dodson, 23; *The Martin of Norfolk*, 4 C. Rob. 297.

20. It was the practice of the court not to entertain causes of possession between foreigners unless the cases were referred to its decision by the consent of parties, or by the intervention of the representative of the foreign state devolving the jurisdiction of his own country on the court. *The See Reuter*, 1 Dodson, 24.

21. In a cause of possession between foreigners, an official decree, duly authenticated, of the authorities of their country, decreeing possession of the ship to be given up by the master, one of the parties in the suit, to the agent of the principal owners, the other party, *held* sufficient to authorize the court to interfere, and possession ordered in furtherance of such decree, on bail being given to answer the master's interest. *Ibid.*

22. The Court of Admiralty would not interfere in the disputes of foreigners, particularly in a case of possession, without the consent of both parties, and an application for that purpose from the foreign minister; and even then it did so with reluctance, and merely to prevent further inconvenience and loss by resort to the decisions of other courts in other countries. *The Martin of Norfolk*, 4 C. Rob. 297.

23. In a cause of possession between foreigners, entertained at the request of the parties and of the consul of their country, the court declined to investigate a decision of a foreign Court of Admiralty, under which the present possessor claimed, and dismissed the parties. *Ibid.* 293. But see *The Evangelistria*, 46 L. J. Adm. 1; 35 L. T. 410; 25 W. R. 255; 3 Asp. 264, and Nos. 45 and 46 in tit. MORTGAGE, p. 1132.

23a. The plaintiff, a foreigner, purchased of the defendant one fourth share of a ship. At the time of the purchase she was a British ship, but the defendant, a foreigner, subsequently procured a register for her as a foreign ship. In a suit by the plaintiff for possession, the court, upon the foreign consul refusing to interfere, declined to entertain the suit, which was dismissed with costs, but not damages. *The Agincourt*, 2 P. D. 239; 47 L. J. Adm. 37. See also *The Cosmopolite*, 3 C. Rob. 533; *The Thomas*, 1 *ibid.* 322; *The Fanny and Elmira*, Edwards, 117, 120; *The Countess of Lauderdale*, 4 C. Rob. 283; *The Victoria*, Edwards, 97; *Dalgleish v. Hodgson*, 5 M. & P. 407; 7 Bing. 495; *Simpson v. Fogo*, 1 Johns. & H. 18; 6 Jur. N.S. 949; 29 L. J. Ch. 657; 8 W. R. 407; *Elias v. Black*, 18 Court of Session Cases, 1225. [SCOTCH.]

* (5) A proprietary suit will be entertained in case of a claim by British subjects, as the owners of a vessel found in England in the

hands of foreigners. Dunlap's Adm. Prac. (2nd ed.) 47. [AMERICAN.]

24. The Court of Admiralty would not, even with the consent of the parties and of the accredited agent resident here of the country to which they belonged, entertain a cause of possession of a foreign ship between foreigners, as not being a case arising on the *jus gentium*, the municipal regulations of different countries having modified and altered the general rule under the old civil law. Such a suit dismissed accordingly. *The Johan and Siegmund*, Edwards, 242.

25. Motion founded on an *ex parte* affidavit of the owners for an order against an agent to bring in the ship's papers belonging to a foreign vessel rejected, the case not being an original cause of possession, in which the court would have the power to make an order for the production of the ship's papers as incidental to the cause. *The Lusitano*, 1 W. Rob. 166.

26. In a court of the law of nations (*i. e.*, a Prize Court), the 26 Geo. 3, c. 60, requiring the name of every owner to appear in the ship's register, and the established rule confining the claims of third parties, if British subjects, to registered owners, *held* binding on British subjects only, and not to bar foreigners from preferring a claim against a *bond fide* owner whose name was not inserted in the ship's register. *The Nostra Signora de los Dolores*, 1 Dodson, 296.

27. A party actively and directly concerned in the purchase and outfit of the vessel, in the appointment of the master, and in the subsequent management of the vessel, whose name, however, was not inserted in the ship's register, bill of sale, or letters of marque, *held* to have been a *bond fide* owner, and responsible as such to a foreigner. The representative of such owner accordingly held responsible for costs and damages decreed to the foreigner. *Ibid.*

28. The government formed during a revolution in Sicily, but not recognized in this country, seized upon the king's treasure, and remitted part of it to persons in this country, to purchase steam ships, and they applied the remittance accordingly. *Held*, that the king, who had re-established his authority, was entitled to sue for one of the ships, which remained in the port of London, and that the persons who made the remittance were not necessary parties to the suit. *Two Sicilies (King) v. Willcox*, 1 Sim. N.S. 332; 14 Jur. 163; 19 L. J. Ch. 202.

(c) *As affected by Courts of Chancery.*

29. Two part owners of a vessel having been appointed ship's husbands, and the other part owners wishing to dismiss them, the ship's husbands denied the right of the others so to do, and possessed themselves of some of the machinery of the ship, which was at an engineer's for repairs. The other part owners filed a bill, and moved for an injunction to restrain the ship's husbands from interfering by detention of the machinery, and for a receiver of the machinery. On it appearing that a decree of possession could not be obtained in the Court of Admiralty by reason of the plaintiffs being in possession of the hull, or, at all events, could not be obtained in time to enable the vessel to fulfil her engagement; *held*, that the Court of Chancery had jurisdiction, upon motion, to appoint a receiver of the machinery, and to direct possession of it to be delivered to him. *Brenan v Preston*, 2 De G. M. & G. 813.

30. A vessel, the property of a bankrupt, had been purchased by a person, who paid his deposit. By an agreement he was to pay over the residue on a certain day to P., the solicitor to the assignees of the bankrupt. On that day the greater portion of the money was paid over to P., and the vessel was delivered to the purchaser; but the bill of sale not being handed over to him, a small portion of the purchase-money was, at his request, left unpaid. The vessel having been arrested in the Admiralty Court by the assignees, who refused to recognize the transaction; *held*, upon bill filed and motion by the purchaser for injunction and specific performance, that it was a proper case for the interference of the Court of Chancery. *Hughes v. Morris*, 14 L. T. 306.

31. Upon motion for decree, *held*, that the Court of Chancery could not interfere to put the purchaser into possession of the ship. Bill dismissed without costs. *Ibid.*; 9 Hare, 636; 16 Jur. 603; 26 L. J. Ch. 761; 2 De G. M. & G. 349. See *The Virtue*, 1 Spinks' Eccl. & Adm. Rep. 77.

32. A person applying under the 65th section of the Merchant Shipping Act, 1854, for an order prohibiting any dealing with a vessel, stands in the position of a plaintiff in a suit for specific performance, and must show that he is ready to carry out his part of the contract. *Re Ship Isis, Ex parte Baker*, 3 Asp. N.S. 52.

33. The petitioner agreed to purchase a barge from A., and had paid some in-

stalments of the purchase-money, when A. gave him notice that he had sold the barge to another person, to whom it must be given up. Order made to prohibit A. from dealing with the barge until a given day, upon the terms of the petitioner paying into court the instalments due, and giving security for the completion of the contract. *Re Ship Isis, Ex parte Baker*, 3 Asp. N.S. 52.

34. The plaintiff, an English subject, entered into an agreement abroad with the defendant, a foreigner, for the purchase of a ship. The defendant being out of the jurisdiction, but the ship being within it, and substituted service having been made on the master, the court decreed specific performance, and restrained the removal of the vessel from England. *Hart v. Herwig*, L. R. 8 Ch. 860; 42 L. J. Ch. App. 457; 1 Asp. N.S. 572; 2 *ib.* 63.

35. As to the jurisdiction of Courts of Equity, in reference to unregistered titles, see cap. 4, p. 1207.

36. To take bail for the safe return of the ship on the application of part owners, see Pt. VIII. p. 1418.

37. As to bottomry, see tit. BOTTOMRY, p. 105.

3. Vice-Admiralty Courts.

38. The matters in respect of which Vice-Admiralty Courts shall have jurisdiction, are as follows . . . (9) claims between the owners of any ship registered in the possession in which the court is established, touching the ownership, possession, employment, or earnings of such ship. Vice-Admiralty Court Act, 1863 (c. 24), s. 10.

39. Vice-Admiralty Courts abroad had prior to this act only the ordinary jurisdiction exercised by the Court of Admiralty before the passing of the 3 & 4 Vict. c. 65. *The Australia*, Swabey, 480; 13 Moore, P. C. C. 132; *The John*, 2 Hagg. 305.

40. Proceeds of a ship and cargo sold abroad and transmitted from a Vice-Admiralty Court to the registry of the High Court of Admiralty, decreed on motion to be paid out to the respective consignees of the cargo, on the consent of the purchaser of the cargo. *The Lady Banks*, 1 Hagg. 306.

41. As to the jurisdiction of Vice-Admiralty Courts generally, see tit. JURISDICTION, p. 686.

3. Registration of British Vessels.

1. Generally.*

42. The ownership, measurement, and registry of British vessels are regulated by Part II. of the M. S. Act, 1854 (c. 104), ss. 17—108; the M. S. Act Amendment Act, 1855 (c. 91), ss. 9—15; *ibid.* 1862 (c. 63), ss. 3 and 4; the M. S. Act, 1867 (c. 124), s. 9; the M. S. (Colonial), Act, 1869 (c. 11); the M. S. Act, 1871 (c. 110), ss. 5 and 6; *ibid.* 1872 (c. 73), ss. 3 and 4; *ibid.* 1873 (c. 85), ss. 3—6; and *ibid.* 1876 (c. 80), ss. 25—28, and 36—44.

43. The second part of the M. S. Act, 1854, applies to the whole of her Majesty's dominions. See the act, s. 17. But it does not affect 3 & 4 Vict. c. 56, which relates to East India ships. *Ibid.* s. 108; nor does it affect her Majesty's ships. *Ibid.* s. 4.

* (6) The registration of British ships appears to have been first introduced into this country by the Navigation Act, 12 Car. 2, c. 18.

(7) The following were the Registry Acts prior to the M. S. Act, 1854:—7 & 8 Will. 3, c. 22; 26 Geo. 3, c. 60; 27 Geo. 3, c. 19; 34 Geo. 3, c. 68; 4 Geo. 4, c. 41; 6 Geo. 4, c. 110; 7 Geo. 4, c. 48; 3 & 4 Will. 4, c. 55; 8 & 9 Vict. c. 89; 12 & 13 Vict. c. 29; 16 & 17 Vict. c. 131. They are all now repealed.

(8) As to the registration of ships belonging to British subjects within the jurisdiction of her Majesty in China and Japan, see the China and Japan Maritime Order in Council, 1874, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), 89.

(9) As to the registration of United States vessels, mode of measurement, and the record

of bills of sale, mortgages, &c., see Revised Statutes of U. S. ss. 4131—4196.

(10) As to granting clearances and entry of clearance of vessels, form of manifest, &c., *Ibid.* ss. 4197—4218.

(11) As to tonnage duties, *Ibid.* ss. 4219—4227.

(12) As to discriminating duties, *Ibid.* ss. 4228—4232.

(13) For provisions as to the inspection of the boilers of steamers, licences of officers, &c., and carriage of merchandize, *Ibid.* ss. 4399—4500.

(14) For provisions as to the appointment and duties of shipping commissioners, *Ibid.* ss. 4501—4508.

(15) As to the fees of shipping commissioners, *Ibid.* ss. 4592—4595.

44. As to the construction of the following terms of the act, "her Majesty's dominions," "British dominions," "British possession," "the United Kingdom," "Consular officer," and "Ship," see *Ibid.* s. 2.

45. Every application for the registry of a ship shall in the case of individuals be made by the person requiring to be registered as owner, or one or more of them, or his or their duly-authorized agent, and in the case of bodies corporate by their duly-authorized agent; the authority of such agent, of individuals, to be testified by writing under the hands of the appointers, and of a body corporate under its corporate seal. *Ibid.* s. 35.

46. Before registry, the ship shall be surveyed by a person duly appointed; and such surveyor shall grant a certificate in the form marked A. in the schedule; the certificate shall be delivered to the registrar before registry. *Ibid.* s. 36.

47. The following rules shall be observed with respect to entries in the register book:—

- (1) The property in a ship shall be divided into sixty-four shares. See M. S. Act, 1854, s. 37.
- (2) Subject to the provisions with respect to joint owners or owners by transmission, not more than sixty-four individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons or of any company represented by or claiming under or through any registered owner or joint owner. See the M. S. Act Amendment Act, 1880 (c. 18), s. 2, repealing sub-s. 2 of s. 37 of the M. S. Act, 1854.
- (3) No person shall be entitled to be registered as owner of any fractional part of a share in a ship; but any number of persons, not exceeding five, may be registered as joint owners of a ship or of a share therein. See M. S. Act, 1854, s. 37.
- (4) Joint owners shall be considered as constituting one person only as regards the last rule, and shall not be entitled to dispose in severalty of any interest in any ship or in any share therein in respect of which they are registered. *Ibid.*
- (5) A body corporate may be registered as owner by its corporate name. *Ibid.*

48. As soon as the requisites to the due registry of a ship have been complied with, the registrar shall enter in the register book the following particulars: (1) the name of the ship and of the port to which she belongs; (2) the details as to her tonnage, build, and description comprised in the certificate hereinbefore directed to be given by the surveyor; (3) the several particulars as to her origin stated in the declaration or declarations of ownership; (4) the names and descriptions of her registered owner or owners, and if there is more than one such owner, the proportions in which they are interested in such ship. *Ibid.* s. 42.

49. Of the documents required to be produced to the registrar, he retains in his possession the surveyor's and builder's certificates, the copy of the condemnation, and all declarations of ownership. *Ibid.* s. 61.

50. Shares in ships registered under the M. S. Act, 1854, are deemed to be included in the word "stock," as defined by the Trustee Act, 1850, which is applicable to such shares accordingly. See the M. S. Act Amendment Act, 1855 (c. 91), s. 10.

51. No notice of any trust, express, implied, or constructive, shall be entered in the register book, or receivable by the registrar; and, subject to any rights and powers appearing by the register book to be vested in any other party, the registered owner of any ship or share therein shall have power absolutely to dispose in manner therein mentioned of such ship or share, and to give effectual receipts for any money paid or advanced by way of consideration. See M. S. Act, 1854, s. 43.

52. A vessel registered by the owner as *The City of Bruxelles*, was registered by the mortgagee as *The City of Brussels*. The identity being established, *held*, that the misdescription did not affect the validity of the registration by the mortgagee. *Bell v. Bank of London*, 3 H. & N. 730; 28 L. J. Exch. 116.

53. The Court of Chancery cannot entertain the question whether a ship was properly registered, but must take the registration as conclusive. *Coombs v. Mansfield*, 3 Drew. 193; 1 Jur. N.S. 270.

54. Any document required by this act to be executed in the presence of or to be attested by any witness or witnesses, may be proved by the evidence of any person able to bear witness to the requisite facts, without calling any one of the

attesting witnesses. See M. S. Act, 1854, s. 526.

55. A ship built to be sold to a foreigner, and delivered at a foreign port, was assigned by the builder to the plaintiff for valuable consideration, under an agreement not in the form of a M. S. Act bill of sale. The assignment was not registered, either under the M. S. Act, 1854, or the Bills of Sale Act, 1854. At the time of the assignment the ship had been completely built and tried. *Held*, that the ship was not a British ship within the meaning of the M. S. Act, 1854, and that an assignment of her need not be by bill of sale, nor registered under that statute. *Held*, also, that an assignment of her fell within the proviso in the Bills of Sale Act, 1854, s. 7, which exempts assignments of a ship from the operation of that statute. *Union Bank of London v. Lenanton*, 3 C. P. D. 243.

56. A vessel being launched must be registered as a British ship at the time of such launch, in order to enjoy the privileges of a British ship in an action of damage by collision arising therefrom. *The Andalusian*, 3 P. D. 182.

56a. Section 2 of the M. S. Act, 1854, does not limit the meaning of the word "ship," but enlarges it. *The Mac*, 7 P. D. (C. A.) 126; 51 L. J. P. D. 81; 4 Asp. 555; *Ex parte Ferguson*, L. R. 6 Q. B. 280.

56b. A hopper barge used for dredging, with no means of propulsion within itself, *held*, to be a "ship" within the meaning of the M. S. Act, 1854. *The Mac*, *supra*.

56c. A fishing coble of ten tons burden and decked forward only, but which went twenty or thirty miles to sea almost entirely with sails, although she was capable of being propelled by oars, *held*, to be a "ship" within the meaning of the M. S. Acts, 1854 and 1862. *Ex parte Ferguson*, *supra*.

57. *Semble*, where a ship is owned by an English limited company, which, for the purpose of carrying on business in a foreign country, is registered in that country as a foreign company, and the ship is also registered there, the ship is nevertheless a British ship, and although not having a British registry, is subject

to all the liabilities of a British ship. *Chartered Mercantile Bank of India, &c. v. Netherlands India Steam Navigation Co. Limited*, 9 Q. B. D. 118; 10 Q. B. D. 521; 4 Asp. 523; 5 Asp. 65; 46 L. T. N.S. 530; 48 L. T. N.S. 546.

58. An Order in Council purporting to be made in pursuance of sect. 60 of the M. S. Act, 1862, is valid, notwithstanding that it recites that the British rules as to measurement have been adopted "with the exception of a slight difference in the mode of estimating the allowance of engine-room." *The Franconia*, 3 P. D. (C. A.) 164; 4 Asp. 1.

59. As to evidence of registers and certificates of registry, see tit. EVIDENCE, c. 16, s. 12, p. 440, and *ibid.* in Addenda.

2. Forms.*

60. For provisions requiring the Commissioners of Customs to cause the several forms required by the second part of this act, and contained in the schedule thereto, to be supplied to all registrars for distribution to the persons requiring the same, free or at such prices as they may direct, and with the consent of the Board of Trade to make alterations therein after public notice; and to give instructions as to anything to be done in pursuance of this part of the act; see M. S. Act, 1854 (c. 104), s. 96.

61. If any bill of sale, mortgage, or other instrument for the disposal or transfer of any ship or share or interest therein is made in any form or contains particulars other than the form and particulars prescribed in pursuance of the M. S. Act, 1854, no registrar can be required to record the same without the direction of the Commissioners of Customs. *Ibid.* 1855 (c. 91), s. 11.

3. Fees.†

(a) Generally.

62. For provisions as to the application of the fees taken under the second part of this act (*i. e.*, as to British ships, their ownership, measurement, and registry), see *Ibid.* 1854 (c. 104), s. 95.

(b) Of Surveyors.

See cap. 6.

* (16) For various forms relating to the ownership, registry, sale, and mortgage of British ships, issued by the Commissioners of Customs and approved of by the Board of

Trade, see 2 Maude & Pollock (4th ed. by Pollock & Bruce), pp. cccclxxii—cccclxxxviii.

† (16a) For the fees to be charged under Pt. II. of the Act of 1854, see the schedule to

4. *Under Indian Registry Acts.*

63. The acts relating to the registry of Indian ships are the 3 & 4 Vict. c. 56, repealed as to ss. 1 to 7 by Statute Law Revision Act, 1874, No. 2, and the Indian Act, No. X. of 1841; Act XI. of 1850; and Act IV. of 1875, s. 30.

64. Nothing in the M. S. Act, 1854, is to repeal or affect the act of 3 & 4 Vict. c. 56, regulating the trade of ships built and trading within the limits of the East India Company's charter. See M. S. Act, 1854, s. 108.

65. No ships shall be deemed British after the passing of the act, unless registered in accordance therewith, and a certificate of registry granted, and on the back of such certificate shall be specified the names of the owners and the amount of shares held by them. See Indian Act X. of 1841, s. 1.

66. The ports at which such registration shall be made shall be the ports of Calcutta, Madras, Bombay, Singapore, and such ports as the local governments shall declare to be registering ports within the act. *Ibid.* s. 2.

67. Rangoon and Akyab have been declared under this section. See Calcutta Gazette for 1854, p. 848; for 1856, p. 1549.

67a. So Kyook Phyoo, Bassien, Tavoy and Mergin. See Gazette of India, Feb. 11, 1871, Pt. I. p. 75.

68. But ships, not built at any of such ports, shall be allowed one voyage thereto for the purpose of being registered. Indian Act of 1841, s. 2.

69. A book of registry is to be kept, and a declaration made before registration. *Ibid.* ss. 4 and 5.

70. And a measurement of the vessel made upon inspection before registration. *Ibid.* s. 7.

71. For the rules of measurement, *Ibid.* ss. 8, 9 and 10.

72. For the rules of measurement of laden vessels, *Ibid.* s. 11.

73. The amount of the registered tonnage is to be cut on the main beam of the vessel. *Ibid.* s. 12.

74. Sect. 15 prescribes penalties for the

fraudulent use of the certificate of registry. A change of master, whenever such occurs, shall be indorsed on the certificate. *Ibid.* s. 16.

75. As to painting the name of the ship on the stern, *Ibid.* s. 17.

76. A certificate of the builder is to be produced to the registrar before he grants a certificate of registration. *Ibid.* s. 18.

77. Sect. 19 provides for the loss of the certificate, or its being mislaid. Sect. 20 provides for the recovery of the certificate when unlawfully detained by any person contrary to the purpose for which it was granted; *i. e.* the navigation of the ship. Upon any alteration in the ship, she is to be registered *de novo*. *Ibid.* s. 21.

78. The oath or declaration of the registrar is to be admitted as evidence. *Ibid.* s. 22.

79. For provisions for the acquisition of a British registry by ships owned by a native prince or state, or any subject of a native prince or state, when commanded by British officers, *Ibid.* s. 24. As to measurement for the purpose of ascertaining port dues, see Act XII. of 1875, ss. 50, 51, 61. See also 4 Geo. 4, c. 50.

80. A ship built in a foreign port in India in 1817, within the limits of the company's charter, by foreigners, and which sailed under foreign flags until 1838, when it was owned by, and had ever since belonged to, British subjects resident at Bombay, *held*, entitled under acts done in pursuance of the powers granted by 3 & 4 Vict. c. 56, to be registered at Bombay as a British ship, for the purposes of trade, within the limits of the charter. *Crauford v. Spooner*, 6 Moore, P. C. C. 1.

5. *In British Possessions.**

81. As to the powers given to the legislative authority of any British possession, by act or ordinance, confirmed by her Majesty in Council, to repeal any provisions of this act relating to ships registered in such possession, see the M. S. Act, 1854, s. 547.

82. Canada is to be deemed a British

the act. Pt. I. containing the tables of fees (2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 160), amended pursuant to the act by the scale of fees sanctioned by the Board of Trade, for which see 2 Maude & Pollock, pp. 391, 393, and pp. 484-486.

* (16b) For provisions appointing the port of Shanghai, in China, a port of registry, and regulating the registration of British ships

thereat, see the China and Japan Order in Council of 6 Aug. 1874, in 2 Maude & Pollock on Merchant Shipping, 4th ed. by Pollock & Bruce, p. 88.

(16c) For the same appointing the master-attendant at Singapore, and the harbour-masters of Penang and Malacca, registrars of British ships in the Straits Settlements, see Order in Council of 9 July, 1869.

possession within the meaning of the M. S. Act, 1854, and of the acts amending the same. See the Merchant Shipping Colonial Act, 1869 (c. 11), s. 6.

83. It shall be lawful for her Majesty, by Order in Council, from time to time to declare, with respect to British possessions mentioned in the order, the description of persons who are to be registrars of British ships in that possession, and to

revoke any order so made. See *Ibid.* s. 6.

83a. See also as to terminable certificates of registry in British possessions, The Colonial Shipping Act, 1868 (c. 129), s. 1.

6. Measurement.

(a) Generally.*

84. The duties imposed upon the Commissioners of Customs with respect to the

* (17) See, for an examination of the existing law and for suggested improvements therein, the Report of the Royal Commission on Tonnage, Sess. Papers, Ho. Co. 1881, No. 1188.

(17a) The following deductions or allowances are to be made in measuring tonnage:

- (a) Any closed-in space or spaces solely appropriated to or fitted with machinery, and the wheel-house for sheltering the man or men at the wheel, if not larger than required for such purposes. See Board of Trade Instructions to Measuring Surveyors under the M. S. Acts, M. 16845—1883, s. 3, p. 6.
- (b) Any erection on the upper-decks of vessels fitted for the shelter of deck passengers on short voyages to protect them from the weather. This exception, however, is only permissible by special directions from the Board of Trade.
- (c) The cook-house and condenser space, if of no greater extent than is required for the cook, and for the engineer when employed in condensing water.
- (d) Water-closets or privies to a reasonable extent for the officers and crew, and an additional one in the case of passenger ships for every 50 persons: not more than 12, however, in all to be allowed.
- (f) Crew spaces.
- (g) In the case of steam vessels the space occupied, and occupied solely by the propelling power—the gross tonnage of the hold having been previously ascertained. *Ibid.* s. 4, p. 7.

(18) See further as to mode of measuring engine-room, *Ibid.* ss. 5—7, pp. 8, 9.

(19) The circumstances under which Rules I. and II. for determining tonnage are to be respectively applied are as follows:

All ships requiring measurement, whether for the purpose of registry or for payment of dues, or for any purpose whatever, are to be measured by Rule I. except under the following circumstances—

- (a) New ships requiring registry under circumstances rendering the application of Rule I. inapplicable, may be measured by Rule II. But the measuring surveyors are in all such cases to obtain direct authority from the Board of Trade.

(b) Foreign ships having cargo on board, or whose holds are so lumbered with stores, dunnage, or ballast, or so fitted with bulkheads or cabins as to prevent the required measurements being taken, may be measured under Rule II.

(c) Ships whose tonnage is already registered according to any former act, but whose owners desire to have them re-measured under the Act of 1854, may, if the holds are so obstructed by bulkheads or cabins or other features as to render Rule I. inapplicable, be measured by Rule II., if the owners so desire.

Ships measured by Rule II. may at any subsequent period be measured by Rule I. on the application of the owner and payment of the proper fees. See Board of Trade Instructions to Measuring Surveyors under the M. S. Acts, M. 16845—1883, s. 2, p. 5.

(20) For practical directions to the surveyors to be observed in the operation of measuring under Rule I., see *Ibid.* ss. 7—22, pp. 9—23.

(21) And under Rule II. see *Ibid.* ss. 23—24, pp. 24—26; calculation under Rule II. and for table of, see *Ibid.* ss. 27—29.

(22) As to International tonnage: By Orders in Council ships of the undermentioned countries having certificates of registry or other national papers, dated on and after the dates following, are no longer required to be re-measured in any port or place in her Majesty's dominions, but are deemed to be of the tonnage denoted in such certificates of registry or other national papers:—

Countries.	Date of adoption of British Rules.	Date of Order in Council.
United States	1st Jan., 1865	{ 30th July, 1869. 18th March, 1883. 29th Feb., 1903.
Denmark	1st Oct., 1867	{ 29th Dec., 1876. 29th April, 1883.
Austria-Hungary.	1st Sept., 1871	28th Aug., 1871.
Germany*	1st Jan., 1873	28th June, 1873.
France	1st June, 1873	5th May, 1873.
Italy*	1st July, 1873	{ 30th Sept., 1873. 14th Feb., 1889.
Spain*	2nd Dec., 1874	17th March, 1875.
Sweden	1st April, 1875	{ 17th March, 1876. 18th Aug., 1882.
Netherlands*	1st Jan., 1876	26th Oct., 1876.
Norway*	1st April, 1876	17th Oct., 1876.
Greece*	1st July, 1878	14th Aug., 1879.
Russia*	20th Dec., 1879	20th Nov., 1880.
Finland	1st June, 1877	20th Nov., 1880.
Hayti	26th Jan., 1882	3rd May, 1882.

* The amount of deduction for propelling power being different in these countries in re-

spect of steamers, option is granted to the masters of steamships of such countries whereby

measurement of ships, by sects. 23, 27, 28 and 29 of the M. S. Act, 1854, are transferred to the Board of Trade by the M. S. Act, 1872 (c. 73), s. 3.

85. The Board of Trade may make modifications and alterations from time to time in the rules for measurement of tonnage. See M. S. Act, 1854 (c. 104), s. 29, as amended by M. S. Act, 1872 (c. 73), s. 3.

86. In the rules for measurement of tonnage, the tonnage deck is to be taken to be the upper deck in ships which have less than three decks, and to be the second deck from below in other ships. All measurements are taken in feet and fractions of feet, fractions of feet being expressed in decimals. See the M. S. Act, 1854 (c. 104), s. 20.

87. The tonnage of every ship to be registered, with the exceptions mentioned in the next section; and the tonnage of every ship to which such rule can be applied, whether about to be registered or not, is to be ascertained according to the measurements, deductions and divisions in rule 1 and the table therein set forth as to transverse areas, computation from areas, poop and other closed-in space, and cases of two or more decks. *Ibid.* s. 21.

88. For provisions for the measurement of ships having two or more decks, *Ibid.* s. 21, sub-s. 5.

89. As to the measurement, under rule 2, of ships which require to be measured for any purpose other than registry, and have cargo on board; and of ships which require to be measured for registry and cannot be measured under rule 1, *Ibid.* s. 22.

90. As to the measurement, under rule 2, by length, breadth and girth, and the mode of measurement thereunder of poop and other closed-in spaces on upper deck, *Ibid.* sub-ss. 1 and 2.

91. For provisions as to the measurement of a break, poop or other permanent closed-in space on the upper deck available for cargo or stores, or for the berthing or accommodation of passengers under rules 1 and 2, *Ibid.* s. 21, sub-s. 4; and s. 22, sub-s. 2.

92. For the mode of measurement to

ascertain the tonnage of open ships, *Ibid.* s. 24.

93. In every steamer or ship requiring engine-room an allowance is to be made for the space occupied by the propelling power, and the amount so allowed deducted from the gross tonnage of the ship, and the remainder is to be deemed her registered tonnage. For the mode of estimating and measuring the allowance of such space generally, and of the shaft trunk of screw steamers, and when there are separate compartments, see the M. S. Act, 1854 (c. 104), s. 23, as amended by M. S. Act, 1872 (c. 73), s. 3.

94. For the calculation of the deduction from tonnage of the space necessary for the proper working of the boilers and machinery in paddle and screw steamers, and the mode of measurement thereof generally, and when the space is unusually large or small, *Ibid.*

95. For the measurement of steamers in which the engines and boilers are fitted in a separate compartment, and for the measurement of the shaft trunks of screw steamers, *Ibid.* s. 23, sub-ss. 2 and 3.

96. If any alteration is made in the length or capacity of the space allowed for the propelling power, or any cabins are fitted up in such space, the ship is to be deemed a ship not registered until re-measured. *Ibid.* s. 23, sub-s. 4.

97. If in any ship in which this space is measured any goods or stores are stowed or carried, penalty against master and owner not exceeding £100. *Ibid.* s. 23, sub-s. 5.

98. When the tonnage of a ship has been ascertained, and registered in accordance with this act, the same is thenceforth to be deemed her tonnage, and to be repeated in every subsequent registry, unless any alteration is made in the form or capacity of the ship, or unless it is discovered that the tonnage has been erroneously computed, in either of which cases she must be re-measured. *Ibid.* s. 26.

99. *Semble*, it is immaterial, if the provisions of sect. 9 of the M. S. Act, 1867, are complied with, whether the space in question is in "a break or poop, or any other permanent closed-in space on the upper deck available for the

such masters may elect to have the engine-room re-measured under the rules of allowance for engine-room relating to British ships, and deduction made accordingly. A copy of the certificate of tonnage furnished to the master in such cases is to be sent to the principal surveyor for

tonnage, with a note thereon of the measurement of engine-room and the amount of deduction under the foreign rules. See Board of Trade Instructions to Measuring Surveyors under the M. S. Acts, M. 16845—1883, s. 34, p. 37.

berthing of the crew" (see sect. 21 (4) M. S. Act, 1854 (c. 104)), or is a portion of the space between the spar deck and tonnage deck (see sect. 21 (5) of the same Act, 1854). *The Franconia*, 3 P. D. (C. A.): 164; 4 Asp. 1.

100. A "spar deck" within the meaning of sub-div. 5 of sect. 21 of 17 & 18 Vict. c. 104, is a continuous deck from stem to stern, fastened down and water-tight, and making the space beneath fit for the stowage of cargo like a hold. Per Cairns, C., *Leith, Hull & Hamburg Steam Packet Co. v. Lord Advocate*, Court of Sess. Cas. 3rd Series, vol. 2, p. 597. [SCOTCH.]

101. Over the main deck of a ship there was a covering or awning, open at the sides, and unfit for the carriage of cargo, passengers or crew. Held (affirming the decision appealed from), that tonnage was not chargeable thereon as a third deck. *Lord Advocate v. The Clyde Steam Navigation Co.*, 2 H. L. 409. [SCOTCH.]

102. Per Lord O'Hagan: The measurement of the ship's tonnage should be in accordance with her carrying capacity. *Ibid.*

(b) Allowance for Crew Spaces.

(aa) Generally.*

103. So much of the third part of this act as relates to the provisions, health,

and accommodation of seamen applies to all ships registered in any of her Majesty's dominions abroad, when out of the jurisdiction of their respective governments, and to their owners, masters, and crews. See M. S. Act, 1854 (c. 104), s. 109.

103a. For provisions as to the measurement for tonnage under rules 1 and 2 of a break, a poop, or other permanent closed-in space on the upper deck, available for cargo or stores, or further berthing or accommodation of passengers or crew, and providing that nothing shall be added for a closed-in space solely appropriated to the berthing of the crew, unless such space exceeds one-twentieth of the tonnage of the ship ascertained as therein mentioned, and then only the excess beyond that proportion, *Ibid.* s. 21, sub-s. 4; and s. 22, sub-s. 2. But see M. S. Act, 1867 (c. 124), s. 9.

104. Every place in any ship occupied by seamen or apprentices, and appropriated to their use, shall have for every seaman or apprentice a space of not less than seventy-two cubic feet, and twelve superficial feet, measured on the deck or floor. M. S. Act, 1867 (c. 124), s. 9, sub-s. 1.

104a. A vessel had a covering or deck above the tonnage or main deck. In this covering were two gaps made right across the vessel 13 and 8 feet broad respec-

* (23) As the M. S. Act, 1867, s. 9, makes no mention of the one-twentieth reduction referred to in sub-s. 4 of s. 21 of the M. S. Act, 1854, but directs a deduction from the registered tonnage for crew spaces, meeting the requirements of s. 9, this restriction of the M. S. Act, 1854, no longer applies. See Board of Trade Instructions, 1884, as to survey of passenger accommodation, crew spaces, &c., par. 32.

(24) Provided that the surveyor certifies that the provisions of the latter act in regard to such places are complied with. *Ibid.*

(25) For the practical instructions to surveyors as to the measurement of crew spaces, on board merchant ships under M. S. Act, 1867, the meaning of the expressions "ship" and "seamen," "entire contents," "height" and "floor area of crew spaces," the deduction thereof from the tonnage, see *Ibid.* pars. 30, 31, 43, 49, 52, 54—56, 64, and 66.

(26) All crew spaces situated above the upper deck of vessels measured under the Act of 1854, and registered before the Act of 1867 came into operation, were (to the extent of one-twentieth of the vessel's remaining tonnage) excluded from the registered tonnage, and surveyors will, therefore, not now give the certificate headed "Surveys 61,"

authorizing an allowance to be granted for such spaces, which have been already allowed. In order to prevent such allowances from being obtained, instructions have been given to the Registrar of Shipping that, before any deduction on account of crew space situate above the upper deck is made from the vessel's tonnage, such crew spaces are to be measured by the surveyor, and included in or added to the existing tonnage. *Ibid.* par. 64.

(27) As to the mode of calculation of the tonnage allowance on account of crew spaces and of the amount of deduction, see *Ibid.* pars. 66 and 67.

(28) As to the rules for computing the superficial area of the deck or floor, the exclusion from "crew space" of spaces not available for the proper accommodation of the crew who are to occupy them, the rule for computing the cubic capacity, the allowance of spaces for petty officers, apprentices, firemen and coal trimmers' berths, see *Ibid.* pars. 54—58.

(29) As to the allowance as crew space of parts used by master and officers, and the proper apportioning of the same, see *Ibid.* pars. 43 f. and g. and 57.

tively. These gaps were able to be enclosed by planks and side doors, which, however, were not water-tight. *Held* (affirming the judgment of the Court of Session), that the vessel had not a permanent closed-in space on the upper deck available for cargo or stores, or for the berthing or accommodation of passengers or crew within the meaning of sub-division 4 of that section. *Lord Advocate v. Clyde Steam Navigation Co.*, Court of Sess. Cas. 3rd Series, vol. 2, 440; 4th Series, vol. 2, 23; 2 L. R. H. L. (Sc.) 409; 2 Asp. N.S. 502; 32 L. T. 287.

104b. A space between the main deck and an upper deck, which latter deck extended from the fore-castle to the bridge, was partly closed in aft by a round house, on either side of which, however, there were open passages, and through these passages the water could always flow. Water-ports, mooring-bits, scuppers, and a pump, were all within this space. *Held*, that this space was not a "permanent closed-in space" within the meaning of sub-division 4 of sect. 21 of 17 & 18 Vict. c. 104. *Leith, Hull and Hamburg Steam Packet Co. v. Lord Advocate*, Court of Sess. Cas. 3rd Series, vol. 2, p. 597. [SCOTCH.]

(bb) *In British Possessions Abroad.*

105. The governor of any British possession abroad may from time to time appoint fit and proper persons to be surveyors, who shall have and exercise within such possession all the powers with respect to the inspection of crew spaces conferred upon the Board of Trade surveyors in the United Kingdom, by sect. 9

of the M. S. Act, 1867. See the Colonial Shipping Act, 1868 (c. 129), s. 3.

(cc) *Foreign Ships.**

(dd) *Construction and Lighting.*

106. Every such place shall be such as to make space available for the proper accommodation of the men, securely constructed, properly lighted, ventilated, protected from weather and sea, and as far as practicable properly shut off and protected from effluvia of cargo or bilge water. *Ibid.* s. 9, sub-s. 2. And see Board of Trade Instructions as to Survey of Passenger Accommodation, Crew, Space, Lights, &c. 1884, pp. 31—35, pars. 45—52.

(ee) *Free from Cargo.*

106a. Every such place shall be kept free from stores or goods of any kind, not being the personal property of the crew in use during the voyage. See M. S. Act, 1867 (c. 124), s. 9, sub-s. 6.

106b. If any such place is not kept free from goods and stores, the master shall be deemed to be in fault, and shall, for every such failure, pay to each seaman lodged there one shilling a day for each day after complaint made to him by any two or more of the seamen. *Ibid.* sub-s. 8, and Board of Trade Instructions as to Survey of Passenger Accommodation, Lights, &c. 1884, par. 24.

(ff) *Galleys.†*

(gg) *Privies.‡*

107. No crew space shall be deemed such as to authorize a deduction from

* (29a) When surveyors are called in to inspect the crew spaces of foreign ships, they proceed in the same manner as with British ships. See Board of Trade Instructions as to Survey of Passenger Accommodation, Crew Spaces, Lights, &c. 1884, par. 44.

† (29b) Galleys, wherever situated are not deducted as crew space, but if the crew space and galley are contiguous, the bulkhead must be doubled, with felt between the doubling and the bulkhead. *Ibid.* par. 43 (g).

‡ (30) If the owner of a ship wishes to claim a deduction from the registered tonnage of his ship, on account of any places provided for the berthing and accommodation of seamen and apprentices, and solely appropriated to their use, he must, besides proving that the provisions of the act as to cubic and superficial space, fitting, lighting,

and ventilating, therein referred to, are complied with, provide one or more permanently fixed privy or privies for the use of the crew, of such construction as may be approved by the surveyor. *Ibid.* par. 37, and par. 41. See as to the proper construction and number of privies, *Ibid.* par. 52.

(30a) Deductions for crew space are not to be allowed in the case of vessels having an iron deck over this space, unless a wooden deck is laid on top of it, or unless the underside of the deck over the sleeping berths in the fore-castle or crew space is sheathed or ceiled with wood. In the case of vessels in which deductions for crew space have already been allowed, the crew space must be inspected as opportunity arises, and the deduction disallowed if this instruction be not complied with. *Ibid.* par. 37A.

registered tonnage, unless there are one or more properly-constructed privies for the use of the crew, of such number and of such construction as may be approved by the surveyor. See M. S. Act, 1867, s. 9, sub-s. 3.

(hh) *Marking.**

108. No such deduction from tonnage shall be authorized unless there is per-

manently cut in a beam, and cut in or painted on or over the doorway or hatchway of every such place, the number of men it is constructed to accommodate. *Ibid.* s. 9, sub-s. 5.

(ii) *Inspection.†*

109. Every such place occupied by seamen shall, whenever the ship is regis-

* (31) He must also, to entitle him to the allowance, have the number of seamen the place is certified to accommodate cut in a beam, and cut in or painted on or over the doorway or hatchway of the place. See Board of Trade Instructions, &c., 1883, par. 37.

(32) In case of deck-house with cased beams, the cutting may be on the beam casing instead of the beam itself. *Ibid.* par. 68.

(33) It is left to the owner's option whether the crew spaces certified for shall be cut in or painted on or over the door or hatchway leading thereto, but it must be always cut in the beam in the inside of such space. *Ibid.*

† (34) Whenever a ship, not being employed exclusively in fishing on the coasts of the United Kingdom, a pleasure yacht, or a barge employed upon a river, is to be registered or re-registered in the United Kingdom, the crew spaces must be inspected, and if the inspection is in all respects satisfactory, the surveyor will grant a certificate authorizing the proper deduction for crew space, and the ship will be registered with that deduction. *Ibid.* par. 43.

(34a) Even though an owner does not desire to claim any deduction from the registered tonnage of his ship on account of crew spaces, the crew spaces must nevertheless be of the size and construction required by the 9th section of the M. S. Act, 1867. *Ibid.* par. 33.

(34b) The M. S. Act, 1867, is not, however, an enactment intended to regulate or interfere with the manning of merchant ships; therefore it is not for the surveyor to say how many men ought to be accommodated on board any particular ship or any particular classes of ships. That is a matter to be arranged entirely between the owner as an employer, and the crew as the persons he employs to navigate and work his ship. *Ibid.* par. 39.

(34c) On the one hand it is incumbent on the shipowner to man his ship properly, and on the other it is left to any seaman to refuse to engage to serve on board a ship if he thinks that the number of hands proposed to be engaged by the owner or master to form the crew is not sufficient for the ship or service. The proper complement to form the crew, and therefore the proper amount of

accommodation to be provided for the crew are matters that must rest between, and be settled by, the owner and his servants. With these points the Legislature has not interfered and the surveyors have nothing to do, and no surveyor should give any opinion thereon. *Ibid.* par. 40.

(34d) If the inspection is not satisfactory, the surveyor will not give his certificate that the provisions of the M. S. Act, 1867, have been complied with in that respect, but the ship can be registered without any allowance on account of crew space, provided the surveyor gives his certificate that he has inspected the crew spaces; but whether the allowance is or is not certified for and granted, the provisions of the act as regards crew spaces must be complied with (except pars. 3 and 5 of sect. 9, as to privies and marking, when the deductions are not allowed for), and the owners and master are liable to penalties for default. *Ibid.* par. 43.

(34e) After inspection of crew spaces, whether expenses have been incurred or not, the proper form, stating in what respects the act has not been complied with, must be forwarded by the surveyor to the Board of Trade immediately on its receipt from the Superintendent of the Mercantile Marine Office. *Ibid.* par. 60.

(34f) If the owner does not claim any deduction from the registered tonnage of his ship on account of crew spaces, pars. 3 and 5 of sect. 9 of the Act of 1867, as to privies and marking need not be complied with, and the surveyor, after the usual inspection, fills up Div. A. of the form "Surveys 70," and sends it to the owners. On this form being returned to the surveyor by the Superintendent of the Mercantile Marine Office, the surveyor issues his certificate in the form headed "Surveys 62," which is sent to the Collector of Customs and Registrar of Shipping in the same manner as the certificate of compliance, headed "Surveys 61," is sent. The report made to the Board of Trade in form "Surveys 70" will show in what respect the act has not been complied with, and the Board of Trade will then institute such proceedings for the recovery of penalties as they may think fit. *Ibid.* par. 65.

(35) The surveyor records his measurement and calculations on the inspection

inspected by one of the surveyors appointed by the Board of Trade, who shall, if satisfied therewith, give the collector of customs a certificate to that effect, and thereupon such space shall be deducted from the register tonnage. *Ibid.* s. 9, sub-s. 4.

(kk) *Liabilities of Owner or Master in fault.*

110. If in any other respect the provisions of this section are not observed with respect to any such place occupied by seamen, the owner shall be deemed to be in fault. Penalty for every breach not exceeding £20. *Ibid.* s. 9, sub-s. 9.

(c) *Disallowance of Crew Spaces.**

111. Upon any complaint concerning

any such place occupied by seamen, one of the Board of Trade surveyors may inspect such place, and if he finds that any of these provisions are not complied with, he reports the same to the collector of customs at the port where the ship is registered; and thereupon the registered tonnage shall be altered, and the deduction in respect of space disallowed until it is certified by such or some other Board of Trade surveyor that the provisions of the act in respect of such place are fully complied with. *Ibid.* s. 9, sub-s. 7.

(d) *Tonnage Rules and Dues.*

111a. The Board of Trade may make such modifications or alterations as may

form headed "Surveys 64," retaining his own note of measurement and calculations, he forwards a summary of these on the form headed "Surveys 63," to the Principal Surveyor of Tonnage, 13, Downing Street, London. *Ibid.* par. 59.

(36) The memorandum forms of inspection headed "Surveys 64," and other survey forms, may be obtained from the Superintendent of the Mercantile Marine Office of a port. *Ibid.* par. 69.

(37) All the forms headed "Surveys 63" are sent to the office of the Principal Surveyor of Tonnage for the calculations to be checked, and in order that any practical question as to construction, fitting, ventilation, &c., may be attended to. A copy of these documents is kept in the office-book, and any information the Principal Surveyor of Tonnage requires is immediately supplied to him by the surveyor. *Ibid.* par. 60.

(38) In case of a difference between the surveyor and the owner, agent, master or builder, the surveyor forwards to one of the assistant secretaries of the Board of Trade a statement of the facts, and takes the directions of the Board thereon. *Ibid.* par. 41.

(39) After the surveyor has inspected the crew space, and made a note of any defects or additions requiring to be remedied or made, he sends a list of the same to the owner, agent, master or builder, on the form headed "Surveys 70." On receiving back this form in the regular manner, he again inspects the vessel, and if all defects are made good proceeds to measure the space according to the rules. *Ibid.* par. 53.

(40) When the surveyor is satisfied that the crew spaces are in all respects such as are required by the M. S. Act, 1867, s. 9, including proper privies and the cutting in the beam, and the cutting or painting on or over the doorway of the number of men who can be accommodated in such crew spaces, he gives to the collector of customs at the port where the

vessel is registered a certificate to that effect, and thereupon the aggregate tonnage of such spaces, being the quotient obtained by dividing the total entire capacity by 100, is deducted by the registrar from the registered tonnage. *Ibid.* par. 63.

(41) The tonnage allowance on account of crew space is returned by the surveyor to the collector of customs on a form headed "Surveys 61." *Ibid.* par. 66.

(42) Crew spaces inspected for the purpose of registry or re-registry need not be reported to the Board of Trade on the form headed "Surveys 63." *Ibid.* par. 60.

(43) Surveyors are to send into the applicants for crew space inspection of any vessel a report after each survey, stating their requirements, and giving their expenses in detail, on the proper form. *Ibid.* par. 42.

(44) The duty of surveying the crew space under the M. S. Act, 1867, s. 9, is to be fulfilled, if necessary, in equal proportion by all the surveyors in the port or district qualified for the duty, unless special directions are given to the contrary. *Ibid.* par. 29.

(45) Surveyors cannot be required to enter any crew space for the purpose of inspection unless it is in a sufficiently clean and clear state. *Ibid.*

(46) As to the fees and expenses to be charged for surveys of crew spaces, see Pt. I. c. 3, s. 3, p. 1186.

* (47) Upon such complaint one of the surveyors appointed under Part IV. of the principal act is required to make the required inspection, and report to the collector of customs of the port. See Board of Trade Instructions, &c., 1883, par. 36.

(48) It will then be for the collector to take such steps as are required of him by this section. *Ibid.*

(49) The form of the report used by the surveyor in this case is headed "Surveys 62." *Ibid.*

from time to time become necessary in the tonnage rules prescribed by this act in order to the more accurate and uniform application thereof, and the effectual carrying out of the principle of the measurement therein adopted. See the M. S. Act, 1854 (c. 104), s. 29, as amended by the M. S. Act, 1872 (c. 73), s. 3.

112. Sect. 29 of the M. S. Act, 1854, and s. 3 of the M. S. Act, 1872, enabled the Board of Trade, with the sanction of the Treasury, to make alterations in the "tonnage rules" prescribed in the act. *Held*, that they could not, under this section, abolish the distinctions between different classes of vessels or the allowances directed to be made to each class in estimating the registered tonnage under the 23rd section, but only to alter the mode of measuring. *The City of Dublin Steam Packet Co. v. Thompson*, L. R. 1 C. P. (Exch.) 355; 34 L. J. C. P. 316; 35 *ibid.* (Exch.) 198; 2 Asp. 247; *ibid.* (Exch.) 412; 19 C. B. N.S. 553; H. & R. 369; 11 L. T. N.S. 849.

113. Any body corporate or persons having power to levy tonnage rates on ships may, with the consent of the Board of Trade, levy such rates on the registered tonnage as determined by the M. S. Acts, notwithstanding any local act providing a different system of measurement. See M. S. Act Amendment Act, 1862 (c. 63), s. 4.

114. As to the tonnage dues to be paid by ships carrying deck cargo in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage, see M. S. Act, 1876 (c. 80), s. 23.

115. As to the abolition of exemption of ships from paying dues when engaged in certain local trades, see the Shipping Dues Exemption Act, 1867 (c. 15), amended by the Shipping Dues Exemption Act Amendment Act, 1869 (c. 52).

(e) Deck Cargoes.

116. If any ship, British or foreign, other than home trade ships as defined by the M. S. Act, 1854, carries timber, stores, or other goods as deck cargo, *i. e.* in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage, all dues payable on the ship's tonnage shall be payable as if there were added to the ship's registered

tonnage the tonnage of the space occupied by such goods at the time at which such dues become payable. See M. S. Act, 1876 (c. 80), s. 23.

117. The space so occupied shall be deemed to be the space limited by the area occupied by the goods and by straight lines inclosing a rectangular space sufficient to include the goods. *Ibid.*

118. The tonnage of such space shall be ascertained by the officer in manner directed by the M. S. Act, 1854, s. 21, sub-s. 4, and shall be entered by him in the ship's official log-book and in a memorandum he shall deliver to the master, who shall, when the dues are demanded, produce the memorandum as if it were the certificate of registry, or, if a foreign ship, the document equivalent thereto. Penalty for default against the master the same as for non-production of certificate of registry (*i. e.* £100, see M. S. Act, 1854 (c. 104), s. 50) or analogous document. *Ibid.*

119. These provisions as to deck cargo do not apply to any ship whilst engaged in the coasting trade of any British possession. *Ibid.* s. 44.

119a. As to deck cargoes generally, see this tit. Pt. V. c. 1.

7. Re-measurement.

120. The owner of any ship which is measured under Rule II. in sect. 22 of the M. S. Act, 1854, may at any time afterwards apply to the Board of Trade to have the ship re-measured under Rule I. of that act. See the M. S. Act Amendment Act, 1855 (c. 91), s. 14, as amended by the M. S. Act, 1872 (c. 73), s. 3. See also note 19, p. 1188.

121. For provisions for the re-measurement of ships registered before this act came into operation, and for re-measurement subsequently to that time of steamers of which the engine-room compartment has been extended, see M. S. Act, 1854 (c. 104), ss. 27 and 28, as amended by M. S. Act, 1872 (c. 73), s. 3; and see No. 112.

122. When the tonnage of a ship has been duly ascertained and registered, if any alteration is made in the form or capacity of the ship, or it is discovered that the tonnage has been erroneously computed, the ship must be re-measured, and her tonnage determined and registered as before. See M. S. Act, 1854 (c. 104), s. 26.

8. Naming and Marking.*

(a) Generally.

123. A British ship shall not be described by any other name than that by which she is registered. Penalty for breach not exceeding £100; and any principal officer of customs may detain the ship until the provisions of this section are complied with. See the M. S. Act, 1871 (c. 110), s. 6.

124. As to the marking before registry, according to directions of the Board of Trade, of every British ship's name on her stern and both bows, her port of registry on her stern, and her official number, and number denoting her registered tonnage on her main beam, and as to the size and colour of the letters, see *Ibid.* 1873 (c. 85), s. 3.

125. These marks are to be permanently continued unless altered as provided by the M. S. Acts. Penalty for breach against owner or master not exceeding £100; and any officer of customs on receipt of a certificate that the ship is inaccurately marked, may detain her until properly marked. *Ibid.*

(b) Changes.†

126. No change shall be made in the name of a British ship without the previous permission of the Board of Trade under seal or under the hand of one of its secretaries or assistant-secretaries. Application for such change is to be made in writing to the Board. If the Board entertains the application it will require such notice thereof to be published as it may think fit. On such permission being granted, the ship's name shall forthwith be altered in the register book, in the certificate of registry, and on her bows and stern. If it is shown to the satisfaction of the Board that the name of any ship has been changed without such permission, it shall direct her name to be altered into the name she bore before such change, and the name shall be altered in the register book, certificate of registry, and on her bows and stern accordingly. Penalty for change of name without per-

mission, not exceeding £100; and any principal officer of customs may detain the ship until the provisions of this section are complied with. *Ibid.* 1871 (c. 110), s. 6.

127. When a ship having once been registered has ceased to be so registered, no person shall apply to register, and no registrar shall register, such ship except by the name by which she was previously registered, unless by permission of the Board of Trade, to be granted as therein mentioned. Penalty for breach (unless from ignorance) not exceeding £100; and any principal officer of customs may detain the ship until the provisions of this section are complied with. *Ibid.*

(c) Foreign Ship becoming British.

128. When a foreign ship which has not previously been registered as a British ship becomes a British ship, no person shall apply to register, and no registrar shall register, such ship except by the name she bore as a foreign ship just before becoming a British ship, unless by permission of the Board of Trade. Penalty for breach not exceeding £100. *Ibid.* 1873 (c. 85), s. 5.

(d) Exemptions.

129. The Board of Trade may exempt any class of ships from the requirements of sect. 3. *Ibid.* 1873 (c. 80), s. 3.

130. No fishing vessel duly registered, lettered and numbered, pursuant to the Sea Fisheries Act, 1868, is required to have her name and port of registry marked under this section. *Ibid.*

131. As to yachts, barges, pilot vessels, and others exempt from the requirements of having their names marked on their bows, and the scale of feet on the stem and stern posts, see Board of Trade Instructions as to marking of ships, 2 Maude & Poll. (4th ed. by Pollock & Bruce), p. cccxx.

9. Deck and Load Lines.‡

(a) Generally.

132. Every British ship (except ships

* (50) As to the fees and expenses to be charged in respect of inspection prior to marking, see c. 3, s. 3, p. 1186.

† (50a) As to the fees and expenses to be charged in respect of survey for change of name, see c. 3, s. 3, p. 1186.

‡ (51) See the report, anno 1885, of the Load Line Committee, under the presidency of

Sir E. J. Reed, with sets of tables annexed, defining the free board, and showing the system of loading recommended for flush deck, open deck, and awning deck steamers, and for sailing vessels. They are based upon the tables of Lloyd's Register Committee. See further reference thereto in this title, part and chapter, in Addenda.

under eighty tons register employed solely in the coasting trade, ships employed solely in fishing, and pleasure yachts) is to be marked with lines of the length, breadth, and colour herein indicated, painted longitudinally amidships, and indicating the position of each deck above water. The upper edge of each of these lines is to be level with the upper side of the deck plank next the waterway at the place of marking. See M. S. Act, 1876 (c. 80), s. 25.

133. The owner of every such ship before entering her outwards from any port in the United Kingdom is to mark upon each of her sides amidships, or as near thereto as practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre. *Ibid.* s. 26, sub-s. 1.

134. The centre of this disc must indicate the maximum load line in salt water to which the owner intends to load the ship for that voyage. *Ibid.* sub-s. 2.

135. He must also, upon so entering her, insert in the form of entry to the collector or principal officer of customs a statement in writing of the distance in feet and inches between the centre of this disc and the upper edge of each of the lines indicating the position of the ship's decks above that centre. *Ibid.* sub-s. 3.

136. In default of his delivering this statement, any officer of customs may refuse to enter the ship outwards. *Ibid.* sub-s. 4.

137. The master of the ship is to enter a copy of this statement in the agreement with the crew before it is signed by any of the crew, and no superintendent of any mercantile marine office is to proceed with the engagement of the crew until this entry is made. *Ibid.* sub-s. 5.

138. The master is also to enter a copy of this statement in the official log-book. *Ibid.* sub-s. 6.

139. All entries made in the official log in the manner directed by the Act of 1854 (c. 104), ss. 280—284, are to be received as evidence subject to all just exceptions. *Ibid.* 1854 (c. 104), s. 285.

140. The ship is to be kept so marked until her return to a port of discharge in the United Kingdom. *Ibid.* 1876 (c. 80), s. 25, sub-s. 7.

141. Penalty for neglecting to have ship marked, as required by this act, or to keep her so marked, against owner

or master, not exceeding £100. *Ibid.* s. 28.

142. Penalty, if any one of these marks is inaccurate and likely to mislead, against owner, not exceeding £100. *Ibid.*

143. The provisions of this act do not apply to any vessel employed exclusively in going from place to place in any river or inland water of which the whole or part is in any British possession. *Ibid.* s. 44.

(b) *Ships in Coasting Trade.*

144. The owner of every British ship employed in the coasting trade on the coasts of the United Kingdom (except ships under eighty tons register employed solely in that trade) must, before she proceeds to sea from any port, mark upon her the circular disc, in the position and of the size and colour required for other ships (*vide supra*, Nos. 133, 134). See M. S. Act, 1876 (c. 80), s. 27, sub-s. 1.

145. The owner must also, once in every twelve months, before the ship proceeds to sea, send to the collector or principal officer of customs of her port of registry a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks above that centre. *Ibid.* sub-s. 3.

146. The owner must also, before the ship proceeds to sea after any renewal or alteration of the disc, send this officer notice in writing of such renewal or alteration, together with the statement in writing of the distance between the centre of the disc and the upper edge of each of the deck-lines. *Ibid.* sub-s. 4.

147. Penalty for default in sending this statement, or notice of alteration or renewal, against the owner, not exceeding £100. *Ibid.* sub-s. 5.

148. When a ship has been marked as by this section required, she shall be kept so marked until notice is given of an alteration. *Ibid.* sub-s. 6.

149. Penalty against master or owner for default, not exceeding £100. *Ibid.* s. 28.

149a. Penalty against master or owner for allowing the ship to be so loaded as to submerge, in salt water, the centre of the disc, and against any person who conceals, alters, or obliterates, or suffers any person under his control to do so, any of the marks, except to escape capture by an enemy, not exceeding £100. *Ibid.*

150. Penalty, if any one of the marks

required is inaccurate, and likely to mislead, against owner, not exceeding £100. *Ibid.*

10. Draught of Water.*

151. The Board of Trade may, in cases in which they think it expedient, direct any person appointed by them for the purpose, to record in such manner and with such particulars as the Board may direct, the draught of water of any sea-going ship as shown on the scale on her stem and stern post, upon leaving any dock, wharf or harbour, for sea; and such person shall thereupon keep such record, and from time to time forward it or a copy to the Board, and such record or copy produced out of the custody of the Board shall be admissible in evidence of the draught of water of the ship at the time specified. See the M. S. Act, 1871 (c. 110), s. 5.

152. The master of every British sea-going ship, on proceeding to sea, shall record her draught of water in the official log, and produce the same to any principal officer of customs when required. Penalty for breach not exceeding £20. *Ibid.*

153. As to the marking on the stern post, and each side of the stem, of every British ship before registry, of a scale of feet denoting her draught of water; and as to the cutting in, painting and colouring of such letters or figures according to the directions of the Board of Trade, see the M. S. Act, 1873 (c. 85), s. 3. Penalty for inaccuracy of scale against owner, not exceeding £100. *Ibid.*

154. These marks are to be permanently continued, unless altered, as provided by the M. S. Act. Penalty for breach against owner or master not exceeding £100; and any officer of customs on receipt of a certificate that the ship is inaccurately marked may detain her until properly marked. See M. S. Act, 1873 (c. 85), s. 3.

154a. Penalty against master or other person interested in a ship who makes or is privy to the making of any fraudulent alteration in such marks, not exceeding £500. *Ibid.* 1854 (c. 104), s. 359.

155. This record shall also specify the extent of the clear side in feet and inches, the term "clear side" meaning the height from the water to the upper side of the plank of the deck from which the depth of hold, as stated in the register, is measured, and the measurement of the clear side is to be taken at the lowest part of the side. *Ibid.* 1873 (c. 85), s. 4.

156. The master of any sea-going ship is to permit the inspection and measurements required for such record. Penalty for breach not exceeding £5. *Ibid.*

157. The Board of Trade may exempt any class of ships from the requirements of sect. 3. *Ibid.* s. 3.

11. Registrars.

158. The persons required to register British ships as registrars for the purposes of this act, at any port or place in the United Kingdom or Isle of Man approved by the Commissioners of Customs for the registry of ships, are the collector, comptroller, or other principal officer of customs there. See the M. S. Act, 1854 (c. 104), s. 30.

159. As to the registrars of British vessels abroad, see *Ibid.* ss. 30, 31.

160. Every registrar keeps a book called "The Register Book," and enters therein the particulars required to be registered. It may be inspected by any person on payment of a fee not exceeding one shilling. See *Ibid.* ss. 32 and 92.

161. As to the person authorized to fix the fee, see *Ibid.* s. 92, and M. S. Act, 1872 (c. 73), s. 4.

162. As to the responsibilities of registrars, see M. S. Act, 1854 (c. 104), s. 93.

163. Periodical returns are to be made

* (52) The duties of an officer appointed to record the draught of water extend only to sea-going ships. The officer does not record the draught of water of steamers in ballast or carrying passengers, and not cargo, but he records the draught of all other sea-going steamers. As regards sailing ships, he records the draught of water of those wholly or partially laden with coal, iron or metallic ores; and as regards any other sea-going ships he uses his discretion, and is guided by circumstances. The record is made on

the spot in a pocket book. See Board of Trade Instructions to officers in recording the draught of water of ships, headed Draught of Water Circulars, M. 6144 (1879), p. 1.

(53) As to the measurement for clearside, see Circular, No. 623, May, 1873; and Board of Trade Instructions, &c., *Ibid.* p. 2.

(54) No ship on the point of sailing is to be detained to obtain the depth of hold for recording the draught of water. *Ibid.* p. 4.

by every registrar in the United Kingdom and elsewhere to the Registrar-General of Shipping and Seamen in London of all registries, transfers, transmissions, mortgages, and other dealings with ships, and of such other particulars as may be directed by him. See the M. S. Act, 1854 (c. 104), s. 94, as amended by the M. S. Act, 1872 (c. 73), s. 4.

164. For provisions enabling her Majesty by Order in Council to declare with respect to British possessions mentioned in the order the description of persons who are to be registrars of British ships in that possession, see the Merchant Shipping Colonial Act, 1869 (c. 11), s. 6.

12. Surveyors.

See cap. 6, p. 1208.

13. Evidence of Ownership.

165. No person shall be entitled to be registered as owner of a ship or any share therein until he has made a declaration in the form marked B. in the schedule. See M. S. Act, 1854 (c. 104), s. 38.

166. The declaration shall be made and subscribed in the presence of the registrar if the declarant reside within five miles of the custom house of the port of registry, but if beyond that distance, in the presence of any registrar or of any justice of the peace. *Ibid.*

167. No body corporate shall be entitled to be registered as owner of a ship or share therein until the secretary or duly appointed public officer thereof has made in the presence of the registrar of the port of registry a declaration in the form marked C. in the schedule. *Ibid.* s. 39.

168. Upon the first registry of a ship there shall, in addition to the declaration of ownership, be produced the following evidence:—(1.) In the case of a British-built ship, a certificate (which the builder is required to grant under his hand) containing a true account of the proper denomination and of the tonnage of such ship as estimated by him, and of the time when, and place where, such ship was built, together with the name of the party (if any) on whose account he has built the same; and, if any sale or sales have taken place, the bill or bills of sale under which the ship or share therein has become vested in the party requiring to be registered as owner. (2.) In the case of a foreign-built ship, the same evidence as in the case of a British-built ship, unless

the person requiring to be registered as owner, or, in the case of a body corporate, the duly appointed officer, declares that the time or place of her building is unknown, or that the builder's certificate cannot be procured, in which case there shall be required only the bill or bills of sale under which the ship or share therein became vested in the party requiring to be registered as owner thereof. (3.) In the case of a ship condemned by any competent court, an official copy of the condemnation of such ship. Penalty for false statement against builder not exceeding £100. *Ibid.* ss. 40 and 41.

169. Whenever, under the second part of this act, any person is required to make a declaration on behalf of himself, or of any body corporate, or any evidence is required to be produced to the registrar, and it is shown that such person is unable to make the declaration, or that such evidence cannot be produced, the registrar may, with the sanction of the Commissioners of Customs, and subject to such terms as they may think fit, dispense with such declaration or evidence. *Ibid.* s. 97.

170. If any person interested in any ship or share therein is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required in respect of registry, then his guardian or committee, if any, or if none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on his behalf, or of any other person interested therein, may make a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person. *Ibid.* s. 99.

171. False statements in the evidence produced on the registry of a British vessel are made a misdemeanor, and instruments not in the required form may be refused registration by the registrar. See the M. S. Amendment Act, 1855 (c. 91), s. 9.

172. All instruments used in carrying into effect the second part of this act (*i.e.* as to the ownership, measurement and registry of British ships), if not already exempted from stamp duty, and all instruments used by or under the direction of the Board of Trade in carrying such part of this act into effect, are exempt from stamp duty. See the M. S. Act, 1854 (c. 104), s. 9.

14. *Managing Owner or Ship's Husband's Name and Address.*

173. The name and address of the managing owner of every British ship registered in the United Kingdom shall be registered at the custom house of the ship's port of registry. When there is no managing owner there shall be so registered the name of the ship's husband or other person to whom the management of the ship is entrusted for the owner. Any person whose name is so registered shall, for the purposes of the M. S. Acts, 1854 to 1876, be under the same obligations, and subject to the same liabilities, as if he were the managing owner. See M. S. Act, 1876 (c. 80), s. 36.

174. Penalty for breach against the owner, or if more than one against each owner in proportion to his interest, not exceeding in the whole £100 each time the ship leaves any port in the United Kingdom. *Ibid.*

175. The provisions of this act do not apply to any vessel employed exclusively in going from place to place in any river or inland water of which the whole or part is in any British possession. *Ibid.* s. 44.

15. *Who may be Owners.*

176. No ship shall be deemed to be a British ship unless she belongs wholly to owners of the following description:—(1.) Natural-born British subjects; but no natural-born subject who has taken the oath of allegiance to any foreign sovereign shall be entitled to be such owner unless he has, subsequently thereto, taken the oath of allegiance to her Majesty,* and is and continues to be, while such owner, resident in her Majesty's dominions, or a member of a British factory, or partner in a house carrying on business in her Majesty's dominions. (2.) Persons made denizens by letters of denization, or naturalized by any act of the imperial legislature, or any act or ordinance of any British possession; but such persons are to continue to be while such owners resident in her Majesty's dominions, or members of a British factory, or house of business in her Majesty's dominions, and must have taken

the oath of allegiance to her Majesty subsequently to their being so made denizens or naturalized. (3.) Bodies corporate established under, subject to the laws of, and having their principal place of business in, the United Kingdom, or some British possession. See M. S. Act, 1854 (c. 104), s. 18.

177. The rules with respect to entries in the register book are as follows (see *Ibid.* s. 37):—The property in a ship shall be divided into sixty-four shares: sub-s. 1. Subject to the provisions with respect to joint owners or owners by transmission contained in the act, not more than sixty-four individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons of any company represented by or claiming under or through any registered owner or joint owner: sub-s. 2, as amended by M. S. Act, 1854, Amendment Act, 1880, c. 18, s. 2. No person shall be entitled to be registered as owner of any fractional part of a share in a ship; but any number of persons not exceeding five may be registered as joint owners of a ship, or of a share or shares therein: sub-s. 3. Joint owners shall be considered as constituting one person only as regards the foregoing rule relating to the number of persons entitled to be registered as owners, and shall not be entitled to dispose in severalty of any interest in any ship, or in any share or shares therein in respect of which they are registered: sub-s. 4. A body corporate may be registered as owner by its corporate name: sub-s. 5.

16. *Of what Vessels.*

178. Every British ship must be registered, except ships not exceeding fifteen tons burden, employed solely on the rivers or coasts of the United Kingdom, or of some British possession, within which the managing owners are resident, and ships not exceeding thirty tons burden, and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent, or in the gulf of St. Lawrence, or on the coasts of Canada, Nova Scotia or New Brunswick, bordering on

* (54a) This provision is not to be affected by anything contained in the Promissory Oaths Act, 1868 (c. 72), except that the form of the oath of allegiance as prescribed by that

Act shall be substituted for the form of the oath of allegiance contained in the M. S. Act, 1854. See the Promissory Oaths Act, 1868 (c. 72), s. 14, sub-s. 8.

such gulf. No ship hereby required to be registered can, unless registered, be recognized as a British ship. See M. S. Act, 1854 (c. 104), s. 19.

179. See Nos. 55, 56a, 56b, 56c, and 57, p. 1186.

17. Port of Registry.

(a) Generally.

180. The port or place at which any British ship is registered for the time being is her port of registry, or the port to which she belongs. See M. S. Act, 1854 (c. 104), s. 33.

(b) Change of—

181. The registry of any ship may be transferred from one port to another on the application of all parties on the register interested as owners or mortgagees. Such application is to be by declaration in writing made, if the party resides at or within five miles of the custom house of the port from which the ship is to be transferred, in the presence of the registrar of such port, but if beyond that distance in the presence of any registrar or justice of the peace. On such application, and on the delivery to him of the certificate of registry, the registrar of the port at which the ship is already registered transmits to the registrar of the port at which she is intended to be registered notice of the application, a true copy of all particulars relating to the ship, and the names of all the parties appearing by his book to be interested as owners or mortgagees; and this registrar then enters all such particulars and names in his book of registry, and grants a fresh certificate of registry, and thenceforth the ship is to be considered as registered there, and the name of such port is to be substituted on her stern in lieu of the name of the previous port. This transfer of registry does not in any way affect the rights of the persons interested as owners or mortgagees therein. *Ibid.* ss. 89—91.

18. Foreign Ports of Registry.

182. For provisions enabling her Majesty by order in council to declare certain foreign ports to be foreign ports of registry, and the persons who are to be registrars of British ships there, and to make regulations for the registry of British ships there. See the M. S. Act, 1873 (c. 85), s. 29.

19. Alteration of Ship.

183. Whenever any registered ship is so altered as not to correspond with the particulars in the register book, then, if such alteration is made at a port where there is a registrar, that registrar, but if made elsewhere, the registrar of the first port having a registrar at which the ship arrives after her alteration, shall, on application made to him, and on receipt of a certificate from the proper surveyor specifying the nature of such alteration, either retain the old certificate of registry and grant a new one with a description of the ship as altered, or indorse and sign on the old certificate a memorandum of such alteration; and if he is the registrar of the port of registry of the ship, enter in his register book the particulars of the alteration, and the fact of such new certificate having been granted, or indorsement made on the old certificate; but if not such registrar forthwith reports such particulars and facts with the old certificate when a new one has been granted, to the registrar of the port of registry of the ship, who shall retain the old certificate, and enter such particulars and facts in his register book accordingly. See the M. S. Act, 1854 (c. 104), s. 84.

184. The registrar to whom such application is made may, instead of registering such alteration, require the ship to be registered anew, but if he is not the registrar of her port of registry, he shall grant a provisional certificate, or make the provisional indorsement of the alteration as before directed in cases where no registry anew is required, adding to such certificate or indorsement a statement that the same is made provisionally, and reporting accordingly to the registrar of the port of registry of the ship. *Ibid.* s. 85.

185. Every such provisional certificate, or certificate provisionally indorsed, shall, within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if registered there, or at her port of discharge in the British possession within which her port of registry is situate, be delivered up to the registrar thereof, who shall thereupon cause such ship to be registered anew as on the first registry of a ship. *Ibid.* s. 86.

186. On failure of such registry anew, or registry of alteration of any ship so altered, such ship shall be deemed not duly registered, and shall no longer be recognized as a British ship. *Ibid.* s. 87.

As to disabilities of non-recognized British ship, see Pt. II. c. 19, p. 1244.

20. Bill of Sale.*

187. A registered ship or any share therein, when disposed of to persons qualified to be owners of British ships, shall be transferred by bill of sale, which shall be according to the form marked E in the schedule, or as near thereto as circumstances permit, and shall be executed in the presence of and attested by one or more witnesses. See the M. S. Act, 1854 (c. 104), s. 55.

188. A mere literal deviation from the prescribed form will not render it void. *Taylor v. Kinlock*, 1 Stark. N. P. C. 175. Nor a mere clerical error. *Rolleston v. Smith*, 4 T. R. 161.

189. No individual shall be entitled to be registered as such transferee until he has made a declaration in the form marked F in the schedule, and no body corporate until its secretary or other duly appointed public officer has made a declaration in the form marked G in the schedule. See M. S. Act, 1854 (c. 104), s. 56.

190. Every such bill of sale, when duly executed, shall be produced to the registrar of the port at which the ship is registered, with the declaration required to be made by the transferee; and the registrar shall thereupon enter in the register book the name of the transferee as owner, and indorse on the bill of sale the fact of such entry having been made, with the date and hour thereof; and all bills of sale shall be entered in the register book in the order of their production to the registrar. *Ibid.* s. 57.

191. Shares in a vessel were transferred for value by a bill of sale which was never registered. The transferee from time to time received his share of the profits. *Held*, that the transferee's title was not affected by the subsequent bankruptcy of the transferor while still registered as owner. *Watson v. Duncan*, Cases in Court of Session, 4th series, vol. 6, p. 1247. [SCOTCH.]

192. The registration of an assignment of an agreement for the purchase of a ship is not required under the Bills of Sale Act, 1854, c. 36. *Swainston v. Clay* (C. A.) 1 Asp. 343; 8 L. T. N.S. 563; 9 Jur. N.S. 401; 32 L. J. 338, 503; 4 Giff. 187.

193. The court is entitled to look behind a registered bill of sale, although absolute in its terms, and to have regard to all the concomitant circumstances in order to determine the real nature of the transaction. *The Jane*, 3 Asp. 527. [IRISH.] See also *The Innisfallen*, L. R. 1 A. & E. 72; 35 L. J. Adm. 110; 2 Asp. 470; and M. S. Act Amendment Act, 1862 (c. 63), s. 3.

194. A transfer of a vessel by a bill of sale, under the M. S. Act, 1854, s. 55, to a *bond fide* purchaser for value, vests the property in such vessel in the transferee from the time of its execution, although, until registration of the transfer the transferee cannot transfer the vessel to a purchaser from himself. *Stapleton v. Haymen*, 2 H. & C. 918; 10 Jur. N.S. 497; 33 L. J. Exch. 170; 12 W. R. 317; 9 L. T. N.S. 655.

195. When a bill of sale of a ship has been executed in the form prescribed by sect. 55 of the M. S. Act, 1854 (c. 104), the provisions of sect. 66 do not prevent the owners from showing that the transfer, though absolute in its terms, was intended as a security only. *Ward v. Beck*, 13 C. B. N.S. 668; 9 Jur. N.S. 912; 32 L. J. C. P. 113.

196. The M. S. Act Amendment Act, 1862 (c. 63), s. 3, is a declaratory enactment that this is the true interpretation. *Ibid.*

197. An infant son of the bankrupt having been registered as owner of a ship, the conveyance under which the infant claimed from his father was subsequently set aside as fraudulent, but his name still continued on the register. *Held*, that the ship was properly arrested as the property of the father. *Bell v. Gow*, 1 Macph. 183; 35 Jur. 157. [SCOTCH.]

198. A ship registered under the M. S. Act, 1854, was dismantled and used for several years as a coal hulk. Her owners then sold her as a coal hulk under a written agreement, and delivery was made to the purchasers. *Held*, that she had ceased to be a ship within the meaning of the act, and was transferable otherwise than by bill of sale under the 55th section of the act. *The European and Australian Royal Mail Co. Limited v. The Peninsular and Oriental Steam Navigation Co.*, 2 Asp. 351.

199. Per Martin, B.—At any rate the original owners who had sold her as a

* (55) No stamp thereon is required. See M. S. Act, 1854, c. 104, s. 9.

"coal hulk" were estopped from denying that she was one. *The European and Australian Royal Mail Co. Limited v. The Peninsular and Oriental Steam Navigation Co.*, 2 Asp. 351.

200. A vessel built by a British subject for a foreign purchaser, to be delivered to such purchaser at a foreign port, was, when completed, assigned by the builder for valuable consideration to the plaintiff. The assignment was not registered under the Bills of Sale Act, 1854 (c. 36), nor under the M. S. Act, 1854 (c. 104), s. 57, nor was the vessel registered as a British ship under sect. 19 of the latter statute. *Held*, by the Court of Appeal, affirming the decision of Pollock, B., (1) that the assignment did not require registration under the Bills of Sale Act, 1854; (2) that the ship was not a British ship within the meaning of the M. S. Act, 1854, and that an assignment of her need not be by bill of sale under the 55th section, and did not require registration under the 57th section of that statute. *The Union Bank of London v. Lenanton*, L. R. 3 C. P. D. (C. A.) 243; 47 L. J. C. L. (C. A.) 409; 3 Asp. N.S. 600.

201. *Held*, per Bramwell and Brett, L.JJ., that a vessel which has not been registered under sect. 19 of the M. S. Act, 1854, can be validly assigned, although such assignment is not by bill of sale under the act. *Ibid*.

202. A ship that has been duly sold by public auction to a *bona fide* and innocent purchaser cannot subsequently be proceeded against and condemned to the Crown on account of former piratical acts. *The Telegrapho or Restauracion*, L. R. 3 P. C. 673; 40 L. J. Adm. P. C. 18; 8 Moore P. C. N.S. 43; 1 Asp. N.S. 63.

202a. The court cannot look behind a ship's register for the purpose of disposing an innocent purchaser for value, whose name is on the register, and who purchased from a person who was on the register as owner. *The Horlock*, 2 P. D. 243; 47 L. J. P. D. 5.

21. Transfers.

203. The delivery of a vessel by a vendor to a purchaser means, that the purchaser is to have the control of the vessel, but not necessarily that he is to be put into the manual possession of it. To complete the delivery he must be able to direct where the vessel shall go, what it shall do, what performances it shall be

required to undertake; in fact, to have exactly the same power over it as exists with respect to any other chattel which is sold and delivered to a purchaser. *Burke v. Rogerson*, 13 L. T. N.S. 415; 2 Asp. 266, 375.

204. The duty to register a transfer of ownership rests with the vendee. *The Spirit of the Ocean*, 34 L. J. Adm. 74; 12 L. T. N.S. 239.

22. Agreement to transfer Ship.

205. An agreement in writing to transfer a ship does not require to be registered under the M. S. Act, 1854 (c. 104), s. 55, nor need the special description of the ship sold, required by that section to be inserted in a bill of sale transferring the ship, be contained in such an agreement. *Batthyany v. Bouch*, 50 L. J. Q. B. 421; 44 L. T. 177; 29 W. R. 665—Grove, J.

206. The plaintiff agreed in writing with the defendant to sell, and the defendant agreed to purchase, a yacht belonging to the plaintiff for the sum of £2,600, whereof the plaintiff was the registered owner, on condition that the defendant should be at liberty to rescind the said agreement should the yacht prove unsound. The defendant refused to carry out his part of the agreement, and the plaintiff brought an action against the defendant for specific performance, or in the alternative £2,600, and for damages for breach of agreement. The defendant pleaded that the agreement, if any was made, was not a bill of sale, nor was it registered, nor did it contain a sufficient description of the yacht, as required by the M. S. Act, 1854. The plaintiff demurred. *Held*, that sect. 55 of the M. S. Act, 1854, applies to the actual instrument by which the ship is to be transferred, and not to an agreement to transfer. *Ibid*.

23. Certificates of Sale.

207. Any registered owner desirous of selling his ship or share at any place not being her port of registry, may obtain from the registrar a certificate of sale. See the M. S. Act, 1854 (c. 104), s. 76.

208. Previously to any such certificate being granted, the applicant must state to the registrar, to be entered in the register book, the names of the persons by whom the power mentioned in such

certificate is to be exercised, and the minimum price if it is intended to fix a minimum; the place or places where the power is to be exercised, or that it may be exercised anywhere, subject to the other provisions of the act, and the limit of time within which the power may be exercised. *Ibid.* s. 77.

209. No certificate of sale is to be granted to authorize a sale in the United Kingdom if the port of registry of the ship is situate there, nor at any place in the same British possession if the port of registry is situate there, nor by any person not named in the certificate. *Ibid.* s. 78.

210. Certificates of sale are to be in the form marked N. in the schedule. *Ibid.* s. 79.

211. No such certificate shall be granted except for the sale of an entire ship. *Ibid.* s. 81.

212. The power shall be exercised in conformity with the directions contained in the certificate. *Ibid.*

213. No sale *bonâ fide* made to a purchaser for valuable consideration shall be impeached by reason of the person by whom the power was given dying before the making of such sale. *Ibid.*

214. Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no sale *bonâ fide* made to a purchaser for valuable consideration without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given. *Ibid.*

215. Any transfer made to a person qualified to be the owner of British ships shall be by bill of sale in the form mentioned in the act, or as near thereto as circumstances permit. *Ibid.*

216. If the ship is sold to a party qualified to hold British ships, the ship shall be registered anew; but notice of all mortgages enumerated on the certificate of sale shall be entered in the register book. *Ibid.*

217. Previously to such registry anew there shall be produced to the registrar required to make the same the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry. *Ibid.*

218. Such registrar shall retain the certificates of sale and registry, and after having indorsed on both an entry of the fact of sale, shall forward them to the

registrar of the ship's port of registry, who shall make a memorandum of the sale in his register book, and the registry of the ship in such book shall be considered as closed, except as far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein. *Ibid.*

219. On such registry anew the description of the ship contained in her original certificate of registry may be transferred to the new register book, without her being re-surveyed, and the declaration to be made by the purchaser shall be the same as would be required to be made by an ordinary transferee. *Ibid.*

220. If the ship is sold to a party not qualified to be the owner of a British ship, the bill of sale, certificate of sale, and certificate of registry shall be produced to some registrar or consular officer, who, after having indorsed thereon the fact of such ship having been sold to persons not qualified to be owners of British ships, shall forward them to the registrar of the ship's port of registry, who shall thereupon make a memorandum of the sale in his registry book, and the registry of the ship in such book shall be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein. *Ibid.*

221. If upon a sale being made to an unqualified person, default is made in the production of the certificates, such person shall be considered as having acquired no title to, or interest in, the ship. Penalty against the persons who obtained the certificate and exercised the power not exceeding £100. *Ibid.*

222. If no sale is made in conformity with the certificate of sale, such certificate shall be delivered to and cancelled by the registrar who granted it, the fact of cancellation being entered in the register book. *Ibid.*

223. Upon proof at any time to the satisfaction of the Commissioners of Customs that any certificate of mortgage or sale is lost, or so obliterated as to be useless, and has never been used, or if used, upon proof of the matters done thereunder, the registrar may, with the sanction of the Commissioners, issue a new certificate, or direct such entries to be made in the register book, or do such other act as he might have done if no such loss or obliteration had taken place. *Ibid.* s. 82.

224. The registered owner of any ship

or share, in respect of which a certificate of sale has been granted, specifying the place where the power is to be exercised, may, by an instrument under his hand in the Form O. in the schedule, or as near thereto as circumstances permit, authorize the registrar who granted such certificate, to give notice to the registrar or consular officer, at such place, that such certificate is revoked, and notice shall be given accordingly, and all registrars or consular officers receiving such notice shall record the same, and exhibit the same to all persons applying for a transfer under such certificate; and after such notice has been so recorded such certificate shall, as to any sale at such place, be revoked; and the registrar or consular officer recording such notice shall state to the registrar who granted the certificate whether any previous exercise of the power to which such certificate refers has taken place. See the M. S. Act, 1854 (c. 104), s. 83.

24. *Transmission by Death, Bankruptcy, or Marriage.*

224a. If the property in any ship, or share therein, becomes transmitted in consequence of the death, bankruptcy, or insolvency of any registered owner, or of the marriage of any female registered owner, or by any lawful means other than by a transfer according to the provisions of this act, such transmission shall be authenticated by a declaration of the person to whom such property has been transmitted, made in the form marked H. in the schedule. See the M. S. Act, 1854 (c. 104), s. 58.

224b. If such transmission has taken place by the bankruptcy or insolvency of the owner, the declaration shall be accompanied by evidence receivable in courts of justice of the title of parties claiming under the bankruptcy or insolvency; if by the marriage of a female owner, by a copy of the register of the marriage or other legal evidence of the celebration thereof, and by proof of identity; and if by any testamentary instrument or by intestacy, then in England, Wales, and Ireland, by probate of the will or letters of administration or an official extract therefrom, and in Scotland or any British possession by the will or any copy thereof, being evidence by the laws of Scotland or of such possession, or by letters of administration or any copy thereof, or by such other document

as may, by the laws of Scotland or of such possession be receivable in the Courts of Judicature thereof, as proof of the person entitled upon an intestacy. *Ibid.* s. 59.

225. The registrar, upon the receipt of such declaration, so accompanied, enters the name of the person or persons entitled under such transmission in the register book as owner or owners of the ship or share, but such persons, if more than one, shall be considered as one person only as regards the number of persons entitled to be registered as owners. *Ibid.* s. 60.

226. The words, "by any lawful means other than by a transfer according to the provisions of this act," in sect. 58 of the M. S. Act, 1854, comprehend only transmissions of the same nature as those previously enumerated, viz., transmissions by operation of law unconnected with any direct act of the party to whom the property is transmitted. *Chasteauneuf v. Capeyron*, L. R. 7 App. C. 127.

227. *Held*, on appeal from the Mauritius, that a sale by licitation of a British ship without a bill of sale, did not create such an interest in the purchasers as to entitle them to be registered as owners. *Ibid.*

25. *Order prohibiting dealing with Ship or Share.*

228. In England or Ireland the High Court of Admiralty and the Court of Chancery, in Scotland the Court of Session, in any British possession any court possessing the principal civil jurisdiction there, may, without prejudice to its other powers, upon the summary application of any interested person, either *ex parte* or upon service of notice on any other person, as the court may direct, issue an order prohibiting, for a time to be therein named, any dealing with such ship or share; and such court may make or refuse such order, and annex thereto any terms, and discharge such order with or without costs, and act in the premises as justice requires; and every registrar, without being made a party to the proceedings, upon being served with such order, or an official copy thereof, shall obey the same. See M. S. Act, 1854 (c. 104), s. 65, as amended by the Admiralty Court Act, 1861 (c. 10), s. 12.

229. The Court of Probate, as a division of the High Court of Justice, has vested in it the jurisdiction exercised by the High Court of Chancery, and there-

fore may, under the 65th sect. of the M. S. Act, 1854, c. 104, direct an order to issue prohibiting the dealing in any share of a ship for a time, and on conditions to be named therein, and the Registrar of Shipping on being served with such order, or an official copy thereof, must obey the same. *Nicholas v. Dracachi*, 1 P. D. 72.

230. The expression "any interested person" in the above section refers only to a person possessing that kind of interest which may be affected by proceedings under sections 62, 63 and 64 of that act. Sect. 65 is limited by the sections last mentioned. *Roy v. Hamiltons*, Cases in the Court of Session, 3rd Series, vol. 5, p. 573. [SCOTCH.]

231. The section is inapplicable to the case of a personal creditor seeking to prevent his debtor, a British shipowner, from dealing with a ship, or share of a ship, out of the jurisdiction, belonging to the debtor. *Ibid.*

232. Applications under the 65th section of the M. S. Act, 1854, to prohibit any dealing with a ship, can only be made in cases occurring under the 62nd, 63rd and 64th sections (diss. Lord Shand). *M'Phail v. Hamilton*, Cases in the Court of Session, 4th series, vol. 5, p. 1017. [SCOTCH.]

233. A part owner cannot apply under the 65th section to restrain his co-owners from dealing with his joint interest. *Ibid.*

234. This section does not deprive the Court of Chancery of its ordinary jurisdiction to protect property during litigation. *Orr v. Dickinson*, 1 Johnson, 1; 5 Jur. N.S. 672; 28 L. J. Ch. 516.

26. *Non-qualified Owner becoming entitled. Order of Sale.*

235. Whenever any property in a ship or share becomes vested by transmission on the death of any owner, or marriage of any female owner, in any person not qualified to be the owner of British ships, it shall be lawful, if such ship is registered

in England or Ireland for the Court of Chancery, and if in Scotland for the Court of Session, or if in any British possession for any court possessing the principal civil jurisdiction there, upon an application on behalf of such unqualified person, to order a sale of the property so transmitted, and direct the proceeds, after deducting expenses, to be paid to the person entitled under such transmission or otherwise as the court may direct. It is in the discretion of the court to make such order, to annex thereto any terms, and to require any evidence it may think fit. See the M. S. Act, 1854 (c. 104), s. 62.

236. The High Court of Admiralty shall have the same powers over any British ship or any share therein as are conferred upon the High Court of Chancery in England by ss. 62—66 of the M. S. Act, 1854. See the Admiralty Court Act, 1861 (c. 10), s. 12.

237. Every such order for sale shall contain a declaration vesting the right to transfer the ship or share in some person or persons named by the court, and such nominee shall be entitled to transfer such ship or share as if he were the registered owner. Every registrar shall obey the requisition of such nominee as to any transfer to the same extent as if he were the registered owner. See the M. S. Act, 1851 (c. 104), s. 63.

238. Every such application shall be made within four weeks after the occurrence of the event on which such transmission has taken place, or within such further time as the court may allow, not exceeding one year, and in the event of no such application being made within such period, or of such court refusing to accede thereto, the ship or share shall be forfeited, as in cases of interests acquired by unqualified owners in ships using a British flag and assuming the British character. *Ibid.* s. 64.

27. *Of Sea-Fishing Boats under Convention with France.**

239. Subject to any exemptions allowed by Order in Council, every British sea-

* (56) For provisions empowering any British consul in France to take any statement on oath from any British subject charged with any offence against the Articles of the Convention of the 2nd August, 1839, between this country and France, as to the fisheries between the two countries, and rendering the same admissible in evidence, see 18 & 19 Vict. c. 101, s. 5.

(57) For provisions for taking the offending fishing boat into the nearest port; for detaining her there for a period not exceeding four days; for obtaining there evidence on both sides as to the alleged breach; for transmitting the depositions, minutes of proceedings and other documents relating thereto, duly authenticated, to the consular agent in the port where the trial is to take

fishing boat shall, as required by Articles four, five, six, seven and eight of the Convention, be lettered and numbered and have official papers, and shall for that purpose be entered or registered in a register for sea-fishing boats. See the Sea Fisheries Act, 1868 (c. 45), s. 22.

240. A British sea-fishing boat which is required to be, but is not, entered or registered in pursuance of this act, shall not be entitled to any of the privileges of a British sea-fishing boat, but all obligations and penalties as to such boat, the punishment of offences committed on board her, or by any persons belonging to her, and the jurisdiction of officers and courts, shall be the same as if such boat were so entered or registered. *Ibid.*

241. If any British sea-fishing boat required to be, but not, entered or registered in pursuance of this act, is used as a sea-fishing boat in the seas to which this act applies, penalty against the owner and master not exceeding twenty pounds; and any sea-fishery officer may seize and detain such boat and prevent it from going to sea and from sea-fishing until entered or registered, and may, if it is at sea, take it back to the nearest or most convenient British port. *Ibid.*

242. The 207th section of the Customs Consolidation Act, 1853, shall not apply to any British sea-fishing boat entered or registered in pursuance of this act. *Ibid.* s. 25.

243. Subject to any exemptions allowed by Order in Council, the master of every sea-fishing boat within the exclusive fishery limits of the British Islands, and of every British sea-fishing boat outside those limits, shall have on board, if it is a British sea-fishing boat required by this act to be entered or registered, the certificate of registry or official papers issued to the boat in pursuance of any act relating to the registry of British ships, or of this act, and if it is not British, then official papers evidencing the nationality of such boat. *Ibid.* s. 26.

244. Penalty against the master, unless reasonable cause shown (proof of

which shall lie on him), with his boat and crew, not exceeding £20, and he may be taken by any sea-fishery officer into the nearest or most convenient port. If such penalty is not paid, and the boat is not British, such boat may be detained in port not exceeding three months from the date of the sentence. *Ibid.*

245. No fishing vessel duly registered, lettered and numbered, under the Sea Fisheries Act, 1868, is required to have her name and port of registry marked under this section. See M. S. Act, 1873, s. 3.

246. See for Orders in Council under the Sea Fisheries Act, 1868, 2 Maude & Poll. 4th ed. by Poll. & Bruce, pp. 97, 103, 104, 190; Orders dated respectively the 18th June, 1869; the 23rd Oct. 1877; the 7th Oct. 1869; the 26th Feb. 1880.

247. For further regulations as to lettering, see Order in Council, Feb. 26, 1880.

248. For regulations for lettering, numbering, and registering of British sea-fishing boats under Pt. II. of Sea Fisheries Act, 1868 (c. 45), see Order in Council of Oct. 23rd, 1877.

249. For additional regulations thereon for lettering, numbering, and registering of British sea-fishing boats under Sea Fisheries Act, see Order in Council of May 3, 1882.

250. See further as to the conventions with France and Sea Fishery Acts, Pt. II. c. 14, p. 1238.

4. Effect of Registration.

1. Generally.

251. The registry of a ship is conclusive as to its being in a fit state to be registered, although there may be evidence to show that the ship was not completed at the time of the registry. *Coombes v. Mansfield*, 3 Drew. 193.

252. No notice of any trust, express or implied, shall be entered in the register book, and subject to any rights appearing by the register book to be vested in any other party, the registered owner of

place; for the communication thereof to the collector of customs or minister of marine, and for his proceeding, if necessary, with the trial, see 6 & 7 Vict. c. 79, ss. 11, 12; and Arts. 65—69 of the Convention.

(58) The 6 & 7 Vict. c. 79, is repealed by the Sea Fisheries Act, 1868 (c. 45) (see s. 71 and the second schedule thereto), but is revived by the Fisheries (Oysters, Crabs and

Lobsters) Act, 1877 (c. 42), s. 15, until the day when the Convention of the 11th Nov. 1867, set out in the schedule to the Sea Fisheries Act, 1868, comes into operation. The Convention has not yet (July, 1885), come into operation.

(58a) For provisions of the United States for the regulation of fisheries, see Revised Statutes of United States, ss. 4291—4398.

any ship or share therein shall have power absolutely to dispose thereof. See the M. S. Act, 1854 (c. 104), s. 43.

253. *Semble*, that the 43rd section of the M. S. Act, 1854, was enacted to obviate the question how far purchasers fixed with notice that the registered owner was a trustee as executor, or for a firm or corporation, would be affected by that fact. *Liverpool Borough Bank v. Turner*, 1 Johns. & H. 171; 3 L. T. N.S. 84, 494; 2 De G. F. & J. 502; 7 Jur. N.S. 150; 30 L. J. Ch. 379; 8 W. R. 292.

254. Shares in ships registered under the M. S. Act, 1854, shall be deemed included in the word "stock," as defined by the Trustee Act, 1850, and the provisions of that act are applicable to such shares. See the M. S. Act Amendment Act, 1855 (c. 91), s. 10.

255. As to the effect of the registered title as concluding the vendor and vendee, as well as third persons, both at law and in equity, under the M. S. Act, 1854, and prior acts before the M. S. Act Amendment Act, 1862, s. 3, see *Liverpool Borough Bank v. Turner*, 1 Johns. & H. 159, 165, 171; 2 De G. F. & J. 502; 3 L. T. N.S. 84, 494; 7 Jur. N.S. 150; 30 L. J. Ch. 379; 8 W. R. 292; *Wilson v. Heather*, 5 Taunt. 642; *Bland v. Graves*, 1 Madd. (notis) 399; *Ex parte Bulteel*, 2 Cox, 243; *Boyson v. Gibson*, 4 C. B. 121; *Langton v. Horton*, 5 Beav. 19; *Ex parte Yallop*, 15 Ves. 60; *Curtis v. Perry*, 6 Ves. 739; *Mestaer v. Gillespie*, 11 Ves. 621; *Thompson v. Drake*, 1 Mad. 39; *Ex parte Houghton*, 17 Ves. 253; *Hibbert v. Rolleston*, 3 T. R. 406; 3 Bro. C. C. 571; *Camden v. Anderson*, 5 T. R. 709; *Cato v. Irving*, 5 De G. & S. 210; *Follett v. Delany*, 2 *ibid.* 235; 12 Jur. 549; 17 L. J. Ch. 254; 22 *ibid.* 554; *Brewster v. Clarke*, 2 Mer. 75; *Dixon v. Ewart*, 3 Mer. 222; *McCalmont v. Rankin*, 2 De G. M. & G. 403; *The New Draper*, 4 C. Rob. 291; *Speldt v. Lechmere*, 13 Ves. jun. 589; *Thompson v. Leake*, 1 Madd. 39, 44; *Moss v. Charnock*, 2 East, 399; *McLarty v. Middleton*, 9 W. R. 861; 4 L. T. N.S. 852; *Barker v. Chapman*, 1 Madd. 400 (notis); *Morton v. Black*, 5 D. 411; *Ord v. Barton*, *July 3*, 1846; 8 D. 1011; 18 Jur. 505; *McArthur v. McBrair and Johnstone's Tr.*, June 20, 1844; 6 D. 1174; 16 Jur. 513; *Duffus v. Mackay*, 19 Court of Sess. Cas. 430 [SCOTCH]. *Thompson v. Smith*, 1 Madd. 395; *Ex parte Matthews*, 2 Ves. 272.

256. And in regard to contracts of sale under the repealed 8 & 9 Vict. c. 89, see *Hughes v. Morris*, 2 De G. M. & G. 349; 19

L. T. 210; 9 Hare, 636; 21 L. J. Ch. 761; *Duncan v. Tindall*, 17 Jur. 347; 22 L. J. Ch. 554; 8 Hare, 1; 14 Jur. 475; 19 L. J. Ch. 215; 13 C. B. 258; 22 L. J. C. P. 137; *The New Draper*, 4 C. Rob. 291; *Biddell v. Leader*, 1 B. & C. 327; 2 D. & R. 499; *Kain v. Old*, 2 B. & C. 627; 4 D. & R. 52; *Cole v. Perkin*, 12 East, 471.

257. But see *contra* (even prior to the M. S. Act Amendment Act, 1862 (c. 63), s. 3, and by courts of common law as well as equity), *Holderness v. Lamport*, 29 Beav. 129; 7 Jur. N.S. 564; 30 L. J. Ch. 489; 9 W. R. 327; *Orr v. Dickinson*, 1 Johns. & H. 1; 5 Jur. N.S. 672; 28 L. J. Ch. 516; *The Australia*, Swabey, 483; 13 Moore P. C. C. 132; 7 W. R. 718; *Carlyle v. Macalpine Trustees*, 3rd Series, vol. 2, p. 882 [SCOTCH]; *Bell v. Bank of London*, 3 H. & N. 730; 28 L. J. Exch. 116; *Reid v. Fairbanks*, 13 C. B. 692; 21 L. T. 166; 17 Jur. 918; 22 L. J. C. P. 206; *European, &c. Co. v. Royal Mail, &c. Co.*, 4 K. & J. 686; *Gardner v. Cazenove*, 1 H. & N. 423; *The Virtue*, 1 Spinks' Eccl. and Adm. Rep. 78; 17 Jur. 843; *Armstrong v. Armstrong*, 21 Beav. 78; 1 Jur. N.S. 859; 24 L. J. Ch. 659.

257a. And where fraud was used to prevent the provisions of the Registration Act being complied with, see *Mestaer v. Gillespie*, 11 Ves. 628; *Coombes v. Mansfield*, 3 Drewry, 200; 1 Jur. N.S. 270; 24 L. J. Ch. 513; *Prouting v. Hammond*, 8 Taunt. 688.

258. As to the effect of the amending act in the case of an innocent purchaser for value, see *The Horlock*, 2 P. D. 248; 47 L. J. P. D. 5.

259. And in cases of claims by foreigners in the Prize Court, see *The Nostra Senora de los Dolores*, 1 Dodson, 296.

260. As to the effect of non-registration of mortgage, see tit. MORTGAGE, c. 4, s. 7, p. 1138.

2. Equities.

261. Without prejudice to the provisions for preventing notice of trusts from being entered in the register book, to the powers of disposition, and giving receipts, conferred by the act on registered owners and mortgagees, and to the provisions contained in the act for excluding unqualified persons, equities may be enforced against owners and mortgagees of ships in respect of their interest therein, in the same manner as equities may be enforced against them in respect of any

other personal property, see the M. S. Act Amendment Act, 1862 (c. 63), s. 3, and *Ward v. Beck*, 32 L. J. C. P. 113.

262. A person who had paid a deposit for purchase of a share, but was not a registered owner, was held to be an owner within the meaning of sect. 147 of the M. S. Act, 1854 (c. 104). *Hughes v. Sutherland*, L. R. 7 Q. B. D. 160; 50 L. J. Q. B. 567; and in reference to unregistered mortgages, see tit. MORTGAGE, c. 4, p. 1138.

See also c. 8, s. 4, p. 1216.

3. Beneficial Interests.

263. The expression "beneficial interests," whenever used in the second part of the M. S. Act, 1854, includes interests arising under contract and other equitable interests. See the M. S. Act Amendment Act, 1862 (c. 63), s. 3.

264. The "beneficial interests" contemplated by the 38th section of the M. S. Act, 1854, are the equitable rights provided for by sects. 62, 63 and 64 of the same act, which enable an unqualified owner entitled by transmission to apply to the Court of Admiralty and other courts therein mentioned for an order of sale of the ship. *The Liverpool Borough Bank v. Turner*, 1 Johns. & H. 172; 3 L. T. N.S. 84, 494; 6 Jur. N.S. 935; 29 L. J. Ch. 827; 8 W. R. 730; 2 Ds G. F. & J. 502. See also *Ex parte Yallop*, 15 Ves. 60.

265. The words "by any lawful means other than a transfer according to the provisions of this act" in the M. S. Act, 1854, s. 58, do not apply to a contract for the sale of a ship, and therefore do not furnish a sufficient argument that the legislature intended to permit any transfers others than such as are in accordance with the provisions of that act. *Ibid.* 1 Johns. & H. 174; *Liverpool Borough Bank v. Turner*, *supra*.

5. Registration anew.

266. When a ship has ceased to be registered as a British ship by reason of her having been wrecked or abandoned, or for any reason other than capture by the enemy or transfer to a person not qualified to own a British ship, such ship is not to be re-registered till she has been duly surveyed by the Board of Trade surveyors, and certified to be seaworthy. See the M. S. Act, 1873 (c. 85), s. 6.

267. If, upon any change of ownership in any ship, the owners desire to have her registered anew, the registrar of her

port of registry, on such requisites to registry as he thinks material, being complied with, may make such registry anew, and grant a certificate thereof. See the M. S. Act, 1854 (c. 104), s. 88.

268. When a ship, once registered, has ceased to be so registered, no person, unless ignorant of such previous registry, proof of which shall lie on him, shall apply to the registrar to register; and no registrar shall register such ship except by the name by which she was previously registered, unless with the permission of the Board of Trade. Penalty for breach not exceeding £100; and any principal officer of customs may detain the ship until the provisions of this section are complied with. See the M. S. Act, 1871 (c. 110), s. 6.

269. When a registered ship is so altered as not to correspond with the entry in the register book, on failure to register such alterations or register the ship anew, as may be required, the ship is deemed not duly registered, and no longer recognized as a British ship. *Ibid.* s. 87.

270. When a ship is sold by a certificate of sale to a party qualified to hold British ships, the ship shall be registered anew; but notice of all mortgages on the certificate of sale shall be entered in the register book. Previously to such registry anew there shall be produced to the registrar the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry. See M. S. Act, 1854 (c. 104), s. 81, sub-ss. 6 and 7.

271. On such registry anew the description of the ship (sold by a certificate of sale) contained in her original certificate of registry may be transferred to the new register book, without her being re-surveyed, and the declaration by the purchaser shall be the same as would be required to be made by an ordinary transferee. *Ibid.* sub-s. 9.

272. As to registration anew on alteration of ship, see c. 3, s. 19, p. 1200.

6. Surveyors.

1. Generally.

273. The Board of Trade, with the sanction of the Treasury, may appoint surveyors for the survey and measurement of ships, and make the requisite regulations for such purpose. See the M. S. Act, 1854 (c. 104), s. 29, as amended by the M. S. Act, 1872 (c. 73), s. 3.

274. All duties as to the survey and measurement of ships under the M. S. Act, 1872, and the acts amended thereby, are to be performed by the surveyors appointed under the fourth part of the M. S. Act, 1854, in accordance with regulations of the Board of Trade. *Ibid.* (c. 73), s. 13.

275. The surveyors are to execute their duties under the direction of the Board of Trade, and the Board are to make regulations as to the surveys, the notice to be given to the surveyors when surveys are required, &c. See M. S. Act, 1854 (c. 104), s. 307.

276. As to shipwright and engineer surveyors, their appointment, powers, duties and remuneration in reference to the survey of passenger steamers, see Pt. IV. c. 12.

2. Powers.

277. The surveyors may, in the execution of their duties, go on board any steamer at all reasonable times, and inspect any part thereof, or any of the machinery, boats, equipments or articles on board, or any certificates of the master or mate under this act, not unnecessarily detaining or delaying the ship; and, if

for any reason they consider it necessary so to do, may require the ship to be taken into dock to survey her hull. Penalty against any person impeding the surveyor in the execution of his duty not exceeding £5. See M. S. Act, 1854 (c. 104), s. 306.

3. Impeding—

278. See above, No. 277.

4. Withholding Information from—

279. Penalty not exceeding £5 against every owner, master and engineer of any ship to be surveyed, wilfully refusing or neglecting to give, on demand, to the surveyors such information and assistance, within his power, as they require for the purpose of making returns to the Board of Trade. *Ibid.* s. 321.

5. Fees and Expenses.*

280. As to the payment by the Treasury of the salaries and expenses of all surveyors appointed under the M. S. Acts, 1854 to 1876, and persons employed under the Passengers Act, 1855, out of moneys provided by parliament, and the control by the Treasury over such salaries and

* (59) As to the fees and expenses to be charged in respect of surveys of ships for measurement of tonnage, for inspection of crew spaces, for inspection of lights and fog signals, for inspection prior to marking, for survey for change of name, for survey of a vessel alleged to be unseaworthy, for survey of a vessel prior to re-registry where the British registry has been previously closed, for survey of a vessel before transfer to a foreign flag, for passenger certificates, for inspection of drawings of boilers, for surveys under the Passenger Acts, and for medical inspection of passengers and crew under the Passenger Acts, see Board of Trade Instructions of October, 1879, Circular 756 C.

(60) As to the travelling and personal expenses and overtime fees of medical inspectors and the different classes of surveyors, and the charges for tapeholders and messengers, see *Ibid.* p. 12.

(61) Personal expenses are only to be claimed in cases where surveyors have to proceed to some place out of the limits of their port (as defined by the Customs regulations), and are absent for the time stated. *Ibid.* p. 13.

(62) Whenever surveyors are called upon to perform services out of office hours, application should be made by the owners or their agents to the principal officer of the Board

of Trade for the district, or the senior surveyor of the port, on the form headed "Surveys 22." The necessary fee, according to the scale, should then be paid to the superintendent of the Mercantile Marine Office. See as to such fees, *Ibid.*

(63) As to overtime fees of a medical inspector, see *Ibid.*

(64) If the usual three clear days' notice has been given of a survey or inspection, and the official arrangements have not allowed of the work being done within office hours, no overtime fee is chargeable. *Ibid.* p. 14.

(65) Except in the case of a survey of a vessel alleged to be unseaworthy, all fees must invariably be paid to the superintendent of the Mercantile Marine Office before the survey and prior to proceeding with the duty in respect of which they are charged. Payments are in no case to be made to the surveyor himself. *Ibid.*

(66) When, upon inspection, a vessel alleged to be unseaworthy is found to be seaworthy, no fee is chargeable. *Ibid.* p. 10.

(66a) When a survey is made by direction of a magistrate or magistrates, in any case of alleged unseaworthiness or otherwise, under the provisions of the M. S. Act, 1871, upon the complaint of the crew of the vessel, the charge is regulated by the Board of Trade. *Ibid.* p. 11.

expenses heretofore vested in the Board of Trade, see M. S. Act, 1876 (c. 80), s. 39.

281. For the fees to be paid in respect of measurement, survey and inspection of merchant vessels, and of lights and fog signals, see the M. S. Act, 1873 (c. 85), s. 30, and Schedule 3 thereto.

282. The costs, if any, of the survey of a ship (in consequence of a charge made by seamen in defence that the ship is unseaworthy, or that her accommodation is insufficient) shall be determined by the Board of Trade, according to the scale of fees to be fixed by them, and shall be paid, in the first instance, out of the Mercantile Marine Fund. See M. S. Act, 1871 (c. 110), s. 7.

283. If the charge is not proved the costs of the survey shall be paid by the person in consequence of whose allegation the survey was made, and may be deducted out of the wages due or to become due to him, and paid over to the Board of Trade. If the charge is proved, the costs of the survey shall be paid to the Board of Trade by the master or owner. *Ibid.*

284. The Board of Trade are to make regulations as to the amount and payment of the surveyor's travelling or other expenses, and the persons by whom, and the conditions under which, such payment shall be made. See M. S. Act, 1854 (c. 104), s. 307.

285. Against every surveyor who demands from the owner or master of any ship surveyed by him, under this act, any remuneration other than as directed by the Board of Trade, a penalty not exceeding £50. *Ibid.* s. 308.

286. For provisions that no surveyor or person employed under the authority of the Passengers Act, 1855, shall receive any fee or remuneration in respect of his duties, otherwise than by direction of the Board of Trade, and penalty for breach not exceeding £50, see M. S. Act, 1872 (c. 73), s. 15.

287. All fees payable in respect of the survey and measurement of ships under the M. S. Acts, 1854 to 1876, and in respect of any services performed by any person employed under the authority of the Passengers Act, 1855, are payable to the superintendent of a mercantile marine office, according to the directions of the Board of Trade, and carried to the Con-

solidated Fund. See M. S. Act, 1876, s. 39.

7. Certificate of Registry.

1. Generally.*

288. Upon the completion of the registry of any ship the registrar is to grant a certificate of registry in the form marked D. in the schedule. See M. S. Act, 1854 (c. 104), s. 44.

289. The copy or transcript of the register of any British ship, kept by the registrar-general of shipping and seamen, has the same effect to all intents and purposes as the original register. See the M. S. Act Amendment Act, 1855 (c. 91), s. 15, as amended by the M. S. Act, 1872 (c. 73), s. 4.

290. The register, flag and pass of a vessel carry with them a presumption that they are true and correct, and the owner is not at liberty to aver against them. *The Laura*, 2 Asp. M. C. 225; 3 Moore, P. C. N.S. 181; 12 L. T. N.S. 685; and No. 304a.

291. A certified copy of a ship's register was put in evidence in a criminal trial to prove that the ship, which sailed under the British flag, was British. *Held*, by the Court for Crown Cases Reserved that the register was *prima facie* evidence that the ship was British, but that this presumption was rebutted by the negative proof that the owner was alien born, and that it could not be presumed without evidence that letters of denizenship or naturalization had been granted to the owner. *Reg. v. Bjornsen*, 34 L. J. M. C. 180; 2 Asp. 210; 1 L. & C. 545.

292. A register is not a document required by the law of nations, as expressive of a ship's national character. *Le Cheminant v. Pearson*, 4 Taunt. 367.

293. Although it was the intention of the legislature, in passing the Registry Acts, to form a public record of the property in British ships, yet it is a clear proposition that persons who are merely named as owners in the ship's register are not liable as such, for these documents are not recognized as conclusive evidence of ownership, unless shown to have been made by the concurrence of, or recognized by, the owners. *Cooper v. South*, 4 Taunt. 802; 2 *ibid.* 5, 302; 14

* (67) It is now no longer necessary, for any purpose of title, to indorse upon the certi-

ificate of registry the particulars of the transfer by bill of sale.

East, 226; 2 Camp. 176; 3 *ibid.* 456; 2 Park on Ins. 861.

2. *New Certificate.*

294. The registrar may, with the sanction of the Commissioners of Customs, upon the delivery to him of the former certificate of registry, grant a new certificate in its stead. See M. S. Act, 1854 (c. 104), s. 47.

3. *Alteration of Ship.*

295. See c. 3, s. 19, p. 1200.

4. *Indorsement of Change of Owners.*

296. Whenever a change takes place in the registered ownership of any ship, if it occurs at a time when the ship is at her port of registry, the master shall forthwith deliver the certificate of registry to the registrar, who shall indorse thereon a memorandum of such change; but if it occurs during the absence of the ship from her port of registry, then upon her first return thereto the master shall deliver the certificate to the registrar, who shall indorse thereon a like memorandum of the change; or if she previously arrives at any port where there is a British registrar, such registrar shall, upon being advised by the registrar of her port of registry of the change, indorse a like memorandum thereof on the certificate of registry, and may for that purpose require the certificate to be delivered to him, so that the ship be not thereby detained. Penalty for breach against master not exceeding £100. See the M. S. Act, 1854 (c. 104), s. 45.

5. *Indorsement of Change of Master.*

297. Whenever the master of any British registered ship is changed, if the change is made in consequence of the sentence of any Naval Court, the presiding officer of such court, but if the change takes place from any other cause, the registrar, or, if no registrar, the British consular officer resident at the port, shall indorse and sign on the certificate of registry a memorandum of such change, and forthwith report the change of master to the Registrar-General of Shipping and Seamen in London; and the officers of customs at any port situate within her Majesty's dominions may refuse to admit any person to do any act at

such port as master of any British ship, unless his name is inserted in or indorsed upon the certificate of registry as the last appointed master. See M. S. Act, 1854 (c. 104), s. 46, as amended by the M. S. Act, 1872 (c. 73), s. 4.

6. *Provisional Certificates or Passes.*

(a) *Generally.*

298. In the event of the certificate of registry of any ship being mislaid or destroyed, if such event occurs at any port in the United Kingdom, the ship being registered there, or at any port in any British possession, the ship being registered there, then the registrar of her port of registry shall grant a new certificate of registry in lieu of the original; but if such event occurs elsewhere, the master or other person having knowledge of the circumstances shall make a declaration before the registrar of any port having a British registrar at which such ship is at the time or first arrives after such mislaying or destruction; and such declaration shall state the facts of the case, and the names and descriptions of the registered owners of such ship, to the best of the declarant's knowledge and belief; and the registrar shall thereupon grant a provisional certificate as near to the form appointed by this act as circumstances permit, and shall insert therein a statement of the circumstances under which such provisional certificate is granted. See M. S. Act, 1854 (c. 104), s. 48.

299. Every such provisional certificate shall, within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if registered there, or if registered elsewhere, at her port of discharge in the British possession within which her port of registry is situate, be delivered up to the registrar thereof, who shall thereupon grant a new one, as near to the form appointed by this act as circumstances permit. Penalty for breach against master not exceeding £50. *Ibid.* s. 49.

300. If any ship becomes the property of persons qualified to be owners of British ships at any foreign port, the British consular officer resident there may grant the master a provisional certificate, stating—

- The name of the ship;
- The time and place of her purchase, and the names of her purchasers;
- The name of her master;

The best particulars as to her tonnage, build and description, that he is able to obtain.

And he shall forward a copy of such certificate, at the first convenient opportunity, to the Registrar-General of Shipping and Seamen in London; the certificate so granted shall possess the same force as a certificate of registry until the expiration of six months, or until such earlier time as the ship arrives at some port where there is a British registrar, but shall then be void. See the M. S. Act, 1854 (c. 104), s. 54, as amended by the M. S. Act, 1872 (c. 73), s. 4.

301. In cases where it appears to the Commissioners of Customs, or to the governor or other person administering the government of any British possession, that by reason of special circumstances it would be desirable that permission should be granted to any British ship to pass, without being previously registered from one port in her Majesty's dominions to another, they may grant a pass, which shall for the time and within the limits therein mentioned have the same effect as a certificate of registry. See the M. S. Act, 1854 (c. 104), s. 98.

(b) *In British Possessions.*

302. The governor or officer administering the government of any British possession may, with the approval of one of her Majesty's Secretaries of State, make regulations providing that on an application for registration under the M. S. Act, 1854, in that possession, of any ship not exceeding sixty tons burden, the registrar may grant, in lieu of a certificate of registry, as required by that act, a certificate of registry terminable at

the end of six months or a longer period. All such certificates shall be in such form and on such conditions as the regulations prescribe. See the Colonial Shipping Act, 1868 (c. 129), s. 1.

303. This act is to be read as one act with the M. S. Act, 1854, and the acts amending it. *Ibid.* s. 4.

304. Any ship to which a certificate is granted under any such regulations shall, while such certificate is in force, and in relation to all things done or omitted during that period, be deemed a registered British ship. *Ibid.* s. 2.

304a. The appellant, a native of the Ionian Islands, purchased an American ship, and, upon a declaration that he was a British subject, obtained from a British consul at Cuba a provisional registry of the ship as British. The ship was afterwards seized and condemned for a breach of the Slave Trade Acts. Upon a preliminary objection taken on appeal to the jurisdiction of the court below, on the ground of the national character of the owner of the ship and cargo, *held*, first, that the registry flag and pass of a ship carry with them the presumption that they are true and correct, and that the owner was estopped from proving that he was not a British subject; and, secondly, that even if he could have established that the registry was void, and the ship not entitled to claim the protection of any flag or nation, yet that the ship was, by the statute 2 & 3 Vict. c. 73, liable to be adjudicated upon by a Vice-Admiralty Court for a violation of the Slave Trade Acts. *The Laura*, 3 Moo. P. C. C. N.S. 181.

7. *Custody.**

305. The certificate of registry is to

* (68) The earlier acts, now repealed, containing similar provisions, are 34 Geo. 3, c. 68; 6 Geo. 4, c. 110; 3 & 4 Will. 4, c. 55; and 8 & 9 Vict. c. 89. The following are cases under these acts:—

1. The 34 Geo. 3, c. 68, s. 18, which contained a similar clause to that of the M. S. Act, 1854 (c. 104), s. 50, but in which the expression used is "shall wilfully detain," *held*, not to authorize a conviction of a master who did not comply with the requisition of the owner (though the sole owner) to deliver up such certificate to him, though expressed to be for the purpose of procuring the necessary indorsement to be made on it at the custom-house upon the transfer of the ship to him. *Rea v. Patey*, 13 East, 91.

2. Under 6 Geo. 4, c. 110, s. 27, and 3 & 4 Will. 4, c. 55, s. 27, a conviction for detaining the certificate of a ship's registry was bad, unless it stated the purpose for which the certificate was wanted, and that the person who demanded it was the proper officer. *Rea v. Walsh*, 1 A. & E. 481; 3 N. & M. 632.

3. A. commissioned B. to sell a ship for him, and having deposited her register with him for that purpose, became bankrupt. *Held*, that B. had a lien on the register against the assignees of A. for the amount of his demand against A., consisting partly of charges incurred on the ship's account, and partly of other charges, and that this was not such a transfer of the property as to

be used only for the lawful navigation of the ship, and is not subject to detention by reason of any title, lien, charge, or interest which any owner, mortgagee, or other person may claim to have in the ship, and if any person refuses on request to deliver up the certificate when under his control to the person entitled to the custody thereof, or to any registrar, officer of the customs, or other person entitled to require such delivery, any justice or court capable of taking cognizance of such matter may cause the person so refusing to appear before him; and unless it is proved that there was reasonable cause for such refusal, the offender shall incur a penalty not exceeding £100; but if it appears that the certificate is lost, the party complained of shall be discharged, and the justice or court shall certify that the certificate of registry is lost. See the M. S. Act, 1854 (c. 104), s. 50.

306. If the person charged with such detainer or refusal is proved to have absconded, so that the warrant or process cannot be served upon him, or if he persists in his refusal, the justice or court is to certify the fact, and the same proceedings may then be taken as in the case of a certificate of registry mislaid or destroyed, or as near thereto as circumstances permit. *Ibid.* s. 51.

307. For provisions, on the sale of a ship abroad under a certificate of sale, for the certificate of registry to be delivered to the registrar registering such sale, and forwarded by him to the registrar of the former port of registry of the ship (penalty for default not exceeding £100), *Ibid.* s. 81.

308. For provisions, if any registered ship is taken as prize, burnt, broken up, or lost, or ceases to be a British ship, for notice thereof to be given by the owner to the registrar at her port of registry, and the certificate of registry, unless lost or destroyed, to be given up by the master to the registrar at the first port at which he arrives (penalty not exceeding

£100 for default by master and owner), *Ibid.* s. 53.

309. For provisions for delivery up of the certificate of registry to the registrar of either port on change of port of registry, see *Ibid.* s. 88, and the M. S. Act Amendment Act, 1855 (c. 91), s. 12.

310. Under sect. 50 of the M. S. Act, 1854, a pledge by a master and sole owner of a ship of the certificate of registry, though for a good and sufficient consideration, is illegal and void; and therefore an action will lie by the master and sole owner against the person detaining it after a demand made upon him to return it for the purposes of navigation. *Wiley v. Crawford*, 1 El. B. & S. 253, 265; 6 Jur. N.S. 296; 7 *Ibid.* 943; 2 L. T. N.S. 297; 4 *Ibid.* 653; 8 W. R. 662; 9 *Ibid.* 741; 1 Asp. 101; 29 L. J. Q. B. 244; 30 *Ibid.* 319; 6 Jur. N.S. 1290; 7 *Ibid.* 943.

311. The Court of Admiralty will grant a monition, at the suit of an owner having the majority of interest, to show cause why the ship's register should not be delivered to him. *The Frances*, 2 Dodson, 422. See also *Anon.* 2 Chit. 359; 3 D. & R. 178, n.

312. Motion, at the suit of a bottomry bondholder for an order against A. (the purchaser of the ship under a sale from the original owner since her arrival in port, and which sale was asserted to be a collusive one to defraud the bondholder), to deliver up the ship's register, granted. A. made a return that he had deposited the register with B. Order to the same effect decreed against B., who thereupon delivered up the register. *The Barbara*, 4 C. Rob. 2.

313. An American vessel having been sold under a decree of the court in a cause of bottomry, motion for an order against the American consul to bring in the ship's register, which had been delivered to him by the master subsequently to the arrest of the ship, rejected as unnecessary to perfect the purchaser's title. *The Tremont*, 1 W. Rob. 163.

314. The owner of a ship consigned her

bring the case within the meaning of the Register Acts. *Mestaer v. Atkins*, 1 Marsh. 76; 5 Taunt. 381.

4. Where the certificate of a ship's register has been deposited as a security for advances for the use of the ship, held, that this gives the holder a sufficient lien to defeat an action of trover for the certificate. *Bowen v. Fox*, 10 B. & C. 41; 5 M. & R. 5; 4 Car. & P. 452.

5. Where a factor for the owner of a ship at an English port had, by a request to the master, obtained the certificate of registry for the alleged purpose of paying the tonnage duties at the custom-house, held, that he had no lien on the certificate so obtained for the general balance due to him in respect of the ship. *Burn v. Brown*, 2 Stark. 272.

to persons abroad, who hypothecated her, and directed the master to sign a bottomry bond. On her arrival in London he, by their direction, delivered the register to the defendant (the agent of the consignees), who gave it to their solicitor to institute proceedings in the Court of Admiralty on the bottomry bond. The ship was sold by order of that court, and the register decreed to be given up to the purchaser. The owner became bankrupt, and his assignees brought an action of trover for the register. *Held*, that they could not recover, as they might have appeared in the Admiralty Court and prevented the sale of the vessel, and as the delivery of the register to the purchaser under the decree of that court was not a conversion. *Hassack v. Masson*, 4 Moore, 361.

315. After a ship had arrived at the port of discharge, but before it was discharged, the owner demanded the certificate of registry from the master, intending to dismiss him, but not communicating that intention to him. *Held*, that the master was not liable to be convicted, under sect. 50 of the M. S. Act, 1854, for refusing to deliver up the certificate. *Arkle v. Hensell*, 8 El. & Bl. 828; 4 Jur. N.S. 306; 27 L. J. M. C. 110.

316. A vendor of a ship, with a covenant for title, retains, after the sale (in order that he may fulfil his contract, and defend himself against an action brought upon his covenant), such an interest in the certificate of registry as enables him to sustain a suit for its delivery against a party unlawfully detaining it. *Gibson v. Ingo*, 6 Hare, 112.

317. A master has no lien on the certificate of registry, either for his wages or for moneys disbursed by him for the use of the ship, nor have shipbrokers any lien on the certificate of registry for advances made by them to the owner for the use of the ship. *Ibid*.

318. A master, who was also part owner, having been dismissed by the managing owner, refused to surrender the certificate of registry and other papers and keys of the vessel. On security being given for any damages that might accrue

from the order, the court ordered the master to deliver up to his co-owners the register and other articles. *The St. Olaf*, 3 Asp. N.S. 268.

319. A master, whether co-owner or not, has no lien on the ship's papers, in case of wrongful dismissal by the managing owner. *Ibid*.

8. Use of improper Certificate.

See Pt. II. c. 18, s. 9, p. 1244.

9. Evidence.

319a. As to evidence of certificates of registry, see tit. EVIDENCE, c. 16, s. 12, p. 440, and *ibid*. in Addenda.

8. Sale of Ship.

1. Generally.*

320. A bill of sale is the proper title to which the maritime courts of all countries look. It is the universal instrument of transfer of ships in the usage of all maritime countries, and in no degree a peculiar title deed or conveyance known only to the law of England. It is what the maritime law expects, what the Court of Admiralty would in its ordinary practice always require, and what the legislature has made absolutely necessary by statute. *The Sisters*, 5 C. Rob. 155.

321. A bill of sale of a ship, though in form absolute, may operate at law only as a mortgage. *Gardner v. Cazenove*, 1 H. & N. 423; 26 L. J. Exch. 17.

322. The bill of sale entirely divests the title of the vendor. Immediately on the execution of the bill of sale, the vendee becomes entitled to all the benefits of ownership, and he takes with them all the concurrent liabilities. *The Spirit of the Ocean*, 34 L. J. Adm. 74; 12 L. T. N.S. 239.

323. To complete the delivery of a vessel to a purchaser, he must have the control of the vessel given him, but he need not be put into the manual possession of it; though he must be able to

* (69) See also Instructions to Consuls, 1856, pp. 134 *et seq*.

(70) As to the validity of the purchase of a ship from pirates *bona fide*, and in ignorance of her piratical character, and of the purchase of ship or goods generally from such parties, see Introduction to Godolphin's

Adm. Jur.

(71) Courts of Admiralty have no jurisdiction to entertain a libel for a specific performance of an executory contract of sale. *The S. C. Ives*, 1 Newb. Adm. 205. [AMERICAN.]

direct where the vessel shall go, what it shall do, what performances it shall be required to undertake, in fact, to have exactly the same control over it as exists with respect to any other chattel which is sold and delivered to a purchaser. *Burke v. Rogerson*, 2 Asp. 266. And see this case on appeal, 2 Asp. 375.

324. A defendant in execution, being a registered proprietor of shares in a ship, a *fi. fa.* was delivered to the sheriff; and the solicitor for the creditor, by the direction of the sheriff, procured the certificate of registry from the ship, and delivered it to the sheriff, who retained it. The sheriff was registered at the custom house, under the M. S. Act, as the owner of the shares, which were afterwards sold by him and transferred to the purchaser by a bill of sale, which was also registered. *Held*, that the seizure was effectual, although the sheriff did not go on board the ship, and that the property in the shares was regularly transferred by the bill of sale. *Harley v. Harley*, 11 Ir. Ch. Rep. 451.

325. Proceeds of a cargo sold abroad and transmitted from a Vice-Admiralty Court to the registry of the High Court of Admiralty, decreed on motion to be paid out to the respective consignees of the cargo, on the consent of the purchaser of the cargo. *The Lady Banks*, 1 Hagg. 306.

326. On the 7th November, a foreigner purchased a British vessel, receiving possession thereof, and paying a deposit. It was stipulated that the balance was to be paid on receipt of transfer. On the 11th November, the vessel was detained by the Board of Trade, under the 12th section of the M. S. Act, 1873 (c. 85). On the 20th November, the balance of the purchase-money was paid, and a bill of sale (dated the 8th November) was delivered. On the 5th December, the British register was closed. *Held*, that the transfer was not completed until the 20th November, and that the vessel was a British ship at the date of its detention on the 11th November. *Granfelt v. Lord Advocate*, Cases in the Court of Session, 4th Series, vol. 1, p. 782. [SCOTCH.]

327. Whatever equitable rights may be raised between an owner and a purchaser, there is nothing but an actual transfer by bill of sale, entered on the register, which can effect a change in the nationality of a ship.—Per Lord Ardmillan. *Ibid.*

328. An order of detention, under sect. 12 of the M. S. Act, 1873, does not prevent a British vessel being transferable by sale to a foreign purchaser, it only prevents the closing of the British register effecting the release of the ship.—Per Lord President Inglis. *Ibid.*

329. A stranded ship was sold by auction, certain conditions of sale being annexed to the catalogue. A purchaser bought under these conditions, but subsequently signed a memorandum inconsistent with them. A deposit was accepted by the auctioneers in accordance with the conditions which were read from the catalogue in the auction room. A dispute having arisen, the auctioneers again put the vessel up for sale under the memorandum. It was *held* that, upon a libel properly framed, the plaintiff owner would have been entitled to recover the price of the vessel, less the deposit; but that, on the other hand, the defendant would be entitled to recover damages in an action of tort founded on the retaking of possession and resale of the vessel. The Judicial Committee directed a nonsuit to be entered. *Paget v. Cowasjee Eduljee*, L. R. 1 P. C. 127. See also Nos. 202, 202a, and 215, pp. 1202, 1203.

2. From Builder.*

330. An unfinished ship becomes by assignment, and continues afterwards to be when perfected, although at the assignor's expense, the property of the assignee, and no further act is necessary to secure him against the assignor's creditors if the assignor and builder is the same person, but if he is not, then notice of the assignment to the builder is indispensable. *Holderness v. Rankin*, 29 L. J. Ch. 753.

331. For cases in which property passes

* (72) As to contracts for the building of a ship, and when the property vests in the purchaser, see Maclachlan on Merchant Shipping, 3rd ed. p. 2 *et seq.*

(73) As to the right of the builder's assignees on his bankruptcy to a ship in course of building, *Ibid.*

(74) The ownership of a vessel remains in the builder until completion and delivery, although she is built under a contract, and paid for in instalments, as the work progresses. *Low v. Austin*, 20 N. Y. (6 Smith), 181. [AMERICAN.]

to employer on failure to complete by shipbuilder, see *Baker v. Gray*, 17 C. B. 462; 2 Jur. N.S. 400; 25 L. J. C. P. 161; *Wood v. Bell* (in error), 6 El. & Bl. 355; 2 Jur. N.S. 664; 25 L. J. Q. B. 321.

332. Assignment by bill of sale of a ship while building, including all materials then provided, or to be provided and made as a security for past and future advances. *Held*, that a subsequent transfer of the ship by the shipbuilder to third parties was a conversion, and that these parties were liable to the holder of the first assignment for the value of the ship when completed, less the cost they had incurred in completing it. *Reid v. Fairbanks*, 13 C. B. 692; 17 Jur. 918; 22 L. J. C. P. 206; 21 L. T. 166.

332a. A contract for building a ship, provided that in the event of cesser of work, delay in delivery, bankruptcy or insolvency of the builder, the buyer might complete and employ such materials belonging to the builder as should be then on his premises. *Held*, that so far as this clause applied to the bankruptcy of the builder, it was void as against the trustee in bankruptcy. *Ex parte Barter*, *Ex parte Black*, *In re Walker*, 26 Ch. D. (C. A.) 510; 53 L. J. Ch. 802.

3. Defective Title.

333. The general rule is that whoever purchases under an illegal title does so at his own peril, and must take the consequences both in purchase and in his own subsequent expenditure upon it of his inattention to his own security. *The Perseverance*, 2 C. Rob. 239.

334. When a person, having no title to a ship, procures it to be registered in his name, the court will compel him to re-transfer it to the rightful owner, and account for the earnings, even though there has been no fraud, and notwithstanding the M. S. Act, 1854 (c. 104). *Holderness v. Lamport*, 29 Beav. 129; 7 Jur. N.S. 564; 30 L. J. Ch. 489; 9 W. R. 327. See also *Orr v. Dickinson*, 1 Johns. & H. 1; 5 Jur. N.S. 672; 28 L. J. Ch. 516.

335. If a party has taken a title from the original owner and registered his ship accordingly, and has denied the title of a purchaser, alleging it to be no title at all, and has put the validity of that title in

issue, it is very doubtful whether it is competent to him to turn round and claim under a conveyance from that very purchaser whose title he has denied. *The Margaret Mitchell*, 4 Jur. N.S. 1194; *Swabey*, 385.

336. Several acts of transfer *bona fide*, and for valuable consideration, cure antecedent defects of title. *The Helena*, 4 C. Rob. 4. See also *The Australia*, 13 Moore, P. C. C. 132; *Swabey*, 480; *The Molly*, 1 Dodson, 395; *The Horlock*, 2 F. D. 243; 47 L. J. P. D. 5.

337. *Semble*, the purchaser of a foreign ship ought not to rely merely upon what the ship's papers may show, but is bound to make further inquiry into the title of the ship. Per Turner, L. J., *Hooper v. Gumm and others*, *McLellan v. Gumm and others*, L. R. 2 Ch. 282; 36 L. J. Ch. App. 605; 2 Asp. 481.

4. Equities.

338. On a purchase of a vessel by a person under twenty-one, the vendor becomes a trustee in equity for the purchaser, until the latter, on coming of age, is enabled to make the declaration of ownership required by the M. S. Act, 1854 (c. 104), s. 38, previously to registering the vessel in his own name; and sect. 3 of the M. S. Act Amendment Act, 1862, expressly recognizes and gives effect to such equitable rights. *Stapleton v. Haymen*, 2 H. & C. 918; 9 L. T. N.S. 655; 10 Jur. N.S. 497; 33 L. J. Ex. 170; 12 W. R. 317.

339. The owner of a ship at sea, in possession of information that in consequence of her leaky condition she had put into a port for repair, sold his vessel without disclosing this information to the buyer. *Held*, that the sale was void, although afterwards the ship proceeded on her outward voyage safely, and was lost by being stranded on her return home. *Duthie v. Carnegie*, 18 F. C. 162; *Brown*, 408. [SCOTCH.]

See also c. 4, s. 2, p. 1207; and see tit. MORTGAGE, c. 4, s. 7, p. 1138.

5. Bill of Sale.

340. When the sale must, or need not, be by bill of sale. See c. 3, s. 20, p. 1201.

6. What Property passes.*

341. If a shipbuilder make a rudder,

* (75) As to what is included under the term furniture of a ship, see 1 Park on Ins.

123, 126; Maclachlan on Merchant Shipping, 3rd ed. p. 17.

intending it to form part of a ship when completed, and the purchaser of the ship considers and treats it as the ship's rudder, though it was never attached to the ship, and remains unfinished in the builder's possession at his bankruptcy, this is evidence for the jury that the rudder is that of the ship, and the property of the purchaser. *Goss v. Quinton*, 4 Scott, N. R. 471; 3 M. & G. 825; 12 L. J. C. P. 173.

342. Rudder and cordage bought by the builder specifically for a ship complete or nearly so, though not actually attached to it at the time of delivery to the purchaser held to pass with the ship. *Woods v. Russell*, 5 B. & Ald. 942; Abb. Sh. 6.

343. A bill of sale of a whaler then absent on a fishing adventure, "together with all masts, &c., boats, oars, and appurtenances," held not to pass the cargo of oil, &c. acquired during the adventure. *Langton v. Horton*, 5 Beav. 9; 1 Hare, 549; 6 Jur. 357, 910.

344. A chronometer on board a ship passes by assignment of the ship, her tackle and appurtenances. *Ibid.*

345. It seems the chronometer does not ordinarily pass with the ship. *The Velox or Belox*, No. 1809, 1 August, 1863.

346. A vessel was sold with all belonging to her on board and on shore. A chronometer, previously used in the vessel, but, at the date of sale, in the hands of an optician for the purposes of repair, held to pass with the vessel. *Armstrong v. M'Gregor*, Cases in the Court of Session, 4th Series, vol. 2, p. 339. [SCOTCH.]

347. In an action on a policy of insurance on ship and furniture, the ship being employed in the Greenland fishery, held, that boats, rigging and stores belonging to the ship were included; but whether or not the fishing stores were included depended on the usage of trade, which, *semble*, inclined to the negative. *Hoskins v. Pickersgill*, cited in *The Dundee*, 1 Hagg. 123; Marshall on Ins. (4th ed.), 568; 1 Park on Ins. 97.

348. Fishing stores of a vessel engaged in the Greenland fisheries, held to be "appurtenances" within the meaning of 53 Geo. 3, c. 159 (now repealed), and liable thereunder in an action for damage against the vessel, her tackle, apparel and furniture. *The Dundee*, 1 Hagg. 109.

349. The word "appurtenances" is not to be construed with reference to the abstract naked idea of a ship; but regard must be had to the relation borne by the articles in question to the actual service of the ship. Some things are universally appurtenances to a ship, *quod ship*, be its occupation what it may; particular things may become so from their immediate and indispensable connexion with a ship in the particular occupation to which she is destined and in which she is engaged. *Ibid.*

350. The meaning of the word "appurtenances" of a ship, and what would and would not be construed to amount thereto, considered, with reference more particularly to the 53 Geo. 3, c. 159. *Ibid.* 122—127.

351. Whatever property of the owner may be on board a ship for the accomplishment of the objects of the voyage and adventure in which she is engaged, constitutes part of the ship and her appurtenances, under 5 Geo. 3, c. 159, and is liable for damage to another ship. *Gale v. Laurie*, 7 D. & R. 711; 5 B. & C. 156.

352. The fittings of a packet and the guns of a privateer, held to be included under the word "appurtenances." *Ibid.*

353. Ballast does not pass under the term "furniture." *Kinter's case*, Leon. 46.

354. Permanent ballast, called "kettle," does not pass under the words "tackle, apparel, stores, &c." *Lane v. Neale*, 2 Starkie, 105.

355. A plaintiff sought to recover for articles supplied by him in fitting out a ship for active service in time of war, beyond what would be required for classification at Lloyds. Articles supplied after the completion and delivery of the

(76) In the purchase of a ship, "her tackle, apparel and furniture, and other instruments thereto belonging," the ship's boat is not conveyed by such words. Introduction to Godolphin's Adm. Jur.

(77) A., by bill of sale, sold to B. one-half of a vessel, "together with one-half of the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereto appertaining." Held, that ballast on board did not

pass. *Burchard v. Tapscott*, 3 Duer (N. Y.), 363. [AMERICAN.]

(78) A bill of sale of the hull of a vessel, with all and singular her tackle, apparel and furniture, does not include a chronometer on board at the time, when no agreement of the parties or custom of merchants in relation to it is made to appear. *Richardson v. Clark*, 3 Shep. 44. [AMERICAN.]

ship, and requiring a written order for performance, held to be "extras," although the order was written before the completion of the ship. *Scott Russell v. The Viscount Sa da Bandeira*, 1 Asp. 289.

7. *By Decree of the Admiralty Division.**

356. In all cases of bottomry, salvage and wages, the Court of Admiralty possessed an undoubted power to decree a sale of the vessel proceeded against, unless the demand of the successful suitor be satisfied. The jurisdiction of the court therein held to be confirmed by the municipal law of this country, and by the general principles of the maritime law, and the title conferred by the court in the exercise of this authority a valid title against the whole world, and so recognized by the courts of this and of all other countries. *The Tremont*, 1 W. Rob. 164.

357. A vessel found at sea and brought into port as derelict, having been sold under an order of the Instance Court of Admiralty at the instance of the salvors and claimant (without fraud), held, that such sale was available against the Crown's right of seizure for a previous forfeiture incurred by the ship having been guilty of a forfeitable offence against the revenue laws, although the Crown was not a party to the proceedings in the Admiralty Court other than by the King's procurator-general claiming the vessel as an admiralty droit, and although no decision of droit or no droit was awarded, and the sale took place *pendente lite* under an interlocutory order. *Att.-Gen. v. Norstedt*, 3 Price, 97. See also No. 202, p. 1202.

358. For the mode of proceeding in cases of sale of ship by the High Court of Admiralty, see tit. PRACTICE, Pt. II.

8. *By Decree of Foreign Court.†*

359. In the case of the sale of a ship in a foreign port the court naturally looks for the bill of sale, it being the ordinary title by which any and every ship is sold that is sold. *Segredo*, otherwise *Eliza Cornish*, 1 Spinks' Eccl. & Adm. Rep. 44; 17 Jur. 738; see also *The Sisters*, 5 C. Rob. 155.

360. The authority of a Court of Admiralty for the sale of a damaged ship is in some parts of the world deemed conclusive as to the legality of the sale, but it is otherwise held by the courts possessing the controlling power in this country. *The Warrior*, 2 Dodson, 293.†

361. In the case of the sale of a vessel after survey, report and condemnation, by official persons abroad, held, that such a proceeding was in the nature of an inquisition of a sheriff for the purpose of information to those having the power of selling the ship, and not conclusive on the party whose property was in question. *Andrews v. Glover*, Abb. Sh. (12th ed.) p. 16.

362. The sale of a vessel by a foreign Court of Admiralty for the payment of expenses held valid, and the title of a party claiming thereunder pronounced for against the former owner, but without costs. *The Experimento*, 2 Dodson, 47.

363. The order of a foreign commercial court for the sale of a British ship within twenty-four hours of the application by the master, held not to be a judicial proceeding. *The Bonita*, otherwise *The Charlotte*, 1 Lushington, 252; 30 L. J. Adm. 141; 5 L. T. N.S. 141.

364. A defective title by reason of an invalid sentence of condemnation may be cured by a subsequent sentence, though given after the property had passed into other hands, and when the vessel herself was no longer amenable to the jurisdic-

* (79) When the proceeds of sales are brought into court in a proceeding *in rem*, they are not liable to make good a loss of the purchaser sustained by a defect found in the article sold, the sale by the marshal carrying with it no warranty to that effect. *The Monte Allegre*, 9 Wheat. 648. [AMERICAN.]

† (80) It seems that, by the law of France, if the sale of a French ship is made by the master, under the decree of a French court, or under the authority of a French consul in a foreign country, before whom the *innavigabilit * of the ship has been proved, all further question as to the authority for the sale is for ever quieted, even though the court or consul may have been imposed upon. 3

Pardessus Cours de Droit Com. No. 606, cited in Maclachlan on Merchant Shipping, 159.

(81) For particulars as to the Admiralty jurisdiction and practice of the United States Admiralty Court, in regard to the survey and sale of vessels in cases of distress or serious injury, see Marvin on Wreck and Salvage, 255.

(82) For the form of proceeding in an application to the court for survey and sale of a vessel under such circumstances, see *Ibid.* 316.

† (83) The American Admiralty Courts, however, claim and exercise such jurisdiction. See 1 Conkling's Adm. Prac. 2nd ed. p. 312. [AMERICAN.]

tion of the court, such valid sentence being held to operate retroactively, so as to rehabilitate the former title. If, however, the title be impeached before the second sentence takes place it may be vitiated. *The Falcon*, 6 C. Rob. 200.

365. Ship abandoned at the Mauritius by her master and afterwards sold under the authority of the Vice-Admiralty Court there. Owners of cargo brought an action against the owners of ship, and also sent an agent to the Mauritius to procure the proceeds of sale, which, however, had been previously transmitted to the High Court of Admiralty in England. *Held*, that the sale, though under the order of the Vice-Admiralty Court, was illegal, that a verdict against the owners of ship to the extent of the value of ship and freight was no answer to the present action, and that the proceeds of sale at the Mauritius not having been paid when demanded, the plaintiffs were in the same situation as if no such demand had been made, and therefore entitled to recover the value of the goods from the defendant. *Morris v. Robinson*, 3 B. & C. 196. See also as to decrees of Courts of Vice-Admiralty and of foreign Courts of Admiralty, tit. JURISDICTION, Pt. I. c. 10, pp. 661—666.

9. Under Power of Attorney.

366. A power of attorney to sell a ship imports that the grantee of the power shall sell the ship for its full value, and he has no authority to negotiate a sale upon any other terms. *The Margaret Mitchell*, 4 Jur. N.S. 1193; *Swabey*, 382.

367. *Seemle*, a power of attorney to sell a ship, given to the master (among other reasons) by way of security to cover his advances, does not, except in case of necessity, justify him in selling against his owner's consent. *Ibid*.

368. If the grantee of a power of attorney to sell a ship sells fraudulently or so as to commit a breach of trust, the fraud of the attorney vitiates the title of the purchaser if the fraud was known to him or could have been known by reasonable inquiry. *Ibid*.

369. If an agent for the sale of ship has acted improperly or dishonestly towards his principal, the purchaser cannot be affected by such conduct if he were ignorant of the same, and not called upon by circumstances to make inquiry. *Ibid*.

370. There are many circumstances

which may invalidate a sale made by an attorney, though his authority to sell may not be impeachable. For instance, great inadequacy of price, collusion by the agent with the purchaser, &c. *Ibid*.

371. *Seemle*, a power of attorney to sell a ship is not so revoked by a decree of the grantor's insolvency in a colonial possession as to invalidate a *bond fide* exercise of the power before notice of insolvency. *Ibid*.

372. A power of attorney to sell a ship may be substantially revoked by parol, and the attorney selling thereafter is guilty of a breach of trust. *Ibid*.

373. The owner of a vessel gave the master a power of attorney to sell the ship. The power was given in case of the master obtaining an advantageous offer, and he had instructions not to sell for less than £10,000 to £13,000. The master had made advances to the amount of £3,000 in respect of the ship on its arrival in England, and offered to resign the ship to the agent on payment of these advances. This offer was refused. The master received a letter from the owner informing him that he was to be dismissed, that the owner was coming to England and intended to sell the ship. The master meanwhile sold the ship for £4,000. *Held*, that the power of sale was substantially though not expressly revoked, that the master's own representations to the purchaser showed it to be invalid, and that there was no such necessity for sale as to invest the master with an implied authority for that purpose. *Ibid*.

374. A power of attorney authorizing the sale of a vessel is revoked by the death of the owner. *Watson v. King*, 1 Stark. 121; 4 Camp. 272.

375. A., owner of forty-eight shares in a ship, gave a power of attorney to B., the other part owner, empowering him to sell A.'s shares. The ship sailed under the command of B. A. afterwards mortgaged his shares in the ship, then at sea, to the plaintiffs, who had no notice of the power of attorney, and the mortgage was entered on the register. Subsequently B. sold the ship abroad to the defendants, who had no notice of the mortgage by A. The ship was registered *de novo* abroad, and arrived in London. The plaintiffs took possession of the ship; the defendants afterwards also took possession. *Held*, that the plaintiffs had the better title to A.'s shares. *Cato v. Irving*, 16 Jur. 161; 18 L. T. 345; 5 De G. & S. 210; 21 L. J. Ch. 675.

10. *Fraud.*

376. *Seemle*, that if vendors fraudulently or only wilfully prevent the purchaser from complying with the provisions of the Ship Registry Acts, a court of equity would interfere in aid of the vendee's title, even before the M. S. Amendment Act, 1862 (c. 63), s. 3. *Mestaer v. Gillespie*, 11 Ves. 628. See also *Speldt v. Lechmere*, 13 Ves. 589; *Coombes v. Mansfield*, 3 Drewry, 200; 1 Jur. N.S. 270; 24 L. J. Ch. 513.

377. If the grantee of a power of attorney to sell a ship sells fraudulently, or so as to commit a breach of trust, the fraud of the attorney vitiates the title of the purchaser if the fraud was known to him, or could have been known by reasonable inquiry. *The Margaret Mitchell*, 4 Jur. N.S. 1194; Swabey, 393.

378. If an agent for the sale of a ship has acted improperly or dishonestly towards his principal, the purchaser cannot be affected by such conduct if he were ignorant of the same, and not called upon by circumstances to make inquiry. *Ibid.*

379. R. N., sole owner and first master of the *Empress*, after some intermediate appointments, made his son R. N. master, who, in Australia, without authority, sold the vessel, asserting himself to be the sole owner and master, the certificate of registry and indorsement bearing out on the face of it such assertion. R. N., the son, received the purchase-money, but never transmitted it to the father. *Held*, that the sale was effected by the fraud and forgery of the son, that the misleading description of him on the certificate of registry was not proved to arise from any culpable neglect in the instructions given by the father to the Custom House, and that the sale was null and void. Possession decreed to R. N., the father, but without costs. *The Empress*, Swabey, 160; 3 Jur. N.S. 119; 28 L. T. 204; 5 W. R. 165; see also *Ekins v. E. I. Insurance Co.*, 1 P. Wms. 395; 2 Bro. Par. Cases, 72.

380. Vendors sold a vessel "to be classed nine years A 1 at Lloyd's." The vessel was so classed, but on her first voyage was found to be, as the purchasers

alleged, so unseaworthy and rotten as not to be worth repairing. In an action by the purchasers to recover the purchase-money and damages, *held*, that they were not entitled to issues as to the seaworthiness of the vessel or as to whether Lloyd's properly classed her as A 1, but that they were entitled to an issue whether the vessel had been classed A 1, owing to the fraudulent representations of the vendors as to her condition. *Gourlay v. Watt*, Cases in the Court of Session, 3rd Series, vol. 9, p. 107. [SCOTCH.] See also *French v. Newgass*, 3 C. P. D. (C. A.) 163; 47 L. J. *ibid.* 361; 3 Asp. N.S. 574.

381. *Seemle*, a fictitious sale of a British vessel, in order that it may procure a foreign registry for the purpose of avoiding the inspection provided by the M. S. Act, 1873 (c. 85), is fraudulent. *Hutchinson v. Aberdeen Sea Insurance Co.*, Cases in the Court of Session, 4th Series, vol. 3, p. 682. [SCOTCH.]

382. *Seemle*, fraud committed by the owner of a vessel would not affect an innocent purchaser from him. *The Europa*, 8 L. T. N.S. 368; 2 N. R. 194; B. & L. 89; 2 Moore, P. C. N.S. 1.

383. When an instrument has been entered into between two parties for a purpose which may be considered fraudulent as against a third party, it may yet be binding as between themselves. A supposed fraudulent intention as to third parties cannot be interpolated in construing an instrument in reference to the rights of the contracting parties. *Shaw v. Jeffery*, 13 Moore, P. C. C. 432.

384. Under the 43rd section of the M. S. Act, 1854, a registered purchaser, who purchases for value and without notice of fraud, shares in a vessel, from the registered owner thereof, has a good title against a former owner from whom the registered owner obtained such shares by a bill of sale executed and registered fraudulently. *The Horlock*, 2 P. D. 243; 47 L. J. P. D. & A. 5; 3 Asp. N.S. 421.

11. *By Master.*(a) *Generally.**

385. In some of the older cases it was

* (84) The master cannot sell the ship abroad, or, in cases of disaster there, without the authority of his owners. Laws of Oleron, cited in Godolphin's Adm. Jur. ext. 1, 3; 1

Sid. 453.

(85) The master of a ship may in some cases sell the ship, although it does not belong to him, as in the case of famine, &c.

held, that the master had no authority to sell any part of the ship, and that a sale by him transferred no property, but that he might hypothecate. See *Johnson v. Shippen*, 2 Ld. Raym. 984; *S. P. Ekins v. East India Company*, 1 P. Wms. 392; 2 Bro. Parl. Cases, 72.

386. The sale of a ship by the master, though made in a foreign country in a case of inevitable danger, the ship and tackle being beaten and broken, and there being no hope of saving any part of them, partly on account of the tempest, and partly on account of the barbarity of the inhabitants of the country, who carried off everything cast on shore, held not to convey the property to the purchaser. *Tremenhere v. Tressilian*, 1 Sid. 452.

387. If a vessel, pending an insurance on freight and cargo shipped, suffers damage, the master is bound to sell or repair the ship according as a prudent owner would have acted if wholly uninsured. *Green v. The Royal Exchange Insurance Co.*, 6 Taunt. 66.

388. When a ship has been sold in a foreign port by the master, it is the owner's duty, if he disapproves of that act and considers his property to have been sacrificed, to act with the greatest possible promptitude in demanding that justice should be done to him. *The Australia*, Swabey, 486; 13 Moore, P. C. C. 132.

389. The legality of the sale of a ship by the master mainly depends upon his conduct, and he should therefore be examined as a witness. *The Bonita*, 30 L. J. N.S. Adm. 153; 1 Lushington, 252; 5 L. T. N.S. 141.

390. It is the duty of the master of a British ship, before selling her in a foreign port, to consult the British consular officer there resident. *Ibid.*

391. In the case of the sale of a British vessel by its master to a foreigner in a foreign port, the *lex loci contractus* does not apply, save in one case only where the title is derived from the decree of a competent court administering the law in its own jurisdiction, and by its decree conferring a title. *Segredo*, otherwise *Eliza Cornish*, 1 Spinks' Eccl. and Adm. Rep. 57, 58; 22 L. T. 36; 17 Jur. 738;

but see *Cammell v. Sewell*, 3 H. & N. 617; 4 Jur. N.S. 978; 27 L. J. Exch. 447. See also as to decrees of foreign courts, tit. JURISDICTION, pp. 663—666.

392. In deciding whether the sale of a ship by its master in a foreign port to a foreigner be legal, the court must be governed, not by the law in force in the foreign port, but by the law maritime and by the law of England, so far as it is consistent with the law maritime, unless indeed the court be restrained by particular statutes. *Segredo*, otherwise *Eliza Cornish*, *supra*. As to the law maritime generally, see tit. JURISDICTION, Pt. I. c. 8, s. 1, p. 649.

393. On the question whether the master had exercised a sound judgment in selling, evidence of his being addicted to drunkenness is admissible. *Alcock v. Royal Exchange Ass. Co.*, 13 Q. B. 301.

394. The master, in consequence of damage sustained, and of the ship becoming unseaworthy, and of no advances on loan or bottomry being obtainable to repair her, sold her to the plaintiffs, who repaired and sent her with a cargo to her registered port in England. The owners refusing to ratify the sale, or consent to the registry of the ship in the plaintiffs' names, put men on board to take possession of her and the cargo. Held, that if the plaintiffs had acquired no legal title by the purchase they had no lien in respect of the moneys laid out by them in the repairs. *Ridgway v. Roberts*, 4 Hare, 106.

395. On recapture of a neutral (American) ship from the enemy, restitution on salvage decreed to the former owner, and refused to a party claiming under an asserted purchase from the master in Ireland, but without prejudice to the rights of such party to be prosecuted in the American Courts. *The Fanny and Elmira*, Edwards, 117, 120.

395a. As to the authority of the master to sell the ship, see *The Gratitude*, Tudor's Leading Cases on Mercantile Law (2nd ed.), pp. 72, 77.

(b) *Necessity*.*

396. A master has not, unless in a case of extreme necessity, authority to sell the

Jenkin's Centuries, p. 165, cited in Mac-lachlan on Merchant Shipping, 3rd ed. p. 161.

(86) As to the sale of a ship abroad by the master, see *Ibid.* pp. 159—169; Abb. Sh. 12th ed. 5 *et seq.*

(87) As to early foreign ordinances thereon, see Mac-lachlan on Merchant Shipping, p. 160; Abb. Sh. 12th ed. p. 5.

* (88) By the American law the master is justified in selling his ship abroad in cases

ship, and he is bound to try every other expedient to raise money before disposing of the ship or any part of the cargo. *Underwood v. Robertson*, 4 Camp. 138; *Hayman v. Moulton*, 5 Esp. 68.

397. The master has, by virtue of his employment, not merely those powers which are necessary for the navigation of the ship and the conduct of the adventure to a safe termination, but also a power, where such termination becomes hopeless, and no prospect remains of bringing the vessel home, to do the best for all concerned, and therefore to dispose of her for their benefit. It is a case of necessity, when nothing better can be done for the master's employers. *Hunter v. Parker*, 7 M. & W. 322; *The Lord Cochrane*, 2 W. Rob. 335.

398. The existence of a necessity sufficient to justify the master in the sale of the ship abroad depends upon the circumstances of the case. It certainly does not arise where a ship is capable of repair,

and where means exist by hypothecation or otherwise of paying for those repairs. *Segredo*, otherwise *Eliza Cornish*, 1 Spinks' Ecl. and Adm. Rep. 46, 48, 56; 22 L. T. 36; 17 Jur. 738; *The Crowdale*, 15 Jur. 232; *The Fanny and Elmira*, Edwards, 117; *The Lord Cochrane*, 8 Jur. 716; *The Bonita*, 1 Lushington, 252; 5 L. T. N.S. 141; 30 L. J. Adm. 145.

399. A ship, having suffered considerable damage, put into the island of Fayal, and the master petitioned the director of the customs for an official survey. Three were made. The report was to the effect that the ship could be repaired for about £300. The master, being dissatisfied, obtained a private survey, which resulted in a report that the ship was unseaworthy, and should be condemned. The director of the customs then, on the petition of the master, decreed the sale of the ship by public auction, and gave official notice thereof according to the custom of the place. She was purchased by a Portu-

of urgent necessity, and in such cases only. See *The Sarah Ann*, 13 Peters, 387; 13 Curtis, D. S. C. 215; 2 Sumner, 206; *The Triton*, 5 Mason, 465; *The Petapscot Ins. Co. v. Southgate*, 5 Peters, 604; 9 Curtis, D. S. C. 490; *Robinson v. The Commonwealth Ins. Co.*, 3 Sumner, 220; 3 Kent's Comm. 3rd ed. 132. [AMERICAN.]

(89) The master has a right to sell the ship in cases of urgent necessity, acting *bonâ fide* for the interest of all concerned. *The Tilton*, 5 Mason's Rep. 465. [AMERICAN.]

(90) It is not sufficient to a valid sale by the master that he acted with good faith and in the exercise of his best discretion. There must be a moral necessity for the sale, so as to make it an urgent duty upon the master to sell for the preservation of the interest of all concerned. *The Sarah Ann*, 2 Sumner's Rep. 206. See also *Scully v. Briddle*, 2 Wash. C. C. 150. [AMERICAN.]

(91) The purchaser of a wrecked vessel from the master is not bound, in order to maintain his title, to furnish direct and positive evidence of the honesty of the master's conduct and of the necessity of the sale, but presumptive proof of those facts is sufficient. *The Lucinda Snow*, 1 Abb. Adm. 305. [AMERICAN.]

(92) The degree of necessity which justifies the sale of a wrecked vessel by the master defined. *Ibid.*; *Prince v. Ocean Ins. Co.*, 40 Maine, 481. [AMERICAN.]

(93) It is well settled in this country, that the master, as such, has authority to sell a wrecked vessel, when he proceeds in good faith, exercising his best discretion for the benefit of all concerned, and this, whether the sale is made in view of a peril then in-

volving the vessel, or of one likely to ensue, from which, in the opinion of persons competent to judge, she cannot be rescued. *The Lucinda Snow*, *ibid.* [AMERICAN.]

(94) The circumstance that the master, who has sold a stranded vessel, believed at the time that he could get her off, would be pertinent to show bad faith avoiding the sale, but proof that the purchaser believed himself able to rescue the vessel can have no such effect. *Ibid.*

(95) The master has authority to sell the ship only in case of extreme necessity; but this necessity is not physical, but moral, amounting to a strong and vehement exigency. *Peirce v. Ocean Ins. Co.*, 18 Pick. 83; *Woods v. Clark*, 24 Pick. 35; *The Schooner Tilton*, 5 Mason, 465; *Skrine v. Sloop Hope*, Bee, 2; *Scully v. Briddle*, 2 Wash. C. C. 150; *The Sarah Ann*, 2 Sumner, 206; *New England Ins. Co. v. The Brig Sarah Ann*, 13 Pet. 387; *Bryant v. Commonwealth Ins. Co.*, 6 Pick. 131; *Robinson v. Commonwealth Ins. Co.*, 3 Sumner, 220. [AMERICAN.]

(96) Where a vessel abroad is so injured that it becomes questionable whether it will not cost more to repair her than she would be worth when repaired, and the master calls a survey in good faith, there is a moral necessity that he should act on the opinion of the survey, as the agent both of owners and insurers, and he will be supported, unless it appear that the facts or inferences on which the result of the survey was based were false. The burden of proof will lie on those who impugn the master's conduct to show this falsity. *Gordon v. Massachusetts Ins. Co.*, 2 Pick. 249. [AMERICAN.]

guese merchant, who immediately repaired her, and sent her with a cargo to Bristol, where she was arrested by the original owner in a cause of possession. *Held*, that the circumstances of the case did not show an urgent necessity for the sale, and that the sale was invalid. Possession decreed to the original owner with costs. *Segredo*, otherwise *Eliza Cornish*, *supra*.

400. An English-owned vessel came into collision in a foreign port within telegraphic communication of England, at which port a British consul and agent of Lloyd's resided, and the master, believing the vessel would not again be fit for sea, sold her, against the advice of the agent of Lloyd's, and without first fully communicating with the owner and waiting for his reply. It subsequently turned out that the vessel was but slightly injured, and was at a small expense fitted for sea. The court set aside the sale. *The Bonita*, 1 Lushington, 252; 30 L. J. Adm. 145; 5 L. T. N.S. 141.

401. A master has generally no authority to sell his vessel. Necessity alone will justify a sale, and that necessity must arise, *e.g.* from some of the following circumstances: 1st. The state and condition of the vessel. 2nd. The consequences of not proceeding to sell. 3rd. Want of facility of communication with the owners. 4th. The resources of the master, or the total absence of all resources. 5th. To some extent the power of the master to avert a sale. *The Glasgow*, otherwise *The Ya Macrao*, 2 Jur. 1147; 28 L. T. 13; 5 W. R. 10; Swabey, 145.

402. A British vessel in a foreign port was, after proper surveys had, and after having been pronounced unseaworthy, and not worth repair, sold without authority from her owner. *Held*, that such sale was justified by necessity, and therefore valid. *Ibid*.

403. It is not enough to show that the sale of a ship by the master was *bond fide* for the benefit of all concerned, it must also be shown that there was an urgent necessity for its being resorted to. *Robertson v. Clarke*, 1 Bing. 445; *Cambridge v. Anderton*, 2 B. & C. 691; 4 D. & R. 203; 1 C. & P. 213; R. & M. 60; *Allen v. Sugrue*, 8 B. & C. 565; *Doyle v. Dallas*, 1 M. & Rob. 48; *Gardner v. Salvador*, 1 M. & R. 116; *Miller v. Fletcher*, 1 Dougl. 231; *Maeburn v. Leckie*, Abb. Sh. (10th ed.), 8; 1 Bing. 243; *Morris v. Robinson*, 3 B. & C. 196; 5 D. & R. 34; *Reid v. Darby*, 10 East, 143; *Hayman v. Moulton*,

5 Esp. N. P. C. 65; *Ireland v. Thomson*, 4 C. B. 149; 17 L. J. C. P. 241; *Somes v. Sugrue*, 4 C. & P. 276; *Furneaux v. Bradley*, Park on Ins. (8th ed.), 365; *Carman v. Maeburn*, 1 Bing. 243; 8 Moore, 127; *Plantamour v. Staples*, 1 M. & R. 117; *Robertson v. Carruthers*, 2 Stark. 571; *Mount v. Harrison*, 4 Bing. 388; 1 M. & P. 14; *Dommett v. Young*, 1 C. & M. 465.

404. The want of repairs, and the degree of want, the possibility of procuring the repairs at the port where the ship lies, the expense of repairs, the expense of remaining in port, the want of funds or credit, the impracticability of communicating with the owner, these and other circumstances may in combination constitute the necessity the law requires. *The Margaret Mitchell*, Swabey, 386; 4 Jur. N.S. 1194.

405. A ship was in a foreign port (Shanghai) and in need of repairs. The owner had no agent, and the master was not provided with any credit at that place; the master advertised in vain for money on bottomry, and communicated with and acted upon the advice of Lloyd's agent there. The vessel, if repaired, must have been kept on the beach for many months at a great loss and expense. The master therefore *bond fide* sold the vessel. *Held*, that the necessity was such as gave the master an implied authority to sell, and that the sale was valid. *Ibid*.

406. If a ship is sold in a foreign port by the master, the burthen of proof as to the necessity of such sale lies upon the purchaser from the master. *The Australia*, Swabey, 484; 13 Moore, P. C. C. 132; 7 W. R. 718.

407. The necessity which the law contemplates, as justifying the sale of a ship in a foreign port by the master, is not an absolute impossibility of getting the vessel repaired; but if the ship cannot be sent upon her voyage without repairs, and if the repairs cannot be done except at so great and so certain a loss that no prudent man would venture to encounter it, that constitutes a case of necessity. *Ibid*.

408. The first purchaser of the master is bound to prove such necessity; but whether such *onus probandi* attaches to a second purchaser depends on all the circumstances of the case. *Ibid*.

409. The master of an insured ship which has been injured by perils of the seas is not justified in selling the ship instead of repairing her, unless he has not the means of getting the repairs done at the place where the vessel is obliged to

be put in, or cannot get them done except at such an expense as would render it undoubtedly improper to repair if the ship were not insured, or has not money in his possession sufficient to pay for the repairs, and is not in a situation to raise it by loan or otherwise, except at such an extravagant rate as would prevent a prudent man, in the exercise of a sound and vigorous judgment, from undertaking the repairs under such circumstances. *Soames v. Sugrue*, 4 C. & P. 276, 284.

410. If a ship is so injured by perils of the seas that she is rendered wholly unfit for sea, and cannot be repaired except at a greater expense than the building of a new ship, the owner may recover for a total loss, though the ship in the state to which she is reduced is sold with her register. *Cambridge v. Anderdon*, 1 C. & P. 213; 2 B. & C. 691; and see *Irving v. Manning*, 6 C. B. 391.

411. In a case of justifiable sale of ship abroad by the master, the person employed by him to sell may lawfully pay over the proceeds to the master, or to his order. *Ireland v. Thomson*, 4 C. B. 199; 17 L. J. C. P. 241.

412. After three several surveys of the ship in a foreign port by competent persons, at two of which the surveyor for the agents attended, it was found that the expense of repairing her would be from £4,000 to £5,000. The master, having ineffectually attempted to raise money by hypothecation of the ship, and having no funds to repair her himself, sold her for £1,200. The jury found that what had been done by him was for the benefit of all concerned, and gave a verdict for the assured as for a total loss. *Held*, by the Court of Common Pleas, that under the circumstances the sale was justifiable. New trial refused. *Reid v. Bonham*, 6 Moore, 397; 3 B. & B. 147.

413. A ship with a cargo of timber bound from Q. to L., on her voyage down the river St. L. sprung a leak, and it became necessary for the preservation of the lives of the master and crew to run her on shore, where she took the ground on the outside of a reef of rocks, and was there fixed and exposed to the full force of the stream, and in the way of the drift ice then forming and floating down the river. One of the part owners and agent for the others resided at Q., and after two surveys, in which the surveyors stated as their opinion that it would be prudent to sell the ship and cargo, the master, under the direction of such part owner, sold the

same. The ship, however, survived, was repaired by the purchasers, and afterwards brought a full cargo to L. In an action against the underwriters, *held*, by the Court of Common Pleas, that, under the circumstances, the master was warranted in selling the ship and cargo. *Idle v. Royal Exchange Insurance Co.*; 3 Moore, 115; 3 B. & B. 151; 8 Taunt. 755; but *semble*, overruled on writ of error to the Court of Queen's Bench, 3 B. & B. 151.

414. To constitute a valid sale at a port of distress, there must be the consent of the master (except under the most peculiar circumstances), an impossibility of repairs, except at a ruinous cost, or an equally ruinous delay, and an in expediency, arising from imminent risk, of awaiting communication with the owners. *The Uniao Vencedora*, otherwise *The Gipsy*, 33 L. J. Adm. 195; 11 L. T. N.S. 351.

415. *Semble*, if an extreme necessity existed for the sale of a British ship at a foreign port, the British vice-consul at the port might, if the master neglected to sell, sanction the sale, which would then be valid, notwithstanding the absence of the master's consent. *Ibid.*

416. The necessity which gives the master an implied authority to sell his vessel abroad must be created by, and depend upon, the particular circumstances of each case. *The Victor*, 13 L. T. N.S. Adm. 21; 2 Asp. 261.

417. A vessel was at the Cape of Good Hope, and in need of extensive repairs. The master had no credit, and the ship's agents there had a claim of £300 against her and threatened arrest. The master was unable to repair the ship even temporarily, so as to bring her to England; and the necessary delay of three months to enable the master to communicate with the owner in England would have been prejudicial to the vessel; the master, therefore, sold her at the Cape. *Held* that, under the circumstances, an adequate necessity existed for the sale, and that therefore the transfer was valid. *Ibid.*

418. It is only under circumstances of stringent necessity that a master can effect a sale of his vessel so as to affect the insurers; but what a prudent owner would have done under the circumstances may illustrate the question as to how far there was a stringent necessity. *Cobequid Marine Insurance Co. v. Barteaux*, L. R. 6 P. C. 319; 2 Asp. N.S. 536.

419. A vessel ran on a reef close to land, about noon. A survey having been

made, she was reported to be very seriously damaged, and to be in a dangerous condition; and, as recommended by the surveyors, was sold the next day. In an action by the owners against the insurers as for a total loss, it was proved that the vessel at the time of the report was practically uninjured, and was got off by her purchasers a few hours after their purchase, by means that the master might have made available for the same purpose. A verdict having been returned for the owners; *held*, by the Privy Council (reversing the decision of the Supreme Court of Halifax, Nova Scotia), that the verdict was against the weight of evidence as to the necessity for sale. *Ibid.*

419a. As to sale or bottomry of cargo by master, see tit. BOTTOMRY, Pt. I. c. 13, pp. 136—140, and GOODS, CARRIAGE OF—, Pt. V. c. 5, p. 553.

(c) *Purchasers.**

420. A person surveying a ship with a view to its sale by the master, *held* justified under the circumstances in becoming the purchaser. *The Australia*, Swabey, 480, 485; 13 Moore, P. C. C. 132; 7 W. R. 718.

421. Persons should make their election either to be surveyors or purchasers, but they should not be both. By being purchasers they are in a position to avail themselves of information they have obtained as surveyors. *Hayman v. Moulton*, 5 Esp. 68.

422. A ship being in a foreign port out of repair, the master being unable to raise money for such repairs, was ordered to be sold by the Vice-Admiralty Court of the place, and was afterwards sold by the agent of the owner for a larger sum than was offered on the attempted sale by the Vice-Admiralty Court; possession refused to the former owner on the ground that the transaction was not shown to be clearly fraudulent, though the master had bought a one-third share from the purchaser. *The Warrior*, 2 Dodson, 298.

423. A bottomry bond originally valid is not affected by any agreement by the bondholder for the purchase of the ship. *The Helgoland*, Swabey, 497.

424. The plaintiff, in trover for the ship, by bidding at the sale of it under the process of a foreign court, did not

give validity to such sale, the defendant not appearing to have known of, or been misled by, the fact of such bidding. *Cas-trique v. Imrie*, 6 Jur. N.S. 1058; 8 C. B. N.S. 1, 405; 7 Jur. N.S. 1076; 30 L. J. C. P. 177; 9 W. R. 455; 4 L. T. N.S. 143.

425. A party who repaired at a remote port, with the sanction of the owner, a vessel disabled at sea, arrested it for the price, and brought it to judicial sale. *Held*, that he possessed a fiduciary character, which rendered the purchase by him illegal and reducible at the instance of the owner, to whose loss and damage the jury had found the sale had been effected. *Elias v. Black*, 18 Court of Session Cases, 1225. [SCOTCH.]

(d) *Notice to Owners and Lloyd's Agent.*

426. The distress of the vessel may be so urgent as to leave the master no alternative but an immediate sale, and delay may be destructive of the interests of the owners, but where there is a possibility of communicating with them without such consequences, it is the first duty of the master to do so and await their reply. Any sale by the master without communicating with the owners, where practicable, would be void. *The Bonita*, 1 Lushington, 252; 30 L. J. N.S. Adm. 145; 5 L. T. N.S. 141; and see the cases there cited.

427. *Seemle*, it is the duty of the master before selling his vessel to consult with Lloyd's agent, or the British consul, if there be one at or near the port where the vessel lies. *Ibid.*

428. An English-owned vessel came into collision in a foreign port which was within telegraphic communication of England, and at which port a British consul and agent of Lloyd's resided, and the master, believing the vessel would not again be fit for sea, sold her against the advice of Lloyd's agent, and without first fully communicating with the owner, and it subsequently turned out that the vessel was but slightly injured and was at a small expense fitted for sea. The court set aside the sale. *Ibid.*

429. As to notice to owners in cases of bottomry, see tit. BOTTOMRY, p. 129.

* (97) A master of a ship cannot become a purchaser at a sale of the property which is sold by his authority as agent of the owners.

Barker v. Marine Ins. Co., 2 Mason, 369. [AMERICAN.]

(e) Confirmation by Owners.

430. Confirmation of a sale by an owner will not be inferred from vague expressions of approval, if the owner at the time was not aware of the true state of the facts relating to the sale. *The Bonita*, otherwise *The Charlotte*, 1 Lush. 252; 30 L. J. Adm. 145; 5 L. T. N.S. 141.

431. Acceptance of purchase-money generally operates as a ratification of the sale, but not so if the money was received without the intention of appropriating it, or if received in ignorance of the facts relating to the sale. *Ibid.*

432. An owner of a ship, being ignorant of the true state of facts relating to the sale of his ship abroad by the master, received as proceeds of the sale bills of exchange at sixty days. Before the bills became due he became aware of the true circumstances, and his ship having arrived, he arrested her. When the bills fell due he obtained payment of them, and paid the money into court. *Held*, that such receipt of the purchase-money by him did not amount to a ratification of the sale. *Ibid.*

433. Acquiescence by the owner, however unauthorized the sale might have been at the commencement, amounts to a ratification by the owner. *Lapraick v. Burrows (The Australia)*, 13 Moore, P. C. C. 132; Swabey, 480.

434. Unnecessary delay on the part of the owner, dissatisfied with the sale of the ship by the master, may import acquiescence in the sale. *Ibid.*

See also No. 424, p. 1225:

12. Ameliorations.*

435. The general rule is, that whoever purchases under an illegal title does so at his own peril, and must take the consequences, both in the purchase and in his own subsequent expenditure upon it, of his inattention to his own security. *The Perseverance*, 2 C. Rob. 239.

436. A prize was purchased by a neutral under a sentence of condemnation found

to be illegal. It appearing to the court that the purchase had not been made under circumstances requiring the strict application of the rule, the purchaser was reimbursed the money laid out in ameliorations, some deduction having been made for wear and tear and the use of the vessel while in possession of the party making the repairs. *Ibid.*

437. A purchaser of a vessel which, having been condemned in a neutral port, had been restored to the former owner on the ground of the illegality of such condemnation, decreed to be reimbursed for his actual amelioration of the ship, there being some circumstances in the case indicating a probability that the purchaser might have been deceived as to the legality of the title, but the court indicated that such an allowance would not be continued to be permitted after the illegality of such titles should be more generally made known. *The Nostra de Conceicao*, 5 C. Rob. 294.

438. On recapture of a neutral (American) ship from the enemy, restitution on salvage decreed to the former owners, and refused to a party claiming under an asserted purchase from the master in Ireland, but without prejudice to the rights of the purchaser to be prosecuted in the American courts. Claim of the purchaser for amelioration refused. *The Fanny and Elmira*, Edwards, 117, 120.

439. Assignment by bill of sale of a ship while building, including all materials then provided, or to be provided, and made as a security for past and future advances. *Held*, that a subsequent transfer of the ship by the shipbuilder to third parties was a conversion, and that these parties were liable to the holder of the first assignment for the value of the ship when completed, less the expenses they had incurred in completing it. *Reid v. Fairbanks*, 13 C. B. 692; 17 Jur. 918; 22 L. J. C. P. 206; 21 L. T. 166.

440. The master, in consequence of damage sustained, and of the ship becoming unseaworthy, and of no advances

* (98) When the proceeds of sales are brought into court in a proceeding *in rem*, they are not liable to make good a loss of the purchaser sustained by a defect found in the article sold, the sale by the marshal carrying with it no warranty to that effect. *The Monte Allegre*, 9 Wheat. 648. [AMERICAN.]

(99) If the court should decree a sale by the master invalid, it would, where the transaction was free from fraud, compel a proper

allowance for the expenditure of the original purchasers in getting off and repairing the vessel. *The Brig Sarah Ann*, 2 Sumner's Rep. 206. [AMERICAN.]

(100) The purchaser of property in good faith from one who is not the owner is only liable for the fruits from judicial demand. *Dyson v. Phelps*, 14 La. An. 722. [AMERICAN.]

on loan or bottomry being obtainable to repair her, sold her to the plaintiffs, who repaired and sent her with a cargo to her registered port in England. The owners, refusing to ratify the sale, or consent to the registry of the ship in the plaintiffs' names, put men on board to take possession of her, and the cargo. *Held*, that if the plaintiffs had acquired no legal title by the purchase, they had no lien in respect of the moneys laid out by them in the repairs. *Ridgway v. Roberts*, 4 Hare, 106.

441. A successful suitor in a cause of damage is entitled, in case of a deficiency of proceeds, to subsequent accretions in the value of the ship arising from repairs effected at the expense of the owner. *The Aline*, 1 W. Rob. 111.

442. A. had contracted to buy a share of a ship in July, but did not execute a bill of sale till the 14th September. By a memorandum of agreement dated September 30, he transferred his share, with all his liabilities as owner, to B., and he then sued B. for expenses incurred by himself with respect to the ship after the contract for the purchase of the ship in July, but before the execution of the bill of sale in September. The memorandum, it was *held*, showed nothing which made the defendant liable for expenses not incurred by plaintiff as owner, therefore the action was not sustainable. *Chapman v. Callis*, 1 Asp. 37.

13. *Proceeds of Sale.**

443. The court cannot, as regards the proceeds of property, give any relief which could not be given as against the property itself. *Prouting v. Hammond*, 8 Taunt. 688; *M'Calmont v. Rankin*, 2 De G. M. & G. 424; Hare, 1; *The Liverpool Borough Bank v. Turner*, 1 Johns. & H. 159, 179; 3 L. T. N.S. 84, 494; 2 De G. F. & J. 502; but see *Armstrong v. Armstrong*, 21 Beav. 78.

14. *Lapse of Time.*

See tit. LACHES, c. 5, p. 804.

15. *Elsewhere than at Home Port.*

See c. 3, s. 23, p. 1202.

9. **Actions of Possession.**

Generally.

444. G., sole owner, mortgaged a ship to B., and died intestate and insolvent. B., under the power of sale, sold to W., but by mistake endorsed upon the original mortgage a discharge, which was recorded at the custom house. Subsequently the registrar refused to register W.'s bill of sale, as the property in the ship appeared by the papers to be in G.'s representatives. The court ordered possession of the ship to be given to W. without requiring administration to G. *The Rose*, 42 L. J. N.S. Adm. 11; L. R. 4 A. & E. 6; 1 Asp. N.S. 567.

445. The court inclines against dis-possession, and requires the plaintiff's claim to be clearly proved. *The Victoria*, Swabey, 408; 5 Jur. N.S. 204.

446. See also as to the court's jurisdiction in such actions, c. 2, ss. 1 and 2; and as to the court's power of sale, c. 8, s. 7, p. 1218.

447. For practice in such actions, see tit. PRACTICE, Pt. III.

See also Pt. VIII. c. 2, tit. OWNERS.

10. **Freight.**

See tit. GOODS, CARRIAGE OF—, p. 467.

Part II.—GENERAL AND SUNDRY RESPONSIBILITIES OF OWNERS AND THEIR REPRESENTATIVES.

1. **Generally.**

448. In all causes of action which may arise from circumstances occurring during the ownership of the persons whose ship is proceeded against, no action can be maintained against the ship where the owners are not personally liable, or where their personal liability has not been given up, as in bottomry bonds, by taking a lien on the vessel. The liability of the ship, and the responsibility of the owners in such cases, are convertible terms. The ship is not liable if the owners are not responsible, and *vice versa*. *The Druid*, 1 W. Rob. 399.

449. It is the duty of a person using a navigable river with the vessel of which he is possessed, and has the control and

* (101) As to the jurisdiction of Courts of Admiralty over proceeds in the registry, see Parsons on Admiralty Law, vol. ii. p. 548. [AMERICAN.]

(102) The surpluses or remnants of pro-

ceeds on the sale of a ship under the process of the court are a representative of the ship, and subject to claims which might be enforced against her *in rem*. Remnants in Court, Olcott, Adm. 332. [AMERICAN.]

management, to use reasonable skill and care to prevent mischief to others. The liability is the same whether the vessel be in motion or stationary, floating or aground, under water or above it. The liability may be transferred with the transfer of the possession and control to another person; yet, on the abandonment of such possession, control, and management, the liability may cease. *White v. Crisp*, 23 L. T. 300; 23 L. J. Exch. 317; 10 Exch. 312. See also *Rex v. Watts*, 2 Esp. N. P. C. 675.

450. A vessel by her improper navigation caused a second vessel to run into and damage a third vessel. *Held*, that the first vessel was alone responsible for the damage. *The Sisters*, L. R. 1 P. D. (C. A.) 117; 45 L. J. P. D. & A. 23; *ibid.* (C. A.) 39; 3 Asp. N.S. (C. A.) 122. See also *The Thames*, 44 L. J. Adm. 23; 2 Asp. N.S. 513; *The Annapolis and Golden Light*, 5 L. T. N.S. 692; *The Hibernia*, 4 Jur. N.S. 1244; *Secombe v. Wood*, 2 M. & R. 290; *The Venus*, 11 July, 1855. See also tit. COLLISION, Pt. IV. c. 3, p. 234.

451. The representative of an owner is responsible (to the extent of the property inherited from him) for the acts of the owner. *The Nostra Signora de los Dolores*, 1 Dodson, 296.

452. In a court of the law of nations the 26 Geo. 3, c. 60, requiring the name of every owner to appear in the ship's register, and the rule confining the claims of third parties, if British subjects, to registered owners, *held*, not to bar foreigners from preferring a claim against a *bond fide* owner whose name was not inserted in the ship's register. *Ibid.*

453. A party actively and directly concerned in the purchase and outfit of the vessel, in the appointment of the master, and in the subsequent management of the vessel, whose name, however, was not inserted in the ship's register, bill of sale, or letters of marque, *held* to have been a *bond fide* owner, and responsible as such to a foreigner. The representative of such owner accordingly *held* responsible for costs and damages decreed to the foreigner. *Ibid.*

454. *Semble*, owners are not deprived of the benefit of compulsory pilotage because, after a collision, their vessel did not render the assistance required by sect. 33 of the M. S. Act Amendment Act, 1862 (c. 63). *The Queen, The Lord John Russell*, L. R. 2 A. & E. 354; 38 L. J. N.S. Adm. 39; 3 Asp. 242. See also tit. COLLISION, Pt. I. c. 5, s. 2, p. 188.

455. The master of a steam-tug, who had contracted to tow a fishing smack out of the harbour of G. Y. to sea on the terms that his owners should not be liable for damage arising from negligence or default of themselves or their servants, after the towage had been in part performed took in tow, in addition to the smack, six other vessels, and in consequence was unable to keep the fishing smack in her course, so that she went aground and was lost. By having more than six vessels in tow at once, the master of the tug disobeyed a regulation made by the harbour master of G. Y. under statutory authority. *Held*, that the loss of the smack was occasioned by the negligence of the master of the tug, but that the owners were protected from liability by the terms of the towage contract. *The United Service*, 9 P. D. 3; 53 L. J. P. 1; 47 L. T. 701; 32 W. R. 565; 5 Asp. 170, C. A.

456. The defendants' vessel being driven upon a sea-wall became a wreck, and could not be removed otherwise than by breaking her up. Valuable property was on board, which would have been lost if she had been immediately broken up. The defendants removed the property with reasonable speed, and then broke up the vessel. During the period which elapsed between the time when she could have been first broken up and the time she was broken up, in fact, damage was done by the vessel to the sea-wall on which she lay. *Held*, that the defendants, assuming them not to have been guilty of any negligence, although remaining in possession, were only bound to use reasonable care and diligence in preventing the ship from damaging the sea-wall, and were entitled to remove the property on board before breaking her up, and that having done so with reasonable speed they were not liable. *Bailiffs of Romney Marsh v. Corporation of the Trinity House*, 5 Ex. 204; L. R. 7 Ex. Ch. 247; 39 L. J. Ex. 163; 41 *ibid.* Ex. Ch. 106; 3 Asp. 396.

456a. The defendants' vessel, owing to the negligence of their servants, struck on a sand-bank, and becoming from that cause unmanageable, was driven by the wind and tide upon a sea-wall of the plaintiffs, which it damaged. *Held*, that the defendants were liable for the damage so caused. *Ibid.*

456b. See also the case of *The Rhosina*, 10 P. D. 24, given in Addenda.

457. As to owner's liability for the

result of latent and patent defects in their vessels, see tit. COLLISION, Pt. III. cc. 2 and 3, pp. 200—203, and *ibid.* in Addenda.

457a. As to owner's liability for acts of stevedore, see *Murray v. Currie*, L. R. 6 C. P. 24; 40 L. J. C. P. 26; 23 L. T. 557; 19 W. R. 104; and *Burns v. Poulson* or *Poulson*, L. R. 8 C. P. 563; 42 L. J. C. P. 302; 29 L. T. 329; 22 W. R. 20. See also tit. GOODS, CARRIAGE OF—, pp. 499, 550, 563.

2. M. S. Acts.

1. Generally.*

458. The M. S. Act, 1854 (c. 104), is divided into eleven parts:—

Part I.—The Board of Trade and its general functions (sects. 1—16). No precise application stated.

Part II.—British ships, their ownership, measurement and registry (sects. 17—108). To the whole of H. M.'s dominions (see sect. 17).

* (103) The principal acts relating to merchant shipping prior to the year 1854 are repealed by the M. S. Repeal Act, 1854 (c. 120), on the M. S. Act, 1854, coming into force.

(104) The M. S. Act, 1854 (c. 104), is extended and amended by the following acts, viz.:—The M. S. Repeal Act, 1854 (c. 120); the M. S. Act Amendment Act, 1855 (c. 91); the M. S. Act Amendment Act, 1862 (c. 63); the M. S. Act, 1867 (c. 124); the Colonial Shipping Act, 1868 (c. 129); the M. S. (Colonial) Act, 1869 (c. 11); the M. S. Act, 1871 (c. 110); the M. S. Act, 1872 (c. 73); the M. S. Act, 1873 (c. 85); the M. S. Act, 1876 (c. 80); the Shipping Casualties Investigation Act, 1879 (c. 72); the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16); the M. S. Act, 1854, Amendment Act, 1880 (c. 18); the M. S. (Fees and Expenses) Act, 1880 (c. 22); the M. S. (Carriage of Grain) Act, 1880 (c. 43); the M. S. (Expenses) Act, 1882 (c. 55); the M. S. (Colonial Inquiries) Act, 1882 (c. 76); and the M. S. (Fishing Boats) Act, 1883 (c. 41).

(105) For an account of the origin and progress of the navigation laws of England from King Richard 2nd to Queen Victoria, see Pritchard's Admiralty Digest, 2nd ed. p. 424, n.

(106) The original jurisdiction of the High Court of Admiralty in most cases of breaches of the navigation laws was apparently taken away by the 74th section of the 6 Geo. 4, c. 108, re-enacted in succeeding statutes, and in the Customs Consolidation Act, 1853 (c. 107), s. 263. Its appellate jurisdiction thereon from Vice-Admiralty Courts was taken away by the 3 & 4 Will. 4, c. 41, transferring appeals from those courts to the Privy Council direct.

- (106a) As to the course of procedure for

Part III.—Masters and seamen (sects. 109—290.) Applies (unless the context otherwise requires),

So much as relates to lists of crews to Registrar-General of Shipping and Seamen—

To all fishing vessels belonging to the United Kingdom;

To all ships belonging to the Trinity House, to the Commissioners of Northern Lighthouses, or to the port of Dublin corporation;

To all pleasure yachts; and

To owners, masters and crews of such ships:

So much as relates to lists of crews, and to wages and effects of deceased seamen and apprentices—

To all sea-going British ships, wherever registered, whose crews are discharged in, or whose final port of destination is, the United Kingdom, and to their owners, masters and crews:

recovering penalties, enforcing forfeitures, and punishing offenders under the Customs Acts, see 39 & 40 Vict. c. 36, ss. 218—274.

(107) For the old cases determined in the High Court of Admiralty under the revenue and navigation laws, see *The Betty Cathcart*, 1 C. Rob. 220; *The Jeune Voyageur*, 5 *ibid.* 1; *The Recovery*, 6 *ibid.* 341; *The Eleanor*, Edwards, 135; *The Adams*, *ibid.* 310; *The Friendship*, 1 Dodson, 373; *The Mary*, *ibid.* 72; *The Reward*, 2 *ibid.* 271; *The Swift*, 1 *ibid.* 339.

(107a) For cases under the old law as to the forfeiture of ship and cargo by reason of the ship not having been manned by a due proportion of subjects of the Crown, see *The Beaver*, 1 Dodson, 158; *The George the Third*, *ibid.* 311; *The Generous*, 2 *ibid.* 327, 335; *The Pelican*, *ibid.* 194; *Le Louis*, *ibid.* 253; *The Hercules*, *ibid.* 363; *Wilkins v. Despard* (1792), 5 T. R. 112.

(108) For cases of forfeiture under the old law by reason of illegal importation or exportation of goods, see *The Eleanor*, 1 Edwards, 135; *The Beaver*, 1 Dodson, 152; *The Vicer*, *ibid.* 136; *The Matchless*, 1 Hagg, 102; *The Eliza Ann*, *ibid.* 257; *The Reward*, 2 Dodson, 265; *King v. Whittaker*, 1 Hagg, 145; *Campbell v. Innes*, 4 B. & Ald. 426; *Att.-Gen. v. Wilson*, 3 Price, 431; *The Swift*, 1 Dodson, 344; *The Adelaide*, 2 Hagg, 233; *Williams v. Manhill*, 1 Moore, 168; 7 Taunt. 468; *The Adams*, Edwards, 298; *The Mary*, 1 Dodson, 72; *The Sarah*, *ibid.* 78; *The Friendship*, *ibid.* 373; *The Paisley*, Edwards, App. E.; *The Tortola*, 1 Dodson, 124; *The Generous*, *ibid.* 323; *The Wasser Hundt*, *ibid.* 271, n.; *The Union*, 1 Hagg, 37; *Wolf v. Claggett*, 3 Esp. 257; *The Julia*, 1 Dodson, 170, n.

So much as relates to shipping and discharge of seamen in United Kingdom—

To all sea-going British ships, wherever registered, and their owners, masters and crews :

So much as relates to seamen volunteering into royal navy—

To all sea-going British ships, wherever registered, and to their owners, masters and crews :

So much as relates to rights and remedies as to wages; to the shipping and discharge of seamen in foreign ports; to leaving seamen abroad; to the relief of seamen in distress in foreign ports; to the provisions, health, and accommodation of seamen; to the power of seamen to make complaints; to the protection of seamen from imposition; to discipline; to naval courts on the high seas and abroad; and to crimes committed abroad—

To all ships registered in H. M.'s dominions abroad, when such ships are out of the jurisdiction of their respective governments, and to owners, masters and crews of such ships :

The whole of this part—

To all sea-going ships registered in the United Kingdom (except those exclusively employed in fishing on its coasts, and those belonging to the Trinity House, the Commissioners of Northern Lighthouses, or the port of Dublin corporation, and except pleasure yachts), and also to all ships registered in any British possession and employed in trading between United Kingdom and any place not in the possession in which such ships are registered, and to owners, masters and crews of such ships, wherever they may be (see sect. 109).

Part IV.—Safety and prevention of accidents (sects. 291—329). To all British ships, and to all foreign steamers carrying passengers between places in the United Kingdom (see sect. 291).

Part V.—Pilotage (sects. 330—388). To the United Kingdom only (see sect. 330).

Part VI.—Lighthouses (sects. 389—416). No precise applications stated.

Part VII.—Mercantile marine fund (sects. 417—431). No precise application stated.

Part VIII.—Wrecks and casualties (sects. 432—501). No precise applications stated.

Part IX.—Liability of shipowners (sects. 502—516). To the whole of H. M.'s dominions (see sect. 502).

Part X.—Legal procedure (sects. 517—543). To the whole of H. M.'s dominions, except as therein excepted (see sect. 517).

Part XI.—Miscellaneous matters (sects. 544—548). No precise application stated.

459. Every officer of the Board of Trade, every commissioned officer of any of her Majesty's ships on full pay, every British consular officer, the Registrar-General of Shipping and Seamen and his assistant, every chief officer of customs in her Majesty's dominions, and every superintendent of a mercantile marine office, may, in cases where he has reason to suspect that the provisions of this act or the laws as to merchant seamen and navigation are not complied with, require the owner, master, or any of the crew of any British ship to produce any official log-books or other documents relating to such crew or any member thereof in their respective possession or control, and the master to produce a list of all persons on board, and take copies of all or part of such official log-books or documents, and summon the master to give any explanation concerning such ship or her crew, or the official log-books or documents. (Penalty for breach not exceeding £20.) See M. S. Act, 1854 (c. 104), s. 13.

2. Application of their Provisions to Foreign Ships.

460. Whenever it has been made to appear to her Majesty that the government of any foreign state is desirous that any of the provisions of the M. S. Acts, 1854 to 1876, or of any act hereafter to be passed amending the same, shall apply to the ships of such state, her Majesty may by Order in Council apply such provisions to the ships of such state, and to the owners, masters, seamen, and apprentices thereof, as if such ships were British ships. See M. S. Act, 1876 (c. 80), s. 37.

461. Where her Majesty has power to make an Order in Council under the M. S. Act, 1854, or any act amending the same, such Order in Council may be revoked, altered or added to by Order in Council. *Ibid.* s. 38.

462. Every such Order in Council is to be published in the Gazette, and laid be-

fore Parliament. Upon such publication, the Order takes effect as if enacted by Parliament. *Ibid.*

463. No foreign ship proceeding in ballast or with cargo or passengers between any ports of the United Kingdom, the Channel Islands or Isle of Man, nor any goods carried therein, is while so employed subject to any higher or other rate of dues than British ships so employed. See Customs Laws Consolidation Act, 1876 (c. 36), s. 141.*

464. Every foreign ship proceeding in ballast, or with cargo or passengers between any ports of the United Kingdom, the Channel Islands, or Isle of Man, is subject, as to stores for the use of the crew, and in all other respects, to the same regulations as British ships. *Ibid.*

465. As to the jurisdiction of British courts over ships belonging to foreign governments, see tit. JURISDICTION, c. 13, p. 671.

3. Application of Laws of India and Colonies to British Ships throughout the Empire.

466. If the governor-general of India in council, or the legislative authorities in any British possession abroad, by appropriate legal means, apply or adapt any of the provisions in the third part of this act to any British ships registered at, trading with, or being within their respective jurisdictions, and to the owners, masters, mates, and crews thereof, such provisions when so applied, and so long as they remain in force, shall in respect of the ships and persons to which they are applied be enforced, and penalties

and punishments for the breach thereof recovered and inflicted throughout her Majesty's dominions, as if such provisions had been hereby so adopted and applied. See M. S. Act, 1854 (c. 104), s. 288.

467. Every act, ordinance, or other form of law to be passed by the governor-general of India in council, or other legislative authority, in pursuance of this act, shall require the same sanction or other formalities, and be subject to the same conditions as are required in order to the validity of any other act, ordinance, or other form of law passed by such legislative authorities. *Ibid.* s. 289.

468. See also tit. JURISDICTION, Pt. II. c. 13, p. 704; and as to Indian and Colonial legislation, *ibid.* pp. 691—775, and *ibid.* in Addenda.

4. Conflict of Laws.

469. If in any matter relating to any ship or to any person belonging to any ship there appears to be a conflict of laws, then, if there is in the third part of this act (as to masters and seamen) any provision on the subject which is hereby expressly made to extend to such ship, the case shall be governed by such provision, and if there is no such provision the case shall be governed by the law of the place in which such ship is registered. See M. S. Act, 1854 (c. 104), s. 290.

5. Acts of Master.†

470. The court will hold owners responsible for the acts of their masters within the scope of the authority com-

* (109) Various exemptions from local dues on ships and goods are abolished by the Shipping Dues Exemption Act, 1867 (c. 15).

(109a) If a receiver of dues proves to the satisfaction of the Board of Trade that it would be beneficial to the trade of the port that dues already exempted should be abolished, the Board may order accordingly, under certain limitations. *Ibid.* s. 10.

(109b) The Shipping Dues Exemption Act, 1867 (c. 15), is amended by 33 & 34 Vict. c. 50, as to the compensations to be paid under the former act.

† (110) As to the responsibility of the owners for the acts of the master, see Abb. Ship. 12th ed. p. 83 *et seq.*; Maclachlan on Merchant Shipping, 3rd ed. p. 130 *et seq.*;

2 Maude & Pollock on Merchant Shipping (4th ed. by Pollock & Bruce), p. 154 *et seq.*

(111) By the common law the owners are responsible for all the obligations of the master, whether arising *ex contractu* or *ex delicto*, within the scope of his authority as master. *Stinson v. Wyman, Davis*, 172. [AMERICAN.]

(112) The master of a vessel has no power to bind the owners beyond the authority given to him by them, and the extent of their authority must be limited to their express or implied instructions, or to the law of the country in which the ship belongs, and in which they reside. *Pope v. Nickerson*, 3 Story, 465. [AMERICAN.]

mitted to them, viz. for all errors of judgment, &c. *The Vibilia*, 1 W. Rob. 15.

471. The act of the master binds the owner with respect to the conduct of the ship as much as if it were committed by the owner himself. *The Vrouw Judith*, 1 C. Rob. 151; *The Columba*, *Ibid.* 156.

472. Owners are responsible for damage generally when occasioned by the negligence or unskillfulness of the master in performing a lawful service, but not when occasioned by an illegal act maliciously or wilfully done without the privity or approbation of the owners. In a suit preferred against the owners of a steam-tug in respect of damage occasioned by the wilful and illegal acts of the master thereof in their employ, *held*, that the owners were not responsible, those acts not being within the scope of the master's ordinary duties, nor directed or subsequently sanctioned by his owners. *The Druid*, 1 W. Rob. 391.

473. If before a suit is commenced a master, being cognizant of an injury done by his servant, negotiates for the compensation of that injury by the payment of a sum of money out of court, *quere*, would he be so far concluded by such negotiation that he could not avail himself of any legal defence to the action? *Ibid.*

474. The master of a Danish schooner, lying alongside the quay at the port of Ibrailla in the Danube, got on board an English barque lying outside him, and, in order to get the schooner out, wilfully cut the barque adrift, whereby she swung to the stream and capsized a barge, into which the barque had discharged some of her cargo. *Held, inter alia*, that the master was acting out of the scope of his duty, that the Danish schooner proceeded against had nothing to do with the damage, and that her owners were therefore not liable. *The Ida*, 1 Lushington, 6; 1 L. T. N.S. 417.

475. Civilly the owners are responsible for every deviation from that line of conduct which it becomes a master to perform not simply and alone in the navigation of the vessel, but in the care of his own seamen and of those who may be thrown overboard by accident, and for the performance of every other office of humanity. *The St. Lawrence*, 14 Jur. 534.

476. The master is the agent of the owner of the vessel, and can bind him by his contract or his misconduct; but he is not the agent of the owners of the cargo

unless expressly so constituted by them. *The Mercurius*, 1 C. Rob. 82.

477. The incidental powers of a master are restricted to those which belong to the usual employment of the ship; if its ordinary employment has been to carry cargo on the sole account of the owner, he has no authority to let the ship on freight; or if its ordinary employment has been to take goods on freight as a common carrier he will not be presumed to have authority to let the ship on a charter-party for a special agreement. *The Thomas Worthington*, 3 W. Rob. 135.

478. Whenever a master is on shore and a ship is left in charge of the mate, or anyone else, the latter stands in the same position with respect to the law, and in all other respects, as if he had been the master himself. *The Northampton*, 1 Spinks' Eccl. and Adm. Rep. 157.

479. A master in the royal navy placed, for the purpose of bringing it to England, in charge of a vessel retaken from pirates, is invested with all the authority of an ordinary master, but no more. *The Segredo*, otherwise *Eliza Cornish*, *Ibid.* 49.

480. If the master of a vessel exceeds his authority as agent for the owner by signing a charter-party to pay a commission to a ship broker, the owner is not liable to the ship broker, and a suit to recover the amount of commission claimed will be dismissed with costs. *The Phoenix*, 5 Jur. N.S. 77. [IRISH.]

481. In all cases in which the owners of a ship are sought to be made liable, either in contract for necessaries supplied on the order of the master, or in cases of collision for the negligence of the crew, or (as in the case before the court) in a case of injury to the person, from the negligence of the ship keeper, the question of liability does not depend on the title to the ship. The real question is, whether the owners who are sought to be charged were the employers of the master who made the contract, or the masters of the persons who were guilty of the negligence. Per the majority of the court in *Hibbs v. Ross*, L. R. 1 Q. B. 534; 35 L. J. Q. B. 193; 2 Asp. 397; 7 B. & S. 655.

482. In cases of contract, a further question sometimes arises, as to whether the owner may not have clothed the master with apparent authority, so as to be precluded from disputing his authority, but in cases of tort the question can only be, whether he in fact employed those actually guilty of negligence. *Ibid.*

483. The owner of a vessel agreed with

the master that he should take the vessel wherever he chose, on condition that he (the owner) should have a third of the net profits. The owner registered himself as managing owner. *Held*, that the owner was liable to third parties for the negligent management of the vessel by the master. *Steel v. Lester*, 3 C. P. D. 121; 47 L. J. C. L. 43; 3 Asp. N.S. 537.

484. The master's contracts cannot bind the owner, unless authority to bind the owner has been actually given to him or unless the owner has, by word or deed, held out the master as his master. *The Great Eastern*, L. R. 2 A. & E. 88.

485. The liability of the owner of a vessel to pay for repairs and equipments ordered by the master depends, not upon the ground of ownership of the vessel, but upon the ground of a contract made with the vendor by a person who was the owner's agent for the purpose of ordering such necessaries. *Ibid*. See also tit. NECESSARIES, REPAIRS AND SUPPLIES, p. 1148.

486. The steamer T., while on a voyage from M. to L. fell in with the S. disabled. The master of the T. agreed to tow the S. to port for an agreed sum. In endeavouring to do so, the T. negligently came into collision with the S. and sunk her. The policy of insurance upon the T. and her bills of lading provided that she might assist and tow vessels in all situations; but the master of the T. had never received any instructions from the owners as to performing salvage services. *Held*, that the master of the T. was acting within the scope of his authority in endeavouring to tow the S. to port, and that the owners of the T. were liable for the damage caused by his negligence while so doing. *Semble*, even if there had been no such clause in the policy of insurance or bills of lading, the master would nevertheless have been acting within his authority in rendering salvage services to the S. *The Thetis*, L. R. 2 A. & E. 365.

487. The master of a ship whose anchor had got foul of a submarine cable, caused the cable to be cut, although by the exercise of ordinary nautical skill the anchor might have been freed from the cable. *Held*, that the owners of the cable were entitled to recover from the ship-owners for the damage. *The Clara Kilham*, L. R. 3 A. & E. 161.

488. Owners are not liable for an abuse by the master of the powers conferred on him by the M. S. Act, 1854 (c. 104), s. 246, of apprehending deserters without a warrant. *O'Neil v. Rankin*, Cases in the Court of Session, 3rd Series, vol. 11, p. 538. [SCOTCH.]

489. As to the general responsibility of the owners for the acts of the master, see tit. MASTERS, pp. 1120 and 1122.

490. As to their responsibility for the performance of his duties to the cargo, see tit. GOODS, CARRIAGE OF—, p. 465.

490a. As to collision, see tit. COLLISION, p. 188.

6. Acts of Harbour and Dock Masters.*

491. If any harbour master or any of his assistants without reasonable cause or in an unreasonable or unfair manner exercises any of the powers or authorities vested in the harbour master by this or the special act, the person so offending shall for every such offence be liable to a penalty not exceeding £5. See the Harbours, Docks and Piers Clauses Act 1847 (c. 27), s. 54.

492. The harbour master may give directions for all or any of the following purposes, that is to say: For regulating the time at which, and the manner in which, any vessel shall enter into, go out of, or lie in or at the harbour, dock or pier, and within the prescribed limits, if any, and its position mooring or unmooring, placing and removing whilst therein. For regulating the position in which any vessel shall take in or discharge its cargo, or any part thereof, or shall take in or land its passengers, or shall take in or deliver ballast within, or on the harbour, dock or pier. For regulating the manner in which any vessel entering the harbour or dock shall be dismantled as well for the safety of such vessel as for preventing injury to other vessels, and to the harbour, dock, or pier, and the moorings thereof. For removing unserviceable vessels and other obstructions from the harbour, dock or pier, and keeping the same clear. For regulating the quantity of ballast or dead weight in the hold which each vessel in or at the harbour, dock or pier shall have during the delivery of her cargo, or after having discharged

* (113) The principal General Pier and Harbour Acts are—10 & 11 Vict. c. 27; 24 & 25 Vict. cc. 45, 47, 80; 25 & 26 Vict.

cc. 19, 69, 81; 29 & 30 Vict. c. 30; 38 & 39 Vict. c. 89, and 45 & 46 Vict. c. 62.

the same. See the Harbours, Docks and Piers Clauses Act, 1847 (c. 27), s. 52.

493. The harbour master may remove any wreck or other obstruction to the harbour, dock or pier or their approaches, and the expenses of removal shall be paid by the owner of the wreck or obstruction, and the harbour master may detain and, on non-payment on demand of such expense, sell such wreck or obstruction. *Ibid.* s. 56.

494. A vessel, without any negligence on the part of the owner, N., became a wreck and obstructed a harbour. The harbour master removed it pursuant to the 56th section of the Harbours Act, 1847, and brought an action to recover the costs of such removal against N. N. joined E. as a defendant, with whom the vessel had been insured, and who had paid as on a total loss. No notice of abandonment was given to E. *Held*, by the Court of Appeal, affirming the decision of the Queen's Bench Division, that N. was liable under the statute, and that he was not entitled to recover over against E. *Eglinton v. Norman*, 46 L. J. (C. A.) 557; 3 Asp. N.S. 471. See also tit. WRECK.

494a. *Quære*, are the powers conferred by section 4 of the Removal of Wrecks Act, 1877, on conservancy authorities for the removal of vessels sunk, &c., permissive or obligatory? *The Douglas*, 7 P. D. (C. A.) 151; 51 L. J. (P. D.) 89; 5 Asp. 15.

494b. *Semble*, per Kay, J., such powers are permissive, and not obligatory. *Dormont v. The Furness Railway Company*, 11 Q. B. D. 496; 52 L. J. Q. B. D. 331; 5 Asp. 127.

494c. A local act vested B. harbour in the defendants, and gave them jurisdiction over P. harbour and P. channel (which also led to B. harbour), for the purpose of maintaining, improving, regulating and buoying the said harbour and channel, and a subsequent local act gave the defendants one half of certain light duties leviable upon ships entering or leaving P. harbour and channel to be applied by the defendants in maintaining, buoying, lighting, regulating and improving P. harbour and channel. A vessel was sunk in P. channel, and the defendants partially removed the wreck, but left the part unremoved insufficiently buoyed. The plaintiff's vessel having struck on the wreck, *held*, that the defendants were liable for the damage occasioned. *Ibid.*

494d. Vessels were required by act of

parliament to be berthed in a harbour under the directions and control of the harbour master, who had authority to regulate their position, mooring, and placing whilst therein, and damage was occasioned to a vessel by the alleged negligence of the harbour master, who, having fixed the place where the vessel was to be beached, gave an order, on the vessel nearing the spot selected, to let go the anchor, on which the vessel immediately settled and was damaged. In an action by the owners of the vessel against the harbour commissioners (whose servant the harbour master was), *held* (affirming the decision of the President of the P. D. & A. Division), that the order was, under the circumstances, a negligent order; that the harbour master in so ordering was acting in the capacity of and within the scope of his authority as harbour master, and that therefore the Harbour Commissioners were liable, and this, although the ship was at the time, in order to reach the place of beaching so selected, passing through waters outside the limits of the authority of the Harbour Commissioners, and the damage occurred outside such limits. *Edwards v. The Falmouth Harbour Commissioners*, 79 L. T. (C. A.) 135.

494e. In a proceeding under the Crown Suits Act, 1861, it appeared that a harbour was under the management of the Executive Government of the Colony, which appointed the harbour officials and received rates for the use of staiths and wharves, but no harbour dues. *Held*, that such executive government was liable for negligence in permitting an obstruction to remain in the harbour by which the plaintiffs' ship was injured. *The Queen v. Williams*, 53 L. J. P. C. 64.

494f. The owners of a vessel damaging the New Brighton Pier are not precluded by the terms of the New Brighton Pier Act, 1864, from setting up the defence of compulsory pilotage. *The Clan Gordon*, 7 P. D. 190; 4 Asp. 513.

495. The harbour master has power to enter any vessel in harbour burning lights or fires contrary to the provisions of the act or any special act, or any bye-law under such act, and to extinguish them. See the Harbours, Docks and Piers Clauses Acts, 1847 (c. 27), s. 72.

496. The owner of any vessel or float of timber doing damage to the harbour, dock or pier, or the quays or works connected therewith, and the master of any such vessel, shall be responsible for such

damage, whether caused by such vessel itself or by any person on board. *Ibid.* s. 74.

496*a.* As to the manner in which such damages are to be recovered, *Ibid.* s. 75.

497. If the owner is compelled to pay for damage wilfully done under s. 74, by his servants, he may recover it from them. *Ibid.* s. 76.

498. The principal powers and duties of the Lords Commissioners of the Admiralty over harbours and navigation are transferred to the Board of Trade, by the Harbours Transfer Act, 1862 (c. 69). See also tit. TRADE, BOARD OF—.

499. Provisional orders may be made by the Board of Trade, empowering the undertakers (among other things) to make and alter bye-laws for the management of their works, subject to approval as therein mentioned. See the General Pier and Harbour Act, 1861 (c. 45), s. 15.

500. The undertaking authorized by any provisional order is subject to the provisions of the M. S. Act, 1854, and of every general act relating to harbours or dues on shipping, or on goods carried in ships, now or hereafter in force. See the General Pier and Harbour Act, 1861, Amendment Act (c. 19), s. 21.

501. By 10 & 11 Vict. c. 27, s. 83, the undertakers authorized by any special act to construct a dock may from time to time make such bye-laws as they shall think fit for (amongst other purposes), regulating the shipping, unshipping, and removing of all goods within the limits of the dock, and for regulating the duties and conduct of all persons, as well the servants of the undertakers as others, employed in the dock. A dock company, who were the undertakers under a special act, made bye-laws that no lumpers should be allowed to work on board any vessel in the dock but such as were authorized by the company, unless permission in writing had been previously obtained from the superintendent of the dock, and that servants of the company only should be allowed to work within the dock premises, whether on ship, lighter or shore. *Held*, that the bye-laws were in excess of the power conferred upon the dock company by sect. 83, and were therefore invalid. *Dick v. Badart*, 10 Q. B. D. 387; 5 Asp. 49.

502. For powers and regulations of harbour trustees, and harbour and dock masters, and Queen's harbour masters, see tit. COLLISION, Pt. VIII. cc. 2, 3, pp. 277, 281—286.

502*a.* As to their powers in particular localities, *Ibid.*

502*b.* As to their powers in reference to dangerous goods, see Pt. V.

502*c.* As to their powers in reference to removal of wreck, see tit. WRECK, Pt. IX. pp.293—313.

See also ADDENDA.

7. Acts of Pilots.

See Pt. VII. c. 36, and tit. COLLISION, Pt. I. c. 6, p. 189.

8. Crown Ships.

See tit. JURISDICTION, Pt. I. c. 13, pp. 668—671.

9. Chartered Ships.

See tit. COLLISION, Pt. I. c. 3, p. 186.

10. Steam Tugs.

503. As to the responsibilities of steam tugs in reference to damage by collision, see No. 455, p. 1228; and when a pilot is in charge, Pt. VII. c. 36, ss. 9, 10, and tit. COLLISION, Pt. IV. c. 8, p. 231.

11. Sea-going Fishing Ships.

1. Generally.

504. Registered sea-going ships exclusively employed in fishing on the coasts of the United Kingdom are exempt from the following clauses of the M. S. Act, 1854, viz. :—

Sect. 136. As to being required to have certificated masters and mates.

Sect. 145. As to the production of the apprentices before the Superintendents of Mercantile Marine Offices before each voyage, with the indentures, and the entering of the apprentices' names on the agreement with the crew.

Sect. 147. As to the penalties for supplying seamen without a licence, for employing unlicensed persons to engage seamen, and for receiving seamen illegally supplied.

Sect. 157. As to the penalty for shipping seamen without such an agreement.

Sect. 158. As to the reporting of changes in the crew.

Sects. 161, 162. As to the production of agreements with the men, and of the certificates of the master and mates.

Sect. 170. As to the discharge and payment of wages before a superintendent of a mercantile marine office in the United Kingdom.

Sect. 256. As to the entry of fines in

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the official log book, and the deduction and payment thereof.

Sect. 279. As to the deposit of agreements, indentures and assignments on arrival at a foreign port with the consul or officer of customs there.

Sects. 280—287. As to the keeping of official log books, the entries to be made therein, the signatures thereto, the penalties for irregular keeping thereof, the reception thereof in evidence, and the delivery up or transmission of such logs, see M. S. Act Amendment Act, 1862 (c. 63), s. 13.

505. In all other respects the third part of the M. S. Act, 1854, applies to such vessels. *Ibid.*

506. Sects. 141, 142—144, 149, 163, 164, 166, 167, 171—174, 243 and 269 of the M. S. Act, 1854 (c. 104); part of sect. 13 of the M. S. Act Amendment Act, 1862 (c. 63); sect. 8 of the M. S. Act, 1873 (c. 85); and sect. 9 and part of sect. 10 of the M. S. (Payment of Wages and Rating) Act, 1880 (c. 16), are repealed by the M. S. (Fishing Boats) Act, 1883 (c. 41).

506a. For provisions as to fishing boats and the sea-fishing service, including indentures of apprenticeship, agreements with seamen, their wages and discharge, discipline, certificates to skippers and second hands, and for the protection and punishment of seamen engaged in fishing, see the M. S. (Fishing Boats) Act, 1883 (c. 41).

507. For the convention made between Great Britain, Germany, Belgium, Denmark, France and the Netherlands relating to fisheries in the North Sea, see the Sea Fisheries Act, 1883 (c. 22).

507a. For provisions confirming that convention making fishery regulations, defining fishery limits, giving powers to British and foreign sea-fishery officers, and imposing compensations for damage by offences, *Ibid.*

508. See, for decree of the Emperor of the French, relative to herring and mackerel fishery, of September 24, 1884, 14 Hertslet's Treaties, p. 330.

508a. See, for ordinance of the King of Denmark relative to foreigners fishing near Iceland, of February 12, 1872, *Ibid.* p. 257.

509. See, for Danish law, notifying the Icelandic Ordinance of the 12th of February, 1872, relative to fishing boats, of December 17, 1875, *Ibid.* p. 268.

510. See, for notice to British fishermen fishing off the coast of Jutland or other possessions of the Danish Crown, of April, 1874, *Ibid.* p. 267.

511. See, for act of the legislature of Newfoundland to carry into effect the provisions of the Treaty of Washington as far as they relate to that colony, *Ibid.* p. 1232.

512. And for act of the legislature of Newfoundland to amend the law relating to the coast fisheries, *Ibid.* p. 1233.*

* (114) The following is a list of the treaties, conventions, or regulations with reference to fishing vessels, concluded or agreed to by Great Britain with foreign States, up to April, 1879:—

Country.	Treaty.	Date.	Hertslet's Treaties.
Austria	Treaty—Navigation	30 April, 1868 .	Vol. XII. p. 1109
Belgium	Convention—Coast Fishery	22 March, 1852 .	IX. " 156
	Protocol—Fishery Limits	23 July, 1862 .	XI. " 73
France	Treaty—Newfoundland Fishery	11 April 1713 .	I. " 237
	" " "	10 Feb. 1763 .	I. " 239
	" " "	3 Sept. 1783 .	I. " 241
	Treaty—Fishery, &c.	23 April, 1814 .	I. " 247
	Treaty—Newfoundland Fishery	30 May, 1814 .	I. " 249
	Convention—Coast Fisheries	2 Aug. 1839 .	V. " 86
	Regulations—Channel Fishery	24 May, 1843 .	VI. " 415
	Declaration— " Fishermen	23 June, 1843 .	VI. " 447
	Convention—Newfoundland Fishery	14 Jan. 1847 .	X. " 749
	Convention—Coast Fisheries	11 Nov. 1867 .	XII. " 1125
Sandwich Islands	Treaty—Whalers	10 July, 1851 .	IX. " 687
Spain	Treaty—Newfoundland Fishery	2-13 July, 1713 .	II. " 203
	" " "	10 Feb. 1763 .	II. " 235
Sweden	Treaty—Herrings	{ 11 April, } 1654	II. " 316
	" " "	{ 9 May, }	
	" " "	17 July, 1656 .	II. " 323
United States	Treaty—Newfoundland Fishery	20 Oct. 1818 .	II. " 392
	Treaty—Fisheries, &c.	8 May, 1871 .	XIII. " 970

2. Lights.

513. Open boats and fishing vessels of less than twenty tons registered tonnage, when under way, and when not having their nets, trawls, dredges or lines in the water, shall not be obliged to carry the coloured side lights, but every such boat or vessel shall in lieu thereof have ready at hand a lantern with a green glass on one side and a red glass on the other side, and on approaching to, or being approached by, another vessel such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side. International Steering and Sailing Rules, Art. 10, under Order in Council of 10th Aug. 1884.

514. The following portion of this article applies only to fishing vessels and boats when in the sea off the coast of Europe, lying N. of Cape Finisterre:—

- (a) All fishing vessels and fishing boats of twenty tons registered tonnage or upwards, when under way, and when not required by the following regulations in this article to carry and show the lights therein named, shall carry and show the same lights as other vessels under way.
- (b) All vessels when engaged in fishing with drift nets shall exhibit two white lights from any part of the vessel where they can best be seen. Such lights shall be placed so that the vertical distance between them shall not be less than six feet and not more than ten feet, and so that the horizontal distance between them, measured in a straight line with the keel of the vessel, shall not be less than five feet and not more than ten feet. The lower of these two lights shall be the more forward, and both of them shall be of such a character, and contained in lanterns of such construction, as to show all round the horizon on a dark night with a clear atmosphere for a distance of not less than three miles.
- (c) A vessel employed in line fishing

with her lines out shall carry the same lights as a vessel when engaged in fishing with drift nets.

- (d) If a vessel when fishing becomes stationary in consequence of her gear getting fast to a rock or other obstruction, she shall show the light and make the fog signal for a vessel at anchor.
- (e) Fishing boats and open boats may at any time use a flare-up in addition to the lights which they are by this article required to carry and show. All flare-up lights, when exhibited by a vessel trawling, dredging or fishing with any kind of drag net, shall be shown at the after part of the vessel, excepting that if the vessel is hanging by her stern to her trawl, dredge or drag net they shall be exhibited from her bow.
- (f) Every fishing vessel and every open boat, when at anchor between sunset and sunrise, shall exhibit a white light visible all round the horizon at a distance of at least one mile.
- (g) In fog, mist or falling snow, a drift net vessel attached to her nets, and a vessel when trawling, dredging or fishing with any kind of drag net, and a vessel employed in line fishing with her lines out, shall at intervals of not more than two minutes make a blast with her fog-horn and ring her bell alternately.
- (h) A ship which is being overtaken by another shall show from her stern to such last-mentioned ship a white light or a flare-up light. International Steering and Sailing Rules, under Order in Council of 11th August, 1884, Art. 11.*

515. A smack with her trawl down had a globular white light exhibited from her weather cross-tree partially hidden from overtaking vessels by her sails, and did not exhibit any other white light or flare-up to an overtaking steamer. *Held*, that this was an infringement of Art. 11 of Rules of 1879. *The Pacific*, 9 P. D. 124. For the rules, see 4 P. D. 244.†

* (114a) These rules came into force 1st September, 1884.

† (114b) Where trawlers and other sailing vessels whose gross registered tonnage does not exceed eighty tons cannot with safety and convenience of working carry their side

lights on stanchions they may be carried in the rigging, provided the surveyors are satisfied that they are so fitted as to show the lights for the distance and in the direction required by the regulations. This is not to be allowed in the case of steamers. Board

516. For the international regulations in regard to lights and fog signals generally, see tit. COLLISION, Pt. V. pp. 240—251, and *Ibid.* in Addenda.

12. Sea-going Ships of General Lighthouse Boards.

517. Sea-going ships belonging to any of the three Lighthouse Boards are like registered sea-going fishing ships exempted from the operation of certain sections of the Merchant Shipping Act, 1854, though otherwise subject to that act. See M. S. Act Amendment Act, 1862, s. 13.

13. Sea-going Pleasure Yachts.

518. Sea-going ships, being pleasure yachts, are similarly exempted. *Ibid.*

14. British and French Fishing Vessels under the Sea Fisheries Acts.

1. Generally.*

519. For the provisions of the Convention of 2nd August, 1839, between Great Britain and France, concerning the sea fisheries between the British Islands and France, and the act of parliament confirming the same, see 6 & 7 Vict. c. 79, and the Convention thereto annexed.

520. As to the confirmation of the rules of 23rd June, 1843, made in pursuance of that Convention, see the Schedule to the Sea Fisheries Act, 1868 (c. 45), Art. 41.

521. For the provisions of the Convention of 11th November, 1867, between England and France, concerning the same sea fisheries, and the act of parliament confirming the same, and amending the laws relating to British sea fisheries generally, see the Sea Fisheries Act, 1868 (c. 45), s. 6, and the Convention thereto

annexed; and 2 Maude & Pollock on Merc. Ship. 4th ed. by Pollock & Bruce, p. cclxxix. and notes thereto.

522. The Convention of the 2nd August, 1839, and rules of 23rd June, 1843, are to continue in force until the Convention of 11th November, 1867, comes into operation. See Art. 41 of that Convention annexed to the Sea Fisheries Act, 1868, c. 45. The Convention of 11th November, 1867, has not yet come into operation, and no act of parliament has been passed in pursuance of Art. 39 thereof.

523. Although the act of 6 & 7 Vict. c. 79, is repealed, by the Sea Fisheries Act, 1868, c. 45, sched. 2, it has been temporarily revived, see the Fisheries (Oyster, Crab and Lobster) Act, 1877 (c. 42), s. 15, which enacts that notwithstanding anything in the Sea Fisheries Act, 1868, the 6 & 7 Vict. c. 79, so far as regards French fishermen and French sea-fishing boats, shall be in force as if it had not been repealed, and shall continue in force until the day when the Convention of 11th November, 1867, shall come into operation.

524. See for various other acts relating to British sea fisheries generally, repealed by the Sea Fisheries Act, 1868, *Ibid.* Sched. 2.

525. The term "sea-fishing boat" includes every vessel of whatever size, and in whatever way propelled, which is used by any person in sea-fishing, or in carrying on the business of a sea-fisherman. *Ibid.* s. 5.

526. See as to the interpretation of terms in this act, *Ibid.*

527. Her Majesty may from time to time make and alter regulations for carrying this act into effect, and impose penalties for breach not exceeding £10. *Ibid.* s. 7.

528. As to British officers of the navy and coast guard, consular officers, and officers of customs, and French officers of the navy, and other French officers duly

of Trade Instructions as to the Survey of Passenger Accommodation, Crew, Spaces, Lights and Fog Signals, 1884, § 82 a, p. 51.

* (115) The Sea Fisheries Act, 1868 (c. 45), came into operation on 1st February, 1869, but the convention referred to therein has not yet come into operation; and the Convention of 2nd Aug. 1839, the Rules of 23rd June, 1843, made under it, and the act of 6 & 7 Vict. c. 79, confirming them, are temporarily revived (see No. 523 in the text), but *semble* only as far as regards French

fishermen and French sea-fishing boats. In other respects that act stands repealed, and the Sea Fisheries Act, 1868 (c. 45), is in force.

(115a) But *quære*, are not the provisions of the Act of 1868 binding on British subjects? See sect. 5 of that act, and note to 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. cclxxix.

(116) For the French notification of 26th January, 1869, respecting the delay in carrying into effect the Fishery Convention of November 11, 1867, see 14 Hertslet, p. 1200.

appointed, authorized to enforce the provisions of this act, the powers of such officers, the enactments for their protection, and the penalties for disobeying or obstructing them, *Ibid.* ss. 8, 9, 10 and 11.

529. For the Convention with France and other powers relating to the fisheries in the North Sea, see the Sea Fisheries Act, 1883 (c. 22).

530. All fishing boats, all rigging gear or other appurtenances of fishing boats, all nets, buoys, floats, or other fishing implements whatsoever, found or picked up at sea, shall, as soon as possible, be delivered to the receiver of wreck if the article saved be taken into the United Kingdom, and to the commissary of marine if the article saved be taken into France. The receiver of wreck or the commissary of marine, as the case may be, shall restore the articles saved to the owners thereof, or to their representatives. These functionaries shall fix the amount which the owners shall pay to the salvors. See the Convention in the 1st Sched. to the act, Art. 22.

531. No boat shall anchor between sunset and sunrise on grounds where drift-net fishing is actually going on. This prohibition shall not apply to anchorings which may take place in consequence of accidents, or any other compulsory circumstances. The Sea Fisheries Act, 1868 (c. 45), s. 13, and 1st Sched. Art. 12. See also pp. 1205, 1206.

2. Lights.

532. Vessels fishing with drift nets shall carry on one of their masts two lights, one over the other, 3 feet (1 metre, French) apart. These lights shall be kept up during all the time their nets shall be in the sea between sunset and sunrise. See the Convention in 1st Sched. Art. 13.

533. The act of 6 & 7 Vict. c. 79, contains similar provisions. See same, reciting Art. 53 of the Convention of 2nd August, 1839. Penalty for breach, see Art. 73.

534. Subject to the exceptions or additions mentioned in the two preceding articles, the fishing boats of the two countries shall conform to the general rules respecting lights which have been adopted by the two countries. See the Sea Fisheries Act, 1868 (c. 45), 1st Sched. Art. 14.

535. Arts. 13 and 14 of the first schedule to this act shall, as to all sea-fishing boats within the exclusive fishery limits of the British Islands, and as to British sea-fishing boats outside of these limits, have the same force as if they were regulations respecting lights within the meaning of the acts relating to merchant shipping, with this addition, that any sea-fishery officer shall have the same powers of enforcing such regulations as are given to any officer by such acts, and any infringement of the regulations contained in Arts. 13 and 14 shall be deemed an offence within the meaning of the portion of this act which gives power to sea-fishery officers. *Ibid.* s. 20.

536. It is forbidden to all boats to anchor between sunset and sunrise on grounds where herring or mackerel drift net fishing is going on. This prohibition does not apply to anchorages which may take place in consequence of accidents, or any other compulsory circumstances, but in such case the master of the boat thus obliged to anchor shall hoist, so that they shall be seen from a distance, two lights placed horizontally, about three feet (one metre, French) apart, and shall keep these lights up all the time the boat shall remain at anchor. See 6 & 7 Vict. c. 79, reciting Art. 52 of Convention of 2nd August, 1839. Penalty for breach, see Art. 73.

537. As to the lights to be carried by fishing vessels generally when at anchor, see c. 11, s. 2.

538. As to lights mentioned in Art. 10 of the Rules of 1879, see 4 P. D. 246.

539. All fishermen are forbidden, except in cases of absolute necessity, to show lights under any other circumstances than those mentioned in the present regulations. See 6 & 7 Vict. c. 79, reciting Art. 54 of Convention of 2nd August, 1839. Penalty for breach, see Art. 73.

3. Trawling.

540. Trawl boats shall not commence fishing at a less distance than three miles from any boat fishing with drift nets. If trawl boats have already shot their nets, they must not come nearer to boats fishing with drift nets than the distance above mentioned. The Sea Fisheries Act, 1868 (c. 45), s. 13, and 1st Sched. Art. 15.

541. As to the lights to be carried by vessels trawling, see c. 11, s. 2.

4. *Drift-net Fishing.**

542. No boat fishing with drift nets shall shoot its nets so near to any other boat which has already shot its nets on the fishing ground as to interfere with its operations. The Sea Fisheries Act, 1868 (c. 45), s. 13, and 1st Sched. Art. 16.

543. No decked boat fishing with drift nets shall shoot its nets at a less distance than a quarter of a mile from any undecked boat which is already engaged in fishing. *Ibid.* Art. 17.

544. Nets shall not be set or anchored in any place where drift-net fishing is actually going on. *Ibid.* Art. 19.

545. If the spot where fishing is going on should be so near to the fishery limits of one of the two countries that the boats of the other country would, by observing the regulations prescribed by Arts. 15, 16 and 17 preceding, be prevented from taking part in the fishery, such boats shall be at liberty to shoot their nets at a less distance than that so prescribed; but in such case the fishermen shall be responsible for any damage or losses

which may be caused by the drifting of their boats. *Ibid.* Art. 18.

546. No one shall make fast or hold on his boat to the nets, buoys, floats, or any part of the fishing tackle belonging to another boat. *Ibid.* Art. 20.

546a. No person shall hook or lift up the nets, lines, or other fishing implements belonging to another person. *Ibid.*

547. When nets of different boats get foul of each other, the master of one boat shall not cut the nets of another boat except by mutual consent, and unless it be found impossible to clear them by other means. *Ibid.* Art. 21.

548. As to the lights to be carried by vessels drift-net fishing, see cap. 11, s. 2, p. 1237.

549. As to the distance from each other at which decked and undecked herring boats shall shoot their nets, see 6 & 7 Vict. c. 79, Arts. 29 to 33. Penalty for breach, see Art. 73.

550. Boats going to fish for mackerel with drift nets are required, when they shall arrive on the fishing ground, to lower

* (117) The Act of 6 & 7 Vict., though repealed, being temporarily revived, as explained *supra*, No. 523, it is expedient to refer to some of its leading provisions, which are as follows:—

(118) In all cases where the breach of any of the articles, rules or bye-laws, by any French subject within the limits of fishery exclusively reserved to British subjects, or by British subjects whether or not within those limits, shall have caused any loss or damage, any magistrate or justice of the peace may take evidence, award compensation to the injured party, and enforce payment thereof, like a penalty for any offence against the articles may be enforced. See 6 & 7 Vict. c. 79, s. 14.

(119) The words "British vessel" mean every fishing vessel or fishing boat, being Irish or British, or belonging to Guernsey, Jersey, Sark, Alderney, or Man, or island thereunto belonging; and the words "British port" mean any port of Great Britain or Ireland, or of any of the said islands. *Ibid.* s. 18.

(120) For provisions as to the trial and judgment in a summary manner, and at as little expense as possible, of all differences between fishing vessels, before a British magistrate or French tribunal, as directed by the act, and the fines which may be imposed, see *Ibid.* ss. 11, 12, and Arts. 69 to 73.

(121) For provisions as to arbitration between fishing vessels on complaint of breaches of the regulations, and as to circumstances

likely to cause damage, by the commanders of cruisers, consular agents, collectors of customs, or commissaries of marine of both countries, see *Ibid.* Arts. 63 to 69, and 98.

(122) For provisions for taking the offending fishing boat into the nearest port, for detaining her there for a period not exceeding four days, for obtaining there evidence on both sides as to the alleged breach, for transmitting the depositions, minutes of proceedings, and other documents relating thereto, duly authenticated, to the consular agent in the port where the trial is to take place, for the communication thereof to the collector of customs, or minister of marine, and for his proceeding, if necessary, with the trial, see *Ibid.* Arts. 65 to 69.

(123) For provisions empowering any British consul in France to take any statement on oath from any British subject charged with any offence against the Articles of the Convention of the 2nd August, 1839, between this country and France, as to the fisheries between the two countries, and rendering the same admissible in evidence, see 18 & 19 Vict. c. 101, s. 5.

(124) As to the limits of the fishery districts to be observed by the subjects of either nation, see 6 & 7 Vict. c. 79, reciting the Convention, Arts. 1 to 5, 34, and 76 to 88.

(125) As to the distance trawl boats shall keep from boats fishing with drift nets, see *Ibid.* Arts. 24, 25, 26; and drift-net boats from each other, see *Ibid.* Art. 40. Penalty for breach, see Art. 73.

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all sails, to show that they have taken their berths. *Ibid.* Art. 39. Penalty for breach, *ibid.*

551. Fishermen using bratt nets, trammels, and other set or anchored nets, shall place buoys on such nets, in order that vessels sailing in those places may avoid them. *Ibid.* Art. 43. Penalty for breach, *ibid.*

552. Such bratt nets, trammels, or other set or anchored nets, shall not, except in unavoidable cases, remain more than twenty-four hours in the sea without being taken up. *Ibid.* Art. 44. Penalty for breach, *ibid.*

553. It is forbidden to set or anchor nets or any other fishing implement, in any place where herring or mackerel drift net fishing is going on. *Ibid.* Art. 57, and see Art. 35. Penalty for breach, *ibid.*

554. For the purpose of distinguishing by day drift net fishing boats from trawl boats, both shall carry at the masthead vanes, which shall be at least eight inches (twenty centimetres, French) in height, and two feet (sixty-one centimetres) in length. See 6 & 7 Vict. c. 79 (reciting the convention concerning the fisheries between this country and France), Art. 50.

554a. The colours of these vanes shall be, for—

British trawl boats, red.

French trawl boats, blue.

British drift boats, white and red.

French drift boats, white and blue.

Ibid.

554b. The vanes of drift boats are to be divided vertically into two equal parts, of which the white is to be nearest to the mast. Penalty for breach, *ibid.*

555. No other fishing boats are to carry vanes similar to those mentioned in the

preceding article. *Ibid.* Art. 51. Penalty for breach, *ibid.*

556. See for other portions of the 6 & 7 Vict. c. 79, revived by the Fisheries (Oyster, Crab and Lobster) Act, 1877 (c. 42), s. 15, 2 Maude & Poll. (4th ed. by Pollock & Bruce), pp. 354—366, where they are set out.*

15. For Cargo.

557. As to the shipowners' responsibilities in reference to damage to cargo, see tit. GOODS, CARRIAGE OF—, Pt. VI. p. 588 *et seq.*

16. Of Cargo.

558. A cargo of blubber became affected by decomposition owing to the unusual duration of the voyage through stress of weather. The master then put into an intermediate port, where the owner of the cargo resided, who however refused to give any directions as to its treatment or otherwise. The master then, acting under advice, treated the cargo and carried it to its destination. The treatment to which the cargo was subjected was necessary to its transport, and it benefited by it. *Held*, that the owner of the cargo was liable for the expenses incurred by the master in treating the cargo, and for demurrage while the cargo was being so treated. *Garriock v. Walker*, Cases in the Court of Session, 4th series, vol. 1, p. 100. [SCOTCH.]

559. Per Lord Benholme. It was only the necessity of operating on the cargo to render it capable of transport, and not the fact that it had been increased in value that made its owner liable. *Ibid.*

* (126) For provisions empowering the Board of Trade to make bye-laws for the more effectual performance of the convention between this country and France, concerning the fisheries between those countries, and the publication and proof of such bye-laws, see 6 & 7 Vict. c. 79, ss. 4, 5, 7.

(127) No such bye-laws have been made, but only certain directions issued by H. M. Commissioners of Customs as to the marking and numbering of fishing vessels, as to which, see Order of Feb. 17, 1844, of H. M. Commissioners of Customs, London, No. 14, 1844.

(128) The terms "boats" and "vessels" in the convention are to be considered as synonymous. *Ibid.*

(129) British and French fishermen fishing in any portion of the seas lying between the coasts of Great Britain and France are subject to the provisions in the act and regulations. See Letter of Board of Trade of April 29, 1846, No. 59, 1846.

(130) See for an act of the Government of Canada to amend the act respecting fishing by foreign vessels (May 12, 1870), 13 Hertslet, p. 1165.

(131) And for an act of the Government of Canada further to amend the act respecting fishing by foreign vessels. *Ibid.* p. 1220.

(131a) See for Consolidated Statutes of Newfoundland, so far as they relate to coast fisheries (1872), *ibid.* p. 1229.

560. As to bottomry of cargo, see tit. *BOTTOMRY*, p. 136.

561. As to average, in reference to cargo, see tit. *AVERAGE*, p. 60.

562. As to the rights and responsibilities of owners of ship and owners of cargo, in reference to damage to cargo, see tit. *GOODS, CARRIAGE OF—*, pp. 558 *et seq.*

563. As to carriage of deck cargo, see this tit. Pt. V. c. 1.

564. As to the addition of the space occupied by deck cargo to the registered tonnage for the calculation of tonnage dues, see Pt. I. c. 3, s. 6, sub-div. (e), p. 1194.

17. British Coasting Trade.

1. *Of the United Kingdom.*

565. The coasting trade of the United Kingdom opened to foreign ships. See 17 & 18 Vict. c. 5, the Harbours and Passing Tolls Act, 1861 (c. 47), s. 10, and the Customs Laws Consolidation Act, 1876 (c. 36), s. 141.

566. For the regulations for the engagement and discharge of seamen in home-trade ships; and as to the employment of certificated masters and mates, see tit. *SEAMEN*.

567. "Home-trade ship" includes every ship employed in trading within the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe between the river Elbe and Brest inclusive. See M. S. Act, 1854 (c. 104), s. 2.

568. "Home-trade passenger ship" means every home-trade ship employed in carrying passengers. *Ibid.*

2. *Of British Possessions.**

569. As to the regulation of the coast-

ing trade of British possessions by the legislatures thereof, subject to certain conditions, see the M. S. (Colonial) Act, 1869 (c. 11), ss. 4, 5.

570. "British possession" means any colony, plantation, island, territory or settlement within her Majesty's dominions, and not within the "United Kingdom." See M. S. Act, 1854 (c. 104), s. 2.

571. Canada is a British possession within the meaning of the M. S. Act, 1854; and the acts amending the same. See the M. S. (Colonial) Act, 1869 (c. 11), s. 7.

18. Forfeitures.

1. *Generally.*

572. Offences under s. 103 of the M. S. Act, 1854, punishable with forfeiture, vest the property in the vessel in the Crown immediately upon the commission of any of such offences; and a *bond fide* purchaser for value, without notice, who becomes such after the commission of the offence, but before seizure, is not protected. *The Annandale*, 2 P. D. 179, 218; 46 L. J. P. D. & A. 68; 47 *ibid.* (C. A.) 3; 3 Asp. N.S. 383, 489.

573. As to the forfeiture of steamers under the Passenger Acts and under the Chinese Passenger Act, see this tit. Pt. IV. cc. 5 and 51.

2. *Jurisdiction of Courts of Admiralty.*

(a) *Generally.*

574. Any ship which has, either wholly or as to any share therein, become subject to forfeiture, for use of a certificate of registry not legally granted, for assuming or concealing British character, or by reason of false declaration as to qualifi-

* (132) The coasting trade of the United Kingdom was opened to foreign ships by 17 Vict. c. 5. For the recent acts thereon, and as to customs, see the Customs Consolidation Act, 1876 (c. 36), s. 140, and the Customs and Inland Revenue Act, 1876 (c. 21), s. 9. As to the old navigation laws and cases thereon, see 1 Pritchard's Admiralty Digest, 2nd ed. p. 420.

(133) For the Order in Council authorizing the conveyance of goods and passengers in other than British ships in the coasting trade of St. Lucia, June 29, 1865, see 13 Hertset, p. 1079.

(133c) The coasting and carrying trade between one port and another in the Indian dominions of each of the high contracting parties shall be open to the vessels of the other without any restriction except such as

is or may be imposed upon national vessels. (Treaty of Commerce and Extradition between Great Britain and Portugal, with reference to their Indian Possessions, signed at Lisbon, Dec. 26, 1878.) 14 *ibid.* p. 1121.

(133b) Foreign vessels may continue freely to carry on the coasting trade between the ports of the empire in which there may be a custom-house or a customs' revenue department. (Regulation for putting in execution the Law of the 25th August, 1873, Art. XI. s. 5, Rio de Janeiro, April 11, 1874.) Art. X. *ibid.* p. 211.

(133c) See for Danish law throwing open the Danish coasting trade, and the coasting trade of Iceland and the Faroe Islands to foreign vessels (April 14 and 17, 1868), *ibid.* p. 1022.

cation, or of unqualified persons becoming entitled, may be brought for adjudication before the High Court of Admiralty in England or Ireland, or any court having Admiralty jurisdiction in her Majesty's dominions; and such court may make such order in the case as it may think fit. See M. S. Act, 1854 (c. 104), es. 52, 103.

575. As to the forfeiture of ships, boats, &c. for breach of customs regulations, see the Customs Laws Consolidation Act, 1876 (c. 36), s. 202; as to the course of procedure for recovering penalties, enforcing forfeitures, and punishing offenders under the Customs Acts, *Ibid.* ss. 218—274; and as to the application of penalties in the Channel Islands, *Ibid.* s. 160; and see the Customs Consolidation Act, 1853 (c. 107), s. 183, so far as not repealed by the former act.

(b) *To award Share to Seizor.*

576. The court in which a ship or share is proceeded against, for forfeiture, for using a certificate of registry not legally granted, for assuming or concealing a British character, or by reason of false declaration as to qualification, or of unqualified person becoming entitled, may award to the seizor such portion of the proceeds of sale of the forfeited ship or share as it may think right. *Ibid.* ss. 52, 103.

3. *Seizors.*

(a) *Who may be—*

577. Any commissioned officer on full pay in the military or naval service of her Majesty, any British officer of customs, or British consular officer, may seize and detain any ship which has, either wholly or as to any share therein, become subject to forfeiture as therein mentioned, and bring her for adjudication before the courts therein mentioned. *Ibid.*

4. *Costs and Damages.**

578. No such officer shall be responsible in respect of any such seizure or detention, notwithstanding the ship is

not brought in for adjudication, or is declared not liable to forfeiture, if it is shown to the satisfaction of the court that there were reasonable grounds for seizure or detention; but if no such grounds are shown, the court may award costs and damages to any party aggrieved, and make such other order as it thinks just. *Ibid.* s. 104.

579. Undoubtedly there may be cases in which there is either *mala fides*, or that *crassa negligentia*, which implies malice, which would justify a Court of Admiralty in giving damages, as in an action brought at common law damages may be obtained. *Xenos v. Aldersley*, 12 Moo. P. C. C. 359.

580. The criterion in *Xenos v. Aldersley*, *supra*, applied in considering whether there was probable cause for the seizure of goods for breach of customs ordinances. The real question in that case, following the principle laid down with regard to actions of this description, comes to this, Is there, or is there not, reason to say that the action was so unwarrantably brought, or brought with so little colour, or so little foundation, that it rather implies malice on the part of the plaintiff, or that gross negligence, which is equivalent to it? *Wilson v. The Queen*, L. R. 1 P. C. 405.

580a. In the Court of Admiralty the proceedings are more convenient, because, in the action in which the main question is disposed of, damages may be awarded. *Ibid.*

581. An officer of one of H.M.'s ships seizing and detaining a ship under the *bona fide* belief that there is reasonable cause for suspecting that an offence under the Pacific Islanders Protection Act, 1875 (c. 51), has been committed by that ship is not liable in damages even where the ship is not in fact employed in the commission of any such offence, as where she has taken labourers on board before the act came into operation. *Burns v. Nowell*, 4 Asp. 323.

581a. See also tit. COSTS, c. 20, s. 12, p. 372.

* (134) Probable cause in all cases of seizure has a fixed and well-known meaning, and imports circumstances which warrant suspicion, though not sufficient to justify condemnation. *Locke v. United States*, 7 Cranch, 339; *The George*, 1 Mason, 24. [AMERICAN.]

Stuart's Vice-Adm. Rep. 115. [LOWER CANADA.]

(135) As to what would and would not amount to probable cause of seizure in the American Courts, see Dunlap's Adm. Prac. 2nd ed. 266.

5. *Assumption of British Character.*(a) *Generally.*

582. If any person uses the British flag and assumes the British national character on board any ship owned in whole or in part by any persons not entitled by law to own British ships, for the purpose of making such ship appear to be a British ship, the ship shall be forfeited to her Majesty, unless such assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in exercise of some belligerent right. See M. S. Act, 1854 (c. 104), s. 103, sub-s. 1.

(b) *Evidence.*

583. In any proceeding for enforcing forfeiture for use of the British flag and assumption of the British national character against a vessel as not entitled to do so, the burden of proving a title to do so lies upon the owners so acting. *Ibid.* s. 103.

6. *Concealment of British Character.*

584. If the master or owner of any British ship does or permits to be done any thing, or carries or permits to be carried any documents, with intent to conceal the British character of such ship from any person entitled by British law to inquire into the same, or to assume a foreign character, or with intent to deceive any such person, such ship shall be forfeited to her Majesty; and the master, if he is privy to the commission of the offence, is guilty of a misdemeanour. *Ibid.* sub-s. 2.

585. A British subject, to prevent the seizure of his vessel as unseaworthy, falsely represented to the collector of customs at the port of registry that he had sold her to foreigners, and so procured the closing of the registry, and sailed her under a foreign certificate. *Held*, that the vessel was liable to forfeiture under the 103rd section of the M. S. Act, 1854. *The Sceptre*, 3 Asp. N.S. 269.

See also No. 573.

7. *Unqualified Person entitled.*

586. If any unqualified person, except in the case of such transmitted interests as therein mentioned, acquires as owner any interest, legal or beneficial, in a ship using a British flag and assuming the British character, such interest shall be

forfeited to her Majesty. See M. S. Act, 1854 (c. 104), s. 103, sub-s. 3.

587. For provisions for forfeiture of ship or share belonging to unqualified owner, if application for a sale thereof is not made within the time therein limited, to the proper court therein mentioned, or if the application is refused by the court, see *Ibid.* s. 64; and Pt. I. c. 3, s. 26, p. 1205.

8. *False Declaration of Qualification.*

588. If any person, on behalf of himself or any other person or body of persons, wilfully makes a false declaration touching his or their qualification to own British ships or shares therein, he is guilty of a misdemeanour; and the ship or share in respect of which such declaration is made, if not forfeited under a foregoing provision, shall, to the extent of the interest therein of the declarant, and, unless it is shown that he had no authority to make the same for the parties interested, be forfeited to her Majesty. See M. S. Act, 1854 (c. 104), s. 103, sub-s. 4.

9. *Use of Illegal Certificate of Registry.*

589. If the master or owner of any ship attempts to use for her navigation a certificate of registry not legally granted, he shall be guilty of a misdemeanour, and any commissioned officer on full pay in the military or naval service of her Majesty, any British officer of customs, or any British consular officer, may seize and detain her, and bring her for adjudication before the High Court of Admiralty in England or Ireland or any court having Admiralty jurisdiction in her Majesty's dominions; and if such court is of opinion that such use or attempt at use has taken place, it shall pronounce the ship, her tackle, apparel, and furniture, forfeited to her Majesty, and may award such portion of the proceeds of sale of such ship as it may think just to the officer so bringing her in for adjudication. *Ibid.* s. 52.

19. *Non-recognized British Ship.*

590. Whenever it is declared by this act that a ship belonging to any person or body corporate qualified according to this act to be owners of British ships shall not

be recognized as a British ship, such ship shall not be entitled to any benefits or protection enjoyed by British ships, nor to use the British flag or assume the British national character; but, as regards payment of dues, liability to pains and penalties, and punishment of offences on board her, shall be dealt with as if she were a recognized British ship. *Ibid.* s. 106.

591. The provisions contained in the ninth part of the M. S. Act, 1854, for the limitation of liability of owners are not to extend to any British ship not being a recognized British ship within the meaning of the act. *Ibid.* s. 516.

592. If any alteration is made in the length or capacity of the space allowed for the propelling power, or any cabins are fitted up in such space, the ship is to be deemed a ship not registered until re-measured. *Ibid.* s. 23, sub-s. 4.

593. Whenever any registered ship is so altered as not to correspond with the particulars in the register-book, such alterations must be registered, or the ship registered anew, and, in default, the ship is to be deemed not duly registered and not to be recognized as a British ship. *Ibid.* ss. 84—87.

20. Non-registered Owner.

594. Whenever any person is beneficially interested, otherwise than by mortgage, in any ship or share registered in the name of another person as owner, both such persons shall be subject to all pecuniary penalties imposed by this or by any other act on owners of ships or shares therein, and proceedings may be

taken for the enforcement of any such penalties against both or either of them, with or without joining the other. *Ibid.* s. 100.

21. Colours.

1. Generally.

595. The colours which may be worn by merchant ships are the red ensign and the union jack, with a white border. *Ibid.* s. 105.

2. Improper.

(a) Generally.*

596. If any other colours, or those usually worn by her Majesty's ships, or resembling them, or the pendant carried by her Majesty's ships, are hoisted on board any British merchant ship or boat without warrant from her Majesty or the Admiralty, penalty against the master, or owner if on board, and every person hoisting or assisting in hoisting the same, not exceeding £500. *Ibid.*

(b) Seizors.

597. Any officer on full pay in the Queen's military or naval service, any British officer of customs, or any British consular officer, may board any such ship or boat, and take away such jack, colours, or pendant. *Ibid.*

(c) Forfeiture.

598. The jack, colours, or pendant so seized are forfeited to her Majesty. *Ibid.*

* (136) Cases of wearing illegal colours were formerly within the jurisdiction of the Court of Admiralty, but they were not of frequent occurrence. It generally happened that when a complaint was made against the master of a vessel for wearing illegal colours, the complaint was forwarded* to the Lords of the Admiralty, who sent instructions to their proctor to proceed against him. This generally produced a memorial to the Lords of the Admiralty, and where fair grounds were stated as an excuse or in palliation of the offence, the penalty was not sued for, but in other cases which called for punishment they were proceeded with and the penalty exacted. See Evidence of Sir Herbert Jenner before the Select Committee of the House of Commons on Admiralty Courts (August 15, 1833), p. 35.

(137) For the cases in the Court of Admi-

ralty thereon, see *The Minerva*, 3 C. Rob. 34; *The King in his Office of Admiralty v. Miller*, 1 Hagg. 197; *The King v. Benson*, 3 Hagg. 96; *The Queen in her Office of Admiralty v. Ewen*, 2 Jur. N.S. 454.

(138) The provisions in 8 & 9 Vict. c. 87, s. 10, as to the mode of procedure in the Admiralty Court and elsewhere against persons for hoisting illegal colours, are repealed by the M. S. Repeal Act, 1854 (c. 120), and are not re-enacted in sect. 105 of the M. S. Act, 1854, or elsewhere. It would seem, therefore, that in default of express provision the Admiralty Court had no longer any jurisdiction in this matter, but that the course of procedure to enforce the penalty must be by penal action in the Court of Queen's Bench by her Majesty's Attorney-General, *ex officio*.

22. Lights and Fog Signals.

1. Generally.

599. The acts relating to the manufacturing, keeping, and carrying of gunpowder, nitro-glycerine, and other explosive substances include fog signals, where these are of an explosive nature, are the Explosives Act, 1875 (c. 17), s. 3, and the Explosive Substances Act, 1883 (c. 3), s. 8. See as to dangerous goods, Pt. V.

600. As to the lights and fog signals to be used by ships under weigh or at anchor, see tit. COLLISION, Pts. V. and VI., p. 178.

2. Inspection and Certificate.*

601. The surveyors under the third part of the M. S. Act, 1854, or such other persons as the Board of Trade may appoint, may inspect any ships for the purpose of seeing they are properly provided with lights and fog signals, and shall for that purpose have the powers given to inspectors by sect. 14 of the M. S. Act, 1854. If any such officer finds any ship is not so provided, he shall give the master or owner notice in writing, pointing out the deficiency, and what is, in his opinion, requisite in order to remedy it. Every notice so given shall be communicated as directed by the Board of Trade to the collector or collectors of customs at any port from which such ship may seek to clear or at which her *transire* is to be obtained; and no collector to whom such communication is made shall clear such ship outwards, grant her a *transire*, or allow her to proceed to sea, without a certificate under the hand of one of such officers that the ship

is properly provided with lights and fog signals. See M. S. Act Amendment Act, 1862 (c. 63), s. 30.

602. When the survey of a ship is made for the purpose of a declaration or certificate under this act, the person appointed to make the survey shall, if so required by the owner, be accompanied on the survey by some person appointed by the owner, and if the two persons agree, there shall be no appeal to the Court of Survey. See M. S. Act, 1876 (c. 80), s. 14.

3. Appeal from Refusal of Certificate.

603. If a shipowner feels aggrieved by the refusal of the above required certificate as to lights and fog signals, he may appeal in the prescribed manner to the Court of Survey for the port or district where the ship then is. *Ibid.*

604. On such appeal the judge shall report on the question raised by the appeal to the Board of Trade, which, when satisfied that the requirements of the report and the other provisions of the enactments have been complied with, may give or direct a surveyor or person duly appointed, to give the required certificate. *Ibid.*

605. Subject as therein mentioned the provisions of this act as to the Court of Survey and appeals thereto apply to the Court of Survey when acting under this section. *Ibid.*

606. As to Courts of Survey and the procedure therein, see Pt. III. c. 2, p. 1265.

4. Costs of Appeal.†

See tit. Costs, c. 30, s. 6, p. 398.

* (139) As to the fees and expenses to be charged in respect of the inspection of lights and fog signals, see note 59, p. 1209.

(140) For form of surveyor of Board of Trade's certificate of inspection of lights and fog signals, see 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. eccliii.

† (141) As to the inspection by Board of Trade officers of lights and fog signals generally, see Board of Trade Instructions as to survey of passenger accommodation, lights, &c., 1884, pp. 41—53, pars. 70—90.

(142) Outdoor officers of customs are authorized to report to surveyors any cases of infringements of the rules which may come under their notice, and surveyors are authorized to take every opportunity of inspecting the lights of vessels within their districts, especially where they have reason to believe the regulations are wholly or partially evaded. The surveyors always inspect lights and fog signals whenever called upon

to inspect crew spaces or otherwise. *Ibid.* par. 71.

(143) On surveying lights and fog signals, the surveyor requires from the master the last certificate of inspection, and compares the entries therein with the description and position of the lanthorns and screens on board, and, if he finds any variation, is authorized and required to withdraw the certificate; but when the regulations have been complied with, he makes an indorsement to that effect on the certificate, and returns it to the master or owner. A new certificate is not to be issued in such a case. *Ibid.*

(144) A surveyor, on surveying lanthorns for the first time, impresses part of the lanthorn with a mark fixed by the Board of Trade, and the description of the mark is inserted in the certificate. He takes care, however, not to impair the efficiency of the lanthorn in impressing the mark. *Ibid.* par. 72.

23. Signals of Distress.

607. The following are signals of distress, whether used together or separately:—

In the daytime—

1. A gun fired at intervals of about a minute.
2. The international code signal of distress indicated by N C.
3. The distant signal, consisting of a square flag having either above or below it a ball, or anything resembling a ball.

At night—

1. A gun fired at intervals of about a minute.

2. Flames on the ship (as from a burning tar barrel, oil barrel, &c.).

3. Rockets or shells, of any colour or description, fired one at a time, at short intervals. See M. S. Act, 1873 (c. 85), s. 18, and first schedule.

608. Any master who uses or causes or permits to be used any of these signals of distress, except in case of distress, is liable to pay compensation for any labour, risk or loss in consequence thereof, and such compensation may, without prejudice to any other remedy, be recovered like salvage. *Ibid.*

(145) When the lights or fog signals are not fitted and provided in accordance with the regulations, the inspecting surveyor fills up a form specifying the additions or alterations required, and gives or sends it by post to the owner, master or agent. A report on the proper form is then to be sent at once to the collector of customs, who will either refuse to grant the vessel a clearance, or to permit her to proceed to sea until he receives from the surveyor a report on the proper form that the regulations have been complied with. *Ibid.* par. 73.

(146) A surveyor exercises his discretion in cases involving the detention of a ship under such circumstances, and in some cases abstains from detaining her, as, for instance, when the ship is not about to leave the United Kingdom, and when she is supplied with lights, but there is a question as to their complying with the regulations with respect to fittings, power, condition, &c., and when there is no reason to apprehend delay or the good faith of the owner or master in carrying the regulations into effect; but he should forward a notice to the owner, master, or agent. *Ibid.* pars. 73, 74.

(147) If a ship leaves one port for another port in the United Kingdom before the surveyor is satisfied that the requirements have been complied with, he communicates with the port or district to which the ship is proceeding. *Ibid.* par. 74.

(148) When the required alterations have been made and are satisfactory to the surveyor, he fills up and sends to the owner or master a notification thereof on the proper form, specifying his fees and expenses; and when these have been paid the surveyor sends to the collector a certificate thereof on the proper form and a certificate of inspection to the owner, master, or agent, and a copy thereof to the Board of Trade. This certificate is also entered in the office light book with the surveyor's rotation number for light certificates. The rotation number is also entered on the original certificate and on the

copy sent to the Board of Trade. *Ibid.* par. 75.

(149) Surveyors are not required to grant the usual declaration unless the lights will, in all conditions of the ship and her sails, be clearly seen in the direction and for the distance required. *Ibid.* par. 83.

(150) Surveyors are not to advise owners how to arrange or modify sails, &c., interfering with the lights, but are to decline giving declarations if the regulations are not complied with. The surveyor, if he thinks it necessary, sees the sails set, and always goes aloft to the masthead to inspect the lights from there, or gets a colleague to do so in his presence. *Ibid.*

(151) If the master or owner neglects or refuses to alter the position of the lanterns, or to cut away the required portions of the lower courses as the surveyor directs, the surveyor reports the fact to the collector of customs, in order that he may stop the ship; and the collector refuses a clearance until he receives a report from the surveyor to the effect that these requirements have been complied with. *Ibid.* par. 84.

(152) If after a ship has been passed by the surveyor as carrying proper lights, properly constructed, the master fixes them in such a position that they are or may be obscured by the square-sail, and are not visible, as required by the regulations, he is guilty of a misdemeanour under s. 27 of the M. S. Act, 1872. *Ibid.* par. 85.

(153) Surveyors are entitled to inspect the lights, &c. of foreign ships within British jurisdiction; and when a surveyor has reason to believe that the lights of a foreign ship are imperfect or the screen is improperly placed, he inspects them, and points out to the master or agent, if on board the vessel, where they are not in accordance with the regulations, and reports to the Board of Trade to the same effect. *Ibid.* par. 90. See also par. 78 as to the construction and range of lights.

24. Signals for Pilots.

609. The following are the signals which may be used together or separately by ships wanting a pilot:—

In the daytime—

1. To be hoisted at the fore, the jack or other national colour usually worn by merchant ships, having round it a white border, one-fifth of the breadth of the flag; or
2. The international code pilotage signal indicated by P T.

At night—

1. The pyrotechnic or blue light every fifteen minutes; or
2. A bright white light, flashed or shown at short intervals just above the bulwarks, for about a minute at a time. See M. S. Act, 1873 (c. 85), s. 19, and second schedule.

610. Penalty against any master who uses, causes or permits to be used, any of these signals for any other purpose than that of summoning a pilot, or any other signal for a pilot, not exceeding £20. *Ibid.* s. 19.

25. Private Signals.*

611. Any shipowner desirous of using, for purposes of a private code, any rockets, lights, or other similar signals, may register them with the Board of Trade, which shall give public notice of the signals so registered; but the Board may refuse to register any signals which in their opinion cannot easily be distinguished from signals of distress or signals for pilots. *Ibid.* s. 21.

26. Other Signals.

612. Her Majesty may, from time to time, by Order in Council, repeal or alter the rules as to signals in the schedules to this act, or make new rules. *Ibid.* s. 20.

27. Ship's Boats, Rafts and Buoys.†

613. (1) No decked ship (except ships used solely as steam tugs and ships engaged in the whale fishery) shall proceed

to sea from any place in the United Kingdom unless provided, according to her tonnage and class, with boats duly supplied with all requisites for use, and not fewer in number nor less in their cubic contents than those specified in table S. in the schedule: (2) no ship carrying more than ten passengers shall proceed to sea from any place in the United Kingdom unless, in addition to the above, she is provided with a lifeboat furnished with all requisites for use, or unless one of her boats is rendered buoyant after the manner of a lifeboat, and unless she is also provided with two life-buoys: such boats and life-buoys shall be kept so as to be at all times fit and ready for use. See M. S. Act, 1854 (c. 104), s. 292.

614. Penalty for breach or for loss or injury thereto through the wilful fault or negligence of the owner or master; or, if the master wilfully neglects to replace or repair them on the first opportunity; against owner appearing to be in fault, not exceeding £100, and against the master appearing to be in fault, not exceeding £50. *Ibid.* ss. 292, 293.

615. Officers of customs are not to grant a clearance or *transire* unless the ship is so provided; and if the ship attempts to go to sea without, the officer may detain her until she is so provided. *Ibid.* s. 294.

616. Sections 292 to 294 apply to all British ships and to all foreign steam ships carrying passengers between places in the United Kingdom. *Ibid.* s. 291.

617. In the case of any ship surveyed under the fourth part of the M. S. Act, 1854, the Board of Trade may, at the request of the owners, authorize a reduction in the number and dimensions of her boats, and the substitution for them of rafts or other appliances for saving life, so that they are sufficient for the number of persons on board. The provisions of sect. 293 of the principal act are extended to such rafts and appliances. See M. S. Act, 1873 (c. 85), s. 15.

618. As to such appliances on board "passenger ships," see this tit. Pt. IV. cap. 26, p. 1295.

28. Steamers' Safety Valves.

619. If any person places an undue weight on the safety valve of any steam

* (153a) See, for list of private signals, 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. cccclxi, Form No. 50.

† (153b) As to the Regulations of the Board of Trade with reference to boats and life-

buoys, see Instructions as to the survey of the hulls, equipment and machinery of steamships carrying passengers, 1884, pars. 23—34.

ship, penalty not exceeding £100, in addition to any other liability. See M. S. Act, 1854 (c. 104), s. 302.*

29. Fire-hose to Steamers.

620. Every seagoing steam ship (unless used solely as a steam tug) shall be provided with a hose for extinguishing fire, and capable of being connected with the engines. Penalty for default against the owner appearing in fault not exceeding £100, and against the master appearing in fault, not exceeding £50. *Ibid.* s. 301, sub-s. 3.

30. Official Logs.

621. See tit. EVIDENCE, pp. 434—437; and for their form, see 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. ccccxlii.

31. Duty to declare National Character of Ship.

622. No officer of customs shall grant a clearance or *transire* for any ship until the master has declared to him the name of the nation to which she belongs, and such officer shall thereupon inscribe such name on the clearance or *transire*; if the ship attempts to proceed to sea without such clearance or *transire*, the officer may detain her until such declaration is made. See M. S. Act, 1854 (c. 104), s. 102.

32. Duty to assist colliding Ship.

623. See tit. COLLISION, Pt. I. c. 5, p. 188.

33. Effect of Breach of Regulations for preventing Collisions.

623a. See tit. COLLISION, Pt. IV. c. 2, s. 5, p. 215.

34. Wrecks and Removal of Wrecks.

624. As to wrecks and removal of wrecks, see tit. WRECK.

35. Deposit of Documents on arrival at Foreign Port.

1. Generally.

625.—(1.) Whenever any ship in whatever part of her Majesty's dominions she is registered (except ships whose business for the time being is to carry passengers), arrives at any foreign port where there is a British consular officer, or at any port in any British possession abroad, and remains thereat for forty-eight hours, the master shall, within forty-eight hours of the ship's arrival, deliver to such consular officer, or to the chief officer of customs (as the case may be), the agreement with the crew, and all indentures and assignments of apprenticeships; or in the case of a ship belonging to a British possession, such of the documents as such ship is provided with: (2.) Such officer shall keep such documents during the ship's stay in such port, and, in cases where any indorsements upon the agreement are hereby required, shall duly make the same, and return the documents to the master a reasonable time before his departure, with a certificate indorsed on the agreement, stating when the same were delivered and returned: (3.) If it appears that the required forms have been neglected, or that the existing laws have been transgressed, such officer shall make an indorsement to that effect on the agreement, and forthwith transmit a copy of such indorsement, with the fullest information he can collect regarding such neglect or transgression, to the Registrar-general of Shipping and Seamen. Penalty against any master for default not exceeding £20; and in the prosecution it lies on the master to produce the certificate, or prove that he duly obtained it, or that it was impracticable for him so to do. See M. S. Act, 1854 (c. 104), s. 279.

2. Exemptions.

626. All registered seagoing ships exclusively employed in fishing on the coasts of the United Kingdom are exempted from the operation of the M. S. Act, 1854 (c. 104), s. 279, as to the deposit of agreements, indentures, and assignments on arrival at a foreign port with the consul

* (153c) As to the Regulations of the Board of Trade in reference to safety valves, see Board of Trade Instructions as to the

survey of the hulls, equipment, and machinery of steamships carrying passengers, 1884, ss. 31, 58, 66, 67, 77—83, 92.

or officer of customs there. See M. S. Act Amendment Act, 1862 (c. 63), s. 13.

627. Seagoing ships belonging to any of the three General Lighthouse Boards are similarly exempted. *Ibid.*

628. Seagoing ships being pleasure yachts are similarly exempted. *Ibid.*

36. Lists of Crew, Marriages, &c.

1. Foreign-going Ships.

629. Every master of every foreign-going ship of which the crew is discharged in the United Kingdom, in whatever part of her Majesty's dominions it is registered, and of every home-trade ship, shall make out and sign a list in a form sanctioned by the Board of Trade, containing:—

- (1.) The number and date of the ship's register and her registered tonnage:
- (2.) The length and general nature of the voyage or employment:
- (3.) The christian names, surnames, ages, and places of birth of all the crew, including the master and apprentices; their qualities on board, their last ships or other employments, and the dates and places of their joining the ship:
- (4.) The names of any members of the crew who have died or otherwise ceased to belong to the ship, with the times, places, causes, and circumstances thereof:
- (5.) The names of any members of the crew who have been maimed or hurt, with the times, places, causes, and circumstances thereof:
- (6.) The wages due to any of the crew who have died, and the times of their respective deaths:
- (7.) The clothes and other effects belonging to any of the crew who have died, with a statement of the manner in which they have been dealt with, and the money for which any of them have been sold:
- (8.) Every marriage which takes place on board, with the date thereof, and the names and ages of the parties.

See M. S. Act, 1854 (c. 104), s. 273, as amended by the Births and Deaths Registration Act, 1874 (c. 88), s. 37.

630. In the case of foreign-going ships, the master shall, within forty-eight hours after the ship's arrival at her port of

destination in the United Kingdom, or upon the discharge of the crew, which ever first happens, deliver to the superintendent of a mercantile marine office before whom the crew is discharged such list: penalty for default not exceeding five pounds; such superintendent shall thereupon give to the master a certificate of such delivery; no officer of customs shall clear inwards any foreign-going ship without the production of such certificate, and any such officer may detain the ship until the same is produced. See M. S. Act, 1854 (c. 104), s. 274.

2. Home-trade Ships.

631. The master or owner of every home-trade ship shall, within twenty-one days after the 30th of June and 31st of December in every year, transmit or deliver to the superintendent of a mercantile marine office in the United Kingdom such list for the preceding half-year: penalty for default not exceeding £5; and such superintendent shall give to the master or owner a certificate of such transmission or delivery; and no officer of customs shall grant a clearance or *transire* for any home-trade ship without the production of such certificate, and any such officer may detain any such ship until the same is produced. *Ibid.* s. 275.

632. So much of the third part of this act as relates to the delivery or transmission of lists of crews to the Registrar-general of Seamen shall apply to all fishing vessels belonging to the United Kingdom, whether employed exclusively on the coasts of the United Kingdom or not; to all ships belonging to the Trinity House, or the commissioners of northern lighthouses constituted as hereinafter mentioned, or the port of Dublin corporation; and to all pleasure yachts, and to the owners, masters, and crews of such ships. So much of the third part of this act as relates to the delivery and transmission of lists of crews, shall apply to all seagoing British ships, wherever registered, of which the crews are discharged, or whose final port of destination is in the United Kingdom, and to the owners, masters, and crews of such ships. *Ibid.* s. 109.

3. Ships ceasing to be Foreign-going or Home-trade Ships.

633. If any ship ceases by reason of transfer of ownership or change of employment to fall within the definition of a foreign-going or of a home-trade ship,

the master or owner thereof shall, if such ship is then in the United Kingdom, within one month, and if she is elsewhere within six months, deliver or transmit to the superintendent of a mercantile marine office at the port to which the ship has belonged, such list, duly made out to the time at which she ceased to be a foreign-going or home-trade ship, penalty for default not exceeding £10; and if any ship is lost or abandoned, the master or owner thereof shall, if practicable, and, as soon as possible, deliver or transmit to the superintendent of the mercantile marine office at the port to which the ship belonged such list, duly made out to the time of such loss or abandonment, penalty for default not exceeding £10. *Ibid.* s. 276.

37. Lists of Changes in Crew.

634. The master of every foreign-going ship of which the crew has been engaged before a superintendent of a mercantile marine office shall before leaving the United Kingdom sign and send to the nearest superintendent a statement on a Board of Trade form of every change in his crew before leaving the United Kingdom, penalty for default not exceeding £5; such statement shall be admissible in evidence, subject to all just exceptions. See M. S. Act, 1854 (c. 104), s. 158, as amended by M. S. Act Amendment Act, 1862 (c. 63), s. 15.

38. Registration of Births and Deaths.

635. The general provisions of this act do not apply to the registration of births and deaths on board a vessel at sea. See the Births and Deaths Registration Act, 1874 (c. 88), s. 37.

636. The captain or master or other person in charge of a British ship shall as soon as may be after the birth of a child or death of a person on board, record in his log book, or otherwise, the fact of such birth or death, and the particulars required by this act, or such of them as may be known to him, and shall (unless a Queen's ship), upon her arrival at any port of the United Kingdom, or, as the Board of Trade may direct, deliver or send as that Board may direct, a return of such record to the Registrar-General of Shipping and Seamen. *Ibid.* sub-s. 1.

637. Where a ship which is not a

British ship carries passengers to or from any port of the United Kingdom as her port of destination or departure, the provisions of this section apply to the master or other person in charge like a British ship. *Ibid.* sub-s. 2.

638. Where the return is directed by the Board of Trade (whether the ship is British or foreign) to be delivered upon the arrival of the ship or the discharge of the crew, or otherwise, at any place out of the United Kingdom, that Board may direct the return to be delivered, if within British dominions, to the superintendent of a mercantile marine office, or collector of customs there, and if in a foreign place to the principal British consular officer there, and such functionary shall promptly send the same to the Registrar-General of Shipping and Seamen. *Ibid.* sub-s. 3.

638a. For provisions when it appears from the return that the father of the child so born, or, if a bastard, the mother, or that the person dead was a Scotch or Irish British subject, for the Registrar-General of Shipping and Seamen to send a certified copy of so much of the return to the Registrar-General of Births and Deaths in Scotland or Ireland accordingly. *Ibid.* sub-s. 4.

639. For provisions for the Registrar-General of Shipping and Seamen sending to the Registrar-General of Births and Deaths in England a certified copy of every other such return, or that part of it which is not so sent to the Registrar-General of Births and Deaths in Scotland and Ireland. *Ibid.* sub-s. 5.

639a. The captain or other person in charge of a Queen's ship shall, upon her arrival in any port of the United Kingdom, or at such times and in such manner as the Commissioners of the Admiralty may direct, send a return of the facts recorded in pursuance of this section to the Registrar-General of Births and Deaths, to whom, if a merchant ship, the copy return would be sent by the Registrar-General of Shipping and Seamen. *Ibid.* sub-s. 6.

640. For provisions as to every Registrar-General of Births and Deaths receiving any return or copy, recording the same in the Marine Register Book, and as to such book being deemed a certified copy of a register book within the meaning of the Registration of Births and Deaths Acts. *Ibid.* sub-s. 7.

641. Penalty for breach against every captain, master, or person in charge not exceeding £5, recoverable like a penalty under the M. S. Act, 1854. *Ibid.* sub-s. 8.

642. This section extends to all places and persons in British jurisdiction. See the Births and Deaths Registration Act, 1874 (c. 88), s. 37, sub-s. 8.

642a. Terms in this section have the same meaning as in the M. S. Act, 1854. *Ibid.*

643. The particulars to be registered by the captain of a ship concerning a birth or death at sea, are, for a birth—Date of birth—. Name and sex of child—. Name, surname, and rank, profession, or occupation of father. Name, surname, and maiden surname of mother. Nationality and last place of abode of father and mother. And for a death—Date of death—. Name and surname—. Sex—. Age—. Rank, profession, or occupation—. Nationality, and last place of abode—. Cause of death—. See the Fourth Schedule to the Births and Deaths Registration Act, 1874.

39. Notice of Loss of Ship.

644. If any registered ship is actually or constructively lost, taken by the enemy, burnt or broken up, or by reason of a transfer to unqualified persons or otherwise, ceases to be a British ship, every person who at that time owns such ship or any share therein shall, immediately upon knowledge of any such occurrence, if no notice thereof has already been given to the registrar at her port of registry, give such notice to him, and he shall make an entry thereof in his register book; and, except in cases where the certificate of registry is lost or destroyed, the master of every such ship shall immediately, if such event occurs in port, but if elsewhere, then within ten days after his arrival in port, deliver the certificate of registry to the registrar, or, if there be no registrar, to the British consular officer at such port, and such registrar if he is not himself the registrar of her port of registry, or such British consular officer, shall forthwith forward the certificate so delivered to him to the registrar of the port of registry of the ship. Penalty for breach against owner and master, not exceeding £100. See the M. S. Act, 1854 (c. 104), s. 53.

40. Notice of Ship having ceased to be British.

645. In case of a ship, by reason of her transfer to an unqualified person or

otherwise, ceasing to be British, the like notifications of the fact and delivery up of the certificate of registry are to be made under the like penalty to the same authority by every person who at that time owned the ship or any share therein immediately on his obtaining knowledge of the occurrence. *Ibid.*

41. Notice of apprehended Loss of Ship.

646. If the managing owner, or, if none such, the ship's husband of any British ship has reason to apprehend it has been lost, he shall, as soon as conveniently may be, send to the Board of Trade notice in writing of such loss and of the probable occasion thereof, stating the name of the ship, her official number (if any), and the port to which she belongs. Penalty for breach, not exceeding £50. *Ibid.* 1873 (c. 85), s. 22.

42. Notice of Ship having caused or sustained Injury or Loss of Life.

647. Whenever any steamship has sustained or caused any loss of life or serious injury to any person, or has received any material damage affecting her seaworthiness or her efficiency in hull or machinery, the owner or master shall, within twenty-four hours afterwards, or as soon thereafter as possible, send to the Board of Trade, by letter signed by such owner or master, a report of such accident or damage, and of the probable occasion thereof, stating the name of the ship, the port to which she belongs, and the place where she is. Penalty against the owner or master neglecting so to do, not exceeding £50. *Ibid.* 1854 (c. 104), s. 326.

43. Notice of Explosives having caused Loss of Life or Personal Injury.

648. When there occurs any accident, causing loss of life or personal injury in the carriage by any ship or boat of any explosive, the owner or master thereof, and the owner of the explosive, must forthwith cause notice of such accident, and of loss of life or personal injury to be sent to the Secretary of State. See the Explosives Act, 1875 (c. 17), s. 63.

44. Proof of Execution of Documents.

649. Any document required by this act to be executed in the presence of or to be attested by any witness or witnesses, may be proved by the evidence of any person who is able to bear witness to the requisite facts, without calling the attesting witness or witnesses or any of them. See the M. S. Act, 1854 (c. 104), s. 526.

45. Service of Documents.

650. Service of any summons or other matter in any legal proceeding under this act shall be good service, if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any ship to which he may belong, with the person being or appearing to be in command or charge of such ship. *Ibid.* s. 522.

651. Any document required, for the purpose of this act, to be served on the master, shall be served, where there is no master, and the ship is in the United Kingdom, on the managing owner, or if none, on some agent of the owner residing in the United Kingdom, or where he is not known or cannot be found, by affixing a copy to the ship's mast. See the M. S. Act, 1876 (c. 80), s. 35.

652. Any such document may be served by delivering a copy personally to the person to be served, or leaving the same at his last place of abode, or in the case of a master by leaving it for him on board the ship with the person appearing to be in charge. *Ibid.*

652a. Penalty for obstructing service on the master not exceeding ten pounds, and if the owner or master is privy to it he is guilty of a misdemeanor. *Ibid.*

653. This act is to be construed as one with the M. S. Act, 1854, and the acts amending the same. *Ibid.* s. 2.

46. Sea Apprentices.

654. As to the execution of indentures of sea apprentices generally and in duplicate; as to the duty, in the United Kingdom, of the master of the apprentice, within seven days after execution of the indentures, to transmit them to the Regis-

trar-general of Shipping and Seamen, or some superintendent, who is to record one part and endorse on the other that it has been recorded, and re-deliver it to the master; as to the duty of the master of every foreign-going ship, before carrying any apprentice to sea from any place in the United Kingdom, to produce the apprentice, his indenture, and the assignments thereof, if any, to the superintendent before whom the crew is engaged; and the dates of the indenture and assignments, and where registered, and the name of the apprentice are to be entered on the shipping agreement, penalty for breach not exceeding £5; as to the duty of the master of the apprentice whenever the indenture is assigned or cancelled, or the apprentice deserts or dies, to give notice thereof within seven days afterwards if it happens in the United Kingdom, or, if elsewhere, so soon afterwards as circumstances permit, to the registrar or some superintendent, to be recorded; and as to the penalty for breach not exceeding £10; and, generally, as to sea apprentices, see tit. SEAMEN, Pt. I.

47. Anchors.

See Pt. IV. c. 22.

48. Dealers in Marine Stores.*

655. For the regulations to be observed under penalties by persons dealing in anchors, cables, sails, old iron or other marine stores, and providing that they shall keep books, and enter therein an account of all such marine stores, and when, where and from whom purchased or received; a description of the vendor and his business and place of abode; that they shall not purchase marine stores from any person under the age of sixteen; and that they shall not cut up any cable or similar article, exceeding five fathoms in length, or unlay it into twine or paper stuff, without obtaining a permit and publishing notice thereof, and providing the mode of proceeding for obtaining such a permit from a justice of the peace having jurisdiction where the dealer resides, and the publication thereof in the newspapers, see M. S. Act, 1854 (c. 104), ss. 480—482.

* (154) As to prosecutions of marine store dealers, see Stone's Justices Manual, 21st ed. by Kennett, 1882, p. 520.

49. Powers of enforcing Payment of Orders.

656. When any court, justice or magistrate has power to order payment of any seamen's wages, penalties, or other sums of money, if the party directed to pay is the master or owner, and it is not paid as prescribed in the order, the functionary making the order may, in addition to any other powers of compelling payment, direct the amount unpaid to be levied by distress or poinding and sale of the ship, her tackle, furniture and apparel. M. S. Act, 1854 (c. 104), s. 523.

50. Detention of Ship.

1. Generally.

657. As to the detention of foreign-going ships proceeding to sea without producing agreements and certificates of masters, mates and engineers, see tit. TRADE, BOARD OF—.

658. As to the detention of home-trade ships under similar circumstances, *ibid.*

659. As to the detention of British ships when medical inspector certifies provisions deficient, and the ship proceeds to sea without the deficiency being made good, see tit. SEAMEN.

660. As to the detention of ship on master's refusal to declare her national character, see this Part, c. 31, p. 1249.

661. As to the detention of ship not proceeding with proper boats, rafts and life-buoys, see this Part, c. 27, p. 1248.

662. As to the detention of home-trade and foreign-going ships proceeding to sea without delivering lists of crew, with marriages, deaths, &c. on board, see c. 36, ss. 1 and 2, p. 1250.

663. As to the detention by the Board of Trade of unsafe or unseaworthy ships, see Pt. III. c. 1, p. 1258.

2. Who may detain.

664. When under the M. S. Acts, 1854 to 1876, or any of them, a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of her Majesty, or any officer of the Board of Trade or Customs, or any British consular officer

may detain the ship. See M. S. Act, 1876 (c. 80), s. 34.

3. Escape.

665. If the ship after such detention, or after service on the master of any notice of or order for such detention, proceeds to sea before it is released by competent authority: penalty against the master, the owner, and any person sending the ship to sea, if privy to the offence, not exceeding £100. *Ibid.*

4. Carrying off of Officers.

666. Penalty when a ship takes to sea on board thereof and in the execution of his duty any officer authorized to detain her, or any surveyor or officer of the Board of Trade or Customs, against the owner and master, besides all expenses of and incidental to the officer being so taken to sea, not exceeding £100, or ten pounds a day until the officer returns, or until such time as would enable him to return. *Ibid.*

51. Persons improperly boarding Ship.

667. Penalty against every person who, not being in her Majesty's service, and duly authorized by law, goes on board any ship before her actual arrival in dock or at the place of her discharge, without the permission of the master, not exceeding £20; and the master or person in charge may take any such person into custody, and deliver him up forthwith to any peace officer, to be taken before a justice, or, in Scotland, the sheriff of the county. See M. S. Act, 1854 (c. 104), s. 237.

52. Persons injuring Steamer or molesting Crew.

668. Penalty for injuring steamer or molesting crew not exceeding £20. *Ibid.* 1862 (c. 63), s. 36.

53. Prosecution of Offenders under M. S. Acts, 1854 and 1876.

1. Generally.*

669. As to the punishment of offences and recovery of penalties before justices

* (155) Although justices of the peace exercising summary jurisdiction are the sole judges of the weight of the evidence given

before them, and no other Queen's court will examine whether or not they have formed the right conclusion from it, yet other courts

under this act, see M. S. Act. 1854 (c. 104), s. 518; and notes in 2 Maude & Pollock (4th ed. by Poll. & Bruce), p. cliii.

669a. A stipendiary magistrate has the same power as two justices of the peace under this act. See M. S. Act, 1854 (c. 104), s. 519.

670. The tenth part of this act (ss. 517—543), relating to legal procedure under the act, where no particular country is mentioned, applies to the whole British dominions. *Ibid.* s. 517.

671. All criminal proceedings under the Seamen's Fund Winding-up Act, 1851, the Pilotage Law Amendment Act, 1853, the Merchant Shipping Law Amendment Act, 1853, or this act, are to be carried on like similar proceedings under the M. S. Act, 1854; and all rules of law, practice, and evidence applicable to such proceedings apply to criminal proceedings under this act. See the M. S. Repeal Act, 1854 (c. 120), s. 15.

672. For the purpose of punishment, jurisdiction, and legal proceedings, an offence under this act is an offence under the M. S. Act, 1854. See M. S. Act, 1876 (c. 80), s. 40.

673. See further as to jurisdiction over offences, tit. SEAMEN, Pt. V.

674. For provisions as to the trial of offences committed on the sea within a certain distance of the coasts of her Majesty's dominions, defining the jurisdiction of the Admiralty of England and Ireland for that purpose, and directing modes of, and restrictions on, procedure, see The Territorial Waters Jurisdiction Act, 1878 (c. 73).

2. In Scotland.

675. As to the prosecution in Scotland by indictment, criminal letters or criminal libel, for every offence described in this act as a felony or misdemeanour and the punishment thereof; and as to the procedure there on all other prosecutions, complaints, actions, or proceedings in a summary way before the sheriff or two justices, with powers of making arrestments, compelling the attendance of witnesses, and of adjournment; as to the requirements that the proceedings shall be *vivâ voce* and the sentence in writing;

as to the powers of imprisonment in default of payment, of proceeding by default and giving sentence after citation served, of warrant to apprehend in default of appearance, and of backing sentences or decrees; and as to provisions that orders shall be final and not quashed for want of form, and that the general rules in sections 518 to 529 shall as far as applicable extend to Scotland, see M. S. Act, 1854 (c. 104), ss. 530—543.

676. In the application of this act to Scotland, the provisions as to a prosecution not being instituted except by or with the consent of the Board of Trade do not apply; and as to the analogous legal functionaries there, *Ibid.* 1876 (c. 80), s. 41.

3. In Ireland.

677. As to the application of this act to Ireland, and the analogous legal functionaries there, *Ibid.* s. 42.

4. In the Isle of Man.

678. As to the application of this act to the Isle of Man, and the analogous legal functionaries there, *Ibid.*

5. In British Possessions.

679. All offences under this act shall in any British possession be punishable in any court or by any justice or magistrate in which, or by whom, offences of a like character are at the time ordinarily punishable. *Ibid.* 1854 (c. 104), s. 518, sub-s. 5.

6. As dependent on Locality.

(a) Generally.

680. For the purpose of jurisdiction under this act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, in the place where it was committed or arose, or where the offender or person complained against may be. *Ibid.* s. 520.

(b) Ships off the Coasts.

681. In all cases where any district within which any court, justice, or magistrate has jurisdiction under this or any other act, or at common law, is situate on the coast of any sea, or abutting on or

may and ought to examine whether the premises stated by the justices are such as will, in point of law, warrant the conclusion. *The Scotia*, Stuart's Vice-Adm. Rep. 160. [LOWER CANADA.]

(155a) As to criminal proceedings generally, in reference to merchant shipping, see Stone's Justices Manual, 21st ed. by Kennet, 1882, p. 521.

projecting into any bay, channel, lake, river, or other navigable water, every such functionary shall have jurisdiction over any ship or boat being on or lying or passing off such coast, or in or near such bay, channel, lake, river, or navigable water, and over all persons on board such ship or boat, or belonging thereto, as if such ship, boat, or persons were within the limits of his original jurisdiction. See M. S. Act, 1854 (c. 104), s. 521.

7. Forgery of Documents.

682. Any person forging, or procuring, or assisting, to forge, or fraudulently alter documents required by the second part of this act, is guilty of felony. *Ibid.* s. 101.

8. Misdemeanours.

683. As to the punishment of misdemeanours under this act in all places in her Majesty's dominions, except Scotland, *Ibid.* s. 518, and 7 Geo. 4, c. 64.

9. Offences punishable by Imprisonment under Six Months, or Penalty under £100.

684. In all places in her Majesty's dominions, except Scotland, every offence by this act made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by any penalty not exceeding £100, shall in England and Ireland be prosecuted summarily before any two or more justices, as to England in the manner directed by 11 & 12 Vict. c. 43, and as to Ireland as directed by 14 & 15 Vict. c. 93, or by any act or acts passed for like purposes. See M. S. Act, 1854 (c. 104), s. 518, sub-s. 3, except proceedings under the direction of the Board of Trade. See M. S. Act Amendment Act, 1862 (c. 63), s. 65.

685. For provisions that any offence declared by this act to be a misdemeanour may in all places in her Majesty's dominions, except Scotland, be punished by imprisonment not exceeding six months, or penalty not exceeding £100. See M. S. Act, 1854 (c. 104), s. 518, sub-s. 2.

10. Appeal from Summary Convictions in Sums above £5, or Imprisonment above One Month.

686. In all cases of summary convictions in England, where the sum adjudged to be paid exceeds £5, or the period of imprisonment one month, any person

aggrieved may appeal to the next court of general or quarter sessions holden not less than twelve days after such conviction; but such person must give to the complainant notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at least before such sessions, and either remain in custody until the sessions, or enter into a recognizance, with two sufficient sureties, to appear at the sessions, try such appeal, abide judgment, and pay costs; and after such notice and recognizance he shall be liberated, if in custody; and the court shall hear and determine the appeal, and make such order therein and as to costs as to it shall seem meet. *Ibid.* s. 518.

11. Stipendiary Magistrates.

687. Any stipendiary magistrate shall have full power to do alone whatever two justices of the peace are by this act authorized to do. *Ibid.* s. 519.

688. The harbour master for the time being of Holyhead may be granted H.M.'s commission, and in that case shall have, within the limits of his jurisdiction as harbour master, all the powers of a stipendiary magistrate. See the M. S. Act, 1867 (c. 124), s. 12.

12. Application of Penalties.

689. Any court, justice, or magistrate imposing any penalty under this act, for which no specific application is herein provided, may, if he thinks fit, direct the whole or part thereof to be applied in compensating any person for any wrong or damage he may have sustained by the act or default for which the penalty is imposed, or to be applied in or towards payment of the expenses of the proceedings; and, subject thereto, all penalties recovered in the United Kingdom shall be paid into her Majesty's exchequer as the Treasury may direct, and form part of the consolidated fund, and all penalties recovered in any British possession shall be paid over into the public treasury. See the M. S. Act, 1854 (c. 104), s. 524.

13. Limitation of Time for Proceedings.

690. No conviction for any offence shall be made under this act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the offence; or if both or either of the parties are during

such time out of the United Kingdom, unless the same is commenced within two months after they both first arrive or are at one time within the same. No conviction for any offence shall be made under this act in any proceeding instituted in any British possession, unless such proceeding is commenced within a similar time. No order for the payment of money shall be made under this act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the cause of complaint arises; or, if both or either of the parties are during such time out of the United Kingdom, unless the same is commenced within six months after they both first arrive or are at one time within the same. No order for the payment of money shall be made under this act in any summary proceeding instituted in any British possession, unless such proceeding is commenced within a similar time. And no other provision for limiting the time within which summary proceedings may be instituted shall affect any summary proceeding under this act. *Ibid.* s. 525.

54. Mode of apprehending Offenders on Passenger Ships.

691. It shall be lawful for the master or other officer of any duly-surveyed passenger ship, and for all persons called by him to his assistance, to detain any person who has committed an offence against any one of the provisions of the two last preceding sections of this act (imposing penalties on drunken or disorderly passengers, on persons molesting passengers or crew, forcing their way into the ship and refusing to quit on being ordered, inflicting injury on the ship, and for avoiding payment of fares) whose name and address are unknown to such officer, and to convey such offender before some justice without any warrant or other authority. See M. S. Act Amendment Act, 1862 (c. 63), s. 37.

55. As to Surveyors, their Salaries, Expenses and Fees.

See Pt. I. c. 6, p. 1208.

56. For Costs and Damages.

See tit. COSTS, c. 20, p. 369.

P.

57. As to Investigations into Shipping Casualties.

See tit. SHIPPING CASUALTIES INVESTIGATIONS.

58. As to Lighthouses.

See tit. TRADE, BOARD OF—.

59. As to Registrar-General of Shipping and Seamen.

See tit. TRADE, BOARD OF—.

60. As to the Employment of Certificated Masters, Mates and Engineers.

See tit. SEAMEN.

61. As to Seamen generally.

As to seamen generally, their engagement, protection and discharge, see tit. SEAMEN.

62. As to Wages of Seamen.

See tit. WAGES.

63. For Bottomry.

See tit. BOTTOMRY, p. 100.

64. For Damage to Cargo.

See tit. GOODS, CARRIAGE OF—, Pt. VI. p. 467.

65. For Damage by Collision.

See tit. COLLISION, p. 176.

66. For Laches.

See tit. LACHES, p. 800.

67. As to Mortgages.

See tit. MORTGAGE, p. 1129.

68. For Necessaries, Repairs and Supplies.

See tit. NECESSARIES, REPAIRS AND SUPPLIES, p. 1148.

69. For Salvage.

See tit. SALVAGE.

70. As to the Measure of Damages.

See tit. REGISTRAR AND MERCHANTS.

71. As to Barratry.

See tit. MARINE INSURANCE, p. 1038.

Part III. UNSAFE AND UNSEAWORTHY SHIPS.**1. Unsafe Ships (British).****1. Detention for Survey.****(a) Generally.***

692. When a British ship, in any port of the United Kingdom, is, by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, such ship (hereinafter referred to as "unsafe"), may be detained for survey. See M. S. Act, 1876 (c. 80), s. 6.

693. As to who may detain, see Pt. II. c. 50, p. 1254; and as to the overloading

or improper loading of deck and grain cargoes, see Pt. V.

(b) On Complaint of Seamen.

694. The Board of Trade, or its detaining officer, on the complaint of one-fourth (being not less than three seamen) of any British ship, that the ship is unsafe, if the complaint is made in sufficient time before sailing, and provided that the Board is satisfied that the complaint is not frivolous or vexatious, shall take proper steps for ascertaining whether the ship ought to be detained under this act, and shall not require security for costs from such seamen complaining. See M. S. Act, 1876 (c. 80), s. 11.

See also c. 6, p. 1272.

(c) Exemptions.

695. These provisions do not apply to any vessel employed exclusively in going from place to place in any river or inland water of which the whole or part is in any British possession. *Ibid.* s. 44.

(d) By Board of Trade.†

696. The Board of Trade, if they have reason to believe on complaint, or otherwise, that a British ship is unsafe, may order her detention for survey. *Ibid.* s. 6, sub-s. 1.

(e) By Detaining Officer of Board of Trade.‡

697. Any detaining officer appointed

* (156) The powers given to the Board of Trade and their detaining officers under the M. S. Act, 1876, in regard to detaining unsafe ships, do not extend to ships which are not about to proceed to sea, so that any interference with such ships is not justified by the act. See Board of Trade Circular, Sept. 1879, Consecutive Off. No. 153, p. 2.

† (157) When the application is made by one of the public, and direct to the Board of Trade, the mode of procedure is as follows:—An "information" or complaint on a Board of Trade form, headed Surveys 82, which can be obtained free of charge at any Mercantile Marine Office, and at the office of any of the Board's surveyors, is to be sent by the complainant to an assistant-secretary of the Marine Department of the Board of Trade, S.W., containing particulars under five heads, viz.: A., as to the ship; B., as to her usual employment; C., as to the cargo; D., as to the grounds on which the ship is deemed to be unsafe, i. e. of overloading, improper loading, bad stowage, deck cargo, defects in hull, insufficiency of or defects in

equipment, or defects in machinery or boilers; and E., as to her equipments; concluding with a general outline of defects, &c., rendering the ship unsafe. It is not necessary that all these particulars should be filled up; but it is better to give as much of the information required as is practicable, and sufficient information should always be given to enable the Board of Trade to identify and find the ship. *Ibid.* p. 2, and Form Surveys 82.

(158) The information should conclude with a statement of the opinion of the complainant that the ship "is unfit to proceed to sea without serious danger to human life, having regard to the service for which she is intended," and that the facts are reported in order that she may be provisionally detained for survey. The information must be dated, and signed by the complainant, whose signature must be attested by a witness, whose signature is to be appended. *Ibid.*

(158a) The full name and address by post of the complainant and witness must be added. *Ibid.*; and Form Surveys 82.

‡ (159) The application for detention of a

by the Board of Trade has the same power as the Board of Trade of provisionally ordering the detention of a ship for survey. *Ibid.* sub-s. 9.

2. *Detaining Officers.*

698. The Board of Trade, with the consent of the Treasury, may from time to time appoint detaining officers. *Ibid.* sub-s. 8.

699. Any detaining officer so appointed has the same power as the Board of Trade under this section of provisionally ordering the detention of a ship for survey, and of appointing a person or persons to survey her; and if he thinks that a ship so detained by him is not unsafe he may order her to be released. *Ibid.* sub-s. 9.

700. A detaining officer shall forthwith report to the Board of Trade any order

made by him for the detention or release of a ship. *Ibid.* sub-s. 10.

701. A detaining officer shall have for the purpose of his duties under this act the same powers as an inspector appointed by the Board of Trade under the M. S. Act, 1854. *Ibid.* s. 12, sub-s. 1.

702. The provisions of the M. S. Act, 1854, with respect to persons wilfully impeding an inspector, or disobeying his orders, apply to persons so impeding any officer having, under this act, the powers of an inspector or surveyor. *Ibid.* sub-s. 5.

703. As to the powers of such inspectors, see tit. SEAMEN, Pt. IV.

3. *Provisional Order of Detention.**

704. An order for the provisional detention of the ship, and any order vary-

ship as unsafe under this act may be made to the Board of Trade direct, or to one of the Board's detaining officers, and by a Board of Trade officer, or one of the public. A Board of Trade detaining officer may also make the order of his own accord. See Board of Trade Instructions to Detaining Officers, Sept. 1876, Cons. Off. No. 78, p. 2.

(160) When the "information" or complaint is made by one of the public to a detaining officer of the Board of Trade, it must be on form headed Surveys 82A, which may also be obtained free of charge at any Mercantile Marine Office, and at the offices of any of the Board's surveyors. The contents of this form are similar to those in Form Surveys 82, except that it is to be addressed to the detaining officer of the district. *Ibid.*

(161) Forms 82 and 82A should always be used as required when practicable; but the Board of Trade and a detaining officer will not ignore complaints made by letter, and containing the name and address of the writer. *Ibid.* p. 3.

(162) When the information or complaint is made by a Board of Trade officer, or an officer of the customs, or coastguard, or a receiver of wreck, to the detaining officer, the application is on form Surveys 82A; but the signature of the complainant need not be witnessed. *Ibid.* p. 2.

(162a) In case information is sent straight to the Board of Trade, without going through the officer, the Form 82 is used instead of the Form 82A.

(163) When, from circumstances coming under the observation of the detaining officer himself, he orders the provisional detention of a ship, he also fills up form headed Surveys 82A as far as practicable, and sends it to the Board of Trade with the report hereinafter referred to. *Ibid.* p. 2, par. 5.

* (164) When the "information" is transmitted by the complainant direct to the assistant-secretary of the Board of Trade under form Surveys 82, and the Board of Trade orders provisional detention for survey under sect. 6 of M. S. Act, 1876, of a ship in the United Kingdom, it does so according to a form headed Surveys 83. This document states where the ship is lying, and where she is to be surveyed. It also contains a form of telegram which it directs to be sent to the collector of customs at the port, informing him that the order has been made, and instructing him to detain the ship accordingly, and to cause the telegram to be produced on board as his authority for doing so. This form is dated and signed by order of the Board by one of the assistant secretaries. *Ibid.*

(165) One of the assistant-secretaries of the Board then despatches to an officer of customs, or of the Board of Trade in that locality, a document headed Surveys 84, notifying to the officer that an order for provisional detention has been made, instructing him to detain the ship accordingly; to serve at once the notification or statement accompanying it, and which is in the form headed Surveys 85, of the grounds of the detention; to forward to the principal officer of the Board of Trade for that district the instructions also accompanying it, and which are in the form headed Surveys 86; and to report to the Board at once. *Ibid.*

(166) The notification or statement headed Surveys 85 above referred to is a notice from one of the assistant-secretaries of the Board directed to the master of the ship, informing him that an order for the provisional detention of the ship has been made, and of the grounds of her detention, and that a surveyor of the Board has been instructed to survey

ing same, shall be served as soon as may be on the master. See M. S. Act, 1876 (c. 80), s. 12, sub-s. 2.

705. The plaintiff was the owner of a British ship named the L., which was at the British port of S., and was intended to be employed in the foreign cattle trade. Certain surveyors of the Board of Trade reported, in doubtful terms, that owing to her unusual proportions the L. was an unsafe ship. The Board of Trade thereupon ordered the L. to be provisionally detained. A court of survey was held as

to the condition of the L., and the members thereof reported that the L. was not unsafe, and that she ought not to have been detained. The L. was accordingly released. The plaintiff then brought an action against the secretary of the Board of Trade, to recover compensation for the loss to him by reason of the provisional detention. At the trial it was admitted that the L. was a safe ship. The judge, in substance, directed the jury to consider whether it was reasonable in the Board of Trade to detain the L. for sur-

her; that the survey will commence within forty-eight hours, unless the principal officer of the Board therein named hears from him (the master of the ship) within that time; that if he, the master, wishes to avail himself of the provisions of sect. 6, sub-sect. 5, of the M. S. Act, 1876, as to selecting an assessor to assist in the survey, he, the master, should inform the principal officer therein named of the Board of Trade of the name of the assessor selected, and that a copy of the surveyor's report and of the further order of the Board will be sent to him, the master, on the completion of the survey, and warning him, the master, against coating the ship with tar or any substance until the survey has been completed. See Board of Trade Instructions to Detaining Officers, Sept. 1876, Cons. Off. No. 78, p. 2, par. 5.

(167) If the detaining officer orders the ship to be provisionally detained, he makes, signs, and dates the report at the foot of the "information" to the effect that he has issued an order accordingly and sent it to the collector of customs in the locality to be served on the parties, and forwards the "information" and report to an assistant-secretary of the Marine Department of the Board of Trade. *Ibid.*; and see Form 82A.

(168) If the officer does not order provisional detention he forwards the information to the assistant-secretary with a separate letter giving his reasons for not interfering. *Ibid.*

(169) Every order by a detaining officer for provisional detention of a ship is made on form headed Surveys 84A, and the officer keeps a correct duplicate of it. *Ibid.* p. 3, and see Form 84A, Cons. Off. No. 78, September, 1876.

(170) This order he sends to the principal officer of customs of the port. It notifies that the detaining officer, having reason to believe the ship to be unsafe, thereby orders her to be provisionally detained for the purpose of survey, and requests the officer to take the necessary steps for detaining her forthwith, taking care that the accompanying notice, headed Surveys 85A, and containing a written statement of the grounds for the ship's detention, is served at once; and it further requires him to return this

form 84A, after filling in at the back of it a notification that the form Surveys 85A has been duly served according to the requirements of sect. 35 of M. S. Act, 1876, and stating therein how and on whom it was so served. *Ibid.* See Forms 84A and 85A.

(170a) If in any case with a view to save time the officer thinks it advisable to depart from this rule, and does not send the order for detention to the customs officer to be served, he may send forms 84A and 85A to one of his own staff, or to any officer of coast guard for the purpose. But he should inform the collector of customs in due course. He should then, immediately on completing form 85A, fill up the report on form 84B, and send it to the Board of Trade. *Ibid.* p. 3.

(170b) The form Surveys 85A, above referred to, is the notice referred to in form 84A from the officer having authority to detain the ship, to the master of the ship, intimating that he (the officer) has ordered the ship named, and lying as therein mentioned, to be provisionally detained on the grounds therein mentioned, and has given instructions for her survey, that the survey will commence within forty-eight hours, unless he (the officer) hears from him (the master) within that time, and that if he (the master) wishes to avail himself of the provisions of s. 6, sub-s. 5 of M. S. Act, 1876, he (the master) should communicate with him (the officer), and inform him (the officer) of the name of the assessor selected to accompany the appointed surveyor, and that a copy of the surveyor's report and of the further order to be made thereon by the Board of Trade will be sent to him (the master) on the completion of the survey, and warning the master against coating the ship with tar or any substance until the survey is completed. This notice is served by the collector of customs, or his officer, in accordance with s. 35 of M. S. Act, 1876. *Ibid.* p. 3.

(170c) The Board of Trade have also powers of provisional detention; and where they exercise those powers they instruct the officer as to the steps they require to be taken in each case. Where the Board of Trade order provisional detention they use forms very similar to those above mentioned. *Ibid.*

vey without a direct affirmation by their surveyors that in their opinion she was unsafe. *Held* a misdirection: for the proper question to be left to the jury was whether the facts with regard to the L., as she lay at S., which would have been apparent to a person of ordinary skill in examining her and inquiring about her, would have given him reasonable and probable cause to suspect her safety, and to detain her for survey and inquiry. *Thompson v. Farrer*, 8 Q. B. D. 372; 51 L. J. Q. B. 534; 47 L. T. 117; 4 Asp. 562—C. A.

706. A man was tried and convicted under the M. S. Act, 1871 (c. 110), s. 11, for sending a ship to sea in an unseaworthy state, upon an indictment which did not aver either that he knew of her being unseaworthy, or that he had not used reasonable means to make her seaworthy. *Held*, first, that the indictment need not aver that the accused knew the ship to be in an unseaworthy state. *Held*, secondly, that the indictment need not contain averments negating the use of reasonable means to make and keep the ship seaworthy. *Reg. v. Freeman*, 9 W. R. C. L. 527—C. C. R.

707. As to service of order, see Pt. II. c. 45, p. 1253.

4. Notice of Grounds of Detention.

708. When a ship has been so provisionally detained there shall be forthwith

served on the master a written statement of the grounds of her detention. See M. S. Act, 1876 (c. 80), s. 6, sub-s. 2.

709. As to the service of such notice, see this tit. Pt. II. c. 45, p. 1253.

5. Security for Costs.

710. See tit. COSTS, c. 19, p. 366.

6. Surveyors.

711. The Board of Trade may appoint competent persons to survey unsafe ships, and report thereon to the Board. See M. S. Act, 1876 (c. 80), s. 6, sub-s. 2.

712. Any detaining officer appointed by the Board of Trade may appoint a person or persons to survey any unsafe ship. *Ibid.* sub-s. 9.

713. The provisions of the M. S. Act, 1854, with respect to persons wilfully impeding an inspector, or disobeying his orders, apply to persons so impeding any officer having under this act the powers of a surveyor. *Ibid.* s. 12, sub-s. 5.

714. As to the powers of such inspectors, see tit. SEAMEN, Pt. IV.

7. Survey.

(a) Generally.*

715. Any person authorized to make the survey may go on board and inspect

* (171) The instructions headed Surveys 86, above referred to, as accompanying the notification headed Surveys 85, are instructions directed to the principal officer of the Board of Trade for the district in which the ship is lying, informing him that the Board of Trade has ordered the ship to be provisionally detained for survey, and directing him, unless he hears from the owner, agent or master within forty-eight hours after the receipt of these instructions, to the effect that he (the master) wishes to avail himself of the provisions of s. 6, sub-s. 5 of the M. S. Act, 1876, to proceed with the survey; and if there is any delay or difficulty in doing so to report to the Board from day to day, so long as the delay is caused or the difficulty exists, and further directing him, when the survey has been made, to forward a report of the result to the Board on the form headed Surveys 87, and also to forward at the same time a statement containing the particulars and the amount of expenses incurred by him, and further directing him or the surveyor or surveyors appointed to make the survey to communicate, before acting, with the collector of customs at the port therein named, to

whom the instructions have been sent. The principal officer, on the receipt of this document, reports to the assistant-secretary of the Board that he has duly noted and will act upon such instructions. The form of this report to the Board is on the back of these instructions. *Ibid.*

(172) The Board of Trade find it necessary in some cases to appoint one of the members of their consultative staff to make the survey. In such cases they send full information to the local officer, so that facilities for such survey may be afforded. *Ibid.* p. 5, par. 24.

(173) A list of assessors appointed under s. 6, sub-s. 5 of the M. S. Act, 1876, can be obtained from the superintendent of any Mercantile Marine Office, or from any of the Board of Trade surveyors. See Surveys 85.

(174) When the detaining officer makes the order for provisional detention, he, at the same time that he issues his order headed Surveys 84A for that purpose, reports to the assistant-secretary of the Marine Department of the Board of Trade in a form headed Surveys 84B, the name, port of registry, and official number of the ship detained, where and within what port (if any) she is lying,

every part of the ship, machinery, equipments, and cargo, and may require the unloading or removal of any cargo, ballast, or tackle. See M. S. Act, 1876 (c. 80), s. 12, sub-s. 4.

(b) *With Assessor.*

716. The owner or master, before the person appointed to survey the ship makes the survey, may require that he shall be accompanied by such person as the owner or master may select out of the list of

assessors for the court of survey. *Ibid.* s. 6, sub-s. 5.

(c) *Second Survey.**

(d) *Surveyors' Fees.†*

717. All fees payable in respect of the survey of ships under the M. S. Acts, 1854 to 1876, are to be paid to the superintendent of a mercantile marine office, according to the directions of the Board of Trade, and carried to the Consolidated Fund. *Ibid.* s. 39.

that he has made provisional detention, and adding the grounds on which he has done so, and making a reference to former papers in the case (if any), and stating that he has on that day given directions to the collector of the port where the ship is lying for the detention of the ship for survey. See Board of Trade Instructions to Detaining Officers, Sept. 1876, Cons. Off. No. 78, p. 2, par. 24.

(175) The detaining officer on ordering provisional detention selects from among his staff a competent person, or in grave cases two persons, to make the survey (*Ibid.* p. 3, par. 10), and ascertains at once if the owner intends to appoint a surveyor or assessor. *Ibid.* par. 11.

(176) He also sees that the surveyor or surveyors, with or without a person appointed by the owner, as the case may be, proceeds with the survey as quickly as possible. *Ibid.* par. 12.

(177) A detaining officer, in lieu of appointing a surveyor or surveyors, may himself, at his own discretion, survey the ship if he thinks proper, when from the nature of the case and his special qualifications he is competent to do so. *Ibid.* p. 6, par. 27.

(178) In cases in which the detaining officer thinks it desirable that assistance should be obtained from the Board in making the survey of a ship he may have ordered to be provisionally detained, he at once applies to the Board for assistance, stating the nature of the questions or difficulties involved. The engineer-in-chief or his assistant, or the principal surveyor of iron and wooden ships or his assistants, or such other persons as the case may require, will be instructed to take charge of the survey. *Ibid.* par. 25.

(179) Detaining officers should never hesitate to apply for assistance from London in any case likely to involve any important question as to principle in regard to the strength or construction of the hull, machinery and boilers of ships. *Ibid.* par. 26.

179a. Tools are not to be used nor the spars or hull of a wooden ship examined previous to detention in any way defaced. Board of Trade Instructions to Surveyors, Dec. 1879, Consecutive Office No. 159.

179b. Upon the detention of a wooden ship the following rules are to be observed in her examination:—the condition of the vessel generally, any irregularity in the shear or other signs of straining, started planks, wasted or slack bolts, started treenails, or bad caulking, are to be noted: the instruments to be used in making these and other examinations are a five-eighth auger, a small hooker, a spike gimlet, or a three-eighth auger. The instrument called a prickler is not to be used, either in examining hull or spars. *Ibid.*

* (180) If the Board of Trade are not satisfied with the first survey, a further order may be issued for detention for further survey. *Ibid.* and see form Surveys 87B.

(181) Any recommendations or suggestions as to preparations for further survey or other matters which the Board's officers may have to make are not made on this form, but are written on a separate sheet. *Ibid.*

(182) If all the parts of the ship have not been seen at the first survey, and the Board of Trade has issued an order for detention for further survey, this form is to be subsequently supplemented by a fresh copy of this form fully filled up, that is to say, a further supplemental report on this form is made and forwarded by the Board of Trade surveyors, with their report of the further survey. *Ibid.*

182a. When a further survey is ordered, and it is required to open out the vessel to ascertain what repairs are necessary for her intended service, shipwrights should be employed, to be engaged, if possible, by the owner or master. *Ibid.*

† (183) When, upon inspection, a vessel alleged to be unseaworthy is found to be seaworthy, no fee is chargeable. See Board of Trade Instructions of October, 1879, Circular 756 C. p. 10.

(184) See further as to the fees and expenses to be charged in respect of survey of a vessel alleged to be unsafe or unseaworthy, the travelling and personal expenses and overtime of the different classes of surveyors, charges for tapeholders and messengers, and that no fees are to be paid to the surveyor himself, *Ibid.* pp. 10—12, 13, 14; and this title, Pt. I. c. 6, p. 1208.

8. Report.*

718. The surveyor reports the result of his survey to the Board of Trade. See M. S. Act, 1876 (c. 80), s. 6, sub-ss. 2, 3.

719. When the surveyor and the assessor selected by the owner or master from the list of assessors for the court of survey to accompany the surveyor agree in their report, the Board of Trade shall cause the ship to be detained or released accordingly. When they differ,

the Board of Trade may act as if the requisition had not been made, but the owner and master are entitled to an appeal to a court of survey. *Ibid.* sub-s. 5. See, as to such appeal, c. 2, *infra*.

9. Release.†

720. The Board of Trade on receiving the report may order the ship to be released. *Ibid.* sub-s. 3.

* (185) The surveyors' report of their survey of the ship is in the form headed Surveys 87. It contains particulars as to the ship, her port of registry, official number and rig, gross and net registered tonnage, when and where she was built, whether of hard or soft wood, and where then lying, and the names and addresses of the managing owners and master. It specifies whether the ship was surveyed by one or two surveyors of the board only, or whether he or they were accompanied on the survey by an assessor under sect. 6, sub-sect. 5 of M. S. Act, 1876, and if so mentions that assessor's name, and whether the assessor does or does not agree with the Board of Trade surveyors' report. The report then sets out that the ship has been surveyed, and that the surveyors are or are not, as the case may be, of opinion, having regard to the nature of the service for which she is intended, that she is unsafe, and if unsafe, that she is so by reason of the defects therein mentioned. The report is signed by both surveyors who surveyed the ship, *i. e.*, by the surveyors appointed by the Board or the Board's principal officer for the district, as the case may be, and the assessor chosen by or on behalf of the owner, if he concurs in their report. If the assessor chosen by or on behalf of the owner does not concur in the report, he should fill up, date, and sign a separate report in the form headed Surveys 87A. See Board of Trade Instructions to Detaining Officers, Sept. 1876, Consecutive Office No. 78.

(186) Besides the report already alluded to of the Board of Trade surveyor or surveyors, a further report, headed "Surveys 87B, Notes of General Information from Surveyor," and marked "confidential," is made at the same time by the Board of Trade surveyor or surveyors. This confidential survey states the name, port of registry, official number and rig, gross and net registered tonnage of the ship, when, where, and how built, and where then lying, the names and addresses of her managing owner and master, the condition of the ship and her equipments outboard, on deck, and below the deck, and detailing the condition of the various parts under those heads, and closing with a summary, stating what defect or defects collectively in their or his opinion render the ship unfit to proceed

to sea without serious danger to human life, and reporting accordingly. The report is dated and signed by the surveyors or surveyor. *Ibid.*

(187) The reports both of the Board of Trade surveyor or surveyors and of the assessor are sent to the Board of Trade when the Board detains the ship and orders the survey, and to the Board's detaining officer when he detains the ship and orders the survey. *Ibid.* p. 4, pars. 14, 15.

(188) If the surveyor or surveyors, as the case may be, report that the ship is unsafe and requires repairs, the detaining officer, in forwarding the report or reports to the Board of Trade, adds his own observations and recommendations, and his previous order for the provisional detention of the ship continues in force. This, or the officer's release of the ship, or the surveyors' report that she is not unsafe, constitutes his last independent action in the matter, future stages of the case being conducted by the Board of Trade, which communicates with the parties and sends such instructions to the detaining officer by minute or letter, as circumstances appear to the Board to require. See *Ibid.* p. 4, pars. 13 to 16.

(189) Whenever a ship is detained for survey on account of unseaworthiness, there accompanies the report headed Surveys 87 a memorandum on a printed form issued for that purpose, and dated and signed by the principal officer of the Board of Trade, ordering the survey, and directed to the assistant-secretary, giving information under the following heads:—1. What led to the detention of the ship? 2. Had there been any attempt at the time to send or take her to sea? 3. Had she been cleared outwards or inwards? 4. Had she any, and if so what, cargo on board? 5. Were her crew engaged, and if so, were they on board, and had they signed articles? 6. What was the nature of the contemplated voyage? 7. The names of any of her crew who can speak to her unseaworthiness. 8. Had she recently been repaired, and if so, when? See the form in *Ibid.*

† (190) If the surveyor or surveyors, as the case may be, report that the ship is not unsafe, the detaining officer at once orders her release, and sends the reports and papers to the assistant-secretary of the Board of Trade,

721. The Board of Trade may at any time, if satisfied that a ship detained under this act is not unsafe, order her to be released upon or without any conditions. M. S. Act, 1876 (c. 80), s. 6, sub-s. 7.

722. Any detaining officer appointed by the Board may also, if he thinks that a ship detained by him is not unsafe, order her to be released. *Ibid.* sub-s. 9.

723. When a ship has been detained under this act she shall not be released by reason of her British register being subsequently closed. *Ibid.* s. 12, sub-s. 3.

724. On the 7th November a foreigner purchased a British vessel, receiving possession thereof and paying a deposit. It was stipulated that the balance was to be paid on receipt of transfer. On the 11th November the vessel was detained by the Board of Trade under the 12th section of the M. S. Act, 1873 (c. 85). On the 20th November the balance of the purchase-money was paid, and a bill of sale (dated the 8th November) was delivered. On the 5th December the British register was closed. *Held*, that the transfer was not completed until the 20th November, and that the vessel was a British ship at the date of its de-

tention on the 11th November. *Granfelt v. Lord Advocate*, Cases in Court of Session, 4th series, vol. 1, p. 782. [SCORCH.]

725. Whatever equitable rights may be raised between an owner and a purchaser, there is nothing but an actual transfer by bill of sale entered on the register which can effect a change in the nationality of a ship. Per Lord Ardmillan, *Ibid.*

726. An order of detention under sect. 12 of the M. S. Act, 1873 (c. 85), does not prevent a British vessel being transferable by sale to a foreign purchaser; it only prevents the closing of the British register effecting the release of the ship. Per the Lord President Inglis, *Ibid.*

10. Final Order for Detention.*

727. The Board of Trade on receiving the report may, if in their opinion the ship is unsafe, order her to be finally detained, absolutely, or until so repaired, altered, unloaded, or reloaded, as the Board may think necessary for the protection of human life, and may vary or add to any such order. See M. S. Act, 1876 (c. 80), s. 6, sub-s. 3.

stating that he has done so, and his grounds for having done so. See Board of Trade Instructions to Detaining Officers, Sept. 1876, Cons. Off. No. 78, p. 4, par. 14, and Form 84b.

(191) When the ship has been provisionally detained by an order of the Board of Trade, the Board in like cases makes a similar order of release. *Ibid.*

(192) The detaining officer, however, cannot order the release of a ship which has been provisionally detained under an order of the Board of Trade. *Ibid.* p. 5, par. 22.

(193) The collector of customs has no power to release a ship detained for survey, even if sold to foreigners. See note on form Survey 85.

* (194) When the surveyor or surveyors report that the ship is unsafe, one of the assistant-secretaries of the Board of Trade, on the receipt of such report, addresses a communication to the master of the ship in the form headed Surveys 88 (report of survey to be served on master), enclosing a copy of the report of the survey on the ship, stating that in the surveyor's opinion the ship is unsafe, and intimating that if he desires to appeal, under s. 6, sub-s. 4 of the M. S. Act, 1876, to a court of survey constituted by that act, the appeal must be made within seven days after the service upon him of the accompanying report, and that unless he appeals within that time the Board of

Trade will make a final order for the detention of the ship; and further informing him that if he does not intend to appeal, but wishes to make the ship seaworthy, and to give every facility for further survey, he will save time and expense by replying at once to that effect, and intimating that any further communication on the subject should be addressed to the Assistant-Secretary, Marine Department, Board of Trade, Whitehall Gardens, S.W. See *Ibid.* and form Surveys 88.

(195) If the Board of Trade decides that the ship shall be "finally detained absolutely," or "finally detained until the performance of certain conditions," it makes an order accordingly in the form headed Surveys 89. If the ship is ordered to be detained until the performance of certain conditions, the conditions are specified in this order. This order is signed by one of the assistant-secretaries of the Board. The Board has power to vary or add to this order. *Ibid.* and Form 89.

(196) The Board's detaining officer can never make a final order for the detention of any ship, whether he has provisionally detained her or not. *Ibid.* p. 5, par. 22.

(196a) The stages of the case subsequent to detention are conducted by the Board of Trade, who communicate with the parties and the officer, by minute or letter, as the circumstances require. *Ibid.* p. 4, par. 16.

728. An order for the final detention of a ship, and any order varying the same, shall be served as soon as may be on the master. *Ibid.* sub-s. 2.

729. As to the service of such order, see this tit. Pt. II. c. 45, p. 1253.

11. *Costs and Compensation.*

Taxation.

730. See tit. COSTS, c. 27, s. 11, p. 383.

12. *Costs and Compensation against Owners.*

Generally.

731. See tit. COSTS, c. 20, s. 13, p. 372.

13. *Costs and Compensation against Board of Trade.*

(a) *Generally.*

732. See tit. COSTS, c. 20, s. 13 (c), p. 372.

(b) *In Ireland.*

733. See tit. COSTS, c. 20, s. 13 (b), p. 372.

2. **Courts of Survey (References or Appeals to—).**

1. *Generally.*

734. When a ship has been provisionally detained, the Board of Trade may at any time refer the matter to the court of survey for the port or district where the ship is detained. See M. S. Act, 1876 (c. 80), s. 6, sub-s. 6.

735. Before the order for final detention is made a copy of the report is to be served upon the master, and within seven days after service the owner or master may appeal to the court of survey for the port or district where the ship is detained. *Ibid.* sub-s. 4.

736. As to the mode of service, see this tit. Pt. II. c. 45, p. 1253.

737. As to the right of appeal from the report of a surveyor accompanied by an assessor, *Ibid.* s. 5, and No. 719.

738. For provisions enabling the Lord Chancellor from time to time (with the consent of the Treasury as to fees) to make, revoke, or alter general rules as to courts of survey, and the summoning of and procedure before the court, the requiring on an appeal security for costs and damages, the amount and application

of fees, and the publication of the rules, *Ibid.* s. 9.

739. The rules made under this act relating to the court of survey shall be published as such rules direct. *Ibid.* ss. 7 and 9.

740. In the construction of these rules, words importing the singular number shall include the plural, and words importing the plural number shall include the singular number. R. C. S. 1876, No. 3.

741. These rules are published by her Majesty's stationery office through its agents, and a copy is kept at the office of the registrar of every court of survey and at every custom house and mercantile marine office in the United Kingdom, and may be perused thereat by the master or owner of any ship provisionally detained under the M. S. Act, 1876, and by any one deputed by him. *Ibid.* No. 5.

742. As to appeals to courts of survey from refusal of declarations on survey of passenger ships, see Pt. IV. c. 12, s. 6 (c), p. 1284; from refusal of certificate of clearance for emigrant ships, *ibid.* c. 11, s. 4, p. 1282; from refusal of certificate as to lights and fog signals, see Pt. II. c. 22, s. 3, p. 1246; from detention of unsafe ships (foreign) overladen or improperly laden, see c. 4, p. 1271. As to costs, see tit. COSTS, c. 20, ss. 11 and 13, pp. 372, 373; and c. 42, p. 415.

2. *Courts and Judges.*

743. Where a ship has been provisionally detained, the Board of Trade may at any time refer the matter to the court of survey for the port or district where the ship is detained. See M. S. Act, 1876 (c. 80), s. 6, sub-s. 6.

744. The judge shall be the person summoned for the case in accordance with the rules under this act out of a list, approved for the port or district by a Secretary of State, of wreck commissioners, police magistrates, judges of county courts, and other fit persons; or in any special case a wreck commissioner appointed by the Board of Trade. *Ibid.* s. 7.

745. The courts of survey, with the districts assigned to each, and the persons authorized to act as judges and registrars thereof, and which have been approved by one of her Majesty's principal Secretaries of State, as set forth in Appendix A., shall be the courts of survey, and the districts, judges, and registrars of such courts, for the purposes of

the M. S. Acts, 1854 to 1876. R. C. S. 1876, No. 4. See these rules, and list of courts of survey, their judges and registrars, set out in 2 Maude & Poll. (4th ed. by Poll. & Bruce), pp. cccclxxi—cccclxxx.

746. The following is a list of the courts of survey in England with the districts assigned to each, and the persons authorized to act as judges thereof. See Appendix A. to R. C. S. Sept. 1876.

Berwick, Belford, Alnwick, Morpeth—the judges of the county courts in Circuits 1 and 2; the recorder of Berwick. North Shields, Newcastle, Gateshead, South Shields, Sunderland, Seaham Harbour—the judges of the county courts in Circuits 1 and 2; the stipendiary magistrates at South Shields; the recorders of Durham and Newcastle. Hartlepool, Stockton—the judges of the county courts in Circuits 2 and 15; the stipendiary magistrates at Middlesbrough; the recorder of Hartlepool. Stokesley, Whitby, Scarborough, Bridlington, Beverley, Hedon, Hull—the judge of the county court in Circuit 16; the stipendiary magistrate at Hull; the recorders of Hull and Scarborough. Goole—the judges of the county courts in Circuits 16 and 18. Barton-on-Humber, Great Grimsby, Louth, Spilsby, Boston—the judge of the county courts in Circuit 17. Spalding, Holbeach, Wisbeach—the judge of the county courts in Circuits 17, 32, and 35. King's Lynn, Little Walsingham, Holt, North Walsham—the judge of the county courts in Circuit 32; the recorder of King's Lynn. Yarmouth, Lowestoff—the judge of the county courts in Circuits 32 and 33; the recorders of Oxford, Norwich and Yarmouth. Halesworth, Framlingham, Woodbridge—the judge of the county courts in Circuit 33; the recorders of Aldborough and Oxford. Ipswich, Harwich—the judge of the county courts in Circuits 33 and 38; the recorder of Ipswich. Colchester, Maldon, Rochford—the judge of the county courts in Circuit 38; the recorders of Colchester and Maldon. London—the magistrates of the metropolitan police courts. Rochester, Sheerness, Sittingbourne, Faversham—the judge of the county courts in Circuit 48; the stipendiary magistrate at Sheerness; the recorders of Faversham and Rochester. Canterbury, Margate, Ramsgate, Sandwich, Deal, Dover, Folkestone, Hythe, Romney—the judges of the county courts in Circuits 48 and 49; the judge of Admiralty Court of the Cinque Ports; the recorders of Canterbury, Deal, Dover, Folkestone, Hythe, Margate, Sand-

wich, and Tenterden. Rye, Hastings—the judge of the county courts in Circuit 50; the judge of the Admiralty Court of the Cinque Ports; the recorder of Rye. Lewes, Brighton, Worthing—the judges of the county courts in Circuits 50 and 51; the stipendiary magistrate at Brighton; the recorders of Brighton and Seaford. Arundel, Chichester, Portsmouth—the judge of the county courts in Circuits 50 and 51; the recorders of Chichester, Portsmouth, and Winchester. Southampton, Newport (Isle of Wight), Christchurch, Poole, Wareham—the judges of the county courts in Circuits 51 and 55; the recorders of Poole, Southampton, Wareham, and Winchester. Weymouth, Bridport—the judge of the county courts in Circuit 55. Axminster, Honiton, Exeter, Newton Abbot—the judge of the county courts in Circuits 57 and 58; the recorder of Exeter. Totnes, Kingsbridge—the judge of the county courts in Circuit 58; the recorder of Dartmouth. East Stonehouse, Liskeard—the judges of the county courts in Circuits 58 and 59; the recorders of Devonport, Plymouth, and Tiverton. Saint Austell, Truro, Falmouth, Helston, Penzance, Redruth, Bodmin, Camelford, Holsworthy—the judge of the county courts in Circuit 59; the recorders of Falmouth, Helston, and Penzance. Bideford, Barnstaple, Williton—the judge of the county courts in Circuit 57; the recorders of Barnstaple and Bideford. Bridgewater, Weston-super-Mare, Wells, Bristol—the judges of the county courts in Circuits 54 and 57; the recorders of Bristol and Wells. Thornbury, Dursley—the judges of the county courts in Circuits 53 and 54. Gloucester, Newnham, Clepstone—the judges of the county courts in Circuits 24 and 54; the recorder of Gloucester. Newport (Monmouth), Cardiff, Bridgend, Neath, Swansea—the judges of the county courts in Circuits 24, 30, and 31; the stipendiary magistrates at Cardiff and Swansea. Llanelly, Carmarthen, Narbeth, Pembroke, Haverfordwest, Cardigan, Aberayron—the judge of the county courts in Circuit 31; the recorder of Carmarthen. Aberystwith, Machynlleth, Dolgelly, Portmadoc, Pwllheli—the judge of the county courts in Circuit 28. Carnarvon, Llangefni, Bangor, Conway, St. Asaph, Holywell, Chester—the judge of the county courts in Circuit 29; the recorder of Chester. Runcorn, Birkenhead, Liverpool—the judges of the

county courts in Circuits 6 and 7; the stipendiary magistrate at Liverpool; the stipendiary magistrate at Birkenhead; judge of Court of Passage; the recorder of Liverpool. Ormskirk—the judges of the county court in Circuit 6. Preston, Kirkham, Paulton-le-Fyde, Lancaster—the judge of the county courts in Circuit 4; the recorder of Preston. Ulverston, Whitehaven, Cockermouth, Wigton, Carlisle—the judge of the county courts in Circuit 3; the recorder of Carlisle. *Ibid.*

747. For lists of courts of survey in Scotland and Ireland, see lists 2 and 3. *Ibid.*

748. The district of the court of survey for London includes the City of London, and the districts of all the Metropolitan county courts, the districts of the county court of Kent holden at Gravesend, Dartford, Greenwich and Woolwich, the districts of the county court of Essex holden at Brentwood and Romford, and the district of the county court of Surrey holden at Wandsworth. The district of any other court of survey in England is the district of the county court of the place at which the court of survey is held. *Ibid.*

749. The wreck commissioner is judge of every court of survey in the United Kingdom, and the other judges are those described in the second column, *Ibid.*

750. A court of survey for a port or district shall consist of a judge sitting with two assessors. See M. S. Act, 1876 (c. 80), s. 7.

751. The courts are held at the places whose names they bear, or at any place within their respective districts, and may, by the permission of the judge, be adjourned to any place out of those districts. See App. A. to R. C. S., September, 1876.

752. As to the powers for payment by the Treasury of salaries to the judges of courts of survey, assessors, registrars, and other officers appointed by M. S. Act, 1876, see M. S. Act, 1876 (c. 80), s. 39.

3. Assessors.

753. A court of survey for a port or district shall consist of a judge sitting with two assessors. *Ibid.* s. 7.

754. The assessors shall be persons of nautical engineering or other special skill and experience; one shall be appointed by the Board of Trade, and the other summoned according to the rules under this act by the registrar, out of a list of persons periodically nominated by the local marine

board of the port, or, if there is no such board, by a body of local shipowners or merchants approved by a secretary of state, or, if there is no such list, shall be appointed by the judge. If a secretary of state thinks fit, on the recommendation of the government of any British possession or foreign state, to add any persons to such list, they shall, until otherwise directed by the secretary of state, be so added, and if there is no such list they shall form such list. *Ibid.*

4. Registrars.

755. The county court registrar or such other fit person as a secretary of state may from time to time appoint shall be the registrar of the court, and shall, on receiving notice of an appeal or a reference from the Board of Trade, immediately summon the court in the prescribed manner to meet forthwith. See M. S. Act, 1876 (c. 80), s. 7.

756. The name of the registrar and his office shall be published in the prescribed manner. *Ibid.*

757. The registrar of the court of survey for London is Mr. William Edward Stanley Thomson, and his office is at Room, No. 725, the Royal Courts of Justice, Strand, in the county of Middlesex. See Appendix A. to R. C. S. Sept. 1876.

758. The registrar of any other court of survey in England is the registrar of the county court of the place at which the court of survey is held, and his office is the office of the registrar of that county court. *Ibid.*

759. The registrar of a court of survey in Scotland is the sheriff clerk of the county in which the court is held, and his office is the office of the sheriff clerk. *Ibid.*

760. The registrar of a court of survey in Ireland is the clerk of the peace, registrar, or other person discharging the duties of registrar of the court of the chairman of the county in which the court is held, and his office is the office of such clerk of the peace, registrar, or other person. *Ibid.*

761. A notice shall be put up in some conspicuous place in every custom house and mercantile marine office in the United Kingdom, containing the name of the registrar of the court of survey for that district, and the name of the street or place in which such registrar's office is situated. R. C. S, 1876, No. 6.

5. *Notice of Appeal.*

762. Where the owner or master of a ship, hereinafter called the appellant, desires to appeal to a court of survey, he shall file at the office of the registrar of the court of survey for the London district, or for the district in which the ship is, hereinafter called the court, a notice in the form No. 1 in Appendix B. R. C. S. 1876, No. 7.

6. *Transmission of Notice.*

763. Immediately upon the filing of the notice of appeal, the registrar shall communicate the fact, by telegraph and letter, to the Board of Trade, who shall thereupon inform him whether the Board intends to have the appeal heard by a wreck commissioner, and, if so, on what day. *Ibid.* No. 8.

7. *Arrangements for Hearing.*

764. If the Board of Trade inform him they do not intend the appeal to be heard by a wreck commissioner, the registrar forthwith ascertains which of the other judges of the court will hear the appeal, and on what day. *Ibid.* No. 9.

765. The court shall, if practicable, be summoned to hear the appeal on a day not later than fourteen days from the filing of the notice of appeal. *Ibid.* No. 16.

766. As soon as the registrar has ascertained by whom the appeal will be heard, he summons the court in the form No. 2 in Appendix B. And at the same time sends notice thereof to the Board of Trade and to the appellant, in the form No. 3 in Appendix B. *Ibid.* No. 13.

767. If the survey has been made on the complaint of the complainant, the Board of Trade sends him notice of the time and place appointed for the hearing. *Ibid.* No. 14.

8. *Selection of Assessors.*

768. On ascertaining when the hearing will take place, the registrar shall, if there is a list of assessors for the court, select therefrom the person who is, in his opinion, the best qualified to act as assessor on the appeal; or if there is no such list, he will take the instructions of the judge as to the assessor to be appointed. *Ibid.* No. 10.

769. The Board of Trade shall appoint the other assessor, and shall forthwith send the name and address of such assessor to the registrar. *Ibid.* No. 11.

770. If the ship is a foreign ship, the registrar shall give notice to the consular officer for the state to which the ship belongs, residing at or nearest to the place where the ship is detained, that, at the request of the appellant, some competent person may be selected by the consular officer to act as assessor. *Ibid.* No. 12; and as to the proceedings on provisional detention, see Nos. 807, 812, *infra*.

9. *Parties.*

771. The Board of Trade and the appellant shall be parties to the proceedings. *Ibid.* No. 17.

772. Any other person, on entering an appearance, may, by permission of the judge, be made a party to the proceedings. *Ibid.* No. 18.

10. *Survey.*

773. The judge and each assessor may survey the ship, and shall have for the purposes of this act all the powers of an inspector appointed by the Board of Trade under the Merchant Shipping Act, 1854 (c. 104), ss. 15, 16. See M. S. Act, 1876 (c. 80), s. 8, sub-s. 2.

774. The judge may appoint any competent person or persons to survey the ship and report thereon to the court. *Ibid.* sub-s. 3; and as to survey of foreign ship, see No. 808, *infra*.

775. The owner and master of the ship, and any person appointed by either of them, or by the Board of Trade, may attend the survey. *Ibid.* sub-s. 5.

776. The provisions of the Merchant Shipping Act, 1854, as to persons wilfully impeding an inspector, or disobeying his orders, apply to persons so impeding any judge or assessor under this act. *Ibid.* s. 12, sub-s. 5.

777. As to such powers, see the M. S. Act, 1854 (c. 104), ss. 15, 16, and tit. SEAMEN, Pt. IV.

11. *Evidence.*(a) *Report of Survey.*

778. Previous to the hearing the Board of Trade shall forward to the registrar, to be produced as evidence at the hearing, an official copy of the report of the surveyor. R. C. S. 1876, No. 15.

(b) *Affidavits.*

779. Affidavits may, by permission of the judge, be used at the hearing, when

sworn in the United Kingdom, before any judge or registrar of a court of survey, or before a person authorized to administer oaths in the Supreme Court of Judicature, or before a commissioner empowered to take or receive affidavits, or before a justice of the peace for the county or place where they are sworn or made: in any place in the British dominions out of the United Kingdom, before any court, judge, or justice of the peace, or any person authorized to administer oaths there in any court: in any place out of the British dominions, before a British minister, consul, vice-consul, or notary public, or before a judge or magistrate, his signature being authenticated by the official seal of the court to which such judge or magistrate is attached. *Ibid.* No. 22.

(c) *Notice to produce.*

780. Either party may give to the other a notice in writing to produce such documents (saving all just exceptions) as relate to any matters in difference, and which are in the possession or control of such other party; and if such notice be not complied with, secondary evidence of the contents of the documents may be given by or on behalf of the party who gave such notice. *Ibid.* No. 19.

780a. See as to such notices generally, tit. EVIDENCE, c. 8, p. 427, and tit. PRACTICE, Pt. II.

(d) *Notice to admit.*

781. Either party may give to the other party a notice in writing to admit any documents (saving all just exceptions); and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving such documents, whatever the result may be, unless the court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the officer by whom the costs are taxed, a saving of expense. *Ibid.* No. 20.

781a. See as to such notices generally, tit. EVIDENCE, c. 9, ss. 1, 2, p. 429, and tit. PRACTICE, Pt. II.

12. *Subpœnas.*

782. The wreck commissioner shall have power to issue subpœnas as nearly as may be in the form used in the High

Court of Justice, and such subpœnas shall have effect, and may be served in any part of the United Kingdom. R. C. S. 1876, No. 21.

782a. As to subpœnas generally, see tit. PRACTICE, Pt. II.

13. *Place of Hearing.*

783. Appeals are heard before the Courts of Survey at the places appointed by their respective judges.

14. *Hearing.*

784. Causes shall be heard in open court. See M. S. Act, 1876 (c. 80), s. 8, sub-s. 1.

785. At the hearing, the Board of Trade shall first call their witnesses, and having done so shall state in writing what order they require the court to make. R. C. S. 1876, No. 23.

786. The complainant, if he has appeared, shall then call his witnesses, and, having done so, shall state in writing what order he requires the court to make. *Ibid.* No. 24.

787. The appellant shall then call his witnesses, and, having done so, shall state in writing what order he requires the court to make. *Ibid.* No. 25.

788. After the appellant has examined all his witnesses, the Board of Trade and the complainant may, on cause shown to the satisfaction of the judge, call further witnesses in reply. *Ibid.* No. 26.

789. After all the witnesses have been examined, the court shall first hear the appellant, then the complainant, if any, and afterwards the Board of Trade. *Ibid.* No. 27.

15. *Adjournment.*

790. The judge may adjourn the court from time to time and from place to place, as may be most convenient. *Ibid.* No. 28.

16. *Judgment.*

791. The judge may deliver the decision of the court either *vidâ voce* or in writing; and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a court merely for the purpose of giving the decision. *Ibid.* No. 29.

17. *Report.*

792. The judge shall report to the Board of Trade in the form No. 5 in Appendix B. *Ibid.* No. 31.

793. The judge shall send to the Board of Trade the prescribed report, and each assessor shall either sign the report, or report to the Board of Trade the reasons for his dissent. See M. S. Act, 1876 (c. 80), s. 8, sub-s. 6.

18. Order for Release or Detention.

794. The judge shall have the same power as the Board of Trade to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released. *Ibid.* sub-s. 4.

795. As soon as possible after the court has come to its decision, the judge shall issue an order for the release or detention (either finally or on conditions) of the vessel in the form No. 4 in Appendix B. R. C. S. 1876, No. 30.

19. Costs.

795a. Subject to the order of the judge of the Court of Survey, the costs of appeal follow the event. See M. S. Act, 1876 (c. 80), s. 14, and tit. Costs, c. 42, p. 415.

20. Service of Documents.

796. Any notice, summons, or other document issuing out of the court may be served by post. R. S. C. 1876, No. 36.

797. The service of any notice, summons, or other document may be proved by the oath or affidavit of the person by whom it was served. *Ibid.* No. 37.

798. As to the service of documents under the M. S. Acts, 1854 and 1876, see p. 1253.

21. Computation of Time.

799. In computing the number of days within which any act is to be done, the same shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also. *Ibid.* No. 34.

800. The days between Thursday next before and the Wednesday next after Easter Day and Christmas Day, and the three following days, shall not be reckoned or included in the computation. *Ibid.* No. 35.

22. Fees.

801. The fees, a table whereof is in Appendix C., shall be demanded and taken in any proceedings before a court of survey. *Ibid.* No. 38.

801a. And shall be taken in stamps. *Ibid.* 11th January, 1877, No. 1.

23. Deposit of Papers at Wreck Commissioners Office, London.

802. Immediately on the termination of an appeal before a court of survey elsewhere than in London, the registrar of the court shall forward to the registry of the court of survey for London, The Wreck Commissioners Office, Royal Courts of Justice, Strand, for deposit therein all the papers stamped and unstamped belonging to the appeal. *Ibid.* No. 2.

3. Appeal to Scientific Referees.

803. If the Board of Trade are of opinion that an appeal under this act involves a question of construction, design, scientific difficulty or important principle, they may refer the matter to such one or more out of a list of scientific referees approved by a secretary of state, as may appear to possess the special qualifications necessary, and may be selected by agreement between the Board of Trade and the appellant, or in default of agreement by the secretary of state, and thereupon the appeal shall be determined by the referee or referees, instead of by the court of survey. See M. S. Act, 1876 (c. 80), s. 15.

804. The Board of Trade, if the appellant in any appeal so requires and gives security to the satisfaction of the Board to pay the costs of and incidental to the reference, shall refer that appeal to a referee or referees so selected. *Ibid.*

804a. The referee or referees shall have the same powers as a judge of the court of survey. *Ibid.*

4. Unsafe Ships (Foreign) Overladen or Improperly Laden.

1. Power of Detention.

(a) Generally.*

805. When a foreign ship has taken on board all or any part of her cargo at

* (197) The power of a Board of Trade detaining officer to detain a foreign ship under

this section is confined to cases of overloading, or improper loading, when all or any

a port in the United Kingdom, and is, whilst there, unsafe by reason of overloading or improper loading, the provisions of this act as to detention of ships apply to that foreign ship as if she were a British ship. *Ibid.* s. 13.

806. These provisions do not apply to any vessel employed exclusively in going from place to place in any river or inland water of which the whole or part is in any British possession. *Ibid.* s. 44.

806a. As to which provisions, see c. 1, p. 1258.

(b) *Notice to Consul.**

807. A copy of the order for the provisional detention of the ship shall be forthwith served on the consular officer for the state to which the ship belongs at or nearest to the place where the ship is detained. "Consular officer" means any consul-general, vice-consul, consular agent, or other officer recognized by a secretary of state as a consular officer of a foreign state. *Ibid.* s. 13.

2. *Survey.†*

808. When the ship has been provisionally detained, the consular officer, on request of the owner or master of the ship, may require that the person appointed by the Board of Trade to survey the ship shall be accompanied by such other person as the consular officer may select as in the case of detention of a foreign ship. *Ibid.* sub-s. 2, see No. 770.

3. *Order for Detention or Release.‡*

809. When the ship has been surveyed by a surveyor, accompanied by a person selected by the consul, if the surveyor and such person agree, the Board of

Trade shall cause the ship to be detained or released accordingly, but if they differ, the Board of Trade may act as if the requisition for such person to accompany the surveyor had not been made. *Ibid.*

4. *Appeal.*

(a) *Generally.*

810. When the ship has been surveyed by a surveyor, accompanied by a person selected by the consul, and such surveyor and person differ, the owner and master shall have the appeal to the court of survey touching the report of the surveyor provided by this act. *Ibid.*

811. As to such appeal to the court of survey, *vide* c. 1, No. 719, c. 2, No. 762.

(b) *Assessors.*

812. When the owner or master appeals to the court of survey, the consular officer, at his request may appoint any competent person assessor in such case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Board of Trade. *Ibid.* s. 13, sub-s. 3.

812a. See as to assessors in courts of survey in cases of British ships, c. 1, s. 7 (b), p. 1262.

5. *Sending Unseaworthy Ships to Sea.*

813. Every person who sends, attempts to send, or is a party to sending, any British ship to sea in such unseaworthy state that the life of any person is likely to be endangered, is made guilty of a misdemeanor, unless he proves that he

part of the cargo is taken on board at a port in the United Kingdom, and is, whilst at that port, unsafe by reason of overloading or of improper loading. See Board of Trade Instructions to Detaining Officers, September, 1876, Cons. Off. No. 78, p. 4, par. 17.

(198) The Board of Trade has, and exercises, similar powers of detention of foreign ships, and in exercising those powers uses forms very similar to those used by the detaining officer. *Ibid.* p. 5, par. 23.

* (199) The detaining officer so detaining a foreign ship uses the same forms as in the case of British ships, but, in addition thereto, he serves on the nearest consular officer of the state to which the ship belongs a copy of his order for her provisional detention. This copy is made on form Surveys 82A,

the first part of which he fills in for the purpose, enclosing it in a letter to the consular officer. *Ibid.* p. 4, par. 18.

† (200) The detaining officer makes the best arrangements he can to facilitate the survey of the ship, and if the surveyor or surveyors he appoints, and the person (if any) appointed by the consular officer, agree that she is not unsafe, the detaining officer immediately orders her release. *Ibid.* p. 5, par. 19.

‡ (201) If, however, the surveyor or surveyors appointed by the detaining officer report to him that the ship is unsafe, his order of provisional detention remains in force, and he at once reports the facts, with full particulars, to the Board of Trade for instructions from the Board. *Ibid.* p. 5, par. 20.

used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable; and every master of a British ship who knowingly takes the same to sea in such unseaworthy state is made guilty of a misdemeanor, unless he proves that her going to sea in such state was, under the circumstances, reasonable and justifiable. Any of such parties, for the purpose of giving such proof, may give evidence like any other witness. A prosecution under this section shall not be instituted except by or with the consent of the Board of Trade, or of the governor of the British possession in which such prosecution takes place. A misdemeanor under this section is not punishable upon summary conviction. See M. S. Act, 1876 (c. 80), s. 4.

814. The provisions of this act do not apply to any vessel employed exclusively in going from place to place in any river or inland water of which the whole or part is in any British possession. *Ibid.* s. 44.

814*a*. As to the form of the indictment under this act, see No. 706, p. 1261.

815. By s. 12 of the M. S. Act, 1873 (c. 85), it is enacted that where the Board of Trade have received a complaint or have reason to believe that any British ship is, by reason of the defective condition of her hull, &c., or by reason of overloading, &c., unfit to proceed to sea without serious danger to human life, they may appoint some competent person or persons to survey her and to report to them, and may, if they think fit, order her to be detained for survey; and thereupon any officer of customs may detain such ship until her release be ordered either by the Board or by any court to which an appeal is given under s. 14 of the act; and upon receipt of the report of the surveyor the Board may, if in their opinion the ship cannot proceed to sea without serious danger to human life, make such further order as they may think requisite as to the detention of the ship or as to her release, either absolutely or upon the performance of such conditions with respect to repairs, &c., as the Board may impose.

Held, that neither the original information or complaint nor the report of the surveyor need state in terms that the "vessel cannot proceed to sea without serious danger to human life": it is enough if the facts reported to the Board are such as ought reasonably to satisfy them that the condition of the ship is such that she is unfit to proceed to sea without serious danger to human life. *Lewis v. Gray*, 1 C. P. D. 452.

816. As to survey of passenger steamers for seaworthiness before clearance, see this tit. Pt. IV. c. 13, p. 1285.

6. Unseaworthiness or insufficient Accommodation of Ship.

1. When charged by Seamen in Defence.

(a) Generally.

817. Whenever in any proceeding against any seaman or apprentice for desertion, or neglecting or refusing to join or to proceed to sea, or for being absent from or quitting his ship without leave, it is alleged by one-fourth of the seamen, or, if the seamen exceed twenty, by not less than five, that the ship is for any reason not fit to proceed to sea, or that her accommodation is insufficient, the court having cognizance of the case shall satisfy itself as to the truth thereof, and receive the evidence of the persons making that complaint, and may summon other witnesses, and if satisfied that the allegation is groundless proceed to adjudicate. See M. S. Act, 1871 (c. 110), s. 7.

818. No seaman or apprentice charged with desertion, or quitting his ship without leave, shall have any such right of complaint unless previously to quitting his ship he complained to the master of the circumstances so alleged in justification. *Ibid.*

(b) Survey Report and Order.*

819. The court after hearing the witnesses shall, if not satisfied that the allegation is groundless, cause the ship to be surveyed. *Ibid.*

* (202) When a ship is, under the provisions of this act, directed by a magistrate to be surveyed, the surveyor's report of the result of the survey is made to the assistant-

secretary of the Board of Trade in the form headed Surveys 81. See Board of Trade Instructions to Detaining Officers, September, 1876, Cons. Off. No. 78.

820. The court shall require any of the surveyors appointed by the Board of Trade, under the M. S. Act, 1854, or any person appointed for the purpose by that Board, or, under special circumstances, any other impartial surveyor appointed by the court, and having no interest in the ship, freight or cargo, to survey the ship, and answer questions concerning her from the court. Such person shall survey the ship, and make his report in writing to the court, including answers to such questions. The court shall cause such report to be communicated to the parties, and unless proved erroneous the court shall determine the questions before it in accordance therewith. *Ibid.*

821. For the purposes of such survey, a surveyor shall have all the powers of an inspector appointed by the Board of Trade, under the M. S. Act, 1854. *Ibid.*

822. As to the powers of such inspectors, see M. S. Act, 1854 (c. 104), ss. 15, 16, and tit. SEAMEN.

(c) *Costs and Compensation.*

See tit. COSTS, c. 20, s. 13, sub-s. (d), p. 373.

2. *On Investigations by Naval Courts.*

823. As to the power of any naval court when any ship is the subject of an investigation before it, to order a survey and proceed therein as if directed by a competent court in the course of proceedings against a seaman or apprentice for desertion or a kindred offence, see M. S. Act, 1871 (c. 110), s. 8; and Wreck Inquiries, by Murton, anno 1884, p. 163.

824. As to the powers of naval courts to direct surveys to ascertain the seaworthiness or sufficient accommodation of ships in other investigations before them, and as to naval courts generally, see tit. JURISDICTION, Pt. II. c. 2, p. 690; and Murton's Wreck Inquiries, pp. 158—179.

824a. As to costs in naval courts, see tit. COSTS, c. 44, p. 415.

7. Implied Obligation of Seaworthiness in Contracts with Seamen.

825. In every contract of service, express or implied, between the owner of a ship and the master or any seaman, and in every instrument of marine apprenticeship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner, that he, the master, and the agent charged with the loading, preparing, or sending her to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when it commences, and during the same; but nothing shall subject the owner to any liability by reason of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her is reasonable and justifiable. See M. S. Act, 1876 (c. 80), s. 5.

826. When a seaman signs ship's articles of agreement, there is an implied warranty that the ship is seaworthy. *Turner v. Owen*, 3 F. & F. 176—Cockburn, C. J.

827. As to similar implied obligation in other contracts, see tit. GOODS, CARRIAGE OF—, Pt. II. c. 13, p. 491, and *The Glenfruin*, 10 P. D. 103, in *Ibid.* in Addenda.

8. Service of Documents.

828. See Pt. II. c. 45, p. 1253.

Part IV.—PASSENGER SHIPS.

1. Generally.*

829. In citing this act it is sufficient to use the expression "The Passengers

* (203) The Passengers Acts now in force are—The Passengers Act, 1855 (c. 119), the Passengers Act Amendment Act, 1863 (c. 51), and the Passengers Act Amendment Act, 1870 (c. 95). There are also various provisions relating to passenger ships in the M. S. Act, 1854, the M. S. Act Amendment Act, 1862, the M. S. Acts, 1872 and 1876, and the Stat. Law Revision Act, 1875 (c. 66).

(204) The former Passengers Acts, now repealed, are—43 Geo. 3, c. 56; 5 & 6 Will. 4, c. 55; 5 & 6 Vict. c. 107; 8 & 9 Vict. c. 14;

10 & 11 Vict. c. 103; 11 & 12 Vict. c. 6; the Passengers Act, 1849 (c. 33); 14 & 15 Vict. c. 1; and the Passengers Act, 1852 (c. 44).

(205) The Passengers Acts are to be carried into execution in the United Kingdom by the Board of Trade and by emigration officers under the direction of the Board, and in their absence, or at ports where there are no officers, by the chief officer of customs. These officers are exempt from liability for their official acts. Board of Trade Mem. on Pass. Act, 1880, p. 3, No. 1.

Act, 1855." See the Passengers Act, 1855 (c. 119), s. 2.

830. In any process for enforcing the remedies or penalties under the act, it is sufficient to refer by number to the section under which the proceeding is taken. *Ibid.*

831. The schedules to this act are part of the act. Penalty for breach of directions therein not exceeding ten pounds. See Passengers Act, 1855 (c. 119), s. 103.

832. The Passengers Acts, 1855, 1863, and 1870, are to be construed together. *Ibid.* 1863 (c. 51), s. 18; *ibid.* 1870 (c. 95), s. 1.

833. The term "master" in the Passengers Act, 1855, signifies the person borne on the ship's articles as master, or in charge, or command of the ship (other than the pilot). See the act, s. 3.

834. In the absence of any agreement to the contrary, the owner is the party ultimately responsible, as between himself and other persons made liable for any default in complying with the requirements of this act; and if any such person pays moneys made payable to or on behalf of any such passengers, he is entitled, in the absence of such agreement, to recover from the owner the amount so paid, with costs of suit. *Ibid.* 1855 (c. 119), s. 65.

835. The Board of Trade may, if satisfied that the food, space accommodation, or other particulars provided in an emigrant ship for any class of passengers, is superior to the requirements, in those respects, of the Passengers Acts, exempt such ship from any of the requirements of those acts with respect thereto upon

(206) Appendix 26 contains a list of the ports in the United Kingdom at which there are custom-house officers. Those with asterisks prefixed are also stations for emigration officers. Board of Trade Mem. on Pass. Act, 1880, p. 3, No. 1.

(207) It is to be borne in mind that British passenger ships, except where specially exempted therefrom, are, in addition to their liabilities as "passenger ships," under the same responsibilities as British ships generally. As to such responsibilities generally, see this tit. Pt. II. and tit. SEAMEN.

(208) The act is in force not only in the United Kingdom, but also in the Channel Islands. It extends partially to all the colonies; it applies equally to foreign and to British vessels. But the rules prescribed by the Order in Council of the 7th of January, 1864, passed in virtue of the 59th section of the Act of 1855, or to be prescribed by any other Order hereafter to be passed for promoting health, cleanliness, and order on board [see cap. 40], are not applicable to ships proceeding to foreign countries, but are binding only on "passenger ships" proceeding to the British colonies. Board of Trade Mem. on Pass. Act, 1880, p. 7, No. 7.

(208a) In order, however, to place masters of foreign ships bound to the British colonies on the same footing as British masters, the former are required to give bond to the Crown (sect. 63) to submit themselves in like manner as British subjects to the jurisdiction of the colonial tribunals in case of any violation of the law, and where neither the owner nor charterer reside in the United Kingdom, the bond is to be increased from £2,000 to £5,000, and the obligors are made liable to repay any expenses incurred by the Crown in rescuing, and forwarding to their destination, shipwrecked passengers (sect. 17 of Act of 1863). *Ibid.* No. 8.

(209) For the various forms under the Passengers Acts relating to passenger ships, see

2 Maude & Poll. (4th ed. by Poll. & Bruce), pp. cccxv—cccxxxiv.

(210) An abstract of the last Congressional Act of the United States, relating to passengers, passed in 1855, is in the Appendix, No. 27, to Board of Trade Mem. on Pass. Act, 1880, p. 5, n.

(211) Besides this general Congressional Passengers Act of 1855, which extends over the whole Union, each seaboard state has a local law applicable to the immigration into its own ports. One important provision in these local laws, as regards passengers, is that the owner or consignee of any ship bringing in any lunatic, idiot, deaf, dumb, blind, maimed, or infirm persons, or any one above the age of sixty, or any widow or woman without her husband and with a child or children, or any person likely from any cause to become a public charge, must give a bond of indemnity with two sureties that such persons will not become burthenome to the state within a certain period. See Board of Trade Mem. on Pass. Act, 1880, p. 5, n.

(212) In the state of New York this bond is for 500 dollars for each such impotent person, and is in force for five years. But if the owner or consignee has given a bond of indemnity in the sum of 300 dollars for each passenger landed, able as well as impotent, and has not commuted it (as he has the option of doing by an immediate payment of 1½ dollars for each person), then the 500 dollars bond is not required in respect of the impotent passengers. (Act passed 11 July, 1851, cap. 1523, s. 4.) Practically, however, the commutation money is paid on all the passengers, and the 500 dollars bond is given in respect of those who are deemed likely to become chargeable. *Ibid.*

(213) The Supreme Court of the United States have decided that these local enactments are illegal. *Ibid.*

such conditions as it may think fit. See M. S. Act, 1876 (c. 80), s. 20.

836. As to the meaning of the following terms in the Passengers Act, 1855:—"Her Majesty"—"United Kingdom"—"North America"—"West Indies"—"governor"—"statute adult"—"passage"—"passengers"—"cabin passengers"—"upper passenger deck"—"lower passenger deck"—and "emigrant runner"—see the act, c. 119, s. 3.

837. Words of one number import numbers, and one gender all genders. See the act, s. 3.

838. Under sects. 3 and 71 of the Passengers Act, 1855 (c. 119), a sailing-ship is not a passenger ship because she carries more than thirty passengers, or more than one statute adult passenger to every fifty tons, if that number or proportion is not made up without reckoning cabin passengers. *Ellis v. Pearce*, 1 E. B. & E. 431.

839. And where persons are cabin passengers in all respects, except that of

having received contract tickets in the form in Schedule K., which, in its terms, applies to passenger ships only, such persons, for the purpose of estimating the number or proportion, are to be reckoned as cabin passengers; and unless, without including them, the number or proportion is not made up, the ship is not a passenger ship. *Ibid.*

2. The Ship.*

840. The fourth part of this act applies to all British ships and to all foreign steamships carrying passengers between places in the United Kingdom. The provisions with respect to the certificates of the masters and mates thereof to which British steamships are subject apply also to such foreign steamships. See the M. S. Act, 1854 (c. 104), s. 291.

841. As to surveys and certificates under this act, the expression "passenger steamer" includes every British steam-

* (214) A marked distinction is made between "passenger ships" and ships not carrying a sufficient number of passengers to bring them within that definition, and which may be called "short ships." To the former, all the provisions of the act apply; to the latter only six clauses, viz. 10, 16, 17, 48, 49, and 56, which respectively require that facilities of inspection shall be afforded to the emigration officers; that lists of passengers, however few, and including cabin passengers (Act of 1863), shall be delivered to the custom-house officers; that passage-money shall be returned, with compensation, if passages are not provided according to contract; that subsistence money shall be paid to passengers in case of delay in sailing; and that passengers shall not be landed at the wrong place. *Ibid.* p. 7, No. 6.

(215) Vessels carrying not more than fifty passengers in all, or if sailing vessels not more than one statute adult to every thirty-three tons, or if steamers not more than one to every twenty tons registered tonnage, are partially exempt, and vessels of war, transports, whether in the royal or East Indian service, and vessels trading in the Mediterranean, are wholly exempt from the operation of the act. *Ibid.* p. 8.

(216) So it has been held are vessels engaged in the Newfoundland and Labrador fisheries, although they have on board persons not borne on the ship's articles as seamen, provided such persons are for the purposes of the fishery; the case being analogous to that of the indentured labourers of the Hudson's Bay Company, who are not to be deemed passengers in the company's ships under the 3rd section of the Act of 1855.

Ibid. p. 8, No. 9.

(217) The exemption which mail steamers enjoyed under the Act of 1855 has been taken away by the Act of 1863, the 4th section of which brings them within the provisions of the law "in like manner as any passenger ship not carrying a mail." *Ibid.* p. 8, No. 10.

(218) The spirit and main object of the Passengers Acts contemplate the protection of those passengers only who are taken out of the United Kingdom, and not of those who merely touch at British ports on their way from one foreign port to another. *Ibid.* p. 8, No. 11.

(219) Foreign passenger ships, therefore, bound for foreign ports, which put into ports of the United Kingdom *in transitu*, or to land passengers (although they may subsequently be re-embarked), or to embark foreign passengers who come here to join the ship, or to take in *bonâ fide* first-class cabin passengers, or cargo, do not come within the scope of the law. But if any British subjects or persons resident in the United Kingdom, other than first-class cabin passengers, be embarked in a number sufficient with the foreign passengers already on board to bring the ship within the definition of a "passenger ship," the law becomes applicable in all its provisions and as regards all the passengers, and the allotment of a separate compartment and a separate dietary exclusively for the use of the British passengers would not affect the case, as the health and comfort of the British passengers can only be sufficiently secured, in the purview of the law, by ensuring the health and comfort of their fellow passengers. *Ibid.* p. 8, No. 12.

ship carrying passengers to, from or between any places in the United Kingdom, excepting steam bridges. See the M. S. Act, 1854 (c. 104), s. 303.

842. For the purposes of the Passengers Acts, 1855 and 1863, the term "passenger ship" signifies every description of sea-going vessel, British or foreign, carrying, upon any voyage to which the Passengers Act, 1855, extends, more than fifty passengers, or more passengers than in the proportion of one statute adult to every thirty-three tons registered, if propelled by sails, or to every twenty tons, if propelled by steam. See Passengers Act, 1863 (c. 51), s. 3.

843. Every steam vessel, whether British, foreign, or colonial, and whether carrying a mail or otherwise, carrying passengers other than cabin passengers in sufficient number to bring her within the definition of a passenger ship, is subject to the provisions of the Passengers Act, 1855, and of this act. *Ibid.* s. 4, as amended by the Stat. Law Rev. Act, 1875 (c. 66).

844. This act does not extend to any of her Majesty's ships of war, nor to ships in the service of the Lords Commissioners of the Admiralty, nor of the East India Company. *Ibid.* 1855 (c. 119), s. 4, as amended by the Passengers Act, 1863 (c. 51), s. 4.

845. As to exemption from the provisions of the act in cases of ships approved by the Board of Trade, see M. S. Act, 1876 (c. 80), s. 20.

846. Any steamship may carry not exceeding twelve passengers although not surveyed by the Board of Trade as a passenger steamer, nor carrying a Board of Trade certificate, as provided by the M. S. Act, 1854, as to passenger steamers. *Ibid.* s. 16.

847. "Ship" signifies any description of seagoing vessel, whether British or foreign. See the Passengers Act, 1855 (c. 119), s. 3.

3. The Voyage.*

848. This act extends to every "passenger ship" proceeding on any voyage from the United Kingdom to any place out of Europe, and not in the Mediterranean Sea, and on every colonial voyage as therein described, and as to ss. 101 and 102 (imposing penalties on the master for having more passengers than the prescribed number, and for not issuing to his passengers proper provisions and water), to every ship bringing passengers into the United Kingdom from any place out of Europe not in the Mediterranean Sea. *Ibid.* s. 4, as amended by the Passengers Act, 1863 (c. 51), s. 4.

4. India, Asia, and Africa.

849. This act does not apply to any of the territories of the East India Company. See the Passengers Act, 1855 (c. 119), s. 99.

850. For provisions empowering the Governor-General of India in Council by act to adopt this act for India, and to make rules respecting food, passengers, medical practitioners, space for passengers; and to declare in what manner penalties may be sued for and recovered, and enabling the Indian Act to be enforced in the colonies in like manner as this act, *Ibid.* †

851. The Passengers Act, 1855, does not affect the act of 16 & 17 Vict. c. 84, as to the passages of natives of Asia or Africa, and passages between Ceylon and parts of India. *Ibid.* s. 15.

5. China.

1. Generally.

852. The term "Chinese passenger ship" includes every ship carrying from any port in Hong Kong, and every British ship carrying from any port in China,

* (220) Vessels going through the Suez Canal, if carrying sufficient passengers to bring them under the act, must conform to the law. Board of Trade Mem. on Pass. Act, 1880, p. 8, n.

(221) Vessels bound to ports out of Europe, but intending to call at a port in Europe, if they start with a sufficient number of passengers on board to bring them within the act must comply with all the requirements of the act, although a portion of the passen-

gers are to be landed at a port in Europe. *Ibid.* p. 9, No. 13.

(222) British ships embarking foreign passengers at a British port must clear under the Passengers Acts. *Ibid.* p. 9, n.

† (223) The following Acts, No. 2 of 1860 and Act No. 8 of 1876 (the Native Passenger Ships Act, 1876), have been passed by the Governor-General in pursuance of this power. See 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. ccix.

or within 100 miles of the coast thereof, more than twenty passengers being natives of Asia. See the Chinese Passengers Act, 1855 (c. 104), s. 1.

853. It shall be lawful for the legislature of Hong Kong, by any ordinances by it enacted, to make regulations respecting Chinese passenger ships. *Ibid.* s. 2.

854. It shall be lawful for the governor of Hong Kong, for the purposes of the act, to declare by proclamation what shall be the duration of the voyage, and alter the scale of dietary and medicine contained in the schedule to the act. *Ibid.* s. 3.

855. No Chinese passenger ship shall clear out or proceed to sea on a voyage of more than seven days' duration without an emigration officer's certificate and copy of the regulations so made. *Ibid.* s. 4.

856. Nor until he shall have given a bond in the sum of £1,000, in the forms contained in Schedule C. to the act, to the crown. *Ibid.* s. 4.

857. A commander of any of her Majesty's ships of war, or any emigration officer, custom house officer, or British consul, may search any Chinese passenger ship (being a British ship or within British jurisdiction) for the production of the above papers. *Ibid.* s. 6.

2. Forfeitures.

858. If any Chinese passenger ship clears out, or proceeds to sea on any voyage exceeding seven days in duration, without her emigration papers or with fraudulently altered papers she shall, if a British ship, or if, not being a British ship, the offence is committed and the ship is seized in British dominions, or in the territories of the East India Company, be forfeited to her Majesty. *Ibid.* s. 8.

859. Any commissioned officer on full pay, in the British military or naval service, or any British officer of customs, or consul, may seize and detain any such ship, and bring her for adjudication before the High Court of Admiralty in England or Ireland, or any court having Admiralty jurisdiction in British dominions, and such court may make such order as it thinks fit, and may award a portion of the proceeds of the sale of the ship to the officer bringing her in for adjudication, or to any persons damaged by the act or default which has rendered the ship liable to forfeiture. *Ibid.* s. 10.

860. No such officer shall be responsible to any person in respect of the seizure or detention of any such ship, notwithstanding the ship is not brought in for adjudication, or, if so brought in, is declared not liable to forfeiture, if it is shown to the satisfaction of the judge or court that there are reasonable grounds for such seizure or detention; but if no such grounds are shown costs and damages may be awarded to any party aggrieved. *Ibid.* s. 11.

861. Penalty against every person who commits, or abets in committing, any act or default by which any Chinese passenger ship may become liable to forfeiture not exceeding £100. *Ibid.* s. 9.

862. The court may impose a penalty in lieu of condemnation of the ship, and apply the same like the proceeds of sale of the ship, if condemned, might have been applied. *Ibid.* s. 12.

863. Any court, justice, or magistrate imposing any penalty under this act, for which no specific application is herein provided, may, if it or he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed, or in or towards payment of the expenses of the proceedings; and, subject to such directions or specific application as aforesaid, all penalties recovered in the United Kingdom shall be paid into the receipt of her Majesty's exchequer in such manner as the Treasury may direct. *Ibid.* s. 14.

864. In any legal proceeding under this act, or in respect of the bond therein required, any document purporting to be the written declaration of any British consul, or commander of any British ship of war, or to be a copy of the proceedings of any court, shall, without any proof of signature, be received in evidence, if it shall appear that such copy or declaration, if produced in the United Kingdom, was officially transmitted to one of the secretaries of state, or if produced in any colony was officially transmitted to the governor. But no person making such written declaration shall be capable of receiving a share of any penalty or forfeiture procured by such written declaration. *Ibid.* s. 15.

865. As to forfeiture of passenger steamers generally, see Pt. IV. c. 51, p. 1320.

866. As to forfeitures generally, see Pt. II. c. 18, p. 1242.

6. The Colonies.

1. Australasia.*

867. For provisions enabling governors of Australasian colonies by proclamation to regulate the number of passengers, and on what decks they may be carried in ships plying between Australasian ports, and under what penalties. See 24 & 25 Vict. c. 52, s. 1.

868. The rules prescribed by such proclamations, are to apply as to such inter-colonial voyages in lieu of those on the same subject in the Passengers Act, 1855. *Ibid.* s. 2.

869. Such rules in such proclamations may be enforced in all British possessions as if part of the Passengers Act, 1855, or of any act incorporated with it. *Ibid.* s. 3.

870. A copy of any such proclamation purporting to be under the hand of the governor, and public seal of the colony, shall be received as good evidence in all the Queen's dominions. *Ibid.*

871. Australasia includes Australia proper, New Zealand, Tasmania, parts of New Guinea, and the islands. *Ibid.* s. 4.

871a. As to Passenger Acts in force in South Australia, see tit. JURISDICTION, Pt. II. c. 33, No. 1176b, p. 744; in Victoria, *Ibid.* c. 34, No. 1185e, p. 746; in West Australia, *Ibid.* c. 35, No. 1195e, p. 749; in New Zealand, *Ibid.* c. 38, No. 1244, p. 753.

2. Canada.†

872. In the construction of the M. S. Act, 1854, and of the acts amending the same, Canada is deemed one British possession. See the M. S. (Colonial) Act, 1869 (c. 11), s. 7.

3. Colonial Voyages.

(a) Generally.

873. For the purposes of this act, the term "colonial voyage" signifies any

voyage from any place within any of the British possessions (except those of the East India Company and the island of Hong Kong) to any place whatever, where the distance exceeds 400 miles, or the duration of the voyage exceeds three days. See the Passengers Act, 1855 (c. 119), s. 95.

(b) Exemptions.

874. The provisions in this act as to passenger steamers and emigrant ships do not apply to any vessel employed exclusively in going from place to place in any river or inland water of which the whole or part is in any British possession. See M. S. Act, 1876 (c. 80), s. 44.

875. This act applies to all ships carrying passengers on any such colonial voyage, except as to such parts of the act as relate—1. To passage brokers and their licences. 2. To passengers' contract tickets. 3. To emigrant runners. 4. To the giving bond to her Majesty. 5. To the keeping on board a copy of this act. 6. To Orders in Council regulating emigration from the United Kingdom, or prescribing rules for promoting health, cleanliness, order and ventilation. See the Passengers Act, 1855 (c. 119), s. 96.

876. If the prescribed duration of the colonial voyage is less than three weeks, then, in addition to the matters above excepted, the act does not apply to the construction or thickness of the decks; the berths and berthing; the height between decks; privies; hospitals; light and ventilation; manning; passengers' stewards; passengers' cooks and cooking apparatus; and the surgeon and medicine chest; nor to the maintenance of passengers for forty-eight hours after arrival; and, in the case of such colonial voyages, the prescribed duration of which is less than three weeks, the requirements of this act as to the issue of provisions, except as to the issue of water, do not apply

* (224) Several of our own colonies in North America and Australia have passed Passenger Acts chiefly affecting points to be attended to after the arrival of the ship. Board of Trade Mem. on Pass. Act, 1880, p. 6, n.

(224a) There is no tax on emigrants arriving in the Australian colonies. In Canada and Victoria bonds of indemnity are required in respect of each passenger likely, from bodily or mental infirmity, to become permanently a charge on the colony. In Canada the bond is for 300 dollars, and for three years; in Victoria it is for £100 for five years. *Ibid.*

† (225) By the Canadian Immigration Act, 1872, a capitation tax of two dollars in respect of each passenger is levied on the master of the ship in any of the following cases:—(1) If the vessel has not been cleared under the Imperial Passenger Act. (2) If she does not carry a surgeon. (3) If proper measures for the preservation of the health of the passengers and crews have not been observed on the voyage. Board of Trade Mem. on Pass. Act, 1880, p. 6, n.

(225a) Bonds of indemnity for emigrants are not required in the other British colonies. *Ibid.*

to any passenger who has contracted to furnish his own provisions. *Ibid.*

(c) *Proclamation as to Requirements.*

(aa) *Generally.*

877. The governor of each of her Majesty's possessions abroad, by proclamation for that purpose, may declare what shall be deemed for the purposes of this act the length of the voyage of any ship carrying passengers from such possession to any other place, and may prescribe the scale of diet for passengers during the voyage, and declare what medicines, medical comforts, medical instruments, and other matters shall be deemed necessary for the medical treatment of the passengers during such colonial voyage. See M. S. Act, 1876 (c. 80), s. 97.

878. The governors of any crown possessions may authorize persons to make the like survey and examination of passenger ships sailing from such possessions as are required to be made by two or more competent surveyors in respect of passenger ships sailing from the United Kingdom, and may also authorize any competent person to act as medical practitioner on board any passenger ship proceeding on a colonial voyage. *Ibid.* s. 98.

(bb) *Enforcement.*

879. The provisions and requirements of every such proclamation shall be enforced in all her Majesty's dominions as if incorporated in this act. *Ibid.* s. 97.

(cc) *Proof of Proclamations.*

880. A copy of any such proclamation, purporting to be under the hand of the governor and public seal of such colony, shall, in any part of her Majesty's dominions, be received as sufficient evidence of the issuing and contents thereof, unless it is proved not to be genuine. *Ibid.*

4. *Colonial Certificates.*

881. When the legislature of any British possession provides for the survey of and grant of certificates for passenger steamers, and the Board of Trade reports to her Majesty that they are satisfied those colonial certificates are equally efficient with those granted in the United Kingdom, her Majesty may, by Order in Council, declare that those colonial cer-

tificates are of the same force as if granted in the United Kingdom, and that any of the provisions of the M. S. Acts relating to such certificates, with or without modifications, apply to the colonial certificates; and may impose conditions, make regulations with respect to those colonial certificates, and impose penalties not exceeding £50 for breach thereof. See M. S. Act, 1876 (c. 80), s. 17.

5. *Application of Penalties.*

882. As to the application of penalties under this act, when recovered in the colonies, see No. 689, p. 1256.

7. *Orders in Council.*

883. Her Majesty, by Order in Council, may prescribe rules and regulations as to passenger ships proceeding from the United Kingdom to any place in her Majesty's possessions abroad.

884. Also for preserving order, health, and cleanliness; also for ventilation (see c. 19, p. 1291); also for the use of an apparatus for distilling water, and defining in such case the quantity of water to be carried for passengers (see c. 35, p. 1300).

885. Also for prohibiting emigration from any ports affected with disease, for reducing the number of passengers to be carried, and also for requiring duly-qualified medical practitioners to be carried (see c. 33, p. 1298). See the Passengers Act, 1855 (c. 119), s. 59; and see such Orders in Council in 2 Maude & Pollock (4th ed. by Pollock & Bruce), pp. 60—64.

886. Any such Order in Council may be altered or revoked. Any copy of such Order in Council in the London Gazette, or purporting to be printed by the Queen's printer, is to be received in all legal proceedings as sufficient evidence of the making and contents thereof. See Passengers Act, 1855 (c. 119), s. 59; and the Documentary Evidence Act, 1858 (c. 37), s. 2.

887. In every "passenger ship" proceeding from the United Kingdom to any place in her Majesty's possessions abroad, the medical practitioner on board, aided by the master, or, in the absence of such medical practitioner, the master may exact obedience to all rules and regulations prescribed by any such Order in Council. Penalty against any person

neglecting or refusing to obey, or obstructing the medical practitioner or master in the execution of such duty, or offending against any of the provisions of this act, or guilty of riotous or insubordinate conduct, not exceeding £2, besides imprisonment not exceeding one month, at the discretion of the justices adjudicating on the complaint. See Passengers Act, 1855 (c. 119), s. 60.

8. Abstracts of Acts and Orders in Council.

1. Generally.

888. The Board of Trade are to prepare abstracts of this act and of Orders in Council made under it. *Ibid.* s. 61, as amended by M. S. Act, 1872 (c. 73), s. 5.

2. Copies to Masters.

889. Four copies of such abstracts, with a copy of this act, are, on demand, to be supplied by the principal officer of customs at the port of clearance to the master of every "passenger ship" proceeding from the United Kingdom to any place in her Majesty's possessions abroad. See Passengers Act, 1855 (c. 119), s. 61.

3. Production and posting up by Masters.

890. The master shall, on request made to him, produce a copy of this act to any passenger on board for his perusal, and, further, shall post, previous to the embarkation of the passengers, and shall keep posted so long as any passenger shall be entitled to remain in the ship, in at least two conspicuous places between the decks on which passengers may be carried, copies of such abstracts. Penalty for breach against master, not exceeding 40s. a day during any part of which by his act or default such abstracts shall fail to be so posted. *Ibid.*

891. Penalty against any person displacing or defacing such abstracts so posted, not exceeding 40s. *Ibid.*

9. Bond to the Crown.*

1. Generally.

892. Before any "passenger ship" shall clear out or proceed to sea, the master and owner or charterer, or, in his absence, or if the master be owner or charterer, or other person, approved by the chief officer of customs at the port of clearance, shall enter into a bond, in £2,000, to the crown, in the form in Schedule (C.). The bond is not liable to stamp duty, and is to be executed in duplicate. *Ibid.* s. 63.

893. In the case of a passenger ship, of which neither owners nor charterers reside in the United Kingdom, the bond to the crown shall be for £5,000, with an additional condition that the obligors shall, subject as therein contained, pay, as a crown debt, all expenses incurred under this act and the Passengers Act, 1855, in rescuing, maintaining, and forwarding to their destination any of the passengers who, without their own neglect or default, are not conveyed to their intended destination by or on behalf of the owner, charterer or master. *Ibid.* 1863 (c. 51), s. 17.

894. As to the forfeiture of any passenger ship clearing out or proceeding to sea without the master having joined in executing the required bond, see No. 1179, p. 1320.

895. If any "passenger ship" is intended to call at any intermediate port or place during the voyage, for the purpose of taking in water, an engagement to that effect must be inserted in the bond. See the Passengers Act, 1855 (c. 119), s. 34.

2. Certificate of Execution.

896. The chief officer of customs at the port of clearance of any "passenger ship" bound to any of her Majesty's possessions abroad, is to certify on one part of the bond that it has been duly executed by the master and the other obligor. *Ibid.* s. 64.

897. Such certificate shall, in any colonial court of judicature in which the bond may be put in suit, be conclusive

* (226) If a vessel takes in passengers at two different ports, although she will require to be cleared under the act at each port, yet no second bond to the crown will be requisite. Board of Trade Mem. on Pass. Act, 1880, p. 52, No. 108.

(226a) As to the supervising inspectors

appointed in America pursuant to Act of Congress, and the rules passed by them for the survey and inspection of American ships in American ports, see Rules of Supervising Inspectors, New York, circa anno 1876. [AMERICAN.]

evidence of the due execution of the bond, and it is not necessary to prove the officer's handwriting, nor that he was chief officer of customs at the port of clearance at the time. *Ibid.*

3. *Transmission.*

898. The officer so certifying is to transmit that part of the bond to the colonial secretary of the colony to which the ship is bound. *Ibid.*

4. *Limitation of Actions on—*

899. No such bond shall be put in suit in any of her Majesty's possessions abroad after three months from the ship's arrival there, nor in the United Kingdom after twelve months from the return of the ship and master there. *Ibid.*

10. Surveyor-General.

900. The Board of Trade may appoint a surveyor-general for the United Kingdom, and fix his remuneration. See M. S. Act, 1854 (c. 104), s. 305.

11. Emigration Officers.

1. *Generally.*

901. In the United Kingdom the Board of Trade, and in British possessions the respective governors thereof, may appoint emigration officers and assistant emigration officers for carrying this act into execution. See the Passengers Act, 1855 (c. 119), s. 8, as amended by M. S. Act, 1872 (c. 73), s. 5.

902. All powers and duties exercised by an emigration officer may be exercised by his assistant, or at a port where there is none such, or in their absence, by the chief officer of customs at such port. *Ibid.* s. 9.

903. Neither emigration officers nor their estates or effects are liable for pay-

ment of moneys, costs, or otherwise, in respect of any contract made by any of them, nor in respect of any proceedings taken against any of them, nor for any act or matter done by any of them in their official capacity. *Ibid.* s. 7.

904. An emigration officer, appointed under 15 & 16 Vict. c. 44, was justified in refusing to certify that the requirements of the statute had been complied with, if he, acting *bond fide*, deemed that the quantity of cargo on board a passenger ship was such as to endanger the safety of the ship, although none of the articles expressly prohibited by s. 26 were on board, and although his objection was not to any specific article on board, but solely because the ship was too deep in the water; and if an action was brought against him for refusing his certificate under such circumstances, he was by s. 81 entitled to have the verdict entered for him. *Steel v. Schomberg*, 3 C. L. R. 302; 4 Ell. & Bl. 620; 24 L. J. Q. B. 87; 1 Jur. N.S. 679.

2. *Inspection by—*

905. The master of every passenger ship or ship intended for carrying passengers on any voyage to which this act extends, shall afford to the emigration officer at any port or place in her Majesty's dominions, and, in the case of British ships, to her Majesty's consular officer at any foreign port or place at which such ship shall be or arrive, every facility for inspecting her, communicating with her passengers, and ascertaining that the provisions of this act, so far as applicable, have been complied with. Penalty for breach against the master, not exceeding £50. See the Passengers Act, 1855 (c. 119), s. 10.

3. *Certificate of Clearance.*

(a) *Before Clearance.**

906. No passenger ship shall clear out or proceed to sea until the master has

* (227) The emigration officer is to certify that all the requirements of the act, so far as is practicable before sailing, have been carried out; that the ship is seaworthy and in safe trim, and in all respects fit for her intended voyage, and that the passengers and crew are in a fit state to proceed. Board of Trade Mem. on Pass. Act, 1880, p. 53, No. 110.

(227a) It will be the duty of the emigration officer, when the clearing certificate is applied for, to muster the passengers to see that no

more are on board than the law allows,—to have them inspected by the medical officer,—to ascertain whether any of them have any unsatisfied claims as to detention money or otherwise,—to see that the master and first and second mates possess certificates, either of competency or service,—to muster and inspect the crew, and to see that the ship is in all respects in a fit state to proceed to sea. Until he has satisfied himself on these points, he is not to grant his certificate; and he will make known his instructions in this respect

obtained from the emigration officer at the port of clearance a certificate of clearance, that the requirements of this act have been duly complied with, that the ship is in all respects fit for her voyage, and that her passengers and crew are in a fit state to proceed, nor until the master has joined in executing the required bond to the Crown. See the Passengers Act, 1855 (c. 119), s. 11.

907. As to forfeiture of the ship for breach, see No. 1179, p. 1320.

(b) *After touching at or putting back to the United Kingdom damaged or otherwise.*

908. If any passenger ship after clearance is detained in port more than seven days, or touches at any place in the United Kingdom, she shall not put to sea again until she has taken on board, at the expense of the owner, charterer, or master, a further supply of pure water and wholesome provisions, medical comforts and stores, to make up the prescribed quantities, nor until any damage she may have sustained has been effectually repaired, nor until the master has obtained from the emigration officer or his assistant, or, in his absence, from the officer of customs there, a certificate to the same effect as the certificate for clearance. Penalty for breach against the master not exceeding £100 nor less than £50; and if the master shall not within twelve hours thereafter report, in writing, his arrival, the cause of his putting back, the condition of his ship, stores and provisions, to the emigration officer, or officer of customs at the port, and produce master's list of passengers, not exceeding £20 nor less than £2. See the Passengers Act, 1855 (c. 119), s. 50; and as to forfeiture of the ship for breach, see No. 1179, p. 1320.

4. *Appeal from Refusal of Certificate.*

909. If the emigration officer refuses to grant such certificate, the owner or charterer may appeal in writing to the Board of Trade, which shall appoint any two other emigration officers, or two competent persons, at the expense of the appellant, to examine into the matter; and if the persons so appointed grant a certificate to the purport before required, the

certificate shall have the same effect as if granted by the emigration officer of the port of clearance. See the Passengers Act, 1855 (c. 119), s. 11.

12. Shipwright and Engineer Surveyors.

1. *Appointment.*

910. The Board of Trade may appoint shipwrights' surveyors and engineers' surveyors for the purposes of this act at the ports or places it thinks proper. See M. S. Act, 1854 (c. 104), s. 305.

2. *Powers.*

911. The surveyors may, in the execution of their duties, go on board any steamer at all reasonable times, and inspect any part thereof, or any of the machinery, boats, equipments, or articles on board, or any certificates of the master or mate, under this act, not unnecessarily detaining or delaying the ship; and if for any reason they consider it necessary so to do, may require the ship to be taken into dock to survey her hull. Penalty against any person impeding the surveyor in the execution of his duty, not exceeding £5. *Ibid.* s. 306.

3. *Duties.*

912. The surveyors are to execute their duties under the direction of the Board of Trade, and the Board are to make regulations as to the surveys, and the notice to be given to the surveyors when surveys are required. *Ibid.* s. 307.

4. *Remuneration.*

913. The Board of Trade are to make regulations as to the amount and payment of the surveyor's travelling or other expenses, and the persons by whom and the conditions under which such payment shall be made. *Ibid.*

914. From every surveyor who demands from the owner or master of any ship surveyed by him under this act any remuneration other than as directed by the Board of Trade, penalty not exceeding £50. *Ibid.* s. 308.

915. For provisions that no surveyor or person employed under the authority of

as widely as possible, in order that the masters and charterers of ships may be warned that their vessels will not be cleared until they are in a complete state. Any delay which may accrue from the neglect on their

part of this warning will not be chargeable on the emigration officer. A form of clearing certificate is annexed. Board of Trade Mem. on Pass. Act, 1880, p. 53, No. 110.

the Passengers Act, 1855, shall receive any fee or remuneration in respect of his duties otherwise than by direction of the Board of Trade, penalty for breach not exceeding £50, see the M. S. Act, 1872 (c. 73), s. 15.

916. All fees payable in respect of any services performed by any person employed under the authority of the Passengers Act, 1855, are payable to the superintendent of a mercantile marine office, according to the directions of the Board of Trade, and carried to the consolidated fund. *Ibid.* 1876 (c. 80), s. 39.

917. As to the fees and expenses to be charged for surveys of ships, for passengers' certificates, for surveys under the Passengers Acts, and for medical inspection of passengers and crew under those acts, see Pt. I. c. 6, s. 5, p. 1205.

918. See also tables, sanctioned by Board of Trade, set out in 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. cccclxxxiv.

5. Surveys.*

919. The owner of every passenger steamer shall cause her to be surveyed at the times directed by one of the duly-appointed shipwright surveyors and engineer surveyors, such shipwright surveyor being, in the case of iron steamers, a person in the judgment of the Board of Trade properly qualified. See M. S. Act, 1854 (c. 104), s. 309.

920. In reference to surveys of passenger steam ships under this act, the word "passengers" includes any persons carried in a steamer other than the master, crew, and the owner, his family and servants. *Ibid.* s. 303.

921. When the survey of a ship is made for the purpose of a declaration or certificate under the above enactment, the person appointed to make the survey shall, if so required by the owner, be accompanied on the survey by some person appointed by the owner, and if the two persons agree, there shall be no appeal to the court of survey. *Ibid.* 1876 (c. 80), s. 14.

922. Every passenger steamer shall be

surveyed once at the least in every year in the manner mentioned in the fourth part of the M. S. Act, 1854. *Ibid.* 1872 (c. 73), s. 8, repealing the provisions of s. 304 of the former act requiring such steamers to be surveyed every six months.

6. Declarations of Result of Survey.

(a) Shipwright's Surveyor.

923. The shipwright's surveyor shall, if satisfied with the result of his survey, give the owner a declaration on a Board of Trade form containing statements—(1) that the hull of the ship is sufficient for the service intended, and in good condition: (2) that the boats, life buoys, lights, signals, compasses, and shelter for deck passengers, and the certificates of the master, mates or mate, are such and in such condition as required by the acts: (3) the time (if less than six months) for which the hull and equipments will be sufficient: (4) the limits (if any) beyond which, as regards the hull and equipments, the ship is in the surveyor's judgment not fit to ply: (5) the number of passengers which the ship is in the judgment of the surveyor fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins, and in different parts of the deck and cabins; such numbers to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried, or other circumstances, as the case requires. See M. S. Act, 1854 (c. 104), s. 309; and Board of Trade Instructions as to Passenger Ships, 1884, p. 1.

924. The forging or fraudulent altering of any declaration as to any passenger steamer is a misdemeanour. See M. S. Act, 1854 (c. 104), s. 320.

(b) Engineer's Surveyor.

925. The engineer's surveyor, if satisfied with the result of his survey, shall give the owner a declaration on a Board of Trade form containing statements—

* (228) If the surveyor requires any defects remedied, or any alterations or additions made, he gives to the owner, agent, master or builder, from whom he received the application, a written statement on a form headed Surveys 70, setting forth the nature and extent of his requirements, and will not certify the number of passengers to be carried until

such alterations are made. When they are made, he sends another report on the form Surveys 70, stating the numbers to be cut in the beam and cut in or painted over the entrance to each place. See Board of Trade Instructions as to Survey of Passenger Accommodation, Crew Spaces, 1884, p. 38, par. 61.

(1) that the machinery of the ship is sufficient for the service intended, and in good condition: (2) the time (if less than six months) for which such machinery will be sufficient: (3) that the safety valves and fire hose are such and in such condition as are required: (4) the limits of the weight to be placed on the safety valves: (5) the limits (if any) beyond which, as regards the machinery, the ship is in the surveyor's judgment not fit to ply. See the M. S. Act, 1854 (c. 104), s. 309; and Board of Trade Instructions, 1884, p. 1.

926. The declaration by the engineer's surveyor shall, in the case of a ship by this act required to have a certificated engineer, contain, in addition, a statement that the certificate or certificates of the engineer or engineers are such and in such condition as is required by this act. See the M. S. Act Amendment Act, 1862 (c. 63), s. 12.

927. The forging or fraudulent altering of any declaration as to any passenger steamer is a misdemeanour. See M. S. Act, 1854 (c. 104), s. 320.

(c) *Appeal from—*

928. If a shipowner feels aggrieved by the declaration of a shipwright surveyor or engineer surveyor respecting a passenger steamer, or his refusal to give the declaration; or the refusal of a certificate of clearance for an emigrant ship, he may appeal in the prescribed manner to the court of survey for the port or district where the ship then is. *Ibid.* 1876 (c. 80), s. 14.

929. But when the owner appoints a surveyor, who agrees with the Board of Trade surveyor in his report, no appeal lies. *Ibid.*

930. On the appeal the judge shall report on the question raised by the appeal to the Board of Trade, which, when satisfied that the requirements of the report and the other provisions of the enactments have been complied with, may—(1) in the case of a passenger steamer give their certificate under s. 312 of the M. S. Act, 1854; and (2) in the case of an emigrant ship give, or direct the emigration or other officer to give, a certificate of clearance; and (3) in the case of a refusal of a certificate as to lights or fog signals, give or direct a surveyor or person appointed by them to give a certificate under s. 30 of the M. S. Act Amendment Act, 1862 (c. 63). *Ibid.*

931. Subject as therein mentioned, the provisions of this act with respect to the court of survey and appeals thereto, apply to the court of survey when acting under this section. *Ibid.*

932. As to the courts of survey and the procedure therein, see Pt. III. c. 2, p. 1265.

(d) *Costs of Appeal.*

933. Subject to any order made by the judge of the court of survey, the costs of and incident to the appeal follow the event. See M. S. Act, 1876 (c. 80), s. 14.

(e) *Transmission.*

934. In all cases where it is possible the half-yearly surveys shall be made in the months of April and October, and the declarations shall be transmitted on or before the 30th of April and the 31st of October; but if the owner of any passenger steamer is unable to have her surveyed in April or October, by reason of her being absent from the United Kingdom during the whole period, or of her being under construction or repair, or laid up in dock, or other reason satisfactory to the Board of Trade, then he shall have the same so surveyed as soon after as possible, and shall transmit such declarations to the Board within fourteen days after receipt, with a statement of the reasons which prevented the survey at the time prescribed. In case of delay in transmitting the declarations, penalty for default not exceeding 10s. a day. See M. S. Act, 1854 (c. 104), s. 311, as amended by M. S. Act Amendment Act, 1862 (c. 63), s. 34, below, and M. S. Act, 1872 (c. 73), s. 8.

935. It is not necessary for such surveys to be made in April and October; but no declaration shall be given by any such surveyor for a period exceeding six months, and no certificate by the Board of Trade shall remain in force more than six months. See M. S. Act Amendment Act, 1862 (c. 63), s. 34.

936. Every passenger steamer shall be surveyed once at the least in every year in the manner mentioned in the fourth part of the M. S. Act, 1854. See M. S. Act, 1872 (c. 73), s. 8, repealing the provision in sect. 304 of the former act, requiring such steamer to be surveyed every six months.

937. The owner shall transmit the declarations of the shipwright surveyor, and engineer surveyor, to the Board of Trade within fourteen days after receipt. Penalty

for default not exceeding 10s. per day to be paid upon the delivery of the certificate therein mentioned in addition to the fee for the same, and to be applied like such fees. See M. S. Act, 1854 (c. 104), s. 310.

* (229) This survey has reference to seaworthiness as regards the hull, machinery, and equipment of the ship, and not as regards the quantity, quality, or stowage of the cargo, which is left exclusively to the decision of the emigration officer himself. Board of Trade Mem. on Pass. Act, 1880, p. 16, No. 32.

(230) The survey should extend in all cases to the masts, yards, pumps, and machinery, as well as to the hull of the vessel, and to her boats, ground tackle, and equipments. *Ibid.* No. 34.

(231) The survey must be made before any part of the cargo is taken on board, except so much as may be necessary for ballasting the ship, and any portion of such cargo or any ballast on board must be shifted if required by the emigration officer or surveyors. *Ibid.* p. 17, No. 35.

(232) Vessels, therefore, intending to take cargo at one port and to proceed to another to embark passengers should be surveyed at the port of lading, and the certificate of such survey, signed by the surveyors and the emigration officer of that port, must be produced to the emigration officer at the port of embarkation; but the production of such certificate will not exempt the vessel from a second survey at the latter port, nor from the necessity of unloading for the performance of such survey, should the emigration officer at that port consider that such second survey is necessary. *Ibid.* p. 18, No. 36.

(233) Such second survey should not, however, be required unnecessarily or vexatiously, as it will of course entail expense on the shipowner. But, before dispensing with a second survey, it will be the duty of the emigration officer to satisfy himself that the vessel has suffered no damage or injury since the date of the first survey. *Ibid.*

(234) As regards iron passenger ships, not being steamers, one of the surveyors should be a person properly qualified to survey iron ships. *Ibid.* No. 37.

(235) His certificate should state—(1) that the hull and water-tight partitions, if any, of the ship are sufficient for the intended service, and are in good condition; (2) that the compasses are in good order and properly adjusted, or that the deviation from local attraction has been properly ascertained; (3) the time, if less than six months, for which the hull and equipments will be sufficient; and (4) the limits, if any, beyond which, as regards the hull and equipments, the ship is, in the surveyor's judgment, not fit to ply. *Ibid.*

(236) As British passenger steamers,

13. Survey for Seaworthiness before Clearance.

1. Generally.*

938. No passenger ship shall clear out or proceed to sea unless surveyed, under

whether wooden or iron, were, prior to 1872, required to be surveyed under the M. S. Acts of 1854 and 1862, twice at least in each year by competent officers appointed by the Board of Trade, it is undesirable to put the owners to the expense of a double survey by two sets of government officers where it can be avoided. If, therefore, the emigration officer shall be satisfied that there are no grounds for doubting the seaworthiness of a British steamer which has obtained a passenger certificate from the Board of Trade, he will be at liberty to accept that certificate as sufficient on all matters included in it, if dated within six months preceding the clearance of the ship, and he will accept it if the steamer has not left port since the survey was made. *Ibid.* No. 38.

(237) The following is the machinery which must be surveyed in passenger ships, viz.: the engines and boilers used for propelling the vessel and all machinery connected therewith; the boilers of donkey engines are to be surveyed with the boilers and machinery of the vessel, when they are in any way connected with them. Boilers and machinery used for loading or unloading the vessel, or used exclusively for purposes unconnected with the motive power of the vessel, do not come within the machinery to be surveyed under the M. S. Act, 1854. See Board of Trade Instructions as to Survey of Hull and Machinery of Passenger Ships, 1884, par. 84, p. 49.

(238) Before granting declarations for any period exceeding six months, surveyors in examining machinery should (1) have the upper brasses of all bearings taken off; (2) the shaft turned round and carefully examined; (3) the cylinder covers and junk rings lifted for examination of the piston and cylinders; (4) the slide covers or bonnets removed for the examination of the slides, and, if necessary, the slides taken out; (5) the air and circulating pump covers lifted for examination of the pump bucket and wells; (6) the covers of all feed and bilge pump valves removed for the examination of the valves; (7) all discharge valves and sea-cocks taken out for examination; (8) the propeller shaft to be drawn when necessary, and it and the screw examined and properly replaced; (9) bridges and fire bars removed for a thorough examination of the boilers and furnaces; (10) all cocks and valves on the boilers taken out and examined. It will rest with the owners whether or not they will have a certificate for any period exceeding six months; but if they do so determine, the above instructions are to be complied with before a

the direction of the emigration officer at the port of clearance, but at the expense of the owner or charterer, by two or more competent surveyors appointed by the Board of Trade for each port at which there is an emigration officer, and for other ports by the Commissioners of Customs, nor unless it is reported by such surveyors that she is in their opinion seaworthy, and fit for her voyage. The survey shall be made before any part of the cargo is taken on board, except what is necessary for ballast, and such portion shall be shifted, if required. See the Passengers Act, 1855 (c. 119), s. 19, as amended by the M. S. Act, 1872 (c. 73), s. 5.

939. Penalty for breach against owner, charterer, or master, not exceeding £100 nor less than £5. *Ibid.*

2. Appeal and Survey anew.

940. In case any passenger ship shall

be reported by the surveyors not to be seaworthy, or not fit for her voyage, the owner or charterer, may in writing require the emigration officer, or in his absence the chief officer of customs, to appoint three other competent surveyors, of whom two at least shall be shipwrights, to survey her, at the expense of the owner or charterer; and if they, by an unanimous report under their hands (but not otherwise), declare her seaworthy, and fit for her voyage, she shall be deemed seaworthy for the voyage. See the Passengers Act, 1855 (c. 119), s. 19.

14. Board of Trade Certificates.

1. Generally.*

941. Upon the receipt of such declarations (*i. e.*, those mentioned in No. 937), the Board of Trade shall, if satisfied

declaration is granted. The above instructions are to apply at least once a year to the survey of all passenger steamers, with the exception named in the next paragraph, whatever the period for which these declarations are given; and to carry out the whole as above, it must be done when the vessel is in dry dock. After the examination of the parts as above, the machinery must be tried under steam at full pressure. See Board of Trade Instructions as to Survey of Hull and Machinery of Passenger Ships, 1884, par. 85, p. 50.

(238*a*) In cases in which steamers are surveyed under the Passengers Acts at the commencement of every voyage and in which they are absent for periods of less than six months at a time, the above instructions (in pars. 84 and 85) do not apply to every survey, the usual examination each voyage is sufficient. One complete survey at least, as indicated above, should, however, be made each year. Foreign-going ships are not to have a declaration given them for less than three months, nor home-trade ships for less than one month, unless limited by docking time, with permission of Board of Trade. *Ibid.* par. 86, p. 50.

* (239) See Order in Council of October 28th, 1879, providing that certificates granted by legislature of Bombay for passenger steamers, &c. shall be equally efficient with certificates granted in the United Kingdom.

(239*a*) Passenger certificates for steamships are sent in duplicate to the Mercantile Marine Office mentioned on the back of the declaration, and the master, owner, or agent will be duly advised of the transmission. They will be under the following separate forms:—

1. For foreign-going steamers or those plying beyond the limits of the home trade (Form 1, Sea-going Steamers).
2. For home-trade passenger steamers or those plying at sea within the limits of the home trade (Form 2, Sea-going Steamers).
3. For steamers plying along the coast during daylight, and within defined limits (Form 3, Excursion Steamers).
4. For steamers plying in waters which are partially smooth (Form 4, River Steamers).
5. For steamers plying in smooth water (Form 5, River and Lake Steamers).

See Board of Trade Instructions as to passenger accommodation, &c., crew spaces, lights, and fog-signals, 1884, p. 7, No. 1.

(240) In the case of foreign-going ships which carry more than one mate, the master and first and second mates must have appropriate certificates, but persons acting as mates of a lower grade are not required to have certificates. *Ibid.* p. 8, No. 5.

(241) All certificates of competency granted to masters and mates of foreign-going ships entitle the holders to go to sea in corresponding grades, or in any lower grade, in home-trade passenger ships; but certificates of service for foreign-going ships do not entitle the holders to go to sea as masters or mates in home-trade passenger ships. *Ibid.*

(242) Certificates for home-trade passenger ships do not entitle the holders to go to sea as masters or mates of foreign-going ships. *Ibid.*

(242*a*) The details of the officers' certificates are to be taken from the certificates themselves at every survey. *Ibid.* p. 9, No. 6.

(243) The superintendent of the Mercantile

that the provisions of the act have been complied with, cause a certificate in duplicate to be issued that the law as to the survey and declarations has been complied with. Such certificate shall state the limits (if any) beyond which, according to the declaration of the surveyor, such ship is not fit to ply, and the number of passengers which, according to the declaration of the shipwright surveyor, such ship is fit to carry, distinguishing (if necessary) between the numbers to be carried on deck, in the cabins, and in different parts of the deck and cabins,

subject to such conditions and variations according to the time of year, the nature of the voyage, the cargo carried, and other circumstances, as the case requires. See M. S. Act, 1854 (c. 104), s. 312.

942. As to certificates of passenger steamers under this act, the word "passengers" includes any persons carried in a steamer other than the master, crew, and the owner, his family and servants. *Ibid.* s. 303.

943. The forging or fraudulent altering of any certificate as to any passenger steamer is a misdemeanour. *Ibid.* s. 320.

Marine Office delivers the certificate to the owner, agent, or master, on his applying for same, and paying the expenses, if any. If the certificate is not taken up within fourteen days the fact is reported by the superintendent to the Board of Trade. See Board of Trade Instructions for Survey of Passenger Accommodation, 1884, p. 7, No. 2.

(244) The survey of steamers for passenger certificates, other than Steam 1 (foreign-going) or Steam 2 (home-trade), must be made in the district for which the certificate is required and in which the vessel is intended to ply, and a survey for such certificates made out of the district is not sufficient for dispensing with another survey when the vessel arrives within the district, but this does not apply to surveys of vessels in dry dock, or inspected during construction, and the like. *Ibid.* p. 17, No. 22.

(245) As to the measurement of passenger accommodation of seagoing steamers making short voyages, in which the time occupied in leaving one port and arriving at the next does not exceed ten hours, see *Ibid.* p. 16, No. 20.

(246) Excursion steamers are to have all the equipments and requirements of home-trade steamers, and are to be of such a substantial character as to be capable of sustaining bad weather in the event of being caught in it. *Ibid.* p. 23, No. 24.

(247) Declarations for excursion steamers carrying passengers are to be given on form headed Surveys 3. *Ibid.* p. 24, No. 24.

(248) Declarations for steamers carrying passengers and plying within limits parts of which only are smooth water, are to be given on form headed Surveys 4. *Ibid.* No. 26.

(249) Declarations for steamers conveying passengers and plying exclusively in smooth water limits are to be given on form Surveys 5. *Ibid.* p. 25, No. 26.

(250) As to the gear, lifeboat, life-buoys and safety-valves with which river steamers are to be provided, see *Ibid.* p. 24, No. 25, and p. 25, No. 26.

(251) The upper weather deck and the upper surface of the poop, fore-castle and spar deck, being exposed to the weather, are never to be included in the measurements for passengers in foreign-going steamers; nor

are poop, round-house or deck-house to be measured for passengers, unless they form part of the permanent structure of the vessel, but they should in all cases be railed round at the top to prevent children from falling overboard. *Ibid.* p. 9, No. 7.

(252) No reduction in boat accommodation is allowed until the owner has previously, by special application, obtained the sanction of the Board of Trade. See form Surveys 18; and Board of Trade Instructions as to Passenger Accommodation, &c., 1884, p. 10, No. 9.

(253) As to the plying limits for excursion and river certificates, see *Ibid.* p. 17, No. 23, and the table annexed thereto.

(254) In cases in which the passenger accommodation in foreign-going steamers is under a different act from the Passengers Act, 1855, the surveyor is guided by the act in question regarding the number of passengers to be carried and the boat capacity. If one act allows more than another, the smaller allowance is that to be followed. *Ibid.* p. 10, No. 9.

(255) Declarations for foreign-going steamers carrying passengers are to be given on form headed Surveys 1. *Ibid.* No. 8.

(256) As to the mode of measurement of foreign-going steamers carrying passengers, and not coming within the operation of the Passengers Act, 1855, see *Ibid.* p. 9, No. 7.

(257) As regards the passenger certificates of steamers when the passenger accommodation is increased whilst the certificate is in force, and the owners wish the number of passengers such increased space will accommodate inserted in their certificate before the next survey, the vessel should be remeasured and a fresh declaration issued, see Board of Trade Instructions, as to fees and expenses of surveys, of October, 1879, Circular 756c, p. 4.

(258) If passenger accommodation is known to have been decreased while a certificate is in force, the fact will be reported to the Board of Trade by any officer, when the certificate in force will be cancelled; and if the owners wish the ship to carry passengers again, she must be remeasured and a fresh declaration issued. *Ibid.*

944. When a passenger certificate has been granted to any steamer by the Board of Trade under the M. S. Act, 1854, it is not requisite to her employment under the Passengers Acts that she shall be again surveyed, and so long as a steamship is an emigrant or passenger ship within the meaning of the Passengers Acts, and the provisions of those acts as to survey of her hull, machinery, and equipments have been complied with, she is not subject to the provisions of the M. S. Act, 1854, as to survey of and certificate for passenger steamers, or to the enactments amending the same. See the M. S. Act, 1876 (c. 80), s. 18.

945. In an action on a marine policy, a plea that the ship was sent by the owners with passengers on board on the voyage on which she was lost, without the owners having done what was necessary to enable them to receive, and without having received, a passenger's certificate from the Board of Trade, all which the owner well knew, is good. *Dudgeon v. Pembroke*, L. R. 9 Q. B. 581; 43 L. J. Q. B. 220; 31 L. T. 31; 22 W. R. 914.

946. As to the accommodation for passengers in home-trade seagoing steamers, see Board of Trade Instructions as to Survey of Passenger Accommodation, 1884, pp. 10—16, Nos. 10—21.

947. As to the particulars to be shown in the marking of such ships, *Ibid.* pp. 13—15, Nos. 17—19.*

948. As to the mode of determining the number of passengers to be carried on deck, on the quarter-deck, poop, &c., and the number of passengers to be carried below the deck, *Ibid.*

2. Transmission and Notice of Transmission.

949. The Board of Trade shall transmit such duplicate certificate (*i. e.*, that mentioned in No. 941) to the mercantile marine superintendent or other public officer at such port as the owner may

mention for the purpose, or at the port where the owner or his agent resides, or where the ship was surveyed and is lying, and shall cause notice of such transmission to be given by post or otherwise to the master, or owner, or his agent; and such superintendent or officer shall deliver such duplicate certificate to the owner, master, or agent on his applying and paying the fees and other sums (if any) payable. In proving the due issue and transmission to the owner, agent, or master of such certificate, it shall be sufficient to show that it has been duly received by such superintendent or officer, and that due notice of the transmission thereof to such officer has been given to such owner, master, or agent. See M. S. Act, 1854 (c. 104), s. 313.

950. No passenger steamer is to proceed to sea or upon any voyage or excursion with any passengers, unless the owner has received the Board of Trade certificate applicable to the voyage or excursion. *Ibid.* s. 318.

3. Production of—

951. No officer of customs shall grant any clearance or transire for any passenger steamer, unless upon the production of the Board of Trade certificate. *Ibid.*

952. If any passenger steamer attempts to ply or go to sea without such production of her Board of Trade certificate, any such officer may detain her until it is produced. *Ibid.*

4. Posting up of—

953. The owner or master of every passenger steamer shall forthwith on the transmission of any certificate to him or his agent, cause one of the duplicates so transmitted to be put up in some conspicuous part of the ship, so as to be visible to all persons on board, to be kept there so long as such certificate remains in force and such ship is in use. Penalty

* (259) As to the measurement of deck shelter and deck space for passenger accommodation in home-trade passenger steamers, see Board of Trade Instructions as to Survey of Passenger Accommodation, &c., 1884, pp. 11 and 12, Nos. 14, 15, and 16.

(260) For the table of limits to be inserted in the declarations of surveyors of home-trade passenger ships, see *Ibid.* pp. 18 to 23.

(261) The application for survey of home-trade passenger steamers should be in the form headed Surveys 6A. Each section or

part of the ship intended for passengers, whether on deck or below, is to be described shortly in that application, and the number and class of passengers each section or part is intended to accommodate when free from cattle, animals, cargo, or other incumbrance, is to be stated. *Ibid.* p. 10, No. 11.

(261a) Whenever emigration surveys or surveys for passenger certificates are made, the surveyor carefully looks to the efficiency of the fog-horns. *Ibid.* p. 52, No. 87.

for default against the owner or master not exceeding £10. *Ibid.* s. 317.

954. Penalty for breach if the steamer plies or goes to sea with any passengers on board, against the owner not exceeding £100, and against the master not exceeding £20. *Ibid.* s. 318.

5. Cancellation or Revocation.

955. The Board of Trade may revoke and cancel such certificates in any case in which it has reason to believe—(1) That the declarations of the sufficiency and good condition of the hull, equipments and machinery of any passenger steamer, or either of them, have been fraudulently or erroneously made; or, (2) That such certificate has otherwise been issued upon false or erroneous information; or, (3) That since the making of such declarations the hull, equipments or machinery of such ship have sustained any injury, or are otherwise insufficient. *Ibid.* s. 316.

6. Re-issue or Re-grant after Cancellation.

956. When the Board has cancelled or revoked a certificate it may require the owner to have the hull, equipments or machinery again surveyed, and to transmit a further declaration or declarations of the sufficiency thereof, before re-issuing any certificate or granting a fresh one. *Ibid.*

7. Expiration.*

957. No certificate shall be in force for the purposes of the fourth part of this act beyond the date fixed by the Board of Trade, nor after notice by the Board of Trade to the owner, agent or master that the Board has cancelled or revoked it. But if any passenger steamer is absent from the United Kingdom when her certificate expires, no penalty shall be

* (262) In any case in which the surveyor has reason to believe that the hull, machinery, boilers or equipments are not fit for so long a time as the owner has applied for, he is to grant his certificate for such shorter period as he may deem expedient, informing the owners, if necessary, of his reasons for so doing. Unless it is the docking time only that limits his declaration, or the latest date for which an excursion certificate can be granted in accordance with the regulations, he is not to grant a certificate for a home-trade, excursion, river, or smooth-water steamer for a shorter period than one month, nor for a foreign-going steamer for less than a period of three months, without the written

authority of the Board of Trade. In such cases, and also in cases in which the surveyor refuses the certificate altogether, he is to give a statement in writing of the repairs he considers necessary to enable him to grant a certificate for the time asked. By this paragraph the surveyor is to understand that a foreign-going steamer that is not fit for a declaration for three months is not to be deemed by him as fit for a certificate at all. The same rule is to apply to other steamers that are not fit for a month's certificate. Board of Trade Instructions as to Survey of Hull, Equipments and Machinery of Passenger Steamships, 1884, par. 7, p. 4.

incurred for the want of a certificate until she first begins to ply with passengers after her return. *Ibid.* s. 315.

958. The Board of Trade may require any certificate which has expired, or been revoked or cancelled, to be delivered up as it directs. Penalty against any owner or master who, without reasonable cause, neglects or refuses to comply with such requirement, not exceeding £10. *Ibid.*

959. Every passenger steamer is to be surveyed once at least in every year. *Ibid.* 1872 (c. 73), s. 8.

8. Fees.

960. The owner of every passenger steamer shall pay for every certificate so granted by the Board of Trade such fees as such Board directs, not exceeding those in Table T. in the schedule. See M. S. Act, 1854 (c. 104), s. 314.

961. The fees to be charged for certificates in respect of survey shall not exceed for a yearly certificate twice the amount in Table T. *Ibid.* 1872 (c. 73), s. 8.

9. On Foreign Surveys.

962. When a foreign ship is a passenger steamer or emigrant ship under the M. S. Acts or the Passengers Acts, and the Board of Trade are satisfied with the foreign certificate of survey attested by a British consular officer at that port, and that the requirements of the acts have been substantially complied with, the Board may dispense with any further survey as to the requirements so complied with, and give or direct to be given a certificate having the same effect as if given upon survey under these acts. But her Majesty may, by Order in Council, direct this section shall not apply to a survey at any foreign port at which corresponding provisions are not extended to British ships. *Ibid.* 1876 (c. 80), s. 19.

15. Consular Officer.

963. The master of every British passenger ship, or ship intended for or carrying passengers under this act, must afford to her Majesty's consular officer at any foreign port every facility for inspecting the ship, communicating with the passengers, and ascertaining that the provisions of this act have been duly complied with. Penalty for breach against master not exceeding £50. See the Passengers Act, 1855 (c. 119), s. 10.

964. The term "consular officer" includes her Majesty's consul-general, consul, and vice-consul. *Ibid.*

16. Passenger Brokers.

1. Bond.*

965. No person shall directly or indirectly act as a passage broker in respect of passages from the United Kingdom to any place out of Europe, and not in the Mediterranean Sea, in any passenger ship, or otherwise, unless he shall, with two sureties approved by the nearest emigration officer, have previously entered into a bond in £1,000 in the form in Schedule (D). The bond is to be renewed on each occasion of obtaining his licence, and to be in duplicate, and to be deposited as therein mentioned. *Ibid.* s. 66.

966. The bond is exempt from stamp duty, but must be renewed annually with the licence. *Ibid.* Schedule (D).

967. Each member of a firm acting as a passage broker must give a separate bond with sureties. *Ibid.*

968. Such bond is not required of any

sworn broker of the city of London. *Ibid.* s. 66.

969. The Board of Trade, persons contracting with them or acting under their authority, and any person acting as agent of any passage broker under an appointment in the form in Schedule (I), are excepted. *Ibid.*

970. The emigration officer may accept the bond of a guarantee society, approved by the Board of Trade, in lieu of the bond of two securities. *Ibid.*

2. Licence.

(a) In England.†

971. No person shall act as such passage broker unless he has obtained a licence for the purpose, then in force. Penalty for breach not exceeding £50 nor less than £20. See the Passengers Act, 1855 (c. 119), s. 66.

972. As to the mode of obtaining an annual licence as passage broker from the justices in petty sessions for the district; the grant thereof in the form in Schedule (E) and the notice thereof in the form in Schedule (F), to be transmitted to the Board of Trade, *Ibid.* s. 67, as amended by M. S. Act, 1872 (c. 73), s. 5.

973. Each member of a firm acting as a passage broker must have a separate licence. See the Passengers Act, 1855 (c. 119), Schedule (E).

974. Fourteen clear days' notice of the intention to apply for such a licence must be given by post to the Board of Trade in London, in the form in Schedule (G). *Ibid.* s. 67, as amended by M. S. Act, 1872 (c. 73), s. 5.

* (263) As to brokers of the City of London, see the London Brokers Relief Act, 1870, c. 60.

(264) It devolves on the emigration officer stationed nearest to the place of business of the passage broker, to satisfy himself as to the solvency and sufficiency of the sureties to the bond. He will, therefore, when their names are submitted to him, call on the broker to furnish also the names and addresses of at least two respectable references for each surety, of whom the usual inquiries can be made. The present law authorizes the acceptance of the bond of any guarantee society which may have been approved by the Lords of the Treasury, in lieu of the bonds of two ordinary sureties. Board of Trade Mem. on Pass. Act, 1880, p. 57, No. 116.

(265) The sum for which passage brokers are to give bond to the crown is £1,000; but

they are allowed the privilege of appointing any number of persons to act as their agents, without the necessity of such agents taking out licences or entering into bonds, the passage brokers being held responsible for their acts and defaults. *Ibid.* p. 58, No. 119.

(266) There is, therefore, no reason for allowing a clerk in the office of a passage broker to act in the matter of passages for his principal, unless he holds the required appointment, and the wording of the 69th section of the Act of 1855 forbids it under a penalty not exceeding £50, nor less than £20. *Ibid.* p. 58, No. 120.

† (267) All licences, whenever granted, expire on the 31st January in each year. The licence, as well as the bond to the Crown, must be renewed annually. The licence enables the passage broker to act throughout the United Kingdom. *Ibid.* p. 57, No. 115.

(b) *In Scotland.*

975. As to the application for such licence in Scotland, see the Passengers Act, 1855 (c. 119), s. 67.

(c) *Forfeiture.*

976. Any justices of the peace adjudicating on any offence against this act, or on any breach or non-performance of its requirements, may order the licence to be forfeited; and shall forthwith cause notice of such forfeiture, in the form in Schedule (H), to be transmitted by post to the Board of Trade in London. See the Passengers Act, 1855 (c. 119), s. 67, as amended by M. S. Act, 1872 (c. 73), s. 5.

3. *Agents.**

977. Passage brokers' agents must be appointed in the form prescribed in Schedule I. See Passengers Act, 1855 (c. 119), s. 66.

978. The acts and defaults of any person acting as agent of any passage broker are, for the purposes of this act, deemed the acts and defaults of such passage broker. *Ibid.*

979. No passage broker shall employ as his agent any person not holding from him the appointment of agent as therein mentioned. *Ibid.* s. 69.

980. Every person holding such appointment shall produce the same, on the demand of any emigration officer, or of any person treating for a passage under this act. Penalty for breach not exceeding £50 nor less than £20. *Ibid.*

981. Every passage broker shall keep exhibited in a conspicuous place in his office, a list of every person acting as his agent or emigrant runner, and shall on or before the fifth of every month, transmit a true copy of such list, signed by him, to the nearest emigration officer, and report within twenty-four hours every

discharge or fresh engagement. Penalty for non-compliance not exceeding £5 nor less than £2. *Ibid.* s. 81.

17. *Emigration Runners.†*

982. As to the mode of licensing and registering emigrant runners by the justices of the peace at petty sessions, and supplying them with a badge, *Ibid.* ss. 76, 77 and 79.

983. For penalties against persons acting as emigrant runners without being licensed and registered, or omitting to wear their badge, or persons employing as emigrant runner a person not licensed and registered, or other misconduct of emigrant runners, or persons representing them, *Ibid.* ss. 75, 78.

984. No emigrant runner is entitled to any fee or reward for his services from any passage broker, unless acting under his written authority. *Ibid.* s. 80.

984a. Penalty not exceeding £5 for taking or demanding from any person about to emigrate any fee or reward in reference to his passage. *Ibid.*

985. For form of emigrant runners' annual licence, *Ibid.* Sched. (M).

18. *Construction of Decks and Beams.*

986. For provisions as to the construction of beams and decks on board passenger ships, and penalty for non-compliance against owner, charterer, or master, not exceeding £50, nor less than £5, see the Passengers Act, 1855 (c. 119), s. 20.

19. *Light and Ventilation.‡*

987. No passenger ship shall clear out or proceed to sea without such provision

* (268) The act does not, in express terms, limit the duration of the agent's appointment, but as the licence of his principal is made to expire at a fixed date, the authority of such licence would naturally expire at the same time. *Ibid.* p. 58, No. 122.

† (269) The emigration officer will take care that that portion of the 81st sect. of the Act of 1855 is duly observed which requires that passage brokers at or near his station shall keep conspicuously exhibited in their office a correct list of the names and addresses of the persons authorized in writing to act as their agents or runners, and also that they

furnish him with a true copy of such list on or before the 5th of each month. *Ibid.* p. 59, No. 124.

(269a) If the list includes runners residing at other ports, the names and addresses of such runners should at once be forwarded to the emigration officer at such ports. In cases of suspicion, the emigration officer will require the production of the licence, or in case of agents, of their written authority to act. *Ibid.*

‡ (270) Care should be taken that the means provided for ventilation are sufficient to allow of a good supply of air in the event

for light and air to the passenger decks as the emigration officer at the port of clearance may require; nor, if there are one hundred passengers on board, without adequate ventilating apparatus approved by him; the passengers shall have the unimpeded use of the whole of each hatchway situated over the space appropriated to their use, and there shall be erected over the same such a booby-hatch or other substantial covering as the emigration officer shall judge to afford the greatest amount of light and air, and protection from wet, as the case will admit. Penalty for breach against owner, charterer, or master, or any of them, not exceeding £50, nor less than £20. See the Passengers Act, 1855 (c. 119), s. 26.

988. Her Majesty, by Order in Council, may prescribe rules and regulations as to passenger ships proceeding from the United Kingdom to any place in her Majesty's possessions abroad for securing their ventilation. *Ibid.* s. 59.

989. As to such Orders in Council generally, the alteration and proof thereof, see c. 7, p. 1279.

of the hatches being closed in bad weather. Places ventilated by hatches only, or in which provision is not made for a sufficient supply of air and light under all circumstances, should not be measured for passengers. See Board of Trade Instructions as to Passenger Accommodation, &c., 1884, p. 9, No. 7.

(271) The emigration officer will therefore pay particular attention to the supply of light and ventilation between decks, and see that the law is efficiently carried out. Board of Trade Mem. on Pass. Act, 1880, p. 26, No. 56.

(272) At some of the ports this duty is performed by the medical inspectors under the supervision of the emigration officer. *Ibid.* p. 27, n.

(273) It is very advisable that the hold, especially when the cargo consists of coal or grain, should also be ventilated in such a manner as not to open into or affect in any way the passenger compartments. *Ibid.* p. 26, No. 56.

(274) The plan for light and ventilation usually adopted in Liverpool at present is as follows:—For ships going through the tropics a shaft is required with skylight through the top-gallant fore-castle, another of a large size through the house, and generally three shafts between the mainmast and the stern post. In addition to these shafts, ventilating tubes with bonnet heads are placed forward and aft, varying in size from 12 to 20 inches diameter, according to the size of the ship. Side lights are not always insisted on. For ships crossing the Atlantic or going to Canada,

20. Safety-valves.*

990. Every steamer of which a survey is required shall be provided with a safety-valve upon each boiler, so constructed as to be out of the control of the engineer when the steam is up, and, if such valve is in addition to the ordinary valve, it shall be so constructed as to have an area not less, and a pressure not greater, than the area of, and pressure on, that valve. Penalty for default against the owner appearing in fault not exceeding £100, and against the master appearing in fault not exceeding £50. See M. S. Act, 1854 (c. 104), s. 301, sub-s. 1.

991. Penalty against any person placing an undue weight on the safety-valve of any steamer, surveyed as therein mentioned, increasing such weight beyond the limits fixed by the engineer surveyor, not exceeding £100 in addition to other liability. *Ibid.* s. 302.

21. Fire Engine and Apparatus.†

992. For provisions as to the description and power of the fire engine and appa-

two tubes forward and aft and through the house are generally found sufficient. The large American ships in the passenger trade have many hatchways covered with skylights, also ladder-ways through the houses on deck, so that shafting is not required, two tubes forward and two aft generally being sufficient. *Ibid.* No. 56.

(275) Where there are as many as 100 statute adults on board, a proper ventilating apparatus, to be approved by the emigration officer and fitted to his satisfaction, must be insisted on, in addition to the ordinary means of ventilation supplied by the ship. The commissioners do not prescribe any particular kind of apparatus, as improvements are constantly in progress; but for the present they are not aware of any mode which combines economy, simplicity and efficiency in an equal degree to that of iron air funnels inserted into the deck with revolving heads. *Ibid.* p. 28, No. 56.

(276) Over each of the passengers' hatchways there must be such a booby hatch or other substantial covering as shall, in the opinion of the emigration officer, afford the greatest amount of light and air, and of protection from the wet, as the case will admit. *Ibid.* p. 28, No. 57.

* (277) For instructions to surveyors as to the area, weighting, position, &c., of safety-valves, see Board of Trade Instructions as to the Survey of Hull, Equipment and Machinery of Passenger Ships, 1884, pars. 31, 58, 66—68, 77—83, 92.

† (278) The officer has the power of re-

ratus for extinguishing fire to be carried on board every "passenger ship," and penalty for breach against the master not exceeding £50 nor less than £5 sterling, see the Passengers Act, 1855 (c. 119), s. 27.

22. Anchors and Cables.*

993. For provisions as to anchors and cables, their weight, size and materials

to be carried by "passenger ships," and penalty for breach against the master not exceeding £50 nor less than £5, *Ibid.*

23. Chronometers and Com- passes.†

994. For provisions as to the chronometers and compasses to be carried on

quiring, if he thinks fit, that, in addition to a fire-engine, some other apparatus for extinguishing fire shall be carried. Board of Trade Mem. on Pass. Act, 1880, p. 32, No. 64.

(279) The commissioners are not at present aware of anything more suitable than a proper supply of fire-buckets with long lanyards. In order to assist their officers in the exercise of the discretion vested in them on this point, and to promote a uniform practice at the various outports, the commissioners have prepared a scale (placed in Appendix No. 19), showing the dimensions and power of the fire-engines and number of buckets which should be required. *Ibid.*

(280) See Appendix, No. 21, for suggestions to masters of emigrant ships respecting boats and fire at sea. *Ibid.* No. 65.

(281) It is advisable that the donkey engine for pumping water through the condenser be so fitted that it can be made available in case of emergency for extinguishing fire in any part of the ship; a leather hose, with suitable bends and conductors, is to be supplied for this purpose. See Board of Trade Instructions as to Survey of Hull, Machinery, &c. of Passenger Ships, 1884, par. 92, p. 56.

(282) It shall be the duty of the master or of the mate, or officer next in command, once at least in each week to call all hands to quarters and exercise them in the discipline and use of the pumps and all other apparatus for the safety of life on board of such vessel, and to see that all the equipments required by law are in complete working order for immediate use; and the fact of the exercise of the crew as herein contemplated, shall be entered upon the steamer's log-book, stating the day of the month and hour when so exercised; and any neglect or omission on the part of the officer in command of such steamer to strictly enforce this rule shall be deemed cause for the revocation of the licence of such officer. See Regulations of Supervising Inspectors, r. 57, circa anno 1876. [AMERICA.]

* (283) Every "passenger ship" should carry not less than three bower anchors of such weight, and with cables of such length, size, and material as in the judgment of the emigration officer shall be sufficient for the ship and voyage. In no case should the anchor, cable, or hawser be less than or inferior to the requirement for classification

at Lloyd's. Board of Trade Mem. on Pass. Act, 1880, p. 31, No. 60.

(284) There should be a proper locker set apart for the chain cables, and the emigration officer should see that the ends of the cables are securely clinched before the ship proceeds to sea. This last is a very important point. *Ibid.*

(285) Surveyors must be careful to see that each steamer they survey is provided with chain cables and anchors duly certified under the Chain Cable Acts. When the stream and kedge anchors exceed 168 lbs. in weight they also must be tested in accordance with the act. The surveyors should, upon each occasion, require the production of the test certificates of all the chain cables and anchors. They must also see that the chain cables and anchors on board are sufficient for service and in good condition. The cables must be removed from the chain lockers at least once in twelve months, cleaned if necessary, and the pins knocked out of the shackles. The shackle-pins should also be secured by small pins of hard wood. The spare anchors should not be stowed below, but kept where they will be ready if required. Proper hawsers and warps must also be supplied. See Board of Trade Instructions as to Survey of Hull Equipments, &c. of Passenger Ships, 1884, par. 48, p. 21.

† (286) Every "passenger ship" must carry, if proceeding to any place south of the Equator, at least two chronometers; and if to the north of the Equator, one chronometer; and whatever be the destination, at least three steering and one azimuth compass. Board of Trade Mem. on Pass. Act, 1880, No. 60.

(287) As the employment of iron ships is now common in the passenger trade, the adjustment of the compasses in such ships has become a matter of primary importance. The emigration officer, therefore, should take particular pains to see that the ship has been effectively swung and her compasses correctly adjusted and properly arranged before he grants his clearing certificate. *Ibid.* p. 31, No. 62.

(288) In the Appendix is placed an extract of a recent report made by Captain Evans, the superintendent of compasses attached to the Admiralty, on the arrangement of the

board "passenger ships," and penalty for breach against master not exceeding £50, nor less than £5, see the Passengers Act, 1855 (c. 119), s. 27.

995. Every seagoing steamer employed to carry passengers shall have her compasses properly adjusted from time to time; such adjustment, in the case of ships surveyed, to be made to the satisfaction of the shipwright surveyor, and

according to regulations of the Board of Trade. Penalty for default against the owner appearing in fault not exceeding £100, and against the master appearing in fault, not exceeding £50. See the M. S. Act, 1854 (c. 104), s. 301, sub-s. 2.

24. Hospital and Fittings.*

996. For provisions as to the space in every "passenger ship," to be used ex-

compasses in an iron ship chartered for the transport service and their bearing on her safe navigation. Board of Trade Mem. on Pass. Act, 1880, p. 31, No. 62.

(289) As to the Instructions of the Board of Trade in reference to the adjustment of compasses on passenger ships and the production of an adjuster, or, in the case of a wooden ship, the furnishing of a table of errors, see Board of Trade Instructions as to Survey of Hull, Equipments, and Machinery of Passenger Ships, 1884, pars. 36, 37, 38, p. 17.

(290) The act is silent as to charts. The emigration officer should, however, see that the vessel is provided with proper and accurate charts, otherwise she could hardly be said to be "in all respects fit for her intended voyage." Board of Trade Mem. on Pass. Act, 1880, p. 31, No. 61.

(291) But he could not legally insist on any particular description of charts, as, for example, the Admiralty charts, unless he is satisfied that they are the only correct charts to be had, and that those with which the ship is provided are not sufficient to ensure her safety. *Ibid.*

* (292) In every "passenger ship" there must, to the satisfaction of the emigration officer, be a sufficient space divided off for one or more hospitals, and properly fitted with bed places, bedding utensils, &c. for the exclusive use of the sick passengers. *Ibid.* p. 23, No. 52.

(293) Whenever the emigration officer has a voice in the matter, it would, on sanitary grounds, be advisable that the hospitals, or at least one of them, should be placed in a poop or deck-house if practicable, rather than on the upper passenger deck. *Ibid.*

(294) To assist the judgment of the emigration officer in deciding upon the supply of beds to be shipped for hospital use, a scale is placed in the Appendix. The space must not be less than at the rate of 18 clear superficial feet for every fifty passengers (not statute adults). The hospitals can be placed only on the upper passenger deck, or in the poop, or any deck-house which shall be properly built and secured to the satisfaction of the emigration officer. Where a vessel takes passengers on more than one deck, the owner or charterer may choose whether the

hospitals should be placed on the upper passenger deck, or in the poop or deck-house, or divided between them, unless the poop or deck-house, from the number of cabin and other passengers carried therein, should become an upper passenger deck under the terms of the 3rd section of the Act of 1855, when the hospitals must be placed in the poop or deck-house, and not elsewhere. *Ibid.*

(295) The United States law prohibits more than two tiers of berths, and requires the berths to be 6 feet long by 2 feet wide, and the bottom berth to be not less than 9 inches from the deck. Only a single passenger is to be placed in each berth, but double berths may be constructed and occupied by two women, or by a husband and wife, or a woman and two children under eight, or by a man and two of his own children under eight, or by two men, members of the same family. *Ibid.* p. 23, n.

(296) The space occupied by the hospitals is not to be deducted from the superficial contents of the deck, which regulate the total number of passengers to be carried thereon. *Ibid.* p. 24, No. 53.

(297) There arises, therefore, at first sight some doubt as to the way in which the passengers displaced by the hospitals should be distributed between the deck on which the hospitals are constructed and the other passenger deck. The question is not free from legal difficulty; but after considering the several sections which bear upon it, and the whole spirit of the act, the commissioners are of opinion that the proper course is the following:—(1) to calculate the whole number of passengers which the ship is legally capable of carrying; (2) to calculate the number which each deck would be capable of carrying, after deducting the space which it is proposed to reserve in each for hospitals; and (3) to distribute the whole legal complement of passengers between the different decks in proportion to the number which each deck, taken by itself and exclusive of the room actually occupied as hospitals, would be capable of carrying. *Ibid.*

(298) This is also the American law, but it restricts the hospital to 100 superficial feet. *Ibid.* p. 24, n.

clusively as a hospital for the passengers, and as to the fittings and furniture thereof to the satisfaction of the emigration officer, and penalty for breach against the owner, charterer, or master not exceeding £50, nor less than £5, *Ibid.* s. 24.

25. Privies.*

997. For provisions as to the construction of privies in "passenger ships" to the satisfaction of the emigration officer at the port of clearance, and the maintenance thereof in a serviceable and cleanly condition throughout the voyage, and until after forty-eight hours from the arrival of the ship at the port of final discharge, unless all the passengers sooner quit the ship; and penalty for breach against the master not exceeding £50 nor less than £5, *Ibid.* s. 25.

26. Ship's Boats, Rafts, and Life Buoys.†

998. For provisions as to the boats and life buoys, and the number thereof to be carried and kept in order by every "passenger ship" according to her tonnage, one being a long boat and one a life boat, and penalty for breach against the master not exceeding £50 nor less than £5, *Ibid.* s. 27.

27. Signals of Distress and Lights.‡

999. Every seagoing passenger steamer and emigrant ship must be provided to the satisfaction of the Board of Trade with means for making the signals of distress at night specified in the M. S. Act, 1873, or in any rules substituted therefor, including means of making on the ship flames inextinguishable in water, or such other means as the Board of Trade may previously approve; and with a proper supply of lights inextinguishable in water and fitted for attachment to life buoys. See M. S. Act, 1876 (c. 80), s. 21.

1000. Penalty for breach against owner not exceeding £100, and against master not exceeding £50. *Ibid.*

1001. As to such signals, see Pt. II. c. 23, p. 1247.

1002. For provisions as to adequate means to be approved by the emigration officer at the port of clearance of making signals by night and in fogs, to be carried by every "passenger ship," and penalty for breach against the master not exceeding £50 nor less than £5, see the Passengers Act, 1855 (c. 119), s. 27.

28. Crew.

1. Sufficiency.||

1003. For provision for the carrying

* (299) See for regulations of Board of Trade in reference to water-closets in home-trade passenger ships, Board of Trade Instructions as to Survey of Passenger Accommodation, &c., 1884, par. 12, p. 11.

(300) The act under this head requires that where there are as many as fifty female passengers, two at least of the required privies must be water-closets, placed under the poop or elsewhere on the upper deck, to the satisfaction of the emigration officer, for the exclusive use of the women and young children. If any water-closets are placed in the between decks, there must be an interval between them and the nearest berths of at least nine inches, and these would not supersede the necessity of having water-closets under the poop or on the upper deck. Board of Trade Mem. on Pass. Act, 1880, p. 26, No. 54.

(301) While the act distinguishes between privies and water-closets, it abstains from specifying any particular description of closet, leaving that point to be settled between the master and the emigration officer. *Ibid.* No. 55.

(302) Any closet fitted with water would meet the words of the act; but a control is

lodged in the hands of the emigration officer by the proviso that the privies and water-closets are to be fitted to his satisfaction. *Ibid.*

(303) It will be his duty, therefore, to see that the water-closets are so fitted as to be serviceable and safe both for the passengers and the ship, but he need not insist on valves and pipes for this purpose, if satisfactory provision can, in his opinion, be made for it in any other way. *Ibid.*

(304) The American law requires one safe and convenient privy for every 100 passengers. *Ibid.* p. 26, n.

† (305) For the regulations given to the Board of Trade surveyors as to the boats and life buoys to be carried on passenger ships, see Board of Trade Instructions as to Survey of Hull, Equipments, &c. of Passenger Ships, 1884, pars. 23—34, pp. 11—17.

‡ (306) See, for Board of Trade instructions, in respect of statutory distress signals, their examination, guns and rocket apparatus, *Ibid.* pars. 49—54, p. 22.

|| (307) This section requires generally that passenger ships shall be manned with "an efficient crew;" but it does not prescribe any ratio of men to tonnage. Board of Trade Mem. on Pass. Act, 1880, p. 32, No. 66.

of an efficient crew on board every "passenger ship" to the satisfaction of the emigration officer, and that the men are not to be changed without his consent, and penalty for breach against the master not exceeding £50, see the Passengers Act, 1855 (c. 119), s. 28.

1004. As to survey of crew spaces by surveyors of Board of Trade, see Pt. I. c. 36, p. 1190.

2. Appeal from Emigration Officer's Decision.

1005. If the emigration officer considers the crew inefficient, the owner or charterer may appeal in writing to the Board of Trade, which shall, at the expense of the appellant, appoint two other emigration officers or competent persons to examine into the matter, and the unanimous opinion of the persons so appointed, expressed under their hands,

(308) The emigration officer must on this point be influenced by the usage of the port at which he is stationed; but he must bear in mind that a sufficient crew for a passenger ship includes efficient crews for all the boats, and also that a cargo ship may very well be navigated with a less crew than would be safe if the same ship full of passengers had to carry sail with the hatches open. Board of Trade Mem. on Pass. Act, 1880, p. 33, No. 66.

(309) To assist the judgment of the emigration officer and promote a uniform practice, the commissioners have, after consulting their most experienced naval officers, prepared the crew scale placed in the Appendix No. 20, as applicable to sailing vessels. *Ibid.*

(310) This scale requires 4 men for each 100 tons of the ship's registered tonnage, for all vessels of 500 tons and under; 3 men for each additional 100 tons between 500 and 1,000 tons; 2½ men for each additional 100 tons between 1,000 and 1,500 tons; and 2 men for every 100 tons over 1,500 tons. Two-thirds of the seamen are to be A.B.'s, and two boys under 18 are to count as one ordinary seaman; but not more than two boys for each 500 tons are to be carried. In the computation of the crew the captain, officers, carpenter, ship's cook, and steward are to be included. *Ibid.*

(311) It sometimes occurs that sailors are engaged for an Australian voyage at a nominal rate of wages, e.g., 1s. a month, their object being to get a free passage out. In these cases the emigration officer would not be justified in objecting to them on the ground of the bargain they had made with the owner, if he had no reason to doubt that they were engaged in good faith, and were to work the ship on the voyage. He would,

however, be justified in objecting to them if he had reason to conclude that the insertion of their names in the ship's articles was colourable—that they were not really seamen—that they were not to proceed on the voyage—or, if they proceeded, that they were not to work the ship. *Ibid.*

3. Medical Inspection.

1006. See as to medical inspection of stores for the crew, c. 42, s. 9, p. 1313.

29. Cooks and Cooking Apparatus.*

1007. As to the cook or cooks and the cooking apparatus and fuel for the same to be carried on board "passenger ships" to the satisfaction of the emigration officer, and penalty for breach against the master not exceeding £50 nor less than £5, see the Passengers Act, 1855 (c. 119), s. 39.

30. Stewards.

1008. For provisions for every "passenger ship" with 100 passengers carrying a steward, who is to be approved by

however, be justified in objecting to them if he had reason to conclude that the insertion of their names in the ship's articles was colourable—that they were not really seamen—that they were not to proceed on the voyage—or, if they proceeded, that they were not to work the ship. *Ibid.*

(312) By the 136th section of the Merchant Shipping Act, 1854, Part 3 (c. 104)—which, however, applies only to British ships—no foreign-going ship shall go to sea unless the master and the first and second mates, or only mate, as the case may be, have obtained and possess valid certificates, either "of competency" or "of service," appropriate to their several stations in the ship, or of a higher grade. *Ibid.* p. 34, No. 66.

(313) The penalty for an infraction of this enactment is a sum not exceeding £50 on the master or mate, and on the person employing them. The act does not fix the number of mates to be carried in a ship. The emigration officer could not, therefore, object to clear a ship carrying only one mate, unless he considers, from the circumstances of the case, that an additional officer of that class is indispensable to her safety. In short, he must in every case satisfy himself, before he clears the ship, that the crew on board is efficient, both in numbers and in character, and that the master and first and second mates, if more than one is carried, possess certificates either "of competency" or "of service." *Ibid.*

* (314) It will be important to see that the cooking apparatus is adequate for the number of passengers intended to be taken, that it is firmly secured in its place, that its housing is properly protected from fire by a sufficient metal lining, and that there is a supply of fuel for the voyage. *Ibid.* pp. 42, 43, No. 87.

the emigration officer, and not to assist in navigating the ship, and penalty for breach against the master not exceeding £50 nor less than £5, *Ibid.* s. 38.

31. Cargo.

1. Horses, Cattle, and Dangerous or Injurious Goods.*

1009. No "passenger ship" shall clear out or proceed to sea if there shall be on board as cargo, horses, cattle, gunpowder, vitriol, lucifer matches, guano, or green hides, nor if there shall be on board any article as cargo or ballast, which by reason of its nature, quantity or mode of stowage shall, singly or collectively, be deemed by the emigration officer at the port of clearance likely to endanger the health or lives of the passengers or the

safety of the ship. Penalty for breach against owner, charterer or master not exceeding £300 nor less than £5. *Ibid.* s. 29.

1010. As to the conditions under which horses, dogs, pigs, goats and cattle may be carried in passenger ships, see the Passengers Act Amendment Act, 1863 (c. 51), s. 8.

1011. One of the secretaries of state may by order under his hand, according to the conditions and directions therein specified, authorize the carriage as cargo in any passenger ship of naval and military stores for the public service. *Ibid.* 1870 (c. 95), s. 3.

1012. As to the delivery of the order to and by the master, and the penalty for breach being the same as that for carrying such articles or cattle without such order, see *Ibid.*

* (315) As to the prohibition of the conveyance of gunpowder, &c. see the Explosive Substances Act, 1875 (c. 17), s. 42, and the M. S. Act, 1873 (c. 85), ss. 23—28; 2 P. & B. 4th ed. p. 186.

(316) The mate of every passenger steamer shall also carefully examine all packages of freight delivered on board for shipment, with a view to detect and prevent any combustible or dangerous articles being delivered on board without his knowledge. Regulations of Supervising Inspectors, rule 58, circa anno 1876. [AMERICAN.]

(317) As to foreign-going steamers, when cargo or stores are carried in the space measured for passengers, one passenger is to be deducted for every 12 superficial feet of deck space so occupied. See Instructions as to Survey of Passenger Accommodation, &c. 1884, p. 10, No. 8.

(318) As to the arrangements to be made when cattle are carried, see *Ibid.* p. 11, No. 13; p. 23, No. 24; p. 24, No. 25; p. 25, No. 26.

(319) The Act of 1855 altogether prohibited horses and cattle as cargo in passenger ships. But as a rigid application of this rule to passenger ships carrying but comparatively few passengers was found seriously to interfere with the exportation of animals needed for the improvement of stock in the colonies, the Act of 1863 has so far relaxed the prohibition as to allow horned cattle, deer, horses, asses, dogs, sheep, and female goats (but not male goats or pigs) to be taken as cargo in numbers proportioned (within narrow limits) to the tonnage of the vessel, provided the passengers on board do not exceed the proportion of fifteen to each 100 tons register, and that for their use and exercise at least 10 superficial feet per statute adult be kept clear on the weather deck. Board of Trade Mem. on Pass. Act, 1880, p. 35, No. 69.

(320) Besides gunpowder, vitriol, lucifer matches, guano and green hides, which are absolutely prohibited, there is a general prohibition against taking as cargo or ballast any article or number of articles which, by reason of their nature or quantity or mode of stowage, shall either singly or collectively be deemed by the emigration officer likely to endanger the health or lives of the passengers or the safety of the ship. *Ibid.*

(321) It is on this latter part of the clause that questions frequently arise, such as whether salted hides, packed or unpacked salt, iron in an unusual quantity, coal, &c., come within the meaning of the prohibition. The determination of these and similar questions rests with the emigration officer. *Ibid.* pp. 35, 36, No. 69.

(322) In the appeals that have been made to the commissioners on this part of the law, they have declined to sanction the shipment of salted hides unless packed in tight casks, or flour of sulphur; but they have not objected to salt in moderate quantities, and properly packed; nor to the description of coal or of patent fuel, such as Warlich's, Wylam's, and the national patent steam fuel, which on chemical analysis have been found not liable to spontaneous combustion. *Ibid.* p. 36, No. 69.

(323) With regard to iron, they have instructed their officers not to allow the shipment of such a quantity (taken in ordinary cases at two-thirds the registered or British tonnage) as would be likely from its weight to strain or endanger the ship; and, as much must depend on the manner of its stowage, they have further directed them to watch the stowage of ships carrying iron, so as to ascertain that it is properly distributed fore and aft, and raised by chequering or otherwise. *Ibid.*

2. *Stowage.*(a) *Interference with Passenger Accommodation.**

1013. In every "passenger ship" no part of the cargo, passengers' luggage, provisions, water or stores, whether for the use of passengers or crew, shall be carried on the upper deck or on the "passenger decks," unless in the opinion of the emigration officer it shall be so placed as not to impede light or ventilation, nor interfere with the comfort of the passengers, nor unless stowed to his satisfaction, and the space occupied thereby, or in his opinion unavailable for the accommodation of the passengers, shall (unless occupied by passengers' luggage) be deducted in calculating the space by which, under the provisions of this act, the number of passengers is regulated. Penalty for breach against owner, charterer, or master, not exceeding £300 nor less than £5. See the Passengers Act, 1855 (c. 119), s. 29.

(b) *Storage of Water.*

1014. As to the tanks or casks in which water is to be carried being approved by the emigration officer, and being of a re-

quisite strength, &c., see *Ibid.* s. 33, and the specifications of water casks sanctioned by the Board of Trade, set out in 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. ccccxxx.

* 32. *Interpreters.*

1015. In every foreign "passenger ship" in which half of the passengers are British subjects, unless the master and officers or not less than three of them understand and speak English, there shall be carried, according to the number of passengers, one or two persons who understand and speak the language of the master and crew and the English language, and they shall act as interpreters, and be employed exclusively in attendance on the passengers, and no such ship shall clear out or proceed to sea without having such interpreter or interpreters on board. Penalty for breach against the master, not exceeding £50 nor less than £5. *Ibid.* s. 40.

33. *Medical Man.†*

1016. Every passenger ship shall carry a duly qualified medical practitioner, rated

* (324) As a general rule, no part of the cargo, passengers' luggage, provisions, water or stores should be carried on the upper or passengers' decks. Board of Trade Mem. on Pass. Act, 1880, p. 36, No. 70.

(325) But as the stowage of very heavy cargo, such as iron, at the bottom of the ship, makes her laboursome, and in some cases unseaworthy, the law permits the stowage of a portion of the cargo on deck, with the consent of the emigration officer, provided that it be stowed to his satisfaction, and so as not to impede light or ventilation, or interfere with the comfort of the passengers. *Ibid.*

(326) The room occupied by any cargo on the passengers' decks is to be deducted from the space by which the number of passengers is regulated. *Ibid.*

(327) See also instructions to surveyors as to carriage of coal in passenger ships. *Ibid.* p. 36, n.

† (328) The Order in Council of August 9th, 1866, orders every passenger ship carrying more than fifty passengers to carry a duly-qualified medical practitioner. See same in 12 Hertslet, p. 1100.

(329) The only definition given of the term "duly qualified," is, that the medical man shall be authorized by law to practise in some part of her Majesty's dominions (or in the case of a foreign ship, in the country to

which the ship may belong), as a physician, surgeon or apothecary. Any difficulty, however, as regards medical practitioners in the United Kingdom may be considered as removed by the Medical Act of 1858, c. 90, (amended in minor points by the 22 Vict. c. 21, and 23 Vict. c. 7.) By that act (s. 15) all persons possessing the qualifications specified in Schedule A. to the act, are entitled to be registered by one of the three branch medical councils for England, Scotland and Ireland respectively, and unless so registered they cannot recover at law their charges (s. 32), nor hold any appointment in the military or naval service, or in emigrant or other vessels, nor in any hospital, parish, union, friendly society or other public establishment, body or institution (s. 36). See Board of Trade Mem. on Pass. Act, 1880, pp. 43, 44, No. 90.

(330) The emigration officers, therefore, will be guided by the Medical Act as regards British practitioners, and require them to produce in proof of their qualifications either a copy of the "Medical Register" containing the name of the candidate, or a certificate under the hand of the registrar of the general council, or of any branch council, that he is duly registered. *Ibid.* p. 44, No. 90.

(331) Medical men authorized to practise in the colonies may, however, without being registered, take charge of passenger ships

on the ship's articles when the duration of the voyage, as therein computed, exceeds eighty days for sailing ships and forty-five days for steamers and the number of passengers exceeds fifty, or when the number of persons on board (including cabin passengers, officers, and crew) exceeds 300. Penalty for breach against the master not exceeding £100 nor less than £20. See the Passengers Act, 1855 (c. 119), s. 41.

1017. As to the proper qualifications of such a medical man, the notification of his name to, and his approval by, the emigration officer at the port of clearance, and the requirement that he shall be provided with proper surgical instruments to the satisfaction of such officer, *Ibid.* s. 42.

1018. Penalty against any unqualified person attempting to proceed as medical practitioner, and against all persons aiding therein, not exceeding £100 nor less than £10. *Ibid.*

1019. For provisions enabling governors of colonies to appoint medical practitioners to passenger ships on colonial voyages, *Ibid.* s. 98.

1020. Every foreign-going ship having 100 persons or upwards on board shall carry on board as part of her complement some person duly authorized to practise as physician, surgeon, or apothecary. Penalty for default against owner for every voyage, not exceeding £100. See *M. S. Act, 1854* (c. 104), s. 230.

1021. Her Majesty, by Order in Council, may prescribe rules and regulations as to passenger ships proceeding from the United Kingdom to any place in her Majesty's possessions abroad, for requiring duly-qualified medical practitioners to be carried in passenger ships in cases where they would not be required to be carried under the provisions of this act. See Passengers Act, 1855 (c. 119), s. 59.

1022. As to such Orders in Council generally and the alteration and proof thereof, see this Part, c. 7, p. 1279.

1023. In every passenger ship pro-

ceeding from the United Kingdom to any place in her Majesty's possessions abroad, the medical practitioner on board, aided by the master, or, in the absence of such medical practitioner, the master, may exact obedience to all rules and regulations prescribed by any such Order in Council. See Passengers Act, 1855 (c. 119), s. 60.

1024. Penalty against any person neglecting or refusing to obey, or obstructing the medical practitioner or master in the execution of such duty, not exceeding £2, besides imprisonment not exceeding one month, at the discretion of the justices adjudicating on the complaint. *Ibid.*

34. Medical Stores.

1. Generally.

1025. For provisions for the supply by the owner or charterer of every "passenger ship," for the use of the passengers, of medicines, medical comforts, instruments, and other things proper for diseases and accidents incident to sea voyages, and for the medical treatment of the passengers, including an adequate supply of a disinfecting fluid or agent, and printed or written directions for use, in the judgment of the emigration officer at the port of clearance good and sufficient for the voyage, and properly packed and placed under charge of the medical practitioner, when there is one on board, to be used at his discretion, and penalty for breach against the master not exceeding £50, nor less than £5, see *Ibid.* s. 43.

1026. As to the taking on board of further medical stores and comforts to make up the prescribed quantities on the ship putting back to or touching at any port or place in the United Kingdom, see *Ibid.* s. 50.

1026a. As to lime juice, see c. 35, s. 2, p. 1034.

2. Inspection.*

1027. As to the medical inspection of such medicines, medical comforts, and

from the United Kingdom, which they could not have done under the Act of 1852; and when the majority of the passengers in the ship, or as many as 300 of them, are foreigners, any medical man may be carried (whatever his professional qualification), provided only that he is approved by the emigration officer. *Ibid.* No. 91.

* (332) The emigration officer is constituted the judge of the sufficiency, both as regards quality and quantity, of the medicines and medical comforts for passenger ships. *Ibid.* p. 45, No. 94.

(333) With a view to a uniform practice in this matter at the several ports, the commissioners [Board of Trade] have, with profes-

other articles, by some medical practitioner appointed by the emigration officer at the port of clearance, and his certificate to the officer that the ship contains a sufficient supply thereof, and of disinfecting agents, instruments, and other things requisite for the medical treatment of the passengers, see the Passengers Act, 1855 (c. 119), s. 44.*

1028. Penalty in case of any passenger ship clearing out or proceeding to sea without complying with all such requirements, against the master not exceeding £100, nor less than £5. *Ibid.*

1029. If the emigration officer shall be unable to obtain the attendance of a medical practitioner, the master may clear out and proceed to sea, on receiving from the officer written permission for the purpose. *Ibid.*

1030. Any local marine board may, on the requirement of the Board of Trade, appoint and remove a medical inspector of ships for the port, and fix his remuneration, subject to the control of the Board of Trade; and at ports where there are no local marine boards the Board of Trade may appoint and remove such inspectors, and fix their remuneration; such inspectors are to inspect the medicines, medical stores, sugar, vinegar, lime, lemon juice, or other articles, required to be kept on board any such ships; and such inspection, if at places where there are local marine boards, shall be made under their direction, and in any special cases under the direction of the Board of Trade, and if made at places where there are no local marine boards, shall be made under the direction of the Board of Trade. See the M. S. Act, 1854 (c. 104), s. 226.

1031. Such medical inspectors shall for the purposes of such inspection have the same powers as the inspectors appointed by the Board of Trade under the first part of this act (for such powers see ss. 14 and 15 of the act, and tit. SEAMEN); but every such inspector, if required by timely notice in writing from the master, owner,

or consignee, shall make his inspection three days at least before the ship proceeds to sea, and if the result of the inspection is satisfactory shall not again make inspection before the commencement of the voyage, unless he has reason to suspect that some of the articles inspected have been subsequently removed, injured, or destroyed. *Ibid.*

1032. Whenever any such medical inspector is of opinion that in any ship hereby required to carry them such articles or any of them are deficient in quantity or quality, or placed in improper vessels, he shall signify the same in writing to the chief officer of customs of the port, and to the master, owner, or consignee, and the master of such ship, before proceeding to sea, shall produce to such chief officer of customs a certificate under the hand of such or some other medical inspector, that such deficiency has been supplied or remedied, or that such improper vessels have been replaced by proper vessels; and such chief officer of customs shall not grant a clearance for such ship without the production of such certificate, and if such ship attempts to go to sea without a clearance, he may detain her until such certificate is produced; penalty against the owner, master, or consignee, if such ship proceeds to sea without the production of such certificate, not exceeding £20. See the M. S. Act, 1854 (c. 104), s. 226.

1033. For provisions enabling governors of colonies by proclamation to declare what shall be deemed for the purpose of this act the scale of medicines, and medical comforts, and enabling such proclamations to be received as evidence, see the Passengers Act, 1855 (c. 119), s. 97.

35. Provisions and Water.

1. Generally.†

1034. There was in an agreement under seal for the use of cabins and accommo-

sional assistance, prepared and placed in the Appendix, for the use of the emigration officers, two scales of medicines, medical stores, and instruments, one applicable to Australian and other distant voyages, and the other to North American voyages. See Board of Trade Mem. on Pass. Act, 1880, p. 45, No. 94.

* (334) But to assist him in this part of his duty, the law requires (sect. 44 of Act of 1855) that the medical examiner of passengers shall inspect the medicines, medical comforts, &c.

and certify to the emigration officer that they are sufficient for the voyage. Without this certificate the emigration officer should not grant his clearing certificate. *Ibid.*

† (335) By notice in London Gazette of 29th April, 1856, another dietary scale, instead of Scale B in the 35th section of the Passengers Act, 1855, was authorized. See the scale set out in 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. cxcii. See also sect. 20 of the M. S. Act, 1876, giving power to the Board of Trade to modify requirements as to

dition for passengers in a ship, a covenant on the part of the captain to permit and

suffer the hirer to stow away the baggage of the passengers in a part of the hold.

food, &c. Board of Trade Mem. on Pass. Act, 1880, p. 37, n.

(336) The present scale of provisions, though diminishing the quantity of oatmeal formerly required, includes meat, and makes a difference between voyages to North America and those to more distant destinations, the latter containing more flour and the additional articles of preserved meat, suet, raisins, and butter. *Ibid.* pp. 37 and 38, No. 74.

(337) It is necessary that the emigration officer should, in the case of each ship, inform himself what scale is intended to be used on the voyage. *Ibid.* p. 39, No. 75.

(338) This can readily be done by an inspection of the contract ticket issued to the passengers. He will then ascertain that the provisions laid in are of the proper kind and qualities. *Ibid.*

(339) A careful survey of the water and provisions in an emigrant ship is one of the most important of the emigration officer's duties. He will therefore give his special attention to this point; and as attempts have occasionally been made to pass inferior articles by overlaying them with a small portion unobjectionable in quality, he will always select indiscriminately a certain proportion of the packages of each sort of provisions, and have all their contents thoroughly exposed to view. For this purpose one in ten at least of the packages of articles which do not spoil by opening should be selected; but while in ordinary cases this mode of examination will suffice, yet if there is any reason to suspect an attempt to evade the law, a strict general search should be made with a view of detecting the fraud. *Ibid.* No. 76.

(340) Should the emigration officer discover any provisions or stores which are not of good and wholesome quality, or which are not in a sweet or good condition, he will at once reject, mark, and have them landed, and such provisions cannot afterwards be re-shipped either in the same or any other "passenger ship" under a penalty not exceeding £100. *Ibid.* No. 77.

(341) The emigration officer having ascertained the quality of the passengers' provisions, will next satisfy himself as to their quantity, with reference to the length of the voyage, and the issues prescribed in sect. 35. *Ibid.* No. 78.

(342) The Act of 1855 does not alter the length of the different voyages prescribed by the Act of 1852. *Ibid.* p. 37, No. 71.

(343) An error has crept into the rule regulating the length of voyage to North America, which, however, affects only vessels clearing out on the 16th or 17th day of January. The first limb of the rule declares the length of the voyage to be seventy days for sailing vessels and forty days for steamers that clear

out between the 15th day of January and the 14th day of October, both days inclusive; whilst the second limb declares eighty and forty-five days respectively as the length of the voyage if the vessel clears between the 15th day of October and the 17th (it ought to be the 15th) day of January, both days inclusive, thus overlapping by two days in January the rule in the first limb. Should it happen that a vessel clears out on the 16th or 17th of January, the commissioners consider that the law would be satisfied if she be provisioned for the shorter and not the longer period. The emigration officer will guide himself accordingly whenever the case arises. *Ibid.* No. 72.

(344) The declared length of voyage to North America for certain passenger steamers has, by notice in the London Gazette, dated 7th June, 1864, been reduced from forty and forty-five days to thirty-two and thirty-seven days respectively. See Appendix (C) to Passengers Acts, *Ibid.* p. 37, n.

(345) The emigration officer will bear in mind that what the passengers themselves may bring is not to be reckoned, but is irrespective of what the owner, charterer, or master is bound to provide. *Ibid.* p. 39, No. 78.

(346) The exact mode of ascertaining the quantity of provisions must depend very much on the facilities for counting and weighing packages afforded by each port. *Ibid.* pp. 39, 40, No. 78.

(347) At some of the ports this duty is performed by the medical inspectors. *Ibid.* p. 39, n.

(348) The commissioners do not, therefore, lay down any precise rule on this point, but leave each officer to adopt the course which he may consider most effectual. *Ibid.* p. 40, No. 78.

(349) He will, moreover, see that there is an ample supply of wholesome food for victualling the crew, and all other persons on board besides the ordinary passengers. *Ibid.*

(350) A scale of provisions for the crew must, however, by the 149th section of the M. S. Act, 1854, be inserted in the ship's articles, the form of which is to be sanctioned by the Board of Trade. *Ibid.*

(351) The emigration officer will enforce the requisite issues, before two o'clock on the day of embarkation, to such passengers as may then be on board, and he will warn masters that they will render themselves liable to heavy penalties, and entail on their sureties in the bond to the crown, a forfeiture of the bond, if the issues are not in like manner continued daily throughout the voyage, and if the articles which require cooking are issued in an uncooked state. *Ibid.* No. 79.

(352) There is no offence against the act

Held, that this, in connexion with a covenant to promote the comfort and convenience of the hirer and his passengers, fairly imported that there should be some demand or request by the hirer for the clearing of the space agreed on. *Corbin v. Leader*, 6 C. & P. 32.

1035. A covenant to keep up a supply of the necessary and usual quantity of water is not broken by a deficiency for a short time occasioned by the unusual length of the voyages. *Ibid*.

1036. In an action against a captain for not furnishing good and fresh provisions to a passenger on a voyage, the jury must be satisfied that there was a real grievance sustained by the plaintiff, and there is no right of action unless he has really been a sufferer; for it is not because a man does not get such a good dinner as he might have had that he is therefore to have a right of action against the captain who does not provide all that he ought. *Young v. Fewson*, 8 C. & P. 55.

which will be more rigorously prosecuted whenever it can be proved. Board of Trade Mem. on Pass. Act, 1880, p. 40, No. 79.

(353) The officer will cause a printed notice to this effect to be kept posted up in places where it would be likely to meet the attention of parties concerned in the passenger trade. *Ibid*.

(354) A form of such notice is given in the Appendix. *Ibid*.

(355) In the case of ships not laying in water for the full voyage, but touching at an intermediate port to fill up, the emigration officer is empowered by sect. 34 to declare the length of voyage to and from the intermediate ports. *Ibid*. p. 37, No. 73.

(356) By Order in Council, dated 28th June, 1875, "passenger" vessels may clear with only half the quantity of water required by the Passengers Acts, provided they carry an efficient distilling apparatus. See Appendix 39. At some of the ports the inspection of water is made by the medical inspectors. *Ibid*. p. 40, n.

(357) The emigration officer will be particular to see that when water casks are used, they are properly charred inside, are sweet, tight, and of sufficient strength, and that they are not of greater capacity than 300 gallons. *Ibid*. pp. 40, 41, No. 80.

(358) The law requires that the staves should not be of fir, pine, or soft wood, but is silent as regards the heads. *Ibid*. p. 41, No. 80.

(359) The emigration officer will be at liberty, therefore, to pass casks of which the staves are made of hard wood, and the heads of yellow pine, pitch pine, or oak; if of pine, the sap-wood should be taken off, and oak cantes be used. *Ibid*.

(360) A scale for casks is placed in the Appendix for the guidance of the emigration officers. *Ibid*. No. 81.

(361) The mode of examining the water-casks, which should be followed when practicable, is to have the casks ranged on the wharf, and filled with fresh water; and after they have been inspected and marked by the emigration officer, to have them emptied and stowed away in the vessel and refilled. The commissioners are aware that this method is not practicable at all ports, and the emigration officer must be left to adopt the best

means that the circumstances at his station will allow for ensuring an efficient test as to the sweetness, tightness, and strength of the casks. Cases of fraud have been alleged where, after the water-casks have been passed, some of them have been withdrawn. The emigration officer will, therefore, take measures for assuring himself that all the casks he may have passed are duly shipped and filled with the proper quantity of good water. *Ibid*. No. 82.

(362) Nothing can be more important for the health and comfort of emigrants than that the water should be pure, sweet, and likely to keep well. It will be incumbent, therefore, on the emigration officer to pay particular attention to this point, and to insist on the supply being obtained from the best sources within reach. When it can be obtained only from a tidal river, it should not be taken before the last quarter ebb, and should, where means exist for the purpose, be filtered before it is filled in. *Ibid*. No. 83.

(363) The water required for cooking the provisions of the passengers is not to be deducted from the daily issue to them of three quarts per statute adult. To provide, however, for cooking purposes, the 31st section enacts "that an additional supply of water shall be shipped after the rate of at least ten gallons for every day of the prescribed length of voyage, for every 100 statute adults on board;" and the emigration officer should see that this additional quantity is accordingly supplied. *Ibid*. p. 42, No. 84.

(364) Besides the water for the passengers and for cooking purposes, the law requires an additional quantity to be shipped for the crew and (under the expression "all other persons on board") cabin passengers. But it does not define, as in the case of ordinary passages, what that quantity should be. It, however, expressly requires that the "supply" should be "ample." The emigration officer must therefore ascertain that an "ample supply" of pure water is shipped for the use of the crew and all other persons on board, as well as for the ordinary passengers, and in determining the quantity he must be guided by the usage of the port and his own judgment. *Ibid*. No. 85.

1037. For enactments as to the quantity and quality of provisions and water on board "passenger ships," and that those for the crew shall not be inferior in quality to those for the passengers, and for the stowage thereof; and penalty if a clearance is obtained for any "passenger ship" not so provided, against the owner, charterer, or master not exceeding £300, see the Passengers Act, 1855 (c. 119), s. 31, and the M. S. Act, 1876 (c. 80), s. 20.

1038. As to the stowage of provisions and water, see c. 31, s. 2, p. 1298.

1039. Her Majesty, by Order in Council, may prescribe rules and regulations as to passenger ships proceeding from the United Kingdom to any place in her Majesty's possessions abroad. See the Passengers Act, 1855 (c. 119), s. 59.

1040. As to such Orders in Council generally, and the alteration and proof thereof, see this Part, c. 7, p. 1279.

1041. For permitting the use on board of an apparatus for distilling water, and for defining in such case the quantity of fresh water to be carried for the passengers, see the Passengers Act, 1855 (c. 119), s. 59, and Order in Council of 28th June, 1875, set out in 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. 64.

1042. Every foreign ship carrying goods or passengers between ports of the United Kingdom, or between ports of Guernsey, Jersey, Alderney, Sark, or Man, or any of them and the United Kingdom, is subject, as to stores and otherwise, to the same laws, rules, and regulations to which British ships so employed are subject. See 17 Vict. c. 5, s. 2; the Customs Consolidation Act, 1876 (c. 36), s. 141.

1043. For enactments as to "passenger ships" enabling the emigration officer to reject and mark as bad any provisions, stores, or water not of a good and wholesome quality, and to direct the same to be landed, and against re-shiping the same in that or any other passengership, and penalty for breach against owner, charterer, or master, or person re-shiping them not exceeding £100, see the Passengers Act, 1855 (c. 119), s. 32.

1044. For provisions as to the carriage of water in passenger ships in proper tanks or casks approved by the emigration officer, and penalty for breach against owner, charterer, or master, not exceeding £50, *Ibid.* s. 33.

1045. For provisions as to passenger ships intended to touch at intermediate ports to fill up water, as to the engage-

ment to that effect to be inserted in the bond to the crown in such cases, as to the emigration officer's certificate of approval thereof, to be obtained, carried, and delivered up as therein mentioned, and as to the supply of water to be taken on board at the port of clearance in such circumstances, *Ibid.* s. 34.

1046. For enactments as to the dietary scales of provisions and water for passenger ships exclusive of the water for cooking, according to the length of the voyage, and as to the substitutions of some of such articles for others at the option of the master, provided the substituted articles are set forth in the contract tickets of the passengers, and penalty for breach against the master not exceeding £50, *Ibid.* s. 35.

1047. For similar provisions under similar penalty against the master as to passengers coming in passenger ships into the United Kingdom from any place out of Europe, *Ibid.* s. 102.

1048. For provisions on board passenger ships as to messes, the arrangement thereof, and the time of issuing provisions to head messmen, and the issue in a cooked state of those requiring to be cooked, and penalty for breach against master not exceeding £50, *Ibid.* s. 36.

1049. For enactments enabling the Board of Trade by notice in the London Gazette to authorize the issue of provisions in any passenger ship, according to any other dietary scale containing an equivalent amount of nutriment; and for the issue of provisions to passengers according to either scale set forth in the contract tickets of the passengers, *Ibid.* s. 37, as amended by the M. S. Act, 1872 (c. 73), s. 5, and note 335, *supra*.

1050. For provisions as to passenger ships, in case of detention after clearance, or putting back into any port in the United Kingdom, taking on board such further supply of provisions, water, and medical stores as are necessary to make up the prescribed quantities, see the Passengers Act, 1855 (c. 119), s. 50.

1051. As to complaints by seamen of British ships of bad or deficient provisions or water, the proceedings thereon, and the penalty for the same, see tit. SEAMEN, Pt. IV.

1052. As to prohibition of the reduction in the allowance to any seaman of the provisions stipulated for, except by way of punishment, and under the conditions prescribed and the compensation for the same, *Ibid.*

1053. For provisions enabling governors of colonies by proclamation to declare what shall be deemed for the purpose of this act the scale of diet, and enabling such proclamations to be received as evidence, see the Passengers Act, 1855 (c. 119), s. 97.

2. Lime Juice.

1054. As to the quantity of lime juice to be issued on board "passenger ships" according to the length of the voyage and the locality, and during portions of the voyage, at the discretion of the medical practitioner, or, in his absence, of the master, see the Passengers Act, 1855 (c. 119), s. 35, and *Ibid.* 1863 (c. 51), s. 9.

1055. For regulations as to the providing of lime juice or such other anti-scorbutics as her Majesty may, by Order in Council, from time to time direct, for the certificate of the Board of Trade that it has been obtained from a proper source, for its mode of carriage, and for the times at which the master is to serve out such lime juice or anti-scorbutics, see the M. S. Act, 1867 (c. 124), s. 4.

3. Soft Bread.

1056. As to the issue on board "passenger ships" in addition to the substitutions in the dietary scales therein specified of soft bread, baked at the option of the master, in lieu of other articles and in certain proportions, see the Passengers Act, 1855 (c. 119), s. 35, and *Ibid.* 1863 (c. 51), s. 10.

36. Computation of Lengths of Voyages.

1057. For the scales for computation of the lengths of voyages for the purposes of this act, of "passenger ships" proceeding from the United Kingdom to the places therein mentioned, see the Passengers Act, 1855 (c. 119), s. 30; see also notes 342—344, p. 1301.

1058. For provisions enabling the Board of Trade to fix different scales of length of voyage, see Passengers Act, 1855 (c. 119), s. 30, as amended by M. S. Act, 1872 (c. 73), s. 5.

1059. For provisions enabling governors of colonies by proclamation to declare what

shall be deemed for the purpose of this act the length of time for voyages, and enabling such proclamations to be received as evidence, see the Passengers Act, 1855 (c. 119), s. 97.

37. Passengers Lists.

1. Outward-bound Ships.

(a) Generally.*

1060. The master of every ship, whether a "passenger ship" or otherwise, carrying passengers on any voyage to which this act extends, shall, before demanding a clearance, sign two lists, in the form in Schedule (B), setting forth the name and other particulars of the ship, and of every passenger on board, including cabin passengers, and specifying whether such cabin passengers are under or over twelve years, and at what place the passengers and cabin passengers are to be landed. These lists, when countersigned by the emigration officer, where there is one at the port, shall be delivered by the master to the officer of the customs from whom a clearance of the ship is demanded, who shall thereupon countersign and return to the master one of such lists, to be called "the master's list." See Passengers Act, 1855 (c. 119), s. 16, as amended by the Passengers Act, 1863 (c. 51), s. 6.

1061. Penalty for breach against master not exceeding £100 nor less than £5. See Passengers Act, 1855 (c. 119), s. 16.

1062. If after such lists have been signed and delivered any additional passenger is taken on board, the master shall, according to the same form, add to "the master's list" the names and other particulars of every such additional passenger or cabin passenger, and sign a separate list, made out according to the same form, containing the names and other particulars of every such additional passenger, and such last-mentioned list, when countersigned by the emigration officer, where there is one at the port, shall, with "the master's list" to which such addition shall have been made, be delivered to the chief officer of customs, and thereupon such officer shall countersign "the master's list," and return the same to the master, and retain the separate list, and

* (365) The lists furnished to the officers of customs must include cabin passengers, who are entitled to a return of half their passage money if prevented by an emigra-

tion officer from undertaking their voyage on account of sickness. See Board of Trade Mem. on Passenger Act, 1880, p. 5, No. 3.

so on in like manner whenever any additional passenger is taken on board. If no officer of customs shall be stationed at the place where such additional passenger is taken on board, the lists shall be delivered to the officer of customs at the next place at which the vessel shall touch, to be so dealt with: when any additional passengers are taken on board the master shall obtain a fresh certificate from the emigration officer of the port that all the requirements of this act have been complied with before the ship shall proceed to sea. Penalty for breach of any of these requirements against the master not exceeding £50 nor less than £5. *Ibid.* s. 17.

(b) *Delivery.*

1063. See Nos. 1060—1062.

(c) *Production.*

1064. For provisions requiring the master of any "passenger ship" on putting into or touching at any port or place in the United Kingdom to produce to the emigration officer or officer of customs there, his "master's list" of passengers, and penalty for breach against master not exceeding £20 nor less than £2, see Passengers Act, 1855 (c. 119), s. 50.

2. *Homeward-bound Ships.*

(a) *Generally.*

1065. The master of every ship bringing passengers into the United Kingdom from any place out of Europe, and not within the Mediterranean Sea, shall, within twenty-four hours after arrival, deliver to the emigration officer or his assistant, or in their absence to the chief officer of customs at the port of arrival, a correct list, signed by the master, and specifying the names, ages, and callings of all the passengers embarked, and the ports at which they embarked, and showing which, if any, died, and the supposed cause of death, and which, if any, were born on the voyage. Penalty for breach against the master not exceeding £50. *Ibid.* s. 100.

(b) *Delivery.*

See No. 1065.

38. Trustees of Docks or Basins.

1. *Byelaws.*

(a) *Generally.*

1066. Trustees or others charged with

the management of any docks or basins in the United Kingdom from which "passenger ships" are despatched, may make and alter byelaws for prescribing the docks, basins, or other places at which emigrants shall be landed and embarked, and the mode thereof, for licensing porters to carry their luggage and otherwise to attend upon them, for the storing and safe custody of their luggage, for admitting persons to, and excluding persons from, such docks or basins. *Ibid.* s. 82.

1067. No such byelaws take effect until approved by one of the secretaries of state, and published in the London Gazette, which is to be conclusive evidence thereof. *Ibid.*

1067a. For provisions for passenger steamers to have their scuttles, hatchways, and other openings properly closed, or sufficiently railed, and the paddle-box fenders properly secured, see the Tyne Bye-laws, sanctioned 9th May, 1868, cl. 41.

1067b. For provisions in regard to the embarkation and disembarkation of passengers, *ibid.* cls. 43—47.

(b) *Enforcement.*

1068. Such trustees may, in such byelaws, attach a penalty not exceeding £5 for any breach thereof, to be recovered as other penalties under this act, except that instead of an emigration officer the trustees or others may recover the same. See the Passengers Act, 1855 (c. 119), s. 82.

1069. Such trustees, by their officers or servants, or by any police officer, may arrest and detain any person charged with the breach of any such byelaw until brought before a justice of the peace, who is hereby authorized to adjudicate on the offence in a summary way. *Ibid.*

39. Regulations for Order, Health and Cleanliness.

1070. Her Majesty, by Order in Council, may prescribe rules and regulations for passenger ships proceeding from the United Kingdom to any place in her Majesty's possessions abroad, for preserving order, health, and cleanliness. And as to the proof of such Orders in Council, see the Passengers Act, 1855 (c. 119), s. 59.

1071. As to such Orders in Council generally, and the alteration and proof thereof, see this Part, c. 7, p. 1279.

40. Regulations for preventing Spread of Disease.

1072. For provisions for preserving order, promoting health and securing health and ventilation on board passenger ships, and revoking the Order in Council of February 25, 1836, see Order in Council of January 7, 1864, in 13 Hertslet, p. 1065.

1073. For provisions prohibiting emigration from any port or ports at any time when choleraic or any epidemic disease may be generally prevalent in the United Kingdom or any part thereof, see Passengers Act, 1855 (c. 119), s. 59.

1074. Her Majesty, by Order in Council, may prescribe rules and regulations as to passenger ships proceeding from the United Kingdom to any place in her Majesty's possessions abroad. *Ibid.* s. 50.

1075. As to such Orders in Council generally, and the alteration and proof thereof, see this Part, c. 7, p. 1279.

41. Quarantine.*

1076. The several laws relating to the performance of quarantine are repealed, and other provisions made in lieu thereof. See 6 Geo. 4, c. 78, and 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 87, note.

1077. As to the performance of quarantine by all vessels coming from the Mediterranean, or West Coast of Barbary on the Atlantic Ocean with or without clean bills of health, see Order in Council of 19th July, 1825, in 2 Maude & Pollock, *ibid.* p. 84.

1078. From the 1st February, 1877, no person on board any ship coming to any port in the United Kingdom, the Channel

Ielands, or the Isle of Man, from Cuba or any port or place between longitude 35 and 60 degrees west of Greenwich, and between 4 and 40 degrees south latitude, shall quit such vessel before its state of health shall be ascertained on examination by the proper officer of customs, and permission given by him to land. See Order in Council of 29th January, 1877, 2 Maude & Pollock, *ibid.* p. 87.

1079. The signal to be hoisted by vessels having cholera on board is a yellow flag. See Order in Council of 15th March, 1832, in 2 Maude & Pollock, *ibid.*

1080. As to the temporary performance of quarantine by vessels coming from the Black Sea, Baltic, or Sea of Marmora, see Order in Council of 22nd March, 1879, in 2 Maude & Pollock, *ibid.*

1081. For provisions constituting Kingstown Harbour, in the Bay of Dublin, a quarantine station in lieu of Poolbeg, see Order in Council of 19th April, 1837.

1082. For regulations for carrying into effect the Act of 6 Geo. 4, c. 77, appointing quarantine stations for England, Scotland, and Ireland, see Order in Council of 19th July, 1825.

1083. For provisions as to the performance of quarantine at Milford Haven, and the restrictions imposed for that purpose, see Order in Council of 30th September, 1825.

1084. For provisions altering the quarantine stations in Scotland (as established by Order in Council of 19th July, 1825), see *Ibid.*

1085. For provisions altering the quarantine stations in Ireland (as established by Order in Council of 19th July, 1825), see Order in Council of 1st September, 1826.

42. Passengers.

1. Generally.†

1086. Nothing in this act shall take away or abridge any right of action which may accrue to any passenger in

* (366) The only quarantine establishment now maintained in England is at the Motherbank, and vessels other than Queen's ships perform quarantine when so necessary in such places as may be directed by the Privy Council. See 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 85, note.

† (367) The words "passenger" and "per-

sons" are used throughout the act in their ordinary significations of individuals, as contradistinguished from "statute adults." Board of Trade Mem. on Pass. Act, 1880, p. 7, No. 5.

(368) The acts do not apply to "cabin passages," or "cabin passengers," unless they are expressly named, as the latter are, in

any ship, or other person, in respect of the breach or non-performance of any contract made between or on behalf of any such passenger or person, and the master, charterer, or owner of any such ship, his agent, or passage broker. See the Passengers Act, 1855 (c. 119), s. 58.

1087. In this act "statute adult" signifies a person of the age of twelve years or upwards, or two persons between the ages of one and twelve. "Passengers" include all passengers except cabin passengers, and except labourers under indenture to the Hudson's Bay Company, and their families conveyed in ships belonging to or chartered by that company. "Passage" includes all passages except cabin passages. *Ibid.* s. 3.

1088. No persons shall be deemed "cabin passengers" unless the spaces allotted to their exclusive use are in the proportion of at least thirty-six clear

superficial feet to each statute adult, nor unless they are messed throughout the voyage at the same table with the master or chief officer, and their fare is in the proportion of at least 30s. for every week of the length of the voyage as computed under this act for sailing vessels proceeding from the United Kingdom to any place south of the Equator, and of 20s. for such vessels proceeding to any place north of the Equator, nor unless they are furnished with a duly-signed contract ticket in the form in Schedule (K). *Ibid.*

1089. Words of one number or gender import both numbers and all genders. *Ibid.*

2. Number.*

1090. For the rules for determining the number of passengers to be carried in

sects. 3, 13, 41, 52, 53, 54, 71, 72, 73 and 74 of the Act of 1855, and in sects. 4, 6, 11 and 15 of the Act of 1863; or are included under the general term "persons," as they are in sects. 27, 31, 45, 58 and 62 of the Act of 1855. *Ibid.* p. 9, No. 14.

(369) Cabin passengers are also brought under the operation of the 16th and 17th sects. of that act by the 6th and 11th sects. of the Act of 1863, and are, in strictness, subject to a muster by the emigration officer, to verify that they are in reality cabin passengers, though it will not be desirable to insist unnecessarily or vexatiously on this liability. *Ibid.*

(370) Except for the purposes of sect. 3 of the Act of 1855 (the definition clause), cabin passengers are to be counted as individuals, and not as statute adults. *Ibid.* p. 10, No. 15.

(371) To constitute a cabin passenger four requisites must be combined—1st, that each statute adult be allowed a space of not less than thirty-six clear square feet (not in the berthing place alone) for his exclusive use; 2nd, that he be messed at the table with the master or the first officer; 3rd, that the fare contracted to be paid be not less than at the rate of 30s. for each week of the prescribed length of the voyage for sailing vessels bound to places south of the Equator, and 20s. for those bound to the north of the Equator; and 4th, that he be furnished with a contract ticket in the form prescribed by the act. *Ibid.* No. 16.

(372) It is not easy to reconcile with this last requisite the provision in the 71st section of the Act of 1855, which makes the issue of contract tickets to cabin passengers imperative only in case they proceed in a "passenger ship." *Ibid.*

(373) The decision of the Queen's Bench in the case of *Ellis v. Pearce*, reported in the Jurist, New Series, No. 208, p. 1275 (see No. 838, p. 1275, *supra*), has, however, settled the point, and passengers who possess the first three requisites are not to be counted for the purpose of making the ship a "passenger ship," although they may not possess contract tickets. *Ibid.*

(374) A body of passengers cannot, by purchasing or chartering and victualling a ship for themselves, exempt her from the provisions of the act, if she would otherwise have come under its operation; but in such a case, the third and fourth requisites to constitute a "cabin passenger," under the 3rd section, viz. the payment of a certain rate of passage money, and the contract ticket, would become inapplicable, and the question, should it arise, as to whether the passengers, or any of them, are "cabin passengers," would have to be decided by the other two tests. *Ibid.* No. 17.

* (375) When the passenger accommodation is increased whilst a certificate is in force, and the owners wish the number of passengers such increased space will accommodate inserted in the certificate before the next survey, the vessel should be remeasured and a fresh declaration issued. In no case can a surveyor alter the number of passengers in a vessel's passenger certificate. See Board of Trade Instructions as to Survey of Passenger Accommodation, Lights, Fog Signals, &c. 1883, p. 19, par. 28.

(375a) The clear area of the deck in square feet is divided by nine, the quotient is the number allowed to be carried on deck in summer. Board of Trade Instructions as to Survey of Passenger Accommodation, Crew Spaces, &c., 1884, par. 18, p. 14. The spon-

any passenger ship, and under the poop, or in the round-house or deck-house, or on the upper and lower passenger deck, see the Passengers Act, 1855 (c. 119), s. 14.

1091. Penalty against the master for breach (except by births at sea) not exceeding £20 nor less than £5 for each passenger constituting such excess. *Ibid.* ss. 14 and 29.

1092. If the owner, master, or person in charge of any passenger steamer receives or she has on board any number of passengers which, having regard to the time, occasion and circumstances is greater than the number allowed by the certificate; penalty against owner or master not exceeding £20, and an additional penalty not exceeding 5s. a passenger

above the number allowed, or if the fare of any passenger exceeds 5s., not exceeding double the amount of all the passengers' fares above the number allowed. Such fares are to be estimated at the highest rate of fare payable by any passenger. See M. S. Act, 1854 (c. 104), s. 319.

1093. Any steamer may carry not exceeding twelve passengers, although not surveyed by the Board of Trade as a passenger steamer, nor carrying a Board of Trade certificate as provided by the M. S. Act, 1854, as to passenger steamers. *Ibid.* 1876 (c. 80), s. 16.

1094. Her Majesty, by Order in Council, may prescribe rules and regulations as to passenger ships proceeding from the United Kingdom to any place in her

soons in paddle-wheel steamers are not to be included in the measurement of vessels for passengers. *Ibid.*

(375b) As to the meaning of "clear area," and the mode of measurement, see *Ibid.*

(375c) Where cargo, cattle, &c. are carried in the space measured for passengers in home-trade passengers' steamers, the following deductions are to be made:—For every square yard of space measured for passengers occupied by cattle, or other animals, or by cargo, or other articles, one passenger is to be deducted, but when no passengers are carried on deck, it may be covered with cattle or cargo, without any deduction on that account in the number of passengers carried in the cabins. *Ibid.*

(375d) The number of passengers to be carried in the after-cabins or saloons is determined by the number of the berths or sofas constructed for sleeping berths, to which add the number due on the space on deck (i. e. the main or weather-deck poop, or quarter-deck, as the case may be, which is measured for saloon passengers) appropriated to the saloon passengers, and the sum will be the total number of after-cabin passengers allowed to be carried. *Ibid.*, par. 19, p. 15.

(375e) One passenger is to be allowed for every nine square feet. As to what is to be measured, see *Ibid.*

(376) As to the mode of determining the number of passengers for river steamers, whether plying entirely in smooth water or in water parts of which only are smooth, see *Ibid.* No. 25.

(377) As to the deduction by one-third in winter time of the number of passengers in river steamers, plying in water parts of which only are smooth, allowed to be carried on deck during summer, see *Ibid.*

(377a) As to river steamers plying in exclusively smooth waters no such deduction is made, see *Ibid.* p. 25, No. 26.

(378) As to the mode of ascertaining the

maximum number of passengers to be carried under different certificates, see *Ibid.* pp. 9—11.

(379) As to the mode of determining the number of passengers allowed to be carried under the different classes of passenger certificates, see *Ibid.* Appendix (A), p. 55.

(380) The 13th and 14th sections of the Act of 1855, in conjunction with that part of the third which defines what is an "upper passenger deck" (see s. 5), regulate the number of passengers that may be carried, and in what parts of the ship they may be berthed. Board of Trade Mem. on Pass. Act, 1880, p. 11, No. 18.

(381) The whole number of passengers is also further limited by the requirement that there shall be an allowance for each statute adult of at least five superficial feet (or if cattle are carried under the provisions of the 8th section of the Act of 1863, ten superficial feet) clear for exercise on the upper or weather deck, including poop, round-house, or deck-house, if the top of these latter is properly and securely fitted with a railing. *Ibid.* No. 21.

(382) The United States Passengers Act of 1855 limits the number to be carried by the twofold check of tonnage and space. Their tonnage check is one passenger to every two tons. Two children between one and eight years (instead of between one and twelve, as in our law), are counted as one passenger. *Ibid.* p. 12, n.

(383) Their space check is regulated by the height between decks. Thus, if the height be not less than 7½ feet, the allowance to each passenger is 14 superficial feet; if less than 7½ feet, but not less than 6 feet, the allowance is 16 superficial feet on the main deck, and in the poop and deck-houses, and 18 feet on the lower deck, not being an orlop deck; and if less than 6 feet, no passengers can be carried on that deck. *Ibid.*

Majesty's possessions abroad, for reducing the number of passengers allowed to be carried in passenger ships generally, or from any particular ports under the provisions of this act. See the Passengers Act, 1855 (c. 119), s. 59.

1095. As to such Orders in Council generally, and the alteration and proof thereof, see this Part, c. 7, p. 1279.

1096. If any ship bringing passengers into the United Kingdom from any place out of Europe shall have on board a greater number of passengers or persons than is prescribed for ships carrying passengers from the United Kingdom; penalty for breach against the master not exceeding £10 nor less than £5 for each extra person or statute adult. See the Passengers Act, 1855 (c. 119), s. 101.

3. False Representations to—

1097. Penalty against any person by any false representation or pretence, or by any fraud, inducing any person to engage a passage in any ship, not exceeding £20 nor less than £5. *Ibid.* s. 70.

4. Contract Tickets.

(a) Generally.*

1098. Every person, except the Board of Trade and persons acting for them and under their direct authority, who shall receive money from any person for or in respect of a passage in any ship, or of a cabin passage in any "passenger ship" proceeding from the United Kingdom to any place out of Europe, and not within the Mediterranean Sea, shall give him a contract ticket, signed by the owner, charterer or master of the ship or "passenger ship" (as the case may be), or on his behalf. Such contract ticket shall be in plain and legible characters on a printed form, which in the case of cabin passengers shall be according to the form in Schedule (K), and in the case of all

other passengers in the form in Schedule (L), or according to such other form as may be prescribed by the Board of Trade in any notice published in the London Gazette; and any directions contained on such contract ticket shall be obeyed as if herein set forth. Penalty for breach against the person so offending, not exceeding £50, nor less than £5. Such contract tickets shall not be liable to stamp duty. *Ibid.* s. 71, as amended by M. S. Act, 1872 (c. 73), s. 5.

1099. Penalty against any person altering or inducing any person to part with or destroy any contract ticket, during the continuance of the contract (except in the case of cabin passengers consenting thereto), not exceeding £20. See Passengers Act, 1855 (c. 119), s. 72.

1100. Any question which may arise respecting the breach or non-performance of any of the stipulations in any contract ticket, may, at the option of any passenger interested, be determined in a summary way by the justices of the peace, magistrates, sheriffs or officers authorized to adjudicate on offences and complaints under the act. If they find a breach of contract has been committed, they may award to the complainant such damages and costs as they think fit, not exceeding the amount of the passage-money specified in the contract ticket and £20; if such damages and costs are not at once paid, payment shall be enforced, like payment of subsistence money, or return of passage-money, under this act. But if any passenger has obtained compensation under other provisions of this act, he is not entitled to sue under this section for damages for the same matter. *Ibid.* s. 73.

1101. Unless the passengers are to have a free table, the victualling for the voyage must be appended to the contract ticket. *Ibid.* Sched. (K).

1102. As to passengers' contract tickets,

* (384) Passengers' contract tickets are exempt from stamp duty, notwithstanding that the Stamp Act, 1870 (c. 59), imposes a duty on all receipts for money of £2 and upwards. *Ibid.* p. 63, No. 132.

(385) It is conceived (1) that where no money passes here, it is not obligatory to issue a contract ticket; (2) that if any portion of the passage money is paid here, a contract ticket must be issued; (3) that in that case the amount paid abroad should be included in it; and (4) that the non-issue of a contract ticket, or the issue of an imperfect one,

would be no ground for the emigration officer withholding his clearing certificate. The remedy in these cases would be a prosecution for penalties under the act against the person who received the money here for the passage. *Ibid.* p. 62, No. 131.

(386) Passengers in home-trade steamers are allowed to be carried on the main and lower decks only. See Board of Trade Instructions as to Survey of Passenger Accommodation, Crew Spaces, &c., 1884, par. 18, p. 14.

and the counterparts thereof, the quantities of provisions and water to be therein specified, Pass. Act, 1855, Sched. (L).

1103. A passenger on paying his fare received a ticket from the clerk of the steam company, on the back of which ticket was printed a notice exonerating the company from liability for all loss, injury or delay to the passenger or his luggage, however caused. During the voyage the steamer was lost by the negligence of the servants of the company, and the passenger lost his luggage and suffered other damage and inconvenience. *Held*, that, in the absence of proof that the passenger had assented to be bound by the condition indorsed on the ticket, it was no defence to an action by him to recover the loss he had sustained. *Henderson v. Stevenson*, 2 H. L. Sc. App. 470; 32 L. T. 709.

1104. A passenger by steamer from A. paid for and received a passenger ticket from the agent of the owners, containing a condition exempting the owners from liability in case of loss or detention of the ship by accidents of navigation or perils of the sea and from responsibility for the loss of his luggage, goods, or other description of property, unless bills of lading had been signed therefor. *Held*, that the latter condition not having been observed by the passenger, he could not recover for loss of

his luggage, though the loss was caused by the ship having been wrecked owing to the negligence of the captain. *Wilton v. Royal Atlantic Mail Steam Navigation Company*, 10 C. B. N.S. 453; 30 L. J. C. P. 369; 8 Jur. N.S. 232; 4 L. T. 706; 9 W. R. 748.

1105. A contract entered into between a shipowner and a passenger contained a provision that the shipowner would not be answerable for loss of baggage "under any circumstances whatsoever." *Held*, that such a stipulation covered the case of wilful default and misfeasance by the shipowners' servant. *Taubman v. Pacific Steam Navigation Company*, 26 L. T. 704.

(b) *Production to Emigration Officer.*

1106. If, on demand of any emigration officer, any cabin or other passenger refuses or omits to produce his contract ticket, or any owner, charterer, or master of a ship to produce the counterpart of any contract ticket issued on their behalf for inspection and for the purposes of this act: penalty not exceeding £10. See the Passengers Act, 1855 (c. 119), s. 74.

5. *On what Decks to be carried.**

1107. No ship shall carry passengers or cabin passengers on more than two

* (386a) When there are only narrow spaces between the sides of deck-houses and the bulwarks, these spaces are not to be measured for passengers. When there is a deck-house amidships for the accommodation of after or first class passengers, and the second class accommodation is either below, aft or in a deck-house aft, the whole of the clear space on deck should be appropriated for the use of second class passengers. *Ibid*.

(387) It shall be the duty of the mate of every steamer carrying passengers to assign to deck or steerage passengers the space they may occupy on board during the voyage; and to supervise the stowage of the freight or cargo, and see that the space so set apart for passengers is not encroached upon. See Regulations of Supervising Inspectors, circa anno, 1876, r. 58. [AMERICAN.]

(388) No ship, whether sailing vessel or steamer, is, except as below, to carry passengers (including cabin passengers) on more than two decks, namely, the upper and the lower passenger deck. See Board of Trade Memorandum on Passengers Act, 1880, p. 11, No. 19.

(389) But cabin passengers may be carried in the poop or deck-house, notwithstanding

that passengers are carried on two other decks, provided that they do not exceed one to every hundred tons of the ship's register. *Ibid*.

(390) A poop round-house, or deck-house, becomes an "upper passenger deck," when the number of all classes of passengers carried therein exceeds one-third of the total number which the vessel can legally carry on the deck next below the poop, &c. *Ibid*.

(391) Where passengers are carried in a poop, round-house, or deck-house, the emigration officer must satisfy himself that these structures are properly built and secured. *Ibid*. p. 11, No. 20.

(392) The least space to be assigned to each statute adult on the "upper passenger deck" is fifteen feet, and on the "lower passenger deck" eighteen feet. *Ibid*. No. 21.

(393) But if the height on the lower deck is less than seven feet, or the apertures for admitting light and air (exclusive of side scuttles) be less than three square feet for every hundred superficial feet of that deck, then twenty-five feet must be allowed. *Ibid*.

(394) The result of the law on this head is shown in the three following cases, supposing that the weather-deck check does not come

decks; but cabin passengers in a proportion not exceeding one for every one hundred registered tons, or sick persons in a hospital, as therein provided, may be carried in a poop or deck-house, notwithstanding passengers are carried on two other decks. If passengers are carried under the poop or in any round-house or deck-house, it shall be properly built and secured to the satisfaction of the emigration officer at the port of clearance. Penalty for breach against the master not exceeding £500, nor less than £20. *Ibid.* s. 83. See also notes 375—383, p. 1308.

1108. In the Passengers Act, 1855 (c. 119), "upper passenger deck" includes the deck immediately beneath the upper deck, poop, or round-house, and deck-house, when the number of passengers and cabin passengers carried in such last-mentioned places exceeds one-third of the total number which the ship can lawfully carry on the deck next below. "Lower passenger deck" includes the deck next beneath the upper passenger deck not being an orlop deck. See the Passengers Act, 1855 (c. 119).

6. Shelter for Deck-carried Passengers.*

1109. Every home-trade steamer carrying passengers by sea shall be provided with such shelter for the protection of deck passengers (if any) as the Board of Trade may require. See M. S. Act, 1854 (c. 104), s. 301, sub-s. 5.

into play:—If a ship carries in the poop or deck-house not more than one cabin passenger to every hundred tons register, she may carry passengers on two other decks. See Board of Trade Mem. on Pass. Act, 1880, p. 12, No. 23.

(395) If she carries in the poop or deck-house more than that proportion of cabin passengers, or any steerage passengers at all, she cannot carry passengers on more than one other deck. *Ibid.*

(396) If she carries in the poop or deck-house more passengers, whether cabin or steerage, or both, than one-third the legal complement of the deck next below, then the passengers on that deck will be entitled to eighteen clear superficial feet per statute adult, otherwise only to fifteen feet. *Ibid.*

(397) The rule formerly in use for ascertaining the area of the "passengers' deck" was to take three transverse measurements of the deck and multiply the mean of them into its length, but the introduction of a

1110. Penalty for default against the owner appearing in fault not exceeding £100, and against the master appearing in fault not exceeding £50. *Ibid.*

7. Berths.

(a) Construction and Arrangement.

1111. For provisions as to the construction, arrangement, and size of berths in passenger ships, and penalty for breach against owner, charterer, or master not exceeding £50, nor less than £5, see the Passengers Act, 1855 (c. 119), s. 21.

(b) Separation of Sexes.

1112. For provisions as to the berthing on board passenger ships of single men in a separate compartment, and penalty for breach against owner, charterer, or master not exceeding £50, nor less than £5, *Ibid.* s. 22.

1113. Not more than one passenger, unless husband and wife, or females or children under twelve years of age, shall occupy the same berth. Penalty for breach against owner, charterer, or master not exceeding £50, nor less than £5. *Ibid.*

(c) Removal.

1114. For provisions that berths of passengers in "passenger ships" shall not be removed until the passengers are landed, or until forty-eight hours after arrival at port of destination, and penalty

sharper built class of vessels has rendered this rule inapplicable. The commissioners have accordingly remodelled it as follows. *Ibid.* p. 13, No. 26.

(398) The length of the "passengers' deck" multiplied into the mean breadth is to be taken as the superficial area. *Ibid.*

(398a) As to the longitudinal, transverse, and stringer measurements and deductions from superficial contents, see *Ibid.*

(399) Any curtailment of the prescribed space for passengers, on the ground that their luggage is stowed elsewhere, or otherwise, must not be allowed. *Ibid.* p. 15, No. 27.

* (400) If the ship has a hurricane-deck or poop or deck-house guarded only by a rail running round it, the emigration officer should insist that the space between the rail and floor of the deck be fitted with netting or other protection sufficiently strong to prevent the possibility of children slipping overboard. *Ibid.* p. 12, No. 22.

for breach against master not exceeding £50, nor less than £5, see the Passengers Act, 1855 (c. 119), s. 23.

(d) *Right to—*

1115. In an action in which one of the questions between the parties was whether the defendant was justified in expelling the plaintiff from a berth in a steamer, it was proved that the plaintiff placed his coat on a berth while it was vacant, afterwards applied at the office of the company to engage a berth, and caused the company's clerk then in attendance at the office to enter the plaintiff's name on the way-bill opposite the number of the berth; but that the defendant having also applied for the same berth, another clerk of the company altered the way-bill, by inserting the defendant's name opposite the berth, and allotting another one to the plaintiff; and that the plaintiff, upon returning to the berth in dispute after the steamer had started, found the defendant's servants at the door, who refused to allow him to enter. The plaintiff afterwards entered the berth, and was removed by the defendant. Evidence was also given that, according to the usage on board the steamer, the rights of passengers *inter se* to berths during the voyage were to be determined by the way-bill as finally settled, and sent abroad, and that disputes during the voyage, with respect to passengers' accommodation, should be decided by the captain or steward. *Held*, first, that the plaintiff was not entitled to a direction that he was in possession of the berth in dispute. *Dysart v. Montgomery*, 8 Ir. R. C. L. 245.

1116. *Held*, secondly, that the way-bill, as finally settled and delivered to the

officers on board, determined the right to the berth as between the plaintiff and the defendant. *Ibid*.

1117. *Held*, thirdly, that as the jury found that the way-bill as finally settled for the purpose of the voyage allotted the berth to the defendant, and as he was in possession at the time of the alleged assault, he was justified in removing the plaintiff, without using unnecessary violence, upon his refusal to leave the berth. *Ibid*.

8. *Sick or Unfit Persons.**

1118. For provisions for relanding or prohibiting the embarkation of all or any passengers or persons in any passenger ship on account of sickness or danger to the health of others, or for purifying the ship, or otherwise, and enabling the emigration officer to require the master to reland all such persons, and requiring the master thereupon to reland them, with so much of their effects, and with such members of their families as cannot in the judgment of such officer be properly separated from them, see the Passengers Act, 1855 (c. 119), s. 45.

1119. Penalty for breach against the master, owner, or charterer not exceeding £200, nor less than £10; and against any passenger or person embarking after such prohibition, or refusing or neglecting to leave the ship when so directed, besides being liable to be summarily removed, not exceeding 40s. for each day he remains on board afterwards. *Ibid*.

1120. Any passenger or cabin passenger so relanded on account of the sickness of himself or of any member of his family, and not re-embarking and finally sailing

* (401) The emigration officer may require to be relanded, or prohibit the embarkation of any person, whether amongst the passengers or crew, whom he may think, for any sanitary reason, unfit to proceed. He may also cause passengers to be relanded for the purification of the ship or otherwise, if necessary. Under the law of 1852 only those persons who were actually ill, and their immediate relations, could be legally relanded, a measure obviously inadequate when disease has taken hold of a ship. See Board of Trade Mem. on Pass. Act, 1880, p. 46, No. 96.

(402) The ordinary passengers so relanded are entitled to subsistence-money until they are re-embarked or decline to proceed, and those who are not permitted to re-embark are entitled also to a return of their passage-money. If, however, holders of "passage

warrants," "passage certificates," or "bounty tickets," granted by colonial governments, are relanded on account of sickness, no passage-money, it is apprehended, is returnable, because none was paid by the passengers, and none can be said to have been paid on their account in the sense contemplated by the act, that is, to the shipper or to any person who could be presumed in any way to be connected with the ship. Nor would detention-money, it is also apprehended, be recoverable in these cases. *Ibid*. No. 97.

(403) Cabin passengers relanded on account of sickness are not entitled to subsistence-money; but by the 11th section of the Act of 1863, if they are not re-embarked they are entitled to a return of half their passage-money. *Ibid*.

in such ship, or any emigration officer on his behalf, is entitled to recover, by summary process, and notwithstanding the ship may not have sailed—the passenger the whole, and the cabin passenger the half—of his or their passage money from the party to whom it was paid, or from the owner, charterer, or master at the option of such passenger, cabin passenger, or emigration officer, upon the delivery up of their contract tickets. *Ibid.* s. 46, as amended by Passengers Act, 1863 (c. 51), s. 11.

1121. Each passenger so relanded shall be paid by the master subsistence-money at the rate of 1s. 6d. a day for each statute adult until he is re-embarked or declines or neglects to proceed, or until his passage money, if he is so entitled to it, is returned to him. If he is maintained in any hulk or establishment under the superintendence of the Board of Trade, the emigration officer at the port is entitled to recover this money. *Ibid.* s. 47.

9. Medical Inspection.*

1122. No passenger ship shall clear out or proceed to sea until all the passengers and crew have been inspected by a medical practitioner appointed by the emigration officer at the port of clearance, and he has certified to the emigration officer, and the emigration officer is satisfied that none of the passengers or crew appear unfit to proceed, or likely to endanger the health or safety of the others. *Ibid.* s. 44.

1122a. As to the place of inspection and the fees for it, see *Ibid.*

1123. Penalty for breach against the master not exceeding £100, nor less than £5. *Ibid.*

1123a. But if the emigration officer shall be unable to obtain the attendance of a medical practitioner, the master may clear out and proceed to sea on receiving from the emigration officer written permission for the purpose. *Ibid.*

1123b. As to the medical inspection of stores, see this Part, cc. 34 and 35, p. 1299.

10. Delay in Sailing.

1124. If any ship, whether a "passenger ship" or otherwise, shall not actually

put to sea and proceed on her voyage before three o'clock in the afternoon of the day after the day of embarkation, the owner, charterer or master, or his agent, at the option of the passenger or emigration officer, shall pay to every passenger entitled to a passage (or if the passenger is lodged in any establishment under the superintendence of the Board of Trade, then to the emigration officer at the port of embarkation) subsistence-money after the rate of 1s. 6d. for each statute adult in respect of each day's delay for the first ten days, and afterwards 3s. a day for each statute adult, until the final departure of such ship on such voyage, to be recovered as therein mentioned. But if the passengers are maintained on board in the same manner as if the voyage had commenced, no such subsistence-money shall be payable for the first two days, nor if the ship is unavoidably detained by wind or weather, or by any cause not attributable, in the opinion of the emigration officer, to the act or default of the owner, charterer or master. *Ibid.* s. 49.

1125. Where a vessel bound for the East Indies is advertised to sail by a certain day and does not, the shipowner will be entitled to recover half the passage-money of a person who refused to go, after having engaged a passage, unless either the time was of the essence of the contract or the delay in sailing was unreasonable. *Yates v. Duff*, 5 C. & P. 369.

1126. C., who resided in Ireland, having applied to certain emigration agents in London respecting a passage for himself and his family on board their ships to Australia, received in answer a letter in which they agreed to convey him and his family for a sum of money. This letter was written on the fly-sheet of a printed circular, headed "Emigration to Australia," and which stated that "ships will be despatched on the appointed days (wind and weather permitting), for which written guarantees will be given." Then followed a list of ships, among which the Asiatic was named as to sail from London on the 15th August, and from Plymouth on the 25th. In another part of the circular it was stated "Passengers from

* (404) When a vessel touches at a second port, the passengers on board having recently undergone a medical examination need not undergo another at the second port unless the emigration officer there has reason

to suppose, from sickness in the ship or otherwise, that such a precaution is called for. Fresh passengers must, of course, be duly examined before the vessel is allowed to proceed. *Ibid.* p. 47, No. 99.

Ireland can readily join at Plymouth; a deposit of one-half of their passage-money to be paid at the time their berths are engaged, the balance to be paid prior to granting the emigration order." C. engaged a berth on board the Asiatic, and paid the agents a deposit, but no written guarantee was given. The Asiatic did not arrive at Plymouth until the 3rd of September, although not prevented by wind or weather. The berth was kept vacant from London to Plymouth. *Held*, that the statement in the circular was not a mere representation, but a warranty that the Asiatic would sail on the days appointed, and that as she did not, C. was justified in taking a passage on board another vessel, and was entitled to recover from the emigration agents the amount of the deposit and the expenses he had been put to by the delay at Plymouth. *Cranston v. Marshall*, 5 Ex. 395; 19 L. J. Ex. 340.

11. *Relanding for purifying Ship.*

See No. 1118, p. 1312.

12. *Landing of— at Port contracted for.*

1127. If any passenger in any ship, whether a passenger ship or otherwise, is landed at any port or place other than that at which he contracted to land, unless with his previous consent, or such landing is rendered necessary by unavoidable accident, penalty against the master not exceeding £50, nor less than £10. See Passengers Act, 1855 (c. 119), s. 56.

1128. The captain of a ship covenanted to promote the comfort of passengers engaged by the plaintiff: the plaintiff covenanted not to interfere with the navigation of the ship and to defray the expense of putting into port if it should be necessary for the convenience and at the request of the plaintiff. *Held*, that the captain was bound to put into port for the convenience and at the request and expense of the plaintiff, unless he could show that putting in would be dangerous. *Corbin v. Leader*, 10 Bingh. 275; 3 M. & Scott, 751; 6 C. & P. 32.

13. *Maintenance on Board for Forty-eight Hours after Arrival at Port of Destination.*

1129. Every passenger in a passenger ship is entitled for at least forty-eight

hours after the end of his voyage, to sleep in the ship and be maintained on board as during the voyage, unless within that period the ship shall quit such place in further prosecution of her voyage. Penalty for breach against the master not exceeding £5. See Passengers Act, 1855 (c. 119), s. 57.

14. *Forwarding of— to their Destination.*

(a) *Generally.*

1130. If any passenger in any ship on any voyage to which this act extends, shall be at the place of embarkation before six o'clock in the afternoon of the day of embarkation appointed in the contract, and pay the passage-money, and if from any cause not being his own refusal, neglect, or default, or the prohibition of an emigration officer, or the requirements of any Order in Council, such passenger shall not be received on board, or shall not obtain a passage in such ship to the port contracted for, with the members of his family included in such contract, or a passage thereto in some equally eligible ship, to sail within ten days, and in the meantime is paid subsistence-money from the time and at the rate therein mentioned, such passenger, or any emigration officer on his behalf, is entitled to recover from the party to whom he paid his passage-money, or (if such contract was made with the owner, charterer, or master, or any person on their behalf) from such owner, charterer, or master, at the option of such passenger or emigration officer, all passage-moneys paid for such passage, and such further sum, not exceeding £10, in respect of such passage as, in the opinion of the justices of the peace adjudicating on the complaint, is a reasonable compensation for the passenger's loss or inconvenience. *Ibid.* s. 48.

1131. If any passenger or cabin passenger of any passenger ship shall, without his neglect or default, be landed in any colonial or foreign port or place other than that for which the ship was originally bound, or at which he or the Board of Trade, or any public officer or other person on his behalf may have contracted that he should land, the governor of such colony, or person authorized by him, or her Majesty's consular officer there, may forward such passenger to his destination, unless the master within forty-eight hours of the passenger's arrival gives to such functionary a written undertaking to forward or carry on, within six weeks, such

passenger to his original destination, and does so. See the Passengers Act, 1863 (c. 51), s. 15.

1132. If the passengers or cabin passengers of any "passenger ship" are taken off from her, or picked up at sea, if the port or place to which they shall be conveyed is in the United Kingdom, one of her Majesty's principal secretaries of state, or if in any of her Majesty's colonial possessions, the governor of such colony, or any person authorized by him, or if in any foreign country, her Majesty's consular officer at such place, may defray all or part of the expenses thereby incurred. See Passengers Act, 1855 (c. 119), s. 52.

1133. All expenses incurred under the 15th section of this act or the 52nd section of "The Passengers Act, 1855," by or by the authority of such functionary, including the cost of maintaining the passengers until forwarded to their destination, and of all necessary bedding, provisions, and stores, shall become a debt to her Majesty and her successors from the owner, charterer, and master, and be recoverable from any one or more of them, at the suit of her Majesty, like other crown debts. A certificate in the form in Schedule (A), or as near thereto as the case admits, purporting to be under the hand of any such functionary, stating the amount of such expenses, shall in any proceeding for the recovery of such debt be deemed sufficient evidence of such amount, and that the same were duly incurred, without other evidence, and judgment shall pass for the crown with costs of suit, unless the defendant shall specially plead and duly prove that such certificate is false or fraudulent, or plead and prove facts showing such expenses were not duly incurred under this or the "Passengers Act, 1855." See Passengers Act, 1863 (c. 51), s. 16.

1134. But no larger sum shall be recovered than twice the amount of passage-money, which amount of passage-money shall be proved by the defendant, if he seeks the advantage of this limitation. If any such passengers are forwarded or conveyed to their intended destination under the provisions of sect. 16, they are not entitled to the return of their passage-money nor to compensation for loss of passage. *Ibid.*

1135. As to bond to the crown and obligation to pay such expenses when neither owners nor charterers reside in the United Kingdom, see this Part, c. 9, p. 1280. See also No. 1173, p. 1319.

(b) *Ship Wrecked or unfit to proceed.**

1136. If any passenger ship shall be wrecked, or rendered unfit to proceed on her voyage, while in any port of the United Kingdom, or after the commencement of the voyage, and if the passengers, or any of them, shall be brought back to the United Kingdom, or if any passenger ship shall put into any port or place in the United Kingdom in a damaged state, the master, charterer, or owner shall, within forty-eight hours thereafter, give to the nearest emigration officer, or in his absence to the chief officer of customs, a written undertaking: if the ship has been wrecked, or rendered unfit to proceed on her voyage, to convey the passengers in some other eligible ship, to sail within six weeks to their port of destination; and if the ship shall have put into port in a damaged state, that she shall be made seaworthy and fit for her voyage, and shall, within six weeks, sail with her passengers; and in either of these cases shall, until the passengers proceed on their voyage, maintain them on board as if they were at sea, or pay them subsistence-money at the rate of one shilling and sixpence a day for each statute adult, unless the passengers are maintained in any hulk or establishment under the superintendence of the Board of Trade as mentioned in the Passengers Act, 1855, in which case the subsistence-money shall be paid to the emigration officer there. If the substituted or damaged ship, as the case may be, shall not sail within the time prescribed, or if default be made in any of these requirements, such passengers, or any emigration officer on their behalf, shall be entitled to recover, by summary process, as in the Passengers Act, 1855, mentioned, all their passage-money from the party to whom it was paid, or from the owner, charterer, or master at the option of such passenger or emigration officer. See Passengers Act, 1863 (c. 51), s. 14.

* (405) In case of wreck or damage to the ship the regulations applicable under the Act of 1855 to passengers who have contracted

for their own passages extend to passengers whose passages have been provided by others. Board of Trade Mem. on Pass. Act, p. 5, No. 3.

1136a. The emigration officer may direct the passengers to be removed from the damaged ship at the expense of the master. Penalty against any passenger after such direction refusing to leave, not exceeding 40s. or imprisonment not exceeding one month. See the Passengers Act, 1863 (c. 51), s. 14.

1137. In an action for negligently steering a ship whereby she was wrecked, and the plaintiff lost his passage in her, no evidence can be given of a specific act of negligence, which is not the foundation of the action. Evidence may be given that the captain had often expressed his conviction that the officer to whom he gave charge of the ship was incompetent for that situation. Experienced nautical men may be called and asked whether in their judgment particular facts which have been proved amount to gross negligence. *Malton v. Nesbit*, 1 C. & P. 70. See also as to the expenses of forwarding, Nos. 1132, 1133.

(c) *Ship Damaged and putting into Intermediate Port.*

See No. 1136.

15. *Molestation of—.*

1138. Any person on board any duly-surveyed passenger steamer who, after warning by the master or other officer, molests any passenger is liable to a penalty not exceeding 40s. See M. S. Act Amendment Act, 1862 (c. 63), s. 35.

1139. As to the apprehension without warrant and trial of such offenders, see *Ibid.* s. 37.

16. *Misconduct of—.*

(a) *Generally.*

See cc. 43, 44, p. 1317.

(b) *Attempting to enter, or refusing to leave, Steamer.*

1140. The master of any home-trade passenger steamer may refuse to receive on board any person who from drunkenness or otherwise is in such a state, or so misconducts himself as to cause annoyance to other passengers on board, or if such person is on board, may put him on shore at any convenient place; and no person so refused admittance or put on shore shall be entitled to the return of any fare he may have paid. See M. S. Act, 1854 (c. 104), s. 325.

1141. Any person drunk or disorderly,

and on that account refused admission into any duly-surveyed passenger steamer by the owner, or any person in his employ, after his fare (if paid) has been returned, or tendered to him, and persisting in attempting to enter such steamer, is liable to a penalty not exceeding forty shillings, and such liability is not to prejudice the recovery of any fare payable by him. See M. S. Act Amendment Act, 1862 (c. 63), s. 35.

1142. For the like penalty and proviso as to any such person on board any such steamer, and so requested to leave the same at a convenient place in the United Kingdom, after his fare (if paid) has been returned or tendered to him, and refusing to comply with such request, *Ibid.*

1143. For the like penalty and proviso as to any person persisting in attempting to enter such steamer after having been refused admission by the owner, or person in his employ, on account of her being full, and after having had his fare (if paid) returned or tendered to him, *Ibid.*

1143a. For the like penalty and proviso as to any person having got on board, and being so requested on the like account to leave such steamer before she has quitted the place where he got on board, and after his fare (if paid) has been returned or tendered to him, and he refuses to comply with such request, *Ibid.*

1144. For the like penalty and proviso as to any person who knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit such steamer, *Ibid.*

1145. As to the apprehension without warrant and trial of such offenders, see No. 1153.

(c) *Non-payment or short Payment of Fare.*

1146. For the like penalty and proviso as to any person travelling, or attempting to travel, in any such steamer without having previously paid his fare, and with intent to avoid payment, see M. S. Act Amendment Act, 1862 (c. 63), s. 35.

1147. For the like penalty and proviso as to any person who, having paid his fare for a certain distance, knowingly and wilfully proceeds in any such steamer beyond such distance without previously paying the additional fare, and with intent to avoid payment, *Ibid.*

1148. For the like penalty and proviso

as to any person on board any such steamer who does not, when required by the master, or other officer, pay his fare, *Ibid.*

1149. As to the apprehension without warrant, and trial of such offenders, see No. 1153.

(d) *Non-production of Ticket.*

1150. The like penalty and proviso as to any person on board who does not when required by the master or other officer exhibit his ticket or usual receipt for payment of his fare. See M. S. Act Amendment Act, 1862 (c. 63), s. 35.

(e) *Refusing Name or giving False Name.*

1151. Penalty against any person who refuses on application of the master, or any other person in the employ of the owner, to give his name and address, or gives a false name or address, not exceeding £20, to be paid to the owner. See M. S. Act, 1854 (c. 104), s. 324.

(f) *Apprehension and Trial.*

1152. The master or officer of any duly-surveyed passenger steamer, and all persons called by him to his assistance, may detain any person who has committed

any offence within the above 35th section of this act, and whose name and address are unknown to him, and convey him with all convenient despatch before some justice without any warrant or other authority than this act. See M. S. Act Amendment Act, 1862 (c. 63), s. 37.

1153. The justice shall have jurisdiction to try the case, and shall proceed with all convenient despatch to the hearing and determining of the complaint. *Ibid.*

43. Misconduct generally.

1154. Penalty against any person offending against any of the provisions of this act not exceeding £2, besides imprisonment not exceeding one month, at the discretion of the justices adjudicating on the complaint. See Passengers Act, 1855 (c. 119), s. 60.

44. Misconduct of Persons on Board.*

1155. Any person on board any duly-surveyed passenger steamer who wilfully

* (406) For provisions as to the care and treatment of passengers, see the M. S. Act, 1854 (c. 104); the Passengers Act, 1855 (c. 119); and the M. S. Act Amendment Act, 1862 (c. 63); as to passengers in Asia and Australia, see the Chinese Passenger Act, 1855 (c. 104); 16 & 17 Vict. c. 84; 24 & 25 Vict. c. 52; the Passengers Act Amendment Act, 1863 (c. 51); the Passengers Act Amendment Act, 1870 (c. 95); the M. S. Act, 1871 (c. 73); the M. S. Act, 1876 (c. 80).

(407) A passenger assaulted and beaten by the master may recover damages in respect thereof from the owner of the ship, but actual damages only, not punitive, should be allowed. *M'Guire v. Steamship Golden Gate*, 1 M'All. C. C. (Cal.) 104. [AMERICAN.]

(408) A suit was sustained in the Admiralty, in Massachusetts, by a foreigner, brought tortiously from his own country to the United States, against the master of the vessel in which he was brought. *Dunlap's American Admiralty Practice*, 68.

(409) And against a master of a vessel for immoderate and harsh deportment and improper language toward passengers, in disregard of his duties in relation to them. *Ibid.* 65.

(410) The law invests the master with a necessary control over his passengers. He may make proper regulations for their government, such as may ensure their

safety, promote the general comfort, and preserve decent order; and these regulations he may enforce by all temperate and needful exercise of power. But here his authority over his passengers finds its limit, and he is a trespasser if he goes beyond it. *Conkling's United States Admiralty Practice* (2nd ed.), p. 439. [AMERICAN.]

(411) He must show not only a breach of regulation before venturing to use force towards any one of them, but also that there was a clear necessity for the exercise of force. . . . Courteous request, patience, and renewed remonstrance or reprimand, and at last just so much restraint, and if that be unavailing just so much force, and no more, as the exigency may call for: these are the legitimate rights of the master over his passengers. *Ibid.*

(412) The Admiralty has jurisdiction of personal wrongs committed on a passenger on the high seas by the master of a vessel, whether those wrongs be by direct force or consequential injuries. *Chamberlain v. Chandler*, 3 Mason, 242. [AMERICAN.]

(413) A suit may be instituted in the Admiralty, not only by a sailor, or other officer or person employed on board a ship during a voyage, against the captain, or master, or other person on board the same ship, or against a person on board another ship, for an assault and battery, but even by

does or causes to be done anything to obstruct or injure any part of the machinery or tackle, or any of the crew, or to molest any of them in the execution of their duty; penalty not exceeding £20. See M. S. Act Amendment Act, 1862 (c. 63), s. 36.

1156. As to the apprehension without warrant and trial of such offenders, *Ibid.* s. 37.

1157. Penalty against any person guilty of riotous or insubordinate conduct not exceeding £2, besides imprisonment not exceeding one month, at the discretion of the justices adjudicating on the complaint. See Passengers Act, 1855 (c. 119), s. 60.

1158. For provisions empowering the medical practitioner on board a passenger ship aided by the master or, in the absence of such practitioner, the master to exact obedience to the rules and regulations to be observed on board; penalty for disobedience or obstructing the medical practitioner or the master, not exceeding £2, and imprisonment not exceeding one month, *Ibid.*

1159. The master has absolute control over the passengers in all that is necessary to the safe and proper conduct of the vessel, but the exercise of such power in each instance is defined and limited by the necessity of the case. *King v. Franklin*, 1 F. & F. 360. See also *Noden v. Johnson*, 16 Q. B. 218; 20 L. J. Q. B. 95; 15 Jur. 424.

1160. The master has authority to exercise so much force as is necessary for the safety of the ship. *Aldworth v. Stewart*, 14 L. T. 862; 4 F. & F. 957.

1161. To imprison a passenger in his cabin for seven days for alleged insolence to the master personally is an excess of such power, and an action for false imprisonment will lie. *Ibid.*

1162. Conduct unbecoming a gentleman in the strict sense of the word will, it seems, justify a master of a ship in excluding a passenger from the cuddy table, whom he has engaged by contract to provide for there; but it is difficult to say in what degree want of polish would, in point of law, warrant such an exclusion; but it is clear that if a passenger use

threats of personal violence towards the master, the master may exclude him from the table, and require him to take his meals in his own private apartment. *Prendergast v. Compton*, 8 C. & P. 454.

1163. A declaration on an agreement to carry the plaintiff in a ship to a particular place alleged as a breach that the defendants by their agent caused him to be disembarked at an intermediate point, and, by their agent, caused the disembarkation to be conducted in a scandalous, disgraceful and improper manner, whereby, and also by contemptuous usage and insulting language addressed to the plaintiff by their agent in effecting the disembarkation, the plaintiff sustained damage. *Held*, a good declaration. *Coppin v. Braithwaite*, 8 Jur. 875.

1164. *Held*, secondly, that the judge rightly received evidence of the language of the master in putting the plaintiff on shore, in which he described him as being a pickpocket, and belonging to the swell mob. *Ibid.*

1165. *Held*, thirdly, that the judge rightly directed the jury that the defendants were responsible for any injury naturally resulting from the acts of the master when acting as their servant; and that the plaintiff was entitled to fair compensation for the injury done to him in being put ashore at the intermediate place, so far as injury arose from the act of the master in putting him on shore. *Ibid.*

1166. A passenger may sue the master of a vessel in the Admiralty for personal damage. *The Ruckers*, 4 C. Rob. 73. See further, as to the misconduct of passengers, c. 42, s. 16, p. 1316.

45. Stowaways.

1167. Penalty against any person secreting himself and going to sea in any ship without the consent of the owner, consignee, master, mate, or other person entitled to give such consent, not exceeding twenty pounds, or imprisonment not exceeding four weeks. See M. S. Act, 1854 (c. 104), s. 258.

1168. Any person travelling or at-

a passenger against the master, when the injury was committed during a voyage, or on the high seas. *Dunlap's Adm. Prac.* 512. [AMERICAN.]

(414) The Admiralty has jurisdiction of personal torts committed on a passenger on

the high seas by the master of the ship. *The Friends*, *Stuart's Vice-Adm. Rep.* (Lower Canada), 118; *The Toronto*, *ibid.* 170.

(415) Unless in cases of necessity the master cannot compel a passenger to keep watch. *The Friends*, *ibid.*

tempting to travel in any duly-surveyed passenger steamer without having previously paid his fare, and with intent to avoid payment, penalty not exceeding forty shillings, by s. 7 of Act of 1863 extended to any sum not exceeding £20; and such liability is not to prejudice the recovery of the fare payable by him. See M. S. Act Amendment Act, 1862 (c. 63), s. 35.

1169. As to the power of the master or officer and those called by him to his assistance to detain any person who has committed such an offence, and whose name and address are unknown to him, and to convey him without warrant before a justice for trial, see *Ibid.* s. 37.

1170. Penalty against any person found on board any passenger ship with intent to obtain a passage without the consent of the owner, charterer, or master, and against every person aiding and abetting him, not exceeding £20, and in default of payment imprisonment, with or without hard labour, not exceeding three months; such person so found on board may without warrant be taken before any justice of the peace, who may summarily hear the case, and on proof convict such offender. See Passengers Act, 1855 (c. 119), s. 18, as amended by the Passengers Act Amendment Act, 1863 (c. 51), s. 7.

46. Sale of Spirits.

1171. Penalty against any person in any passenger ship during the voyage, directly or indirectly, selling or causing to be sold any spirits or strong waters to any passenger, not exceeding £20, nor less than £5. See Passengers Act, 1855 (c. 119), s. 62.

47. Insurance of Passage-money.

1172. No policy of assurance effected in respect of any passages, passage, or compensation moneys, by any person by this act liable to provide such passages or pay such moneys, or in respect of any other risk under this act, shall be deemed invalid by reason of the nature of the risk or interest. *Ibid.* s. 55.

1173. Policy of insurance on passage-money "against all costs, charges and liabilities which the owner or charterer might be subject to under sects. 46, 47, 48, 49, 50 and 51 of the Passengers Act,

1852" (c. 44). The ship was lost by perils of the sea: the passengers were saved in a British colony not being their place of destination: the master within six weeks forwarded them to their place of destination. *Held*, that the expenses so incurred were charges to which the owner was subject under sects. 49 and 50, and might be recovered under the policy. Sect. 49 does not merely provide that if the master does not forward the passengers within six weeks the governor may do so, but makes it the duty of the master to forward them. *Gibson v. Bradford*, 4 Ell. & Bl. 586.

1174. A policy of insurance was made at and from Liverpool to Boston on passage money valued at £700. The policy was in the usual printed form with this memorandum: "On passage-money of emigrants, subject to pay a loss *pro rata*, and subject to the clauses and conditions made under sects. 47 to 51 of the Passengers Act, 1852, compensation clause excepted, and against these risks only." The ship, being a passenger ship within the act, sailed, and by a peril of the sea was driven into F. a foreign port, where she necessarily remained repairing damage for more than six weeks, after which she proceeded with passengers to Boston and arrived there. During the detention at F. the passengers were maintained by the insured at a cost exceeding the passage-money. *Held*, on demurrer, that this was not a loss incurred under the enumerated sections, and that the underwriters were not liable to make it good. *Willis v. Cooke*, 5 Ell. & Bl. 641.

48. Registration of Births and Deaths.

See Pt. II. c. 38, p. 1251.

49. Forms, &c.

1175. If any person falsely represents himself or assumes to act as the agent of the Board of Trade or sells any form of application or other paper for the use of persons desirous of emigrating with the assistance of the Board of Trade, or wilfully makes any false representation therein, or forges or fraudulently alters any signature or statement therein; or in any certificate of birth, baptism, marriage or other document, or personates any person named therein, or abets any person in so doing, penalty for breach

not exceeding £50 nor less than £2. See Passengers Act, 1855 (c. 119), s. 84.

1176. These provisions extend to any forms of application or other papers issued under the authority of a secretary of state for the use of persons desirous of emigrating with his assistance, and to any certificate or document adduced in support thereof. See M. S. Act, 1872 (c. 73), s. 6.

50. Service of Documents.

See Pt. II. c. 45, p. 1253.

51. Forfeitures.

1. Generally.

1177. As to forfeitures generally, see this tit. Pt. II. c. 18, p. 1242; and as to forfeiture of ships under the Chinese Passenger Act, see this Part, c. 5, s. 2, p. 1277.

1178. As to the concurrent jurisdiction of the Admiralty division with courts of Vice-admiralty as to forfeiture of any ships, goods, or effects, or the award of damages for seizure thereof, or of any person on board, see tit. JURISDICTION, Nos. 482, 483, p. 689; and the Pacific Islanders Protection Acts, 1872 and 1875, cc. 19, 51.

2. Sailing without Clearance.

(a) From Port of Departure.

1179. If any passenger ship shall clear out or proceed to sea without the master having first obtained the certificate of clearance required for her, or without having joined in executing the required bond to the Crown, or after having put to sea, shall put into any port or place in the United Kingdom in a damaged state, and shall leave or attempt to leave with passengers without the master having first obtained the certificate of clearance required for her, such ship shall be forfeited to her Majesty. See the Passengers Act, 1863 (c. 51), s. 13.

(b) After putting in damaged.

1180. See No. 1179.

3. Sailing without Bond to the Crown.

1181. See No. 1179.

4. Seizure and Proceedings thereon.

1182. Any ship liable to forfeiture as above may be seized by any officer of customs, if found within two years from the commission of the offence, in any port or place in her Majesty's dominions; and shall thereupon be dealt with as if seized for an offence incurring forfeiture under any law relating to the customs. See the Passengers Act Amendment Act, 1863 (c. 51), s. 13.

1183. The Board of Trade may release her from forfeiture, on payment, by the owner, charterer, or master, to her Majesty, of such sum not exceeding £2,000 as the Board of Trade may in writing specify. *Ibid.*, as amended by the M. S. Act, 1872 (c. 73), s. 7.

1184. As to the procedure on seizure for forfeiture under the Customs Acts, see the Customs Consolidation Act, 1876 (c. 36).

52. Passage or Subsistence Moneys, Damages or Compensation.

1. Who may sue.*

1185. All moneys made recoverable by this act as return of passage money, subsistence money, damages, or compensation may be recovered by and for the use of any passenger entitled thereto, or by any emigration officer for and on behalf of any such passenger or passengers. See Passengers Act, 1855 (c. 119), s. 84.

1186. Where an agreement was made to carry a passenger on board a ship from London to the West Indies, the passage money to be paid in London before the commencement of the voyage, and the passenger put his baggage on

1880, p. 47, No. 101.

(417) To entitle a passenger, however, to take advantage of the act, he must have done all that is required by it. *Ibid.* pp. 47, 48, No. 101.

(418) A new provision was inserted in the Act of 1855, entitling the charterer or master of a ship, in the absence of any agreement to the contrary, to recover from the owners the amount of any monies, with costs of suit which he may have to pay, for any default in complying with the requirements of the act. *Ibid.* p. 49, No. 102.

* (416) If a passenger fails to obtain, within ten days of the stipulated date, a passage from any cause other than his own default or a legal prohibition, he can proceed for the recovery of his passage-money and compensation against either the person to whom he paid the money, or (in case the contract was made with the owner, master or charterer of the ship, or any agent of theirs) against such owner, charterer or master, or any of them, at the option of the passenger, or of the emigration officer acting on his behalf. Board of Trade Mem. on Pass. Act,

board in the Thames, meaning himself to embark at Portsmouth, and the ship was lost going round to that place, *held*, that the passage money could not be recovered back. *Gillan v. Simpkin*, 4 Camp. 241.

1186a. Aliter, if the agreement had been to carry the passenger from Portsmouth to the West Indies. *Ibid.*

1187. If a master of an East Indiaman dies at the outward port after having contracted to bring home certain passengers, and laid in a certain quantity of stores for the homeward voyage: and the chief mate succeeding to the command brings home these and other passengers, and provides further stores for their subsistence during the voyage; the master's representatives are entitled to the passage money of the passengers with whom he had contracted, and the mate to that of the others, the representatives being liable to him for the portion of the stores laid in by him consumed by the former class of passengers, and he being liable to the representatives for the portion of the master's stores consumed by the latter class of passengers. *Siordet v. Brodic*, 3 Camp. 253.

2. How and before whom recoverable.

1188. Such passage or subsistence moneys, damages, or compensation, may be recovered by one or several informations or complaints. See Passengers Act, 1855 (c. 119), s. 84.

1189. As to the mode of proceeding to enforce such claims, see next cap.

53. Penalties.

1. Who may sue.

1190. All penalties and forfeitures under this act are to be sued for in the United Kingdom by any emigration officer or his assistant, or any person so authorized by the Board of Trade, or by any collector or comptroller of customs, or other officer of customs authorized by the commissioners of customs, and in any of her Majesty's possessions abroad by any government emigration officer or agent, or any such officer of customs, or by any officer authorized by the governor of such possession, and the Board of Trade. See the Passengers Act, 1855 (c. 119), s. 84.

2. Before whom recoverable.

(a) In England.

1191. All penalties and moneys made
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recoverable under this act as passage money, subsistence money, compensation or damages in any contract ticket, may be recovered before any two or more justices of the peace, acting in any part of her Majesty's dominions or possessions in which the offence was committed or the cause of complaint arose, or in which the offender or party complained against happens to be, or acting in any county or borough, or place adjacent to any navigable river or inlet of the sea on which the offence committed or cause of complaint arose. *Ibid.* s. 85.

1192. Every police or stipendiary magistrate has the same powers and jurisdiction as the justice, two justices or justices at petty sessions under this act. *Ibid.* s. 86.

(b) In Scotland.

1193. In Scotland every sheriff, steward and sheriff substitute or steward substitute of a county or stewartry, within his own county or stewartry, has the like powers and jurisdiction as any justice, or two justices or justices at petty sessions under this act. *Ibid.*

3. Summons.

(a) Generally.

1194. Upon complaint made before any justice of the peace so acting, he shall issue a summons in the form in Sched. (N), requiring the party to appear at a time and place named therein. *Ibid.* s. 85.

1195. For form of summons for a defendant or witness, see *Ibid.* Sched. (N).

(b) Service.

1196. Every such summons shall be served on the party, or left at his last known place of abode or business, or on board any ship to which he may belong. *Ibid.*

4. Warrant without Summons.

1197. The justice before whom the charge is made, if he suspects, from information on oath, that the party is likely to abscond, may issue such warrant in the first instance, without summons. *Ibid.*

5. Proceedings by Default.

(a) Generally.

1198. If such party shall not appear accordingly, then (upon proof of the service of the summons) any such two
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justices may hear and determine the case in the absence of the party. See the Passengers Act, 1855 (c. 119), s. 85.

(b) *Warrant.*

1199. One of the justices may issue his warrant for bringing such party, served with summons and not appearing, before the two justices. *Ibid.*

6. *Hearing.*

(a) *Generally.*

1200. Upon the appearance of the party, or in his absence, any two of such justices may hear and determine the case with or without any written complaint. *Ibid.*

(b) *Adjournment.*

See *Ibid.* s. 87.

7. *Proof of Exemption.*

1201. If in any action or other proceeding under this act any question arises whether any ship was or was not exempted from the provisions of this act, the burden of proving such exemption lies on the party claiming it, and failing such proof it shall be adjudged that the ship came within the provisions of this act; and it is not necessary to negative any exemption, proviso, or condition under this act, nor for the complainant to prove the negative, but the defendant may prove the affirmative thereof, if he seeks advantage of it. *Ibid.* s. 89.

8. *Proof of Officer's Authority.*

1202. If in any proceeding before any such justice or justices, or upon any action or other proceeding, against any person for anything done contrary to or in pursuance of this act, a question arises whether any person is an emigration officer or assistant emigration officer, or an officer of customs, *videlicet* evidence may be given of such fact by the officer, and is to be deemed sufficient evidence. *Ibid.* s. 90.

9. *Witnesses.*

1203. The justices are authorized to summon and swear witnesses. *Ibid.* s. 85.

1204. Any passenger suing under this act for any moneys made recoverable as passage or subsistence money, compensation, or damages, shall not be deemed an incompetent witness, notwithstanding,

if recovered, it is applicable to his own benefit. *Ibid.* s. 91.

10. *Conviction or Adjudication.*

1205. Such justices may convict the offender, or adjudicate upon the complaint. *Ibid.* s. 85.

1206. The conviction or adjudication is to be drawn up according to one of the forms in Schedule (O). *Ibid.*

1207. For form of conviction and order for adjudication when the defendant does not appear, see *Ibid.* Schedule (P).

11. *Order.*

(a) *Generally.*

1208. Upon every such conviction the justices may order the offender to pay the penalty, and upon every such adjudication may order the party complained against to pay all or part of the money or damages sued for, with costs. *Ibid.* s. 85.

(b) *Service of—*

1209. The warrant may issue, although no order of conviction or adjudication or any minute thereof has been served. *Ibid.*

(c) *Enforcement of—*

1210. The justices may, by warrant, cause the party offending to be committed to gaol, with or without hard labour, according to their discretion, for any term not exceeding three months, unless such moneys and costs are sooner paid. *Ibid.*

12. *Want of form in Proceedings.*

1211. No conviction, order, adjudication, or other proceeding under this act shall be quashed for want of form. *Ibid.*

13. *Defect or Variance in Proceedings.*

1212. No objection shall be taken or allowed to any complaint, information, summons, or warrant under this act, for any alleged defect therein, in substance or form, or for any variance between such complaint or information and the evidence on the hearing; but if there is any such variance that the party so summoned and appearing has been thereby misled, such justice or justices, upon such terms as he or they think fit, may adjourn the hearing, and in the meantime commit the defendant to such safe custody as they may think fit, or discharge him upon his recognizance, with or without sureties,

to appear as may be appointed. *Ibid.* s. 87.

14. Limitation of Actions.

1213. When no time is limited for any complaint or information under this act, it must be made or laid within twelve months from the time when the matter thereof arose, or, if the master of the ship is the person proceeded against, within twelve months after his return to the country in which the matter arose. *Ibid.* s. 94.

15. Application.

(a) Generally.

1214. All penalties under this act shall, notwithstanding any local act to the contrary, be paid to the officer of emigration or customs at whose suit they have been recovered, for the use of the crown; and if recovered in the colonies shall be paid into the colonial treasury; and if recovered in the United Kingdom shall be paid over to the Board of Trade if recovered by an emigration officer or his assistant; and to the commissioners of customs if recovered by an officer of customs. *Ibid.* s. 88.

(b) As Compensation.

1215. But the justices may direct that a part, not exceeding a moiety, may be applied to compensate any passenger for any wrong or damage sustained by the act or default in respect of which the penalty or forfeiture has been imposed. *Ibid.*

16. Forms.

1216. In all proceedings under this act for which no form is provided, forms similar to those contained in the schedule to 11 & 12 Vict. c. 43 are to be used. *Ibid.* s. 85.

54. Actions against Officers.

1. Limitation.

1217. No action shall be commenced against any emigration officer or other person for anything done under this act, until ten clear days' notice in writing, specifying the cause of action, has been

given to the person against whom such action is intended to be brought, nor after three months after the act committed and mentioned in such notice. Every such action shall be brought, and tried where the cause of action arose. *Ibid.* s. 93.

2. Tender of Amends.

1218. No plaintiff shall recover in any action against any emigration officer or other person for anything done in pursuance of this act, if tender of sufficient amends has been made before action brought, or if, after action brought, a sufficient sum has been paid into court on behalf of the defendant. *Ibid.* s. 92.

3. Pleadings and Proofs.

1219. The defendant may plead the general issue and give this act and any special matter in evidence at the trial. *Ibid.* s. 93.

4. Costs.

See tit. Costs, c. 46, p. 416.

55. Pilotage.

1220. As to the obligation upon passenger steamers to employ a duly-licensed pilot when in pilotage waters, see this tit. Pt. VII. c. 5, p. 1355.

Part V.—DECK AND GRAIN CARGOES, AND DANGEROUS GOODS.

1. Deck Cargoes.*

1. Generally.

1221. If any ship, British or foreign, other than home-trade ships as defined by the M. S. Act, 1854, carries timber, stores, or other goods, as deck cargo, *i. e.* in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage, all dues payable on the ship's tonnage shall be payable as if there were added to the ship's registered tonnage the tonnage of the space occupied by such goods at the time at which such dues become payable. See M. S. Act, 1876 (c. 80), s. 23.

(418a) For an instance of wreck inquiry in a case of improperly-laden deck cargo, see Murton's Wreck Inquiries, 1884, p. 256; and for other instances of wreck inquiries into

vessels which perished by reason of neglect, overloading, bad stowage, imperfect ventilation, see the Board of Trade Official Caution, set out *Ibid.* pp. 251—280.

1222. The space so occupied shall be deemed to be the space limited by the area occupied by the goods and by straight lines inclosing a rectangular space sufficient to include the goods. See M. S. Act, 1876 (c. 80), s. 23.

1223. The tonnage of such space shall be ascertained by the officer in manner directed by the M. S. Act, 1854 (c. 104), s. 21, sub-s. 4, and shall be entered by him in the ship's official log book, and in a memorandum he shall deliver to the master, who shall, when the dues are demanded, produce the memorandum as if it were the certificate of registry, or if a foreign ship, the document equivalent thereto. Penalty for default, against the master, the same as for nonproduction of certificate of registry or analogous document. *Ibid.*

1224. These provisions as to deck cargo do not apply to any ship whilst engaged in the coasting trade of any British possession. *Ibid.* s. 44.

2. During Winter.

1225. Penalty for carrying in any ship, whether British or foreign, arriving between the last day of October and the 16th day of April at any port in the United Kingdom from any port out of the United Kingdom, as deck cargo, *i. e.* in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage (a) any square, round, waney, or other timber, or any pitch pine, mahogany, oak, teak, or other heavy wood goods whatever; or (b) any more than five spare spars or store spars, whether or not made, dressed, and finally prepared for use; or (c) any deals, battens or other light wood goods of any description to a height exceeding three feet above the deck; against the master of the ship, and also against the owner, if he is privy to the offence, not exceeding £5 for every hundred cubic feet of wood goods so carried, or to an amount not exceeding £100. *Ibid.* s. 24.

1226. But the master or owner shall

not be liable to any penalty (1) in respect of any wood goods considered necessary to be on deck on account of any damage to the ship received or apprehended; or (2) if he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the last day of October as allowed a sufficient interval, according to the ordinary duration of the voyage, for the ship to arrive before that day at the port in the United Kingdom, but was prevented from so arriving by stress of weather or circumstances beyond his control; or (3) if he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the 16th day of April as allowed a reasonable interval according to the ordinary duration of the voyage for the ship to arrive at the port in the United Kingdom, and by reason of an exceptionally favourable voyage arrived before that day. *Ibid.* s. 24.

1227. Nothing in this section shall affect any ship not bound for but coming into a port of the United Kingdom under stress of weather, or for any other purpose than the delivery of her cargo. *Ibid.*

3. Exemptions.

1228. The provisions of this act do not apply to any vessel employed exclusively in going from place to place in any river or inland water of which the whole or part is in any British possession. *Ibid.* s. 44.

See also No. 1224, *supra*.

4. Additions to Registered Tonnage.

1229. As to the addition of the space occupied by deck cargo to the registered tonnage, for the calculation of tonnage dues, see tit. OWNERS, Pt. I. p. 1194, and Nos. 1221—1224, *supra*.

5. Detention of Overladen or Improperly-laden Ships.*

1230. As to detention for survey of

Ross v. Thwaite, 1 Park. 23; *Myers v. Sarl*, 30 L. J. Q. B. 9; *Kirchner v. Venus*, 33 L. T. 82; *Harley v. Milward*, 1 Jones & Carey, Ex. (Ir.) 224; *Lennon v. Mar. Ins. Co.*, 1 Caine's Rep. 44 (Amer.); *Smith v. Wright*, 2 Caine's Rep. 43 (Amer.); *Lenca v. United Ins. Co.*, 3 John. Cas. 178 (Amer.); *Dodge v. Bartol or Bartlett*, 5 Gee, 285 (Amer.); *Cram v. Aiken*, 13 Maine, 229 (Amer.); *Brown v. Cornwall*, 1 Root, 60 (Amer.); *Cunard v. Hyde*, 29 L. J. Q. B. 6.

* (419) For the old law in reference to the carriage of deck cargo prior to the above act, see *Gould v. Oliver*, 4 Bing. N. C. 120, 134; 2 Scott, N. R. 241; 5 Scott, 445; *Milward v. Hibbert*, 3 Q. B. 120; 6 Jur. 706; 2 G. & Dav. 142; 3 Ad. & Ell. N.S. 120; 11 L. J. Q. B. 127; *Blackett v. Royal Ex. Ass. Co.*, 2 C. & J. 250; *Miller v. Titherington*, 3 L. T. N.S. 893; 1 Asp. 39; *Gorham v. Sweeting*, 2 Saund. 205; *Da Costa v. Edmunds*, 4 Camp. 120; *Hall v. Janson*, 4 Ell. & Bl. 504; *Crofts v. Marshall*, 7 C. & P. 537;

overladen or improperly-laden ships, see Pt. III. c. 1, p. 1258.

2. Grain Cargoes in British Ships generally.

1. Interpretation of Terms.

1231. "Grain" means any corn, rice, paddy, pulse, seeds, nuts, or nut kernels. "Ship laden with a grain cargo" means a ship carrying a cargo of which the grain portion is more than one-third of the ship's registered tonnage; to be computed, when the grain is reckoned in measures of capacity, at one hundred cubic feet for each registered ton, and when reckoned in measures of weight, at two tons weight for each registered ton. See M. S. (Carriage of Grain) Act, 1880 (c. 43), s. 10.

2. Obligation of proper Precautions.*

1232. Where a grain cargo is laden on any British ship all necessary and reasonable precautions (whether prescribed by this act or not) shall be taken to prevent the cargo from shifting. Penalty for breach against the master and agent of the owner charged with the loading or sending her to sea, not exceeding £300, and against the owner to the same amount, unless he shows he took all reasonable means to enforce the observance of this section, and was not privy to the breach. *Ibid.* s. 3.

3. Authority of Inspectors.

1233. Towards securing the observance of this act, any officer, duly authorized by the Board of Trade, has the same power as an inspector appointed under the M. S. Act, 1854 (as to which see that Act, ss. 15 and 16, and Pt. I. c. 6, p. 1208), and power to inspect any grain cargo, and the mode in which it is stowed. *Ibid.* s. 8.

4. Prosecution of Offenders and Recovery of Penalties.

1234. Every offence under this act may be prosecuted summarily and every penalty recovered and enforced sum-

marily, like offences and penalties under the M. S. Act, 1854, and the acts amending the same (see as to same, Pt. II. c. 53, p. 1255). *Ibid.* s. 9.

5. Exemptions.

See No. 1228, *supra*.

3. Grain Cargoes in British Ships from particular Ports.

1. Generally.

1235. The M. S. (Carriage of Grain) Act, 1880 (c. 43), makes the following regulations, to be observed in all British ships laden with a grain cargo at any port in the Mediterranean or Black Seas and bound to any port outside the Straits of Gibraltar, or laden with a grain cargo on the coast of North America. See M. S. (Carriage of Grain) Act, 1880 (c. 43).

2. On what Decks to be carried in Bulk.

1236. There shall not be carried between the decks, or, if the ship has more than two decks, between the main and upper decks, any grain in bulk, except what may be necessary for feeding the cargo in the hold, and is carried in properly-constructed feeders. *Ibid.* s. 4.

3. Proportion to be carried in Bags.

(a) Generally.

1237. When grain laden in British ships at such ports (except what is carried in properly-constructed feeders) is carried in bulk in any hold or compartment, and proper provision for filling it up by feeders is not made, not less than one-fourth of the grain carried in the hold or compartment (as the case may be) shall be in bags supported on suitable platforms laid upon the grain in bulk. *Ibid.*

(b) Exceptions.

(aa) Oats or Cotton Seed.

1238. The following exceptions are allowed to this regulation:—

As to bags of oats or cotton seed. *Ibid.*

* (420) Sect. 22 of M. S. Act, 1876, is repealed by M. S. (Carriage of Grain) Act,

1880, from 1st July, 1881, when this latter act came into operation.

(bb) *Sailing Ships under 400 Tons and not in Atlantic Trade.*

1239. Sailing ships of less than 400 tons register, and not engaged in the Atlantic trade. See M. S. (Carriage of Grain) Act, 1880 (c. 43), s. 4.

(cc) *Ships laden in Mediterranean and Black Sea Ports and specially fitted.*

1240. Ships laden at ports in the Mediterranean or Black Sea, if the ship is divided into compartments formed by substantial transverse partitions, and fitted with longitudinal bulkheads or such shifting boards as are mentioned in this section (see No. 1242), and if the ship does not carry more than one-fourth grain cargo, nor more than 1,500 quarters, in any one compartment, bin, or division, and provided each division of the lower hold is fitted with properly-constructed feeders from the between decks. *Ibid.*

(dd) *Ships carrying only half a Grain Cargo and specially stowed.*

1241. Ships in which the grain cargo does not exceed one-half of the whole cargo, and the rest consists of cotton, wool, flax, barrels or sacks of flour, or other suitable cargo so stowed as to prevent the grain in any compartment, bin, or division from shifting. *Ibid.*

4. *Longitudinal Bulkhead or sufficient shifting Boards:*

1242. When grain is carried in the hold or between decks, in bags or bulk, the hold or space between the decks shall be divided by a longitudinal bulkhead or by sufficient shifting boards extending from deck to deck or from deck to keelson and properly secured, and if the grain is in bulk, fitted grain-tight with proper fillings between the beams. *Ibid.*

5. *Stowing, Trimming and Securing.*

1243. In loading, the grain shall be properly stowed, trimmed and secured. *Ibid.*

6. *Effect of Breach of Regulations.*

1244. In the event of contravention of any of these regulations, reasonable precautions within the meaning of sect. 3 (for which see No. 1232) to prevent the grain cargo of that ship from shifting shall be deemed not to have been taken, and the owner, master, and any agent of the ship charged with loading or sending her to sea shall be liable to penalties accordingly, besides any liability, civil or criminal, to which he would otherwise be subject for failing to adopt any precautions reasonably required to prevent grain cargo from shifting. *Ibid.*

7. *Exemption of Ships loaded under Board of Trade Rules.*

(a) *Generally.*

1245. The precautions required to be adopted by ships within this category do not apply to ships loaded, or constructed and loaded, in accordance with Board of Trade rules or plans. *Ibid.* s. 5.

(b) *Board of Trade Rules.*

1246. The precautions required by the act to be adopted by ships laden with a grain cargo shall not apply to ships laden at a port on the coast of N. America, in accordance with the regulations numbered 1 to 5, of which the titles and dates are set forth in the first schedule hereto, so far as they relate to the stowage of grain cargoes; and in accordance with the additional regulations set forth in the second schedule hereto, in the case of Rules 1 and 5 of the first schedule. Board of Trade Official Notice, 8th May, 1882, M. 22,361—1880.*

* (421) The first schedule to this official notice comprises and sets out the following:—(1) The rules of the New York Board of Underwriters, dated at the office of the Board of Underwriters, 51, Wall Street, New York, Oct. 1860, as amended in Oct. 1876, and signed by Chas. Dennis, secretary; (2) rules of the New Orleans Board of Underwriters, approved and adopted by them on the 5th April, 1881, and signed by Geo. Mather, secretary; (3) rules and regulations adopted by the National Board of Marine Underwriters, New York, at a meeting held on the 16th Aug. 1881, H. S. Vining, chief in-

spector; (4) rules and regulations of the marine surveyors at San Francisco for ships carrying grain in bags, dated 20th Dec. 1877, and signed by Amos Noyes, chairman, and C. Davidson, secretary; (5) acts and rules relating to the loading of grain in ships at the ports of Montreal and Quebec; rules and bye-laws of the office of port warden, harbour of Montreal, signed D. R. Kerr, port warden, 1879, Montreal, John Dick, port warden, June, 1871, Quebec. Copies of a pamphlet containing the rules and regulations included in the first schedule above can be obtained through any bookseller or chart-

1247. In the case of single-decked ships loading a grain cargo at a port in the Mediterranean or Black Sea, where no provision is made for feeding the hold, and where, according to the requirements of s. 4 of the act, one-fourth of the grain is carried in any one compartment, the Board of Trade have approved a regulation that the whole fourth or any part of the fourth of the compartment, bin or division which would according to the requirements thereof be stowed with grain in bags, may in lieu thereof be stowed with bales of cotton, bales of grass or bags of flour, or other suitable cargo; provided always, that the substituted cargo can be supported on suitable platforms laid on the grain in bulk, and be so stowed as to prevent the grain from shifting. *Ibid.* 29th Jan. 1881, M. 2,352—1881.

1248. In the case of vessels having two or more decks, loading a cargo of oats or cotton seed at a port in the Mediterranean or Black Sea, and bound to ports outside the straits of Gibraltar, the Board of Trade have approved the following regulation, viz., that oats or cotton seed may be carried in bulk between decks, provided (1) that the 'tween deck hatches shall not at any time be put on; and (2) that strakes of the deck shall be lifted, or if the deck is an iron deck, sufficient openings be provided to admit of the cargo in the 'tween decks feeding the lower hold; and (3) that the precautions specified in sects. 4 (c) and 4 (d) of the act be adopted. *Ibid.* 20th February, 1881—M. 3,904—1881.

1249. A similar exemption, viz., that oats may be carried in bulk between decks is made in favour of two-decked ships loading oats at any Canadian ports on complying with the same conditions. *Ibid.* 3rd June, 1881—M. 14,062—1881.

1250. Shipowners desirous of obtaining the approval (under sect. 5 of the act) of plans of single-decked ships employed in

the grain trade, should forward plans showing the particulars of the arrangements for feeding the hold, and the mode to prevent the cargo shifting, to the Board of Trade: also the following particulars, viz., the date of the building of the ship; (2) the period she has been employed in the grain trade since; (3) whether she has been a single-decked ship during that time; (4) whether she has carried her cargoes safely, whether they have shifted or not; and (5) whether she is now a single-decked ship. The Board of Trade do not intend to sanction (under s. 5) any ships which at any time have had more than one deck. *Ibid.* 19th March, 1881, M. 6,749—1881.

1251. The Board of Trade have approved of the following regulations, Nos. 1 to 5, in the case of ships loading barley at ports in the Mediterranean or Black Sea. *Ibid.* Aug. 1881, M. 19,928—1881; M. 22,011—1881; M. 12,257—1883; M. 12,629—1884.

- (1) In the case of single-decked ships, loaded in accordance with plans submitted to and approved by the Board of Trade, and whose names are included in the lists of ships issued by the Board of Trade and for the information of consular officers at ports in the Mediterranean and Black Seas, the precaution as to carrying a fourth of the grain cargo in bags shall not apply:
- (2) In the case of ships having two decks and loading a grain cargo at a port in the Mediterranean or Black Sea, barley may be carried in bulk in the 'tween decks, provided that—
 - (a) grain-tight feeders be fitted from the lower hold through the hatches to the uppermost deck, such feeders to contain not more than six per cent. and not less than three per cent. of the quantity carried in the hold or compartment they feed:

seller; or of T. D. Potter, 31, Poultry, London; or E. Stanford, 55, Charing Cross, S.W.

(422) The second schedule to this official notice is as follows:—"N.B. In all cases in which the regulations as to the stowage of grain cargo set forth in the first schedule do not contain the express provisions contained in this second schedule, then such of the following regulations, if any, as are not included in the regulations set forth in the first schedule must also be complied with. If such of these regulations as may not be in-

cluded in the regulations set forth in the first schedule are not also complied with, the precautions required by the act must be taken—

- (1) shifting boards must extend to the keelson; (2) there shall not be carried between the decks, or if the ship has more than two decks, between the main and upper decks, any grain in bulk, except such as may be necessary for feeding the cargo in the hold, and is carried in properly-constructed feeders; (3) grain carried in bulk must be supplied by proper feeders, or else secured by bags of grain or other cargo.

(3) Or (in lieu of the regulation in paragraph 2 (a)), barley shipped at a port in the Mediterranean or Black Sea may be carried in bulk in the 'tween decks, provided—(a) that the 'tween deck hatches shall not at any time be put on; and (b) that strakes of the deck be lifted, or if the deck be an iron deck, sufficient openings be made through the deck in the wings, which, with the open hatches shall admit of the cargo in the 'tween decks feeding the lower hold:

(4) The regulations contained in this paragraph (No. 4) shall also be observed, whether the ship is loaded under the regulation contained in paragraph No. 2 above or that contained in No. 3 above; that is to say, (a) there shall be longitudinal grain-tight shifting boards in accordance with sub-s. (c) of s. 4 of the Act, and the grain shall be properly stowed, trimmed, and secured, as registered by sub-s. (d) of the said s. 4; (b) feeders shall be fitted to feed the grain carried in the 'tween decks, such feeders to contain not less than two per cent. of the compartments they feed; (c) the space in the 'tween decks in which barley in bulk is carried, shall be bounded at each end by grain-tight transverse bulk-heads or partitions extending from deck to deck; (d) the ship shall not be overloaded:

(5) If at any time it shall appear to the Board of Trade that the above regulations or any of them insufficiently provide for the safety of the ship, and should therefore in their opinion be revoked and withdrawn, or that they need alteration, the Board of Trade will revoke, withdraw, or alter them accordingly.

8. Notices at Loading and Delivery Ports.

(a) At Loading Port.

1252. Before a British ship laden with grain cargo at any port in the Mediter-

ranean or Black Sea, bound to ports outside the Straits of Gibraltar, or laden with grain cargo on the coast of N. America, leaves her final port of loading, or within forty-eight hours afterwards, the master shall cause to be delivered to the British consular officer, or, if in her Majesty's dominions, to the principal officer of customs at that port, a notice stating—the draught of water and clear side (as defined by s. 5 of the M. S. Act, 1871, c. 110, and s. 4 of the M. S. Act, 1873, c. 85), of the ship after the completion of the loading of her cargo there; the kind of grain and the quantity thereof loaded in her and described as in cubic feet, quarters, bushels, or tons weight; the mode in which the grain cargo is stowed; and the precautions taken against shifting. See M. S. (Carriage of Grain) Act, 1880 (c. 43), s. 6.

(b) At Delivery Port.

(aa) Generally.

1253. The master of a British ship laden with grain cargo at any of such ports (see No. 1252) is to deliver a notice (similar to that required to be delivered by him to a British consular officer, or principal officer of customs, within forty-eight hours after leaving his final port of loading (for which see No. 1252, *supra*), to the principal collector or other proper officer of customs in the United Kingdom, with the report required to be made by the Customs Consolidation Act, 1876, on the ship's arrival there. *Ibid.*

1254. The master of every ship, whether laden or in ballast, shall within twenty-four hours after arrival from parts beyond the seas at any port in the United Kingdom make due report of such ship to the collector or other proper officer in the form No. I. in Sched. (B) to this act, (as to which see note (423) *infra**), and containing the several particulars indicated in or required thereby, or in such other form or manner as the commissioners of customs may direct, and such

* (423) Sched. B, Form No. 1, contains the form of report giving the following information as to cargo, viz.: the name or names of places where laden, in order of time; the marks and Nos. of the packages; the packages, and description of goods, particulars of goods stowed loose, and general denomination of contents of each package of tobacco, cigars or snuff intended to be imported

at the port, the particulars of packages and goods (if any) intended for any other port in the United Kingdom, the goods (if any) to be transhipped or to remain on board for exportation, the name of the consignee, and whether the ship is in ballast or not. Sched. B, Form No. 1, to the Customs Consolidation Act, 1876, c. 36.

report, except where otherwise specially allowed or provided for by their order, or at ports where goods may be landed into transit sheds, shall be made before bulk is broken. See the Customs Laws Consolidation Act, 1876 (c. 36), s. 50.

1255. Penalty for breach against the master £100, and the goods may be detained by the officer of customs in the Queen's warehouse. *Ibid.* s. 51.

(bb) *Transmission to Board of Trade.*

1256. Every such notice shall be sent to the Board of Trade as soon as practicable by the officer receiving it. See M. S. (Carriage of Grain) Act, 1880 (c. 43), s. 6.

(c) *Effect of Breach or False Statement.*

1257. Penalty against master for failing to deliver any such notice, not exceeding £100. *Ibid.*

1258. Penalty against any master who in any such notice wilfully makes any false statement, or wilfully omits any material particular, not exceeding £100. *Ibid.* s. 7.

(d) *Exemptions by Board of Trade.*

(aa) *Generally.*

1259. The Board of Trade may, by notice published in the London Gazette, or otherwise, exempt ships laden at any particular ports or any class of such ships from having to give these notices. *Ibid.* s. 6.

(bb) *Board of Trade Notices.**

9. *Authority of Inspectors.*

See No. 1233, p. 1325.

10. *Interpretation of Terms.*

See No. 1231, p. 1325.

11. *Prosecution of Offenders and Recovery of Penalties.*

See Pt. II. c. 53, p. 1254.

4. Explosive Substances and Dangerous Goods.

1. *Generally.*

1260. The law with respect to manufacturing, keeping, selling, carrying, and

importing gunpowder, nitro-glycerine, and other explosive substances is amended by the Explosives Substances Act, 1875, (c. 17).

1261. The act includes fog signals, where these are of an explosive nature. *Ibid.* s. 3.

1262. For the general rules to be observed with respect to the packing of gunpowder for conveyance (penalty for breach against the person guilty of such breach not exceeding £20, and the gunpowder may be forfeited), see *ibid.* s. 33.

1263. For provisions enabling every harbour authority, with the sanction of the Board of Trade, to make bye-laws for regulating the conveyance, loading, unloading and stowage of gunpowder, the navigation and mooring of ships and boats conveying the same, their construction, fitting up, and licensing and lights and fires therein, *Ibid.* s. 34.

1263a. For similar provisions as to petrolum, see the Petroleum Act, 1871 (c. 105), s. 4.

1264. On breach of bye-law the harbour-master or his subordinate may cause the ship, boat, carriage or gunpowder, at the expense of the owner, to be removed to a proper place, and the expense of the removal is to be recovered like a penalty. See the Explosives Substances Act, 1875 (c. 17), s. 34.

1265. Where there is no harbour authority the Board of Trade may make bye-laws for such purposes. *Ibid.*

1266. The occupier of every wharf or dock on or in which gunpowder is loaded or unloaded (if such loading or unloading is not otherwise subject to any bye-laws under the act) may, and if so required by the secretary of state shall, with his sanction, make bye-laws for regulating the loading and unloading of gunpowder on such wharf or dock. *Ibid.* s. 36.

1266a. The regulations as to gunpowder apply to every other explosive. *Ibid.* s. 39.

1267. Sect. 29 of the Passengers Act, 1855, c. 119, (for which see No. 1009, p. 1297), and sects. 23 to 27, both inclusive, of the M. S. Act, 1873, c. 85 (for which see Nos. 1304—1308, *infra*, apply to every explosive within the meaning of this act as they apply to gunpowder. *Ibid.* s. 42.

1268. For powers of any of her Majesty's secretaries of state to authorize

* (424) No such exemptions of notice have as yet been allowed by the Board of Trade.

the carriage of military or naval stores in passenger ships, see the Passengers Act Amendment Act, 1870 (c. 95), s. 3.

1268*a*. As to the right of prohibition, by proclamation or Order in Council, of the exportation, or carrying coastwise, of ammunition, gunpowder, or military or naval stores, see the Customs and Inland Revenue Act, 1879 (c. 21), s. 8.

1269. For particulars of substances which are included in and defined by the term "explosives" in the Explosives Act, 1875 (c. 17), see that act, s. 3.

1269*a*. For provisions as to the entry outward or coastwise of explosives, and for the proper description of the explosive in the entry, see the Customs Laws Consolidation Act, 1876 (c. 36), s. 139.

1270. For provisions that all explosive substances within the meaning of the Explosives Act, 1875 (c. 17), on the unloading or landing of which any restriction is imposed, and all explosive substances within the meaning of the Explosives Substances Act, 1883 (c. 3), which are forfeited under that act, are to be deemed restricted goods within the meaning of the Customs Consolidation Act, 1876 (c. 36), see the Customs and Inland Revenue Act, 1883 (c. 10), s. 3.

1271. Her Majesty may, by Order in Council, prohibit absolutely or in part, or subject to conditions or restrictions, the manufacture, keeping or importation of explosives. See the Explosives Act, 1875 (c. 17), s. 43.

1272. The secretary of state may appoint inspectors for the purposes of this act, and assign them their duties. *Ibid.* s. 53.

1272*a*. See as to the powers of government inspectors, *Ibid.* s. 55.

1273. The Board of Trade may from time to time by order direct—(a) Any person acting under the Board as an inspector of railways to act generally with respect to any railway or canal as an inspector under this act. (b) Any person acting as an inspector, or otherwise for the purposes of the M. S. Act, 1854 (c. 104), or the amending acts, to act generally in harbours and with respect to ships as an inspector under this act. *Ibid.* s. 58.

1274. When there occurs any accident causing loss of life or personal injury in the carriage, by any ship or boat, of any explosive, the owner or master thereof, and the owner of the explosive, must forthwith cause notice of such accident, and of the loss of life or personal injury,

to be sent to the secretary of state. *Ibid.* s. 63.

1275. Every harbour authority and canal authority has power to provide carriages, ships and boats for the conveyance, loading and unloading of explosives within its jurisdiction. *Ibid.* s. 71.

1276. Powers are given to any government inspector or officer of the local authority or specially authorized by warrant of a justice to search for explosives, and to seize and detain them if any offence has been committed. *Ibid.* ss. 73 and 75.

1276*a*. See as to the publication of bye-laws, *Ibid.* s. 84.

1277. As to the punishment of offences, *Ibid.* ss. 87—89.

1278. As to the punishment of persons for carrying explosives likely to endanger life or property, see the Explosives Substances Act, 1883 (c. 3).

1279. Where the owner or master of a ship or boat is prevented from complying with the act by the wilful act, neglect or default of the consignor or consignee of the explosive, or other person, or by the improper refusal of the consignee or other person, to accept delivery of the explosive, such person on such default, neglect or wilful act, shall be liable to the same penalty as the owner or master, and his conviction shall exempt the owner or master. See the Explosives Act, 1875 (c. 17), s. 88.

1280. As to the jurisdiction on tidal water or on boundaries, *Ibid.* ss. 89—96.

1281. The owner or master of any ship or boat, or any carrier or warehouseman, or person having charge of any carriage is not to be liable for any breach of this act if he proves that by reason of stress of weather, inevitable accident or other emergency, the doing of such act was necessary and proper under the circumstances. *Ibid.* s. 100.

1282. It shall be lawful for her Majesty, from time to time, by Order in Council, to define for the purposes of this act, the composition, quality and character of any explosive, and to classify explosives. *Ibid.* s. 106.

1283. See, for such classification and definition, Order in Council of 5th August, 1875.

1284. As to the powers of the Board of Trade to make bye-laws for the lower estuary of the Clyde, see the Explosives Act, 1875 (c. 17), s. 115.

1285. For provisions for the safe keeping of petroleum and other substances of

a like nature, see the Petroleum Act, 1871 (c. 105).

1286. As to the manufacture of nitro-glycerine and the prohibition of its exportation and importation without licence, see the Nitro-Glycerine Act, 1869 (c. 113).

1287. As to the notice to the harbour authority to be given by the shipowner carrying petroleum, and penalty for breach not exceeding £500, see the Petroleum Act, 1871 (c. 105), s. 5.

1288. The Petroleum Act, 1871, is amended as to the term petroleum, and the tests to be applied to it, by the Petroleum Act, 1879 (c. 47).

1289. The Queen's harbour master, or any person authorized in writing from the Admiralty, may, with proper assistants, enter any vessel in a dockyard port, and there search for gunpowder, shotted or loaded guns, fires, or lights or combustible substances had or suspected to be had on board in contravention of any Order in Council under this Act, and extinguish such fire or light. Penalty for obstructing him in the execution of this duty not exceeding £10. See the Dockyard Ports Regulation Act, 1865 (c. 125), s. 12.

1290. Her Majesty may, by Order in Council, make regulations in regard to gunpowder, loaded or shotted guns, tar, oil, or other combustible substances on board any vessel, in any dockyard port. *Ibid.* s. 5.

1291. The provisions of the M. S. Act, 1873 (c. 85), as to the carriage of dangerous goods (for which provisions see Nos. 1304—1309), are to be deemed to be in addition to any other enactment for the like object. See the act, s. 28.

1292. As to the carriage and discharge of gunpowder in the Gloucester and Berkeley Canal, see Bye-laws of the Company, confirmed 27th Jan. 1871, Nos. 29, 30, 31, 32, 34.

1293. For the regulations for Penarth Harbour Dock and Railway in regard to explosives made under the Explosives Act, 1865, see Bye-laws sanctioned by the Board of Trade of 3rd October, 1882, and 6th November, 1882.

1294. See also as to explosives, the

Bye-laws of the Penarth Harbour Dock and Railway Authorities, allowed 18th August, 1882, Nos. 23 and 26.*

1295. For provisions in regard to the discharge of gunpowder in the Tyne, see Bye-laws of the Tyne Improvement Commissioners, sanctioned 9th May, 1868, Clause 71.

1296. For provisions as to not shipping gunpowder within 250 yards of any of her Majesty's docks, magazines, wharves, &c. see Order in Council as to Chatham and Sheerness Dockyard Ports, of 29th Feb. 1868, No. 9.

1297. For provisions against any private vessel having loaded guns within the distance therein described from her Majesty's docks or dockyard property, or discharging them before sunrise, see *Ibid.* 28th Feb. 1868, No. 13.

1298. For provisions limiting the quantity of gunpowder which may be brought into Pembroke Harbour, and the place of deposit for the same, and the flags such vessels are to carry, see Order in Council for the regulation of the Dockyard Port of Pembroke, of 29th Feb. 1868, Nos. 8 and 9.

1299. For provisions limiting the quantity of gunpowder which may be brought into the harbour of Hamoaze by private vessels, and its place of deposit, see Order in Council for the regulation of the Dockyard Port of Plymouth, of 28th Feb. 1868, No. 15.

1300. For provisions with regard to vessels laden with gunpowder, and the discharge thereof, and as to shotted guns and the discharge thereof, see Order in Council for regulating the Dockyard Port of Portsmouth, of 29th Feb. 1868, Nos. 21 and 22.

1301. Her Majesty may, by Order in Council, declare that any of the provisions of the M. S. Acts, 1854 to 1876, or any amending act thereafter to be passed, shall apply to the ships of such foreign countries as shall have signified their desire to adopt such provisions. See the M. S. Act, 1876 (c. 80), ss. 37 and 38.

1302. As to coal cargoes and their ventilation, see notes, Nos. 425—431.†

* (425) For provisions within the Pill district of port of Milford Haven as to gunpowder and other combustible goods, and penalty for breach £10, see 30 Geo. 3, c. 55, s. 9.

† (425a) Surface ventilators for coal-laden ships, whether placed on the upper deck,

poop or fore-castle, should be made entirely of wrought iron, as indicated in the sketches in the instructions. See Board of Trade Instructions to Surveyors, Surface Ventilation of Coal Cargoes, July, 1882, M. 17,385—1882, No. 1.

(426) These ventilators should be fitted

1303. For Orders in Council under the Explosives Act, 1875, see 2 Maude & Pollock (4th ed. by Poll. & Bruce), pp. 25—29.*

with cowls. The lower edge of the bell mouth or aperture of the cowl should not be less than six feet from the deck, to which the angles marked C in the sketch are attached. See Board of Trade Instructions to Surveyors, Surface Ventilation of Coal Cargoes, July, 1882, M. 17,385—1882, No. 2.

(427) In cases where they are attached to the weather deck alongside a raised fore-castle, poop or bridge-house, the lower edge of the cowl should be six feet above these erections, and the cowl supported by stays. *Ibid.* No. 3.

(428) The openings for ventilators in the upper deck, poops or forecastles should be fitted with frames or lids, such as are now used for coal bunker openings in upper decks; the lids, when not in use, being stowed on edge or some other suitable way inside the ventilators, and secured by lashings or light iron angles. *Ibid.* No. 4.

(429) In vessels with more than one deck substantial wrought iron pipes should be led from the ventilators on the upper deck, poop or fore-castle to the compartments in which the iron is stowed. *Ibid.* No. 5.

(430) Masters and owners of ships carrying coal should be warned of the fact that gas from the holds or tween decks may find its way into the fore-castle and cabins, and that it is therefore essential that the bulk-heads between those compartments should be gas-tight, and of the caution necessary before introducing naked lights into those places. *Ibid.* No. 9; and further Board of Trade Instructions, May, 1885, M. 7,786—1885.

(431) See also report of the Royal Commissioners appointed to inquire into the spontaneous combustion of coal in ships, 18th July, 1876, set out in the Appendix to Board of Trade Instructions to Principal Officers (carriage of explosives on board ship), Aug. 1877, Consecutive Office, No. 118; and report of the court upon official inquiry held in the case of the explosion on board the steamer *Levant*; and report of the Wreck Commissioners upon the official inquiry held in the case of the burning and abandonment of the steamer *Amadine*, both set out in the same Appendix.

* (432) For the proclamation of 18th April, 1878, prohibiting certain dangerous goods from being imported or carried coastwise, see 14 Hertslet's Collection of Treaties, p. 760.

(433) As to the practice of carrying dangerous acids or inflammable liquids on the decks of ships also loaded with gunpowder or explosives, and the instructions given by the Board of Trade to their detaining officers to detain such ships as unsafe under the M. S. Act, 1876, unless due care is exercised in packing such inflammable fluids, such as naphtha, ether, benzoline, &c. on deck where they can easily be thrown overboard in case of necessity, see Board of Trade Instructions

to Detaining Officers, Dec. 1882, Consecutive Office, No. 211.

(433a) And as to the carriage of liquified carbonic acid, see Board of Trade Notice to Owners and Masters, M. 5372—1884.

(434) For provisions as to shipping inflammable materials, see Revised Statutes of U. S. ss. 4288-9. [AMERICAN.]

(435) For provisions regulating the transportation of nitro-glycerine, *Ibid.* tit. XLVIII. c. 6, ss. 4278-80. [AMERICAN.]

(436) The provisions contained in s. 29 of the Passengers Act, 1855, as added to by ss. 3, 33, 34, 42, 58, 98, and 101, of the Explosives Substances Act, 1875, prohibit the carriage of dangerous goods and combustibles on board emigrant ships. See Board of Trade Circular as to Carriage of Explosives in Ships, No. 100—867—36, Feb. 1877, p. 12.

(437) The officers of the Board of Trade are not to occupy themselves in carrying into effect the provisions of the Explosives Substances Act, excepting that if they find in emigrant ships coming under their survey in due course any combustibles or explosives, or other prohibited articles, they should report to the Board of Trade, and the ship should be detained, if necessary, pending instructions. *Ibid.*

(438) If, also, in any case the principal officer is specially applied to to detain provisionally, under s. 6 of the M. S. Act, 1876, a ship as unsafe on account of improper loading of her cargo, and that ship has on board as cargo any gunpowder or other explosives, he should be guided by the following general instructions:—He need not detain any such ship provided the explosives, being packed as required by s. 33 of the Explosives Substances Act, 1875 (c. 17), and by the order of the secretary of state, are enclosed in a substantial compartment of double boards with an intermediate lining of felt, and free from all exposed iron in the interior thereof, and exclusively appropriated to the stowage of explosives—if such compartment is not provided the officer must satisfy himself that the explosives are “otherwise,” and by careful stowage, secured from contact with or danger from any other article or substance carried as cargo on board the ship. It is understood throughout that explosives are not to be placed in the same part of the ship as coals, combustibles, spirits, or other inflammable goods. *Ibid.*

(439) The attention of officers stationed at other than the London district is called to these last two bye-laws as to the securing and isolation of explosives. See the Board of Trade Instructions to Principal Officers, dated Feb. 1877.

(440) In any ship carrying any quantity of explosives beyond 300 lbs. for the ship's own use, and in any boat carrying explosives, due precautions shall be taken by

2. *Marking and Notice.*(a) *Generally.**

1304. If any person sends or attempts to send, or not being the master or owner of the vessel carries or attempts to carry in any vessel, British or foreign, any dangerous goods, *i. e.*, aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine, petroleum, or any other goods of a dangerous nature, without distinctly marking their nature on the outside of the package containing the same, and giving written notice of the nature of such goods and of the name and address of the sender or carrier to the master or owner of the vessel at or before shipment, penalty not exceeding £100. If he shows he was merely an agent in the shipment, and not aware, and had no reason to suspect they were dangerous, the penalty is not to exceed £10. See M. S. Act, 1873 (c. 85), s. 23.

(b) *Throwing Overboard.*

1305. Where any such goods, or any goods which, in the judgment of the master or owner, are of a dangerous nature, have been brought aboard any such vessel, without being so marked, or

without such notice, the master or owner may cause the goods and package containing them to be thrown overboard, without being subject to any liability in respect thereof. *Ibid.* s. 26.

3. *False Description.*

1306. Penalty for sending or carrying them under a false description, or for falsely describing the sender or carrier, not exceeding £500. *Ibid.* s. 24.

4. *Refusal to carry.*

1307. The master or owner may refuse to take on board any package he suspects to contain such goods, and require it to be opened to ascertain the fact. *Ibid.* s. 25.

5. *Forfeiture.*(a) *Generally.*

1308. Where any dangerous goods have been attempted to be sent or carried on board any vessel, British or foreign, without having been marked or without the notice as before mentioned, and where any such goods have been attempted to be sent or carried, under a false description, or the sender or carrier has been falsely described, any court having Admi-

means of a bulkhead or partition, or otherwise, and by careful stowing to secure the explosive carried from being brought into contact with, or endangered by, any other article or substance conveyed in such ship or boat which is liable to cause fire or explosion. Bye-laws of Thames Conservancy Board of the 20th Nov. 1876, sanctioned by the Board of Trade, 22nd Nov. 1876, and set out in 2 Maude & Poll. (4th ed. by Poll. & Bruce), pp. 455—460, par. 38.

(441) Ships shall not carry more than 1,000 lbs. of any explosive (other than explosives of the first division of the sixth (ammunition) class, prescribed in Order in Council of 5th Aug. 1875), at the same time with any naphtha, paraffin, petroleum, or other volatile oil, and such naphtha, paraffin, petroleum, or other volatile oil shall not be used for any purpose, or on any pretence whatever, in a ship carrying more than 1,000 lbs. of any explosive, other than explosives of the first division of the sixth (ammunition) class, whilst such ship is in the river Thames within the jurisdiction of the conservators. *Ibid.* par. 49.

(442) Appendix (A) to the Circular No. 100 contains the order of the secretary of state made under the Explosives Act, 1875. The order contains instructions as to the mode of packing the various classes of explosives

enumerated in the Order in Council of 5th Aug. 1875.

(443) Surveyors, before granting clearances for emigrant ships or declarations for passenger steamers, should, in all cases, see that a separate, detached and completely-enclosed receptacle is provided for each of the following descriptions of explosives:—(1) Gunpowder and cannon cartridges made with gunpowder; (2) rockets; (3) rocket signals; (4) blue lights; (5) Holmes' lights. These separate receptacles should not be made merely by divisions or partitions in a cupboard or locker or chest, but must be separate magazines exclusively appropriated to the keeping of the explosives. They should, where possible, be kept, in a house on deck. No article of an explosive or inflammable character shall be carried in any room or place in which any receptacle containing explosives is deposited. The attention of masters of vessels should be called to this instruction. See Board of Trade Instructions to Surveyors, Stowage of Signals of Distress, Dec. 1884, M. 18,055—1884.

* (444) It has been ruled by the Board of Trade that bleaching powder comes within the definition of dangerous goods, under s. 23 of the M. S. Act, 1873. Note to Board of Trade Instructions to Principal Officers, Circular No. 100—867—36, dated Feb. 1877.

rally jurisdiction may declare the goods, and the package containing them, forfeited, and when forfeited they shall be disposed of as the court directs. See M. S. Act, 1873 (c. 85), s. 27.

(b) *Jurisdiction.*

1309. See No. 1308, *supra*.

1310. The court may exercise these powers notwithstanding the owner has not committed any offence under the provisions of this act, and is not before the court, and has not notice of the proceedings, and notwithstanding there is no evidence to show to whom the goods belong. The court may, in its discretion, require such notice as it may direct to be given to the owner or shipper of the goods before the same are forfeited. *Ibid*.

6. *In Passenger Ships.*

1311. See Pt. IV. c. 31, p. 1297.

7. *In the Thames.*

1312. As to the bye-laws for the regulation of the carriage of explosive substances on the river Thames and its tributaries, made under the authority of the Explosives Act, 1875 (c. 17), see the Thames Conservancy Bye-laws of the 24th January and 20th November, 1876, sanctioned by the Board of Trade 26th January and 22nd November, 1876. See for these Bye-laws, 2 Maude & Poll. (4th ed. by Poll. & Bruce), pp. cccliv—ccclx, and the Bye-laws of the 22nd October, 1880, and 7th November, 1881.

8. *In the Mersey.*

1313. For provisions in regard to gun-

powder and other dangerous goods in the Mersey, see the Mersey Dock Acts Consolidation Act, 1858, c. 92, (L. & P.) sects. 215 to 220, and the Bye-laws made thereunder.

1314. For provisions as to the conveyance, loading, and unloading of explosive substances, see bye-laws of the Mersey Docks and Harbour Board made under the Explosives Act, 1875, c. 17, and approved by the Board of Trade 12th and 26th July, 1877, and 10th May, 1878.

1315. For provisions as to petroleum made under the Petroleum Act, 1871, see bye-laws of the Mersey Docks and Harbour Board, approved by the Board of Trade the 19th June, 1878, and resolutions of the Mersey Board of the 3rd October, 1878.

5. *Service of Documents.*

1316. See Pt. II. Nos. 650—653, p. 1253.

Part VI.—EXEMPTIONS FROM AND LIMITATION OF LIABILITY OF SHIPOWNERS.

1. *Exemptions.*

1. *Fire.**

1317. No owner of any seagoing ship or share therein shall be liable to make good any loss or damage happening without his actual fault or privity to any goods, merchandise, or other things on board any ship, by reason of fire happening on

* (445) It would seem that this exemption is confined to British ships, the provisions of the M. S. Act Amendment Act, 1862 (c. 63), ss. 54—64, not being applicable thereto.

(446) The former statutes on this head are 7 Geo. 2, c. 15; 26 Geo. 3, c. 86; 53 Geo. 3, c. 159. They are repealed by the M. S. Repeal Act, 1854 (c. 120).

(447) See also the exemption from responsibility in case of fire usually inserted in bills of lading.

(448) The immunity from loss by fire does not protect against losses arising from a fire on board a lighter engaged in transporting cargo from a vessel, which would itself be within the statute. Mayne on Damages (4th ed.), p. 291.

(449) The 26 Geo. 3, c. 86, s. 2 (now repealed), which exempted shipowners from

liability for loss or damages to goods on board ship by fire, did not apply to goods on board a lighter employed in carrying goods from the shore to be loaded on board ship. *Morewood v. Pollok*, 1 El. & Bl. 743; 17 Jur. 881; 22 L. J. Q. B. 250; 21 L. T. 87. See also *Hunter v. McGowan*, 1 Bligh, 573.

(450) When a loss by embezzlement, collision, or otherwise is suffered by several freighters, and the value of the vessel and freight is not sufficient to satisfy all claims, a general average contribution is to be made. See Revised Statutes of U. S. s. 4284. [AMERICAN.]

(451) It is a sufficient compliance with this provision if the owner transfers his interest to a trustee appointed by a competent court for the benefit of the claimants. *Ibid*. s. 4285.

board. See M. S. Act, 1854 (c. 104), s. 503.

1318. A carrier by sea under a bill of lading of goods "to be delivered in the like good order, &c., at the port of, &c., unto A. or his assigns, on paying for the goods, freight, and charges, as per margin, with primage and average accustomed," is not entitled, immediately on the arrival of the vessel, and without notice to the owner, to land the goods. *Bourne v. Gatliff* (in error), 11 Cl. & Fin. 45; 8 Scott, N. R. 604; 7 M. & G. 850.

1319. If he should land them, and they should be destroyed by fire, he will be answerable to the owner for the loss. *Ibid.*

1320. Carriers for hire of goods in Scotland are liable for losses from accidental fire. See Mercantile Law Amendment Act (Scotland), 1856 (c. 60), s. 17.

2. Robbery or Embezzlement of Gold, Silver or Jewels.

1321. No owner of any seagoing ship or share therein shall be liable to make good any loss or damage happening without his actual fault or privity to any gold, silver, diamonds, watches, jewels, or precious stones on board any such ship, by reason of any robbery, embezzlement, making away with or secreting of them, unless the owner or shipper has, at the time of shipping them, inserted in his bills of lading or otherwise declared in writing to the master or owner of the ship the true nature and value of such articles. See M. S. Act, 1854 (c. 104), s. 503.

1322. The exceptions "act of God, Queen's enemies, pirates, robbers, fire, accidents from machinery, boilers and steam, the dangers of the seas, roads and rivers, of what nature and kind soever excepted," do not include, where the carriage is partly by land and partly by sea, theft. *De Rothschild v. Royal Mail Steam Packet Co.*, 21 L. J. Exch. 273; 7 Exch. 734.

1323. The word "robbers" implies violence, and "dangers of roads" means danger caused directly by the bad condition of roads. *Ibid.*

1324. The word "thieves," when amongst the excepted perils of a bill of lading, applies, as in policies of insurance, to thieves outside the vessel, and not to passengers or the crew. *Taylor v. Liverpool and Great Western Rail. Co.*, L. R. 9 Q. B. 546; 43 L. J. Q. B. 205; 2 Asp. N.S. 275.

1325. Where goods have been stolen on board it lies upon the shipowner to prove that the loss comes within the exception. *Ibid.*

1326. A bill of lading contained the exception "the shipowner is not to be liable for any damage to any goods capable of being covered by insurance." *Held*, that the word damage did not apply to the entire abstraction of the goods. *Ibid.*

1327. The master of a general ship, on board of which goods have been laden in the Thames for a foreign port, is liable for the loss of the goods occasioned by a forcible robbery while the ship is lying in the river. *Barclay v. Y'Gana*, 3 Dougl. 389.

1328. Robbery by strangers in concert with one of the crew, *held* within the provisions of 7 Geo. 2, c. 15, now repealed. *Sutton v. Mitchell*, 1 T. R. 18.

1329. The "nature and value" *held* (under the Merchant Shipping Act, 1854) not sufficiently declared by the description, "one box containing about 244 ounces of gold dust." *Williams v. The African Steam Ship Co.*, 1 H. & N. 300; 2 Jur. N.S. 693; 26 L. J. 69.

1330. Nor (under 26 Geo. 3, c. 86, now repealed) by the description "1338 hard dollars." *Gibbs v. Potter*, 10 M. & W. 70.

1331. *Quare*, would the 26 Geo. 3, c. 86, apply to a shipment at a foreign port not made for a port of this country? *Ibid.*

1332. As to what is sufficient notice of special terms limiting the common law liability of carriers, see *Stevenson v. Henderson*, Cases in the Court of Session, 4th series, vol. 1, p. 215; *ibid.* vol. 2 (H. L.), p. 71. [SCOTCH.]

3. Barratry.

1333. See tit. MARINE INSURANCE, p. 1038.

4. Acts of Harbour Masters.

1334. As to exemptions from liability in respect of acts of harbour masters under their local acts and generally, see tit. OWNERS, Pt. II. c. 6, p. 1233.

5. Compulsory Pilotage.

1335. As to exemptions from liability for acts of pilot taken by compulsion of law, see *Ibid.* Pt. VII. p. 1349.

2. Limitation under Merchant Shipping Acts.

1. Generally.*

1336. The ninth part of this act (as to the liability of shipowners) applies to the whole of her Majesty's dominions. See the M. S. Act, 1854 (c. 104), s. 502.

1337. The owners of any ship, whether British or foreign, shall not, in cases where all or any of the following events occur without their actual fault or privity, that is to say:—

- (1) Where any loss of life or personal injury is caused to any person being carried in such ship :
- (2) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship :
- (3) Where any loss of life or personal injury is by reason of the improper navigation of such ship as aforesaid caused to any person carried in any other ship or boat :

* (452) At common law (independently of statute law) owners are answerable for damage occasioned by the negligence of the master or crew in the course of their lawful employment, to the full extent of the injury sustained in ship, goods or person; and if the injured person die by the accident, his family and relations are entitled by statute (9 & 10 Vict. c. 93) to maintain an action for the loss suffered by them in consequence. Maclachlan on Merchant Shipping, 3rd ed. p. 117.

(453) In cases of collision the ancient general maritime law enacted a full compensation out of all the property of the owners of the guilty ship, upon the common principle, applying to persons undertaking the conveyance of goods, that they were answerable for the conduct of the persons whom they employed, and of whom the other parties, who suffered damage, knew nothing, and over whom they had no control. *The Dundee*, 1 Hagg. 109; *The Girolamo*, 3 Hagg. 186; *The Clara*, 2 Jur. N.S. 46; Swabey, 1; 26 L. T. 165; *The Wild Ranger*, 7 L. T. N.S. 725; 32 L. J. Adm. 56; 1 N. R. 32; 11 W. R. 255.

(454) But Holland first introduced a limitation of the responsibility of owners to the value of the property of their own which they placed at hazard. England followed in successive statutes, and by the 53 Geo. 3, c. 159, subjected the ship, tackle, apparel and furniture, and its appurtenances and freight, to contribution in cases of collision. *The Dundee*, 1 Hagg. 109.

(455) As to similar provisions of European codes for the limitation of owners' responsi-

(4) Where any loss or damage is by reason of the improper navigation of such ship as aforesaid caused to any other ship or boat, or to any goods, merchandise, or other things whatsoever on board any other ship or boat;

be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise, or other things, to an aggregate amount exceeding fifteen pounds for each ton of their ship's tonnage; nor in respect of loss or damage to ships, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, to an aggregate amount exceeding eight pounds for each ton of the ship's tonnage; such tonnage to be the registered tonnage in the case of sailing ships, and in the case of steam ships the gross tonnage without deduction on account of engine room. M. S. Act Amendment Act, 1862 (c. 63), s. 54.†

bility to the value of the ship, or their shares therein, see *The Consolato del Mare*, the *Hanseatic*, *French*, *Rotterdam* and *Hamburgh Ordinances*, cited in Maclachlan on Merchant Shipping, 3rd ed. p. 118.

(456) By these ordinances, the surrender of ship and freight enures to the relief of the owner from all liabilities in respect thereof. The French law of 14th June, 1841, is particularly explicit in this respect. *Ibid.* pp. 119, 120.

(457) By the American Act of 3rd March, 1851 (c. 43), ss. 3 and 4 of 9 Statutes at Large, 635, the liability of the shipowner for loss or damage occasioned by collision, &c., "without the privity or knowledge of such owner," is limited to "the amount or value of the interest of such owner in such ship or vessel, and her freight then pending." The language of this act, and of the English Act of 53 Geo. 3, c. 159, seems to be essentially equivalent in import. 1 Conkling's Adm. Prac. (2nd ed.) pp. 245, 372. [AMERICAN.]

(458) By the general maritime law of Europe the liability of the owners for the master's obligations *ex delicto* is limited to the amount of their interest in the ship and cargo, and by abandoning these they are discharged from all personal responsibility. *Stinson v. Wyman*, Davis, 172. [AMERICAN.]

(459) By the laws of Spain and of Massachusetts, the liability of the owners for the acts of the master is limited to the value of the vessel and her freight. *Pope v. Nickerson*, 3 Story, 465. [AMERICAN.]

† (460) The description "seagoing" of the ships to which the statutory limitation applied in s. 504 of the M. S. Act, 1854, is

1338. Insurances effected against any or all of the events enumerated in the last section, and occurring without such actual fault or privity as therein mentioned, are not invalid by reason of the nature of the risk. *Ibid.* s. 55.

1339. If any of the events mentioned in sub-ss. 1, 2, 3 and 4 of s. 54 of the M. S. Act Amendment Act, 1862 (for which see No. 1337, *supra*), should occur in relation to any passenger ferry steamer of the corporation whilst plying to or from Woodside and Liverpool during fog, such event shall for the purposes of that section or any other statutory modification thereof for the time being in force, so far only as regards the plying of any such passenger ferry steamers during fog be deemed to have occurred without the actual fault or privity of the corporation. See the Birkenhead Corporation Act, 1881 (c. clix.), s. 231.

1340. If defendants in an action of collision desire to claim limitation of liability they must claim it by their pleadings. *Walberg v. Young*, 45 L. J. C. L. 783; 4 Asp. 27, n; 24 W. R. 847.

1341. A railway company, carrying passengers and goods partly by railway and partly by their own ships, is entitled to the limitation of liability of shipowners imposed by the M. S. Acts. A railway company, known to be also shipowners, contracted to carry passengers from L. to G. The passengers and goods were taken by rail from L. to S., and were there put on board a ship which belonged to the company. The ship, on her way to G. came into collision with another ship, and sank with several of the passengers and all the goods. Actions were brought against the company by surviving passengers for loss of luggage and delay, by shippers of goods for loss of goods, and by the administrators of lost passengers for damages. *Held*, on appeal, that as to all the damages, except those as to delay, the liability of the company was, by the

M. S. Acts, limited to the amount of £15 a ton on the tonnage of the ship; that the amount so payable should be distributed by the Court of Chancery, and that all the actions against the railway company (except those for delay), should be restrained. *L. & S. W. R. Co. v. James*, L. R. 8 Eq. 241; 42 L. J. Ch. App. 337; 1 Asp. N.S. 526.

1342. The limit of liability of the owner "in respect of loss of life or personal injury caused by the improper navigation of his ship to persons carried in another ship," extends to the crew of such other ship as well as to other persons carried therein. *Glaholm v. Barker*, L. R. 2 Eq. 598; 1 Ch. 223; 11 Jur. N.S. 434; 43 L. J. Ch. 533; 13 W. R. 671; 12 L. T. N.S. 317.

1343. Where the owner of a vessel, which has wrongfully occasioned the loss of some of the crew of another vessel, institutes proceedings for limiting his liability, the damages sustained by the families of the deceased seamen are to be ascertained as if the liability were unlimited; and, if they exceed the statutory liability, then the whole amount of that liability is to be distributed rateably among them. *Ibid.*

1344. The statutory limit of £30 as the amount of damages payable in respect of each family by sect. 510 of the Act of 1854, applies only to damages assessed under inquiries instituted by the Board of Trade. *Ibid.*

1345. Actions at law were brought under Lord Campbell's Act, 1846 (c. 93), against shipowners to obtain compensation for the deaths of certain seamen in a collision. The shipowners filed a bill praying an injunction to restrain the actions and a direction that the amount of their liability might be ascertained. It was contended on behalf of the shipowners that, under the M. S. Acts, 1854 and 1862, they were not liable to any action, or that their liability was limited to £8 per ton. *Held*, that the actions must be allowed to

omitted in s. 54 of the M. S. Act Amendment Act, 1862. The latter act will, therefore, apply to river vessels as well as to seagoing vessels.

(461) The benefit of the American Act of 1851 extends to foreigners. *Levinson v. Oceanic Steam Nav. Co.*, 17 Alb. L. J. 285. [AMERICAN.]

(461a) Parties to obtain such limitation must take the proceedings provided for by that act for having the amount of their liability determined, or must transfer their interest in the vessel and freight, so long as

there is anything left to transfer, as required by the act. *Dyer v. The National Steamship Co.*, 4 Asp. 26. [AMERICAN.]

(462) As to the limitation of liability of the owner for loss by collision or otherwise, to the value of his interest in such vessel and her freight then pending, see Revised Stat. of U. S. s. 4283. [AMERICAN.]

(463) A charterer who mans, victuals, and navigates a vessel at his own expense, is to be deemed the owner for purposes of limiting liability. *Ibid.* 4286.

proceed, and that the liability of the shipowners was limited to £15 per ton. *Glaholm v. Barker*, L. R. 2 Eq. 598; 1 Ch. 223; 11 Jur. N.S. 434; 34 L. J. Ch. 533; 13 W. R. 671; 12 L. T. N.S. 317; 2 Asp. 200; *Ibid.* on appeal, 298; 34 Beav. 305.

1346. The owner of every seagoing ship or share therein is liable in respect of every such loss of life, personal injury, loss or damage to goods on distinct occasions to the same extent as if no other loss, injury, or damage had arisen. See the M. S. Act, 1854 (c. 104), s. 506.

1347. The ship R. came into collision with the ship W. D. and then with the A. which was about to take the W. D. in tow. *Held*, one collision, and that the owners of the R. were not liable beyond £8 per ton of her tonnage. *The Rajah*, 41 L. J. Adm. 97; L. R. 3 A. & E. 539; 1 Asp. N.S. 403.

1348. A collision occurred between the vessels E. and G., through the improper navigation of the G. The E. was severely damaged by the collision, and shortly afterwards her fore and mainmasts went by the board. The wind also increased, and the next day she was driven on shore and several of the crew were lost. *Held*, in an action for limitation of liability by the owners of the G., that the loss of life was the natural and proximate consequence of the collision, and that the owners of the G. were liable to the extent of £15 for each ton of the vessel's tonnage. *The George and Richard*, L. R. 3 A. & E. 466; 1 Asp. N.S. 50.

1349. The words "improper navigation" in the M. S. Act Amendment Act, 1862 (c. 63), s. 54, sub-s. 4, are not to be restricted to the negligent navigation of a vessel by her master and crew, for the statute includes all damage wrongfully done by a ship to another whilst it is being navigated, where the wrongful act is due to the negligence of a person for whom the owner is responsible. Therefore, where a vessel, owing to the negligence of a person on shore in overlooking the machinery, steered so badly that she came into collision with another vessel, *held*, that her owners were entitled to bring an action for limitation of liability. Decision affirmed on appeal. *The Warkworth*, 9 P. D. 145.

1350. If by reason of the improper navigation of a tug, whilst towing another vessel, damage is done to such other vessel, the owners of the tug are entitled

to claim a limitation of their liability, although such damage occurred through a breach of the towing contract. *Walberg v. Young*, 45 L. J. C. L. 783; 4 Asp. 127, n.

1351. If the damage resulted from a mere breach of the towing contract, the owners of the tug would not be entitled to claim a limitation of liability. Per Brett, L. J. *Ibid.*

1352. Where a tug is employed to tow a ship which is in charge of a pilot by compulsion of law, the exemption from liability given to the owners of the ship for damage arising in consequence of obedience to the pilot's orders by s. 388 of the M. S. Act, 1854 (c. 104), does not extend to the owners of the tug for damage done by the tug, whether from acting in obedience to the pilot's orders or in the absence of any orders. (*The Ticonderoga*, followed). *The Mary*, 4 Asp. 183.

1353. The payment of £8 per ton by way of limitation of liability prevents the shipowner from being answerable in damages for a greater amount, but it does not put him into the position of an innocent person. *The Ettrick*, 6 P. D. 127; 40 L. T. 399; affirming, 50 L. J. P. D. 65; 44 L. T. 817; sub nom. *Prehn v. Bailey*, 4 Asp. 428; *Ibid.* 465.

1354. The owner of a ship sunk by a collision in the Thames admitted it to be his fault and paid into court £8 per ton to limit his liability. The Thames Conservancy, having powers under the Removal of Wrecks Act, 1877 (c. 16), and the Thames Conservancy Acts, raised the ship and delivered the ship and cargo to the owner, he undertaking to pay the expenses of raising. Part of the cargo was wool, which was damaged by being sunk. *Held*, that the shipowner was bound to deliver the wool to the owner of it without claiming from him by way of contribution to salvage any part of the expenses of raising the ship and cargo. *Ibid.*

1355. A vessel arrested in a cause of damage by collision was released on payment into court of the amount to which the liability of her owners was limited by statute, and a sum to cover interest and costs. Subsequently her owners instituted a cause of limitation of liability, and moved the court to order that the sum paid in be transferred to the credit of the limitation of liability suit. *Held*, that it was unnecessary to make such an order. *The Sisters*, 1 P. D. 281.

1356. In any proceeding under the 506th section of the M. S. Act, 1854, against the owner of any ship or share therein in respect of loss of life, the master's list or the duplicate list of passengers delivered to the proper officer of customs under the 16th section of "the Passengers Act, 1855," shall, in the absence of proof to the contrary, be sufficient proof that the persons in respect of whose death any such proceeding is instituted were passengers on board at the time of their deaths. See M. S. Act Amendment Act, 1862 (c. 63), s. 56.

1356a. As to the limitation of liability under repealed statutes, see c. 3, s. 1, p. 1347.

2. The Crown.*

3. Foreign Ships.†

1357. The limitation of liability granted to British ships by the M. S. Act, 1854 (c. 104), is extended to foreign ships. See M. S. Act Amendment Act, 1862 (c. 63), s. 54.

1358. The benefit of limited liability conferred by the 54th section of the M. S. Act Amendment Act, 1862, can be claimed by any vessel, whether British or foreign, and whether the place of the collision is within or without British jurisdiction. *The Amalia*, 2 N. R. 462; 1 Moore, P. C. C. N.S. 471; 1 Lush. 191; Br. & L. P. C. 151; 1 Asp. 259; 8 L. T. N.S. 805; 32 L. J. N.S. Adm. 191; 12 W. R. 24; 9 Jur. N.S. 1111. See also *The Albert*, 3 N. R. 217.

1359. The cases suggested in *Cope v. Doherty*, 4 K. & J. 381, and *General Iron Screw Collier Company v. Schurmanns*, 1 J. & H. 180, are expressly provided for by this act. *Ibid.*

1360. As to the calculation of tonnage of foreign ships, see s. 9, p. 1345; and Pt. I. c. 3, p. 1188.

1361. As to proceedings for limiting liability of foreign ships, see s. 9, p. 1342.

4. As affected by Bail.

1362. *Semble*, in cases of collision when the ship is bailed any number of actions may be commenced and prosecuted in the Court of Admiralty, unless recourse is had to the foregoing provisions for limiting liability. *The Clara*, Swabey, 7; 2 Jur. N.S. 46; 26 L. T. 165. See also *The Cumberland*, 6 Ir. Jur. N.S. 325; 5 L. T. N.S. 496; *The Tuscarora*, 6th Feb. 1858; *The Wild Ranger*, 7 L. T. N.S. 725.

1363. The statutory limitation to the liability of shipowners is not affected by their giving bail in a larger sum than they are liable for under the statute. *The Richmond*, 3 Hagg. 431; *The Meltona*, 3 W. Rob. 23; 6 Notes of Cases, 72; *The Duchesse de Brabant*, Swabey, 264.

5. Board of Trade Enquiries.‡

1364. Whenever any such liability is alleged to have been incurred in respect of loss of life or personal injury, the Board

* (464) In an action in which the Lords of the Admiralty sued a shipowner for negligence by his servants in the navigation of the ship, whereby the ship and government stores on board were sunk and lost, and judgment was given for the plaintiff, a question was raised whether the government was bound by the clauses of the M. S. Act Amendment Act, 1862, as to the limitation of damage to £8 per ton, and the point was reserved. On this point coming on to be argued, the attorney-general stated that their lordships had, after consideration, come to the conclusion that it would not be fitting, as they were constantly entering into contracts with shipowners, that they, as against a party who had entered into a contract with them, should raise the question whether the crown was bound by the act referred to, which applied to contracts between subjects, and therefore they were content to take a verdict to the extent of £8 per ton in accordance with the act. A verdict was accordingly, by consent,

entered for the crown against the shipowner. *The Lords of the Admiralty v. Temperley*, 21 Jan. 1881.

† (465) The repealed statutes were held not to apply to foreign ships; but these have now the same benefit of limited liability as British ships. See Nos. 1357—1360, *supra*.

(466) For the old cases hereon under the repealed statutes, see *The Dundee*, 1 Hagg. 113; *The Girolamo*, 3 Hagg. 187; *The Carl Johann*, cited therein, *ibid.*; *The Wild Ranger*, 7 L. T. N.S. 725; 32 L. J. Adm. 56; 1 N. R. 32; 9 Jur. N.S. 134; 11 W. R. 255; *General Iron Screw Collier Co. v. Schurmanns*, 4 L. T. N.S. 138; 29 L. J. Ch. 883; 1 Johns. & H. 180; 6 Jur. N.S. 883; 8 W. R. 732; *Cope v. Doherty*, 4 Kay & J. 367; 31 L. T. 173, 307; 4 Jur. N.S. 451, 699; 27 L. J. Ch. 600; 2 De G. & J. 614.

‡ (467) It is believed that these sections (507—511) have seldom or never been acted upon. See 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. cxlix. note.

of Trade may, after giving not less than three days' notice, by post or otherwise, to the party to be made defendant or defender, by warrant under seal of the Board or signed by one of its secretaries or assistant-secretaries, require the sheriff having jurisdiction over any place in the United Kingdom to summon a jury at a time and place to be specified in the warrant for determining the number, names, and descriptions of all persons so killed or injured; and on the receipt of the warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at such time and place. See M. S. Act, 1854 (c. 104), s. 507.

1365. If either party to the inquiry desire such question to be tried before a special jury, it shall be so tried, provided that notice of such desire, if coming from the other party, is given to the Board of Trade before it has issued its warrant to the sheriff; and for that purpose the Board of Trade shall, by its warrant to the sheriff, require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him by themselves or their attorneys or agents at some convenient time and place appointed by him for the purpose of nominating a special jury; and at the time and place so appointed the sheriff shall proceed to nominate and strike a special jury in the manner in which such juries are required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts; and the sheriff shall appoint a day, and shall on the day so appointed proceed to reduce the special jury to the number of twenty, in the manner used by the proper officers of the superior courts. *Ibid.* s. 508.

1366. The sheriff shall preside at the inquiry, and the Board of Trade shall be deemed in England and Ireland to be the plaintiff, and in Scotland the pursuer, hereinafter called plaintiff, with power to appoint any agent to act on his behalf, and shall have all such rights and privileges as the plaintiff is entitled to in actions at law; and the owner or owners of the ship or ships by whom such liability is alleged to have been incurred shall be deemed in England and Ireland to be the defendant, and in Scotland the defender, hereinafter called defendant. *Ibid.* s. 509.

1367. Not less than ten days' notice of the time and place of the inquiry shall be served by the Board of Trade on the defendant. *Ibid.*

1368. Service on the master of any ship shall be deemed good service on the owner thereof, and the master shall, in respect of the proceedings on such inquiry, be deemed the agent and representative of the owner, with power to appear for him on such inquiry, and to do all things he might himself have done. *Ibid.*

1369. If the defendant does not appear on the inquiry, it shall be proceeded with as if he had appeared, on due proof of service of notice on him in pursuance of this act. *Ibid.*

1370. The empannelling of the jury and the summoning and attendance of witnesses shall be conducted and enforced in England and Ireland as provided by the Lands Clauses Consolidation Act, 1845 (c. 18), in cases of disputed compensation as to land, and in Scotland as provided by the Lands Clauses Consolidation (Scotland) Act, 1845 (c. 16), in like cases, or as near thereto as circumstances permit; and all provisions in those acts having reference to cases where any question of disputed compensation requires to be determined by the verdict of a jury shall, with the requisite alterations, be considered as incorporated with this act, and to have reference to cases where the question of the liability of any owner in respect of any such accident is required to be determined by the verdict of a jury. *Ibid.*

1371. In England and Ireland the sheriff shall, if the Board of Trade so requires, or if the defendant so requires and the Board of Trade consents thereto, appoint as assessor a barrister-at-law of competent knowledge and standing. *Ibid.*

1372. The costs incurred by all parties in and incidental to any such inquiry shall in England and Ireland be taxed by the master of one of the superior courts of common law as between attorney and client, and in Scotland by the auditor of the Court of Session as between agent and client; and shall, if the verdict in any inquiry is in favour of the plaintiff, be paid by the defendant, but if in favour of the defendant, be paid by the Board of Trade out of the Mercantile Marine Fund. *Ibid.*

1373. The payment of all damages and costs in any such inquiry shall, upon application to such superior court by the

party entitled thereto, be enforced by rule or order of such court or judge, or otherwise as he thinks fit. *Ibid.*

1374. The Board of Trade may make any compromise as to the damages in respect of personal injury, or of the death of any person; and any damages received in pursuance of such compromise shall, so far as they extend, be applied in the same manner, and be subject to the same rules, as if they were damages recovered on an inquiry instituted by the Board of Trade. *Ibid.*

1375. In any such inquiry the damages payable in each case of death or injury shall be assessed at £30. *Ibid.* s. 510.

1376. The damages found due on any such inquiry shall be the first charge on the aggregate amount for which the owner is liable, and shall be paid thereout in priority to all other claims. *Ibid.*

1377. All such damages shall be paid to her Majesty's paymaster-general, and be distributed by him in such manner as the Board of Trade directs. *Ibid.*

1378. In directing such distribution the Board of Trade may first deduct and retain any costs incidental thereto; and shall then, as regards sums paid in respect of injuries, direct payment to each person injured, of such compensation, not exceeding the statutory amount, as the Board thinks fit. *Ibid.*

1379. As regards sums paid in respect of deaths, the Board of Trade shall direct payment thereof for the benefit of the husband, wife, parent and child of the deceased, or any of them, in such shares, upon such evidence, and in such manner as the Board thinks fit. *Ibid.*

1380. The Board of Trade shall refund to the owner any surplus remaining under its control after such distribution, and the sum so refunded shall form part of the residue hereinafter mentioned. *Ibid.*

1381. The Board of Trade shall not, nor shall any person acting under it, be liable to any action, account or demand for or in respect of any act or matter done, or omitted to be done, in the distribution of such damages. *Ibid.*

1382. If the amount paid to her Majesty's paymaster-general is insufficient to meet the demands upon it, the several claims thereon shall abate proportionally. *Ibid.*

See also No. 1344, p. 1337.

6. Actions after Board of Trade Inquiries.

1383. After the completion of such inquiry, if any person injured, or the executor or administrator of any deceased person estimates the damages at a greater sum than such statutory amount—*i. e.*, £30—or in case of a compromise made by the Board of Trade, at a greater sum than the amount accepted by the Board as compensation for such injury or death, such person shall, on repaying or obtaining the repayment by the Board of Trade to the owner of the amount paid by him to the Board of Trade in respect of such injury or death, be at liberty to bring an action for the recovery of damages in the same manner as if no power of instituting an inquiry had hereinbefore been given to the Board of Trade, but any damages recoverable by such person shall be payable only out of the residue, if any, of the aggregate amount for which the owner is liable, after deducting all sums paid to her Majesty's paymaster-general; and if the damages recovered in such action do not exceed double the statutory amount, such person shall pay to the defendant in such action all the costs thereof, to be taxed in England and Ireland as between attorney and client, and in Scotland as between agent and client. See M. S. Act, 1854 (c. 104), s. 511.

7. Notice to Board of Trade before Action.

1384. In cases where loss of life or personal injury has occurred by any accident in respect of which the owner of any such ship is or is alleged to be liable in damages, no person shall be entitled to bring any action, or other legal proceeding in the United Kingdom, until the completion of the inquiry (if any) instituted by the Board of Trade, or until the Board of Trade has refused to institute the same; and the Board of Trade shall, for the purpose of entitling any person to bring an action or institute a suit or other legal proceeding, be deemed to have refused to institute such inquiry whenever notice has been served on it by any person of his desire to bring such action or other legal proceeding, and no inquiry is instituted by the Board of Trade in respect of the subject-matter of such intended action or proceeding for one month after service of such notice. *Ibid.* s. 512.

8. *Board of Trade Inquiry after Action brought.*

1385. Whenever the Board of Trade, having so refused to institute any inquiry, afterwards determines to institute the same, the damages and costs (if any) recovered on such inquiry shall be payable rateably with and not in priority to the costs and damages recovered in any other action or legal proceeding. See M. S. Act, 1854 (c. 104), s. 513.

9. *Proceedings for limiting Liability.*
(a) *Generally.*

1386. In cases where any liability is alleged to have been incurred by any owner in respect of loss of life, personal injury, or loss of or damage to ships, boats, or goods, and several claims are made or apprehended in respect of such liability, then, subject to the right before given to the Board of Trade of recovering damages in the United Kingdom in respect of loss of life or personal injury, in England or Ireland the High Court of Chancery, in Scotland the Court of Session, and in any British possession any competent court, may entertain proceedings at the suit of any owner for the purpose of determining the amount of such liability, and for the distribution of such amount rateably amongst the several claimants, with power for any such court to stop all actions and suits pending in any other court in relation to the same subject-matter; and any proceeding entertained by such Court of Chancery or Court of Session, or other competent court, may be conducted in such manner and subject to such regulations as to making any persons interested parties to the same, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of costs, as the court thinks just. *Ibid.* s. 514.

1387. The superior courts or any judge thereof may, upon summary application, by rule or order, exercise the like jurisdiction. See the Common Law Procedure Act, 1860 (c. 126), s. 35.

1388. When any ship or the proceeds thereof are under arrest of the High Court of Admiralty, that court has the same powers. See the Admiralty Court Act, 1861 (c. 10), s. 13.

1389. Prior to the Judicature Acts cross actions of damage from collision between the ships M. and N, were insti-

tuted in the Admiralty Court, and actions at law were commenced against the owners of the N. in respect of damage to goods on board the N. Subsequently an action of limitation of liability was instituted by the owners of the N. in the Court of Admiralty. *Held*, that as the court had jurisdiction in the original cause, it had jurisdiction to entertain the cause of limitation of liability, and to order all actions pending in any other court to be stopped. *The Normandy*, L. R. 3 A. & E. 152; 39 L. J. Adm. 48; 3 Asp. 519.

1390. But *held*, by the Exchequer Chamber, affirming the judgment of the Court of Exchequer, that the Admiralty Court had no jurisdiction to entertain the suit, inasmuch as neither "the ship" nor "the proceeds thereof" were at the time under arrest. *James v. The London and South Western Railway Co.*, L. R. 7 Ex. 187; L. R. 7 Ex. (Ex. Ch.) 287.*

1391. A cause of damage having been instituted against the N., the owners of the N. prevented the arrest of their vessel by giving bail, and instituted a suit for limitation of liability under the 54th section of the M. S. Act Amendment Act, 1862. *Held*, that the court had jurisdiction under the 13th section of the Admiralty Court Act, 1861, to entertain the suit, although the vessel was not actually under arrest of the Court of Admiralty. *The Northumbria*, L. R. 3 A. & E. 24; 39 L. J. Adm. 24; 3 Asp. 316.

1392. Prior to the Judicature Acts, the defendants in an action in the Court of Exchequer for damage to cargo by collision instituted proceedings in the Admiralty Court for a limitation of liability, and obtained an order from the Court of Admiralty staying, amongst other actions, the one in the Exchequer. The Court of Exchequer, however, upon an application by the defendants, refused to stay such action (1) because it was not obliged to stay it under s. 226 of the Common Law Procedure Act, 1852, inasmuch as the Admiralty Court was not a superior court within the meaning of that section; (2) because there was no reason to induce the court to exercise its discretionary power at common law of staying proceedings. *Milburn v. The London and South Western Railway Co.*, L. R. 6 Ex. 4; 40 L. J. Ex. 1; 3 Asp. 491.*

1393. Although an action *in rem* against a foreign ship under Lord Campbell's Act (c. 93), s. 2, is not

within the jurisdiction of the Admiralty Court Act, 1861 (c. 10), s. 7, and therefore the Admiralty Division has not jurisdiction over such an action. (*The Franconia*, 2 P. D. 163, dissented from.) Per Brett, M. R., the Chancery and Admiralty Divisions may entertain such a claim in an action for limitation of liability under their general statutory jurisdiction as to limitation of liability. *The Vera Cruz*, 9 P. D. 96.

1394. In a suit of limitation of liability instituted on behalf of the owners of a brig which had negligently run down a bark, thereby causing loss of life of those on board the bark, an appearance was entered on behalf of a child of one of the drowned men *en ventre sa mère*. The court reserved leave to the child, if born within due time, to prefer its claim for damages sustained by the loss of its father. *The George and Richard*, 3 Adm. & Ecc. 466.

1395. The statutory provisions limiting liability held applicable, notwithstanding that the adverse claimant had obtained a definitive judgment of the Court of Admiralty condemning the ship. *Leycester v. Logan*, 3 K. & J. 446; 26 L. J. Ch. 306; *The General Iron Screw Steam Company v. Schurmanns*, 1 Johns. & H. 180; 4 L. T. N.S. 138.

1396. The utmost to which the claimant in such a case is entitled under such a judgment, in respect of the loss he has sustained, is to share rateably with the other claimants in the value of the ship and freight. *Leycester v. Logan*, *supra*.

1397. A court of equity has no control over the ship itself, and cannot prevent the party who has obtained such a judgment from proceeding to a sale of the ship, and retaining out of the proceeds such costs as he may be entitled to retain under the order of the Admiralty Court. *Ibid*.

1398. Subject to this, however, the shipowner is entitled to an injunction, under the 514th section, restraining the party who has obtained such a judgment from proceeding further in the Court of Admiralty. *Ibid*.

1399. Inasmuch as the ship was under the sentence of the Admiralty Court, and therefore neither under the control of the plaintiff nor of the Court of Chancery, held, that the plaintiff could not be interfered with in his right to sell the ship,

but that the Court would interfere by injunction to prevent him from realizing more than his proper share, together with his costs, having regard to apportionment between himself and the other defendants. *Ibid*.

1400. A jury having awarded to the owner of a damaged vessel the statutory amount of £8 per ton of the vessel proceeded against, the defenders applied for a new trial on the ground that they still remained liable to claims from cargo owners. Held, that their remedy was under the M. S. Act, 1854 (c. 104), s. 514, and not by new trial. *Flensburg Steam Shipping Company v. Seligman*, Cases in the Court of Session, 3rd series, vol. 9, 1011. [SCOTCH.]

1401. In a cause of damage the defendants admitted liability in respect of damage to property and loss of life, but no claim had been asserted in respect of loss of life. On motion by the defendants the court ordered all proceedings against the ship to be stayed upon the defendants paying £8 per ton into court, and giving bail for the rest up to £15 per ton. *The Clutha*, 45 L. J. P. D. 108; 3 Asp. N.S. 225.

1402. A steamer ran into and sank another vessel belonging to the same owner. The sunken vessel was abandoned to the underwriters. The owner admitted his liability, and petitioned to have it limited. He also lodged—(1) a claim for loss of freight or cargo in the sunken vessel; and (2) a claim for certain expenses for the crew of the sunken vessel. Held, that neither claim could be made under the 54th section of the M. S. Act Amendment Act, 1862 (c. 63). *Burrell v. Simpson & Co.*, Cases in the Court of Session, 4th series, vol. 4, 177. [SCOTCH.]

1403. Sect. 9 of the M. S. Act, 1867, c. 124 (*i. e.* as to deduction from registered tonnage of spaces allotted to crew), applies to foreign ships seeking to limit the extent of their liability in an English court. *The Franconia*, 3 P. D. (C. A.) 164; 4 Asp. 1.

1404. Where owners of cargo have recovered judgment in a collision action brought by them, and the owners of the ship carrying the cargo subsequently bring an action against the same ship to recover damages in respect of the same collision, and the damages in both actions

* (468) Since the Judicature Acts, the Admiralty Division being a branch of the High Court, and therefore a superior court, the

jurisdiction of the Admiralty Division is recognized as the same in this respect as that of the Queen's Bench and Chancery Divisions.

would exceed the value of the defendants' ship at £8 per ton, and the damage in the cargo action alone would not exceed that amount, the court will not stay proceedings in the cargo's action until after judgment in the ship's action, on the ground that without such stay the defendants have to institute a limitation of liability action, which would be unnecessary if the defendants obtained judgment in the ship's action. *The Alne Holme* (No. 2), 47 L. T. 309; 4 Asp. 593.

1405. A shipowner paid under an award a sum of money in respect of damage caused to another vessel by collision. Subsequently the owners of cargo on board the damaged vessel having claimed in respect of damage thereto, the shipowner petitioned to have his liability limited under s. 54 of the M. S. Act Amendment Act, 1862 (c. 63). This liability having been ascertained, *held*, that the amount to which the owners of cargo were entitled must be ascertained by ranking their claim, and the satisfied claim of the owners of the damaged vessel *pari passu* against the limited amount. *Rankine v. Raschen*, *Ibid.* Cases in the Court of Session, 4th series, vol. 4, 725. [SCOTCH.]

1405a. The Bell and the B. came into collision, in consequence of which the B. sank. The owners of the B. brought an action against the Bell in respect of the collision, and the Bell counter-claimed against the B. At the trial a verdict was taken by consent, dismissing both the claim and counter-claim. The owners of the cargo of the B. subsequently brought an action against the Bell and obtained judgment in their favour. The owners of the Bell then brought an action for limitation of liability, and paid into court the amount of their statutory liability. A summons was then taken out by the owners of the B. against the owners of the Bell, and an order made by consent (the owners of the cargo of the B. not being parties thereto) setting aside the judgment, dismissing the claim and counter-claim. The owners of the B. then appeared in the limitation action and claimed damages for the loss of the B. out of the fund in court, the owners of the cargo of the B. objecting thereto. The registrar, in his report, disallowed the claim of the owners of the B. against the fund. On motion by the owners of the cargo of the B., opposed by the owners of the B., the court confirmed the report, refusing to allow the owners of the B. to participate in the fund, and holding that

the order setting aside the judgment was void. *The Belcairn*, 11th August, 1885. Decision affirmed on appeal, 6th November, 1885.

1406. In an action in the Admiralty Division for damage by collision in which both ships were injured, and held to blame, and were accordingly condemned to pay a moiety of each other's damage, and one of the parties applied to limit his liability under the act, no set-off is allowed between the two amounts for which they are liable in damages, until the limitation of liability imposed by the statute has been applied. Under the judgment in such an action the moiety of damages to the V. was £14,000, and that to the S. was £2,000. The owners of the S. then brought an action in the Chancery Division for limitation of their liability, and paid into court £5,212, the aggregate amount of £8 a ton on her registered tonnage. *Held* (Brett, L. J., dissenting), overruling the judgment of the Master of the Rolls, that the owners of the V. must prove for £14,000 against the fund in court, and must pay the £2,000 in full to the owners of the S. *Chapman v. Royal Netherlands Steam Navigation Co.*, 4 P. D. 157—C. A. But *semble*, in effect overruled by *The Khedive*, *infra*.

1406a. *Held*, also, by Jessel, M. R., that the owners of the V., and the owners of the cargo, or the underwriters in their place, and the master and crew of the same ship, must prove *pari passu* against the fund in court in respect of the moiety of their respective losses. *Ibid.*

1407. The ships V. and K. having come into collision, the owners of the V. brought an action *in rem* in the Admiralty Division against the owners of the K., who counterclaimed, and both ships were held to blame; the owners of the K. brought an action in the Admiralty Division to limit their liability under the M. S. Act Amendment Act, 1862 (c. 63), s. 54, and paid the amount of their liability into court. The damage to the V. was greater than that to the K., and the fund in court was not sufficient to satisfy all the claims for which the owners of the K. were answerable in damages. *Held* (Lord Bramwell doubting), that the owners of the V. were entitled to prove against the fund for a moiety of their damage, less a moiety of the damage sustained by the K., and to be paid in respect of the balance due to them after such deduction *pari passu* with the other claimants, out of such fund. *The Khedive*, 7 App. Cas.

795; 52 L. J. P. 1; 47 L. T. 198; overruling the judgment of the court below in 4 P. D. 157.

1408. Where freight is pledged by an instrument in the nature of a bottomry bond, and the ship is totally lost, whilst the freight is at risk, by a collision with another ship which admits and limits her liability under the M. S. Acts, paying the amount of her liability into court, the holders of the bottomry bond are entitled to rank against the fund paid into court for the freight so pledged to them. *The Empusa*, 4 Asp. 185.

1409. *Semble*, the bondholders are entitled to recover out of the fund in court applicable to the payment of damages for loss of freight the same proportion of the sum secured by the bond as the total sum apportioned in respect of loss of freight bears to the whole freight of the ship lost. *Ibid.*

1410. Sect. 54 of the M. S. Act Amendment Act, 1862, limiting liability, does not apply to a case where two ships are to blame for a collision, and the owners of one are relieved from liability on the ground of compulsory pilotage; but as both ships are to blame, the owners of the ship, so relieved from liability, are only entitled to be paid by the owners of the other ship a moiety of the damage caused to their ship. *The Hector* (No. 2), 8 P. D. 218; 52 L. J. P. 51; 48 L. T. 890; 31 W. R. 881—C. A.

See also No. 1342, p. 1337.

(b) Admission of Liability.

1411. It is not necessary for the owner of a vessel arrested in the High Court of Admiralty on account of a collision, to admit his vessel to have been to blame for the collision, in order to found an application to the court under s. 13 of the Admiralty Court Act, 1861, and s. 54 of the Merchant Shipping Act Amendment Act, 1862, to determine the amount of his liability, and to protect him from a multiplicity of suits. (*Hill v. Audus*, 1 Kay & Johns. 263, not followed.) *The Amalia*, 2 N. R. 462; 8 L. T. N.S. 806; 32 L. J. N.S. Adm. 191.

1412. Prior to the Judicature Acts held that the power given to the Court of Chancery was simply to determine the amount of the shipowner's liability, and to distribute that amount among the several claimants, and not to decide the question of liability or non-liability. *Hill v. Audus*, 1 Kay & Johns. 263; 3 Eq. Rep. 422; 24 L. J. Ch. 229.

1413. A shipowner, therefore, seeking to have the amount of his liability determined by the court, and to have an injunction to restrain proceedings in the other courts, would not be relieved if he denied his liability altogether. *Ibid.*

1414. Defendants in a collision suit having instituted a suit for limitation of liability, the court ordered the release of the vessel on payment into court in such last suit of the amount limited, together with a sum for interest and costs, without requiring an admission of liability. *The Sisters*, 2 Asp. N.S. 589. *See also Miller v. Powell*, Cases in the Court of Session, 4th series, vol. 2, 976. [SCOTCH.]
See also No. 1404, p. 1343.

(c) Calculation of Tonnage.

1415. The limitation as to tonnage is to be the registered tonnage in the case of sailing ships, and the gross tonnage without deduction on account of engine-room in the case of steamships. *See* M. S. Act Amend. Act, 1862 (c. 63), s. 54.

1416. In the case of any foreign ship which has been or can be measured according to British law, the tonnage as ascertained by such measurement shall, for the purposes of this section, be deemed to be the tonnage of such ship. In the case of any foreign ship which cannot be so measured, the surveyor-general of tonnage in the United Kingdom, and the chief measuring officer in any British possession abroad, shall, on directions from the court hearing the case, with such evidence of the dimensions of the ship as it may be practicable to furnish, give a certificate stating his opinion as to the tonnage of the ship if measured according to British law, and the tonnage in such certificate shall be deemed to be the tonnage of the ship. *Ibid.*

1416a. By the expression "gross tonnage" of steamers in sect. 54 of the above act is meant the gross registered tonnage at the time of the collision, as appearing from the official register of the ship at that time; and this is not affected by the fact that the vessel was afterwards raised and re-registered at a larger tonnage. *The Dione*, 4th February, 1884.

1417. Where the space appropriated on board a steamer to the berthing of the crew did not exceed one-twentieth of the remaining tonnage of the steamer, held, that in estimating the "gross tonnage" of such steamer for the purpose of limiting liability under sect. 54 of the M. S. Act Amendment Act, 1862 (c. 63),

the berthage space must be deducted. *Burrel v. Simpson & Co.*, 4th series, vol. 4, p. 177. [SCOTCH.]

1418. But the 21st section of sub-sect. 4 of the M. S. Act, 1854, only enables such space to be deducted when it is on the upper deck, and not when it is between the spar deck and the tonnage deck. *The Franconia*, 3 P. D. (C. A.) 164; 4 Asp. 1.

1419. The English certificate of registry showing the tonnage is not conclusive evidence of such tonnage, and consequently the Order in Council of the 26th June, 1873, made under sect. 60 of the M. S. Act, 1862, directing that German steamships measured after the 1st Jan., 1873, should be deemed to be of the tonnage denoted in their registers in the same manner and to the same extent as and to which the tonnage denoted in the certificate of registry of British ships, is deemed to be the tonnage of such ships, does not make the registers of such German steamships conclusive evidence of their tonnage. *Ibid.*

1420. The space appropriated to the crew cannot in the case of a foreign, any more than of a British, vessel, be deducted from the registered tonnage under the M. S. Act, 1867 (c. 124), s. 9, unless the conditions imposed by that section have been complied with. *Ibid.*

1421. The tonnage on which a limitation of liability is to be calculated is that taken from the certificate of registry in force at the time of the collision, and no deduction in respect of crew space, under the provisions of the M. S. Act, 1867 (c. 124), s. 9, can be made unless such deduction appears on such certificate. *The John McIntyre*, 6 P. D. 200; sub nom. *The John Ormston*, 50 L. J. P. D. 76.

1421a. See also No. 1403, p. 1343; and as to measurement of tonnage, Pt. I. p. 1188.

(d) *Costs.*

See tit. *Costs*, c. 34, p. 403.

10. *Owner in fault or privy to Damage.*

1422. The ninth part of this act does not lessen or take away any liability to which any master or seaman, being also owner or part owner of the ship to which he belongs, is subject in his capacity of master or seaman. See the M. S. Act, 1854 (c. 104), s. 516.

1422a. The ancient law of unlimited liability in cases of damage is still bind-

ing upon the Court of Admiralty, except where modified by statute. *The Wild Ranger*, 32 L. J. Adm. 49; and see notes (452), (453), p. 1336.

1423. The owners of a ship who are entitled to the privilege of limited liability, are not necessarily those whose names appear upon the ship's register. The master, also part owner of a ship, sold his shares, but before the transfer had been registered, the ship, through the master's default, came into collision with and damaged another vessel. *Held*, that the master was not an owner so as to affect the privilege of limited liability. Part owners are not partners, and therefore, *semble*, the error or misconduct of one part owner would not forfeit the right of his co-owners to limited liability. *The Spirit of the Ocean*, Br. & L. 336; 2 Asp. 192.

1423a. In an action by shipowners to limit their liability in respect of a collision with their vessel, and where it appeared that the master, who was on board at the time of the collision was a part owner, and the collision occurred without the negligence or privy of the remainder of the owners, they have a right to have their liability limited, with a reservation of any right of action there may be against the master personally in respect of his negligence. *The Cricket, The Endeavour*, 48 L. T. 585; 5 Asp. 53.

1424. In a cause of limitation of liability under the 54th section of the Merchant Shipping Act Amendment Act, 1862, arising out of a collision, the plaintiffs alleged that the collision occurred without their fault or privy. It was proved that the master, who was also part owner of the vessel sued, was on board at the time of the collision, but not on deck, the vessel being then in charge of the second mate and a coasting pilot. *Held*, that under these circumstances there was no obligation upon the master to be on deck; that the fact of his being part owner was no reason for charging the other owners with blame; and the fact of his being on board at the time of the collision was not in itself sufficient to show that it occurred "with his fault or privy." *The Obey*, L. R. 1 A. & E. 103.

1425. A steamer got stranded in the Clyde so as to obstruct a considerable portion of the fairway, the owner, who was not a seafaring man, went to the vessel to arrange about getting her lightened. At night the master failed to exhibit lights, whereby a vessel ran into

the steamer and sustained damage. *Held*, that the collision did not occur with the "actual fault or privity" of the owner. *Kidston v. M'Arthur*, 4th series, vol. 5, 936. [SCOTCH.]

1426. As to cases under repealed statutes containing like provision where the owner was in fault or privy to the damage, see c. 3, p. 1348.

11. Interest and Costs.

See tit. COSTS, c. 34, p. 403.

12. Owner of British Ship not recognized as British.

1427. The ninth part of this act does not extend to any British ship not being a recognized British ship within the meaning of this act. See the M. S. Act, 1854 (c. 104), s. 516.

1428. A newly-built ship exceeding fifteen tons burden, on being launched, ran into and damaged a passing ship. The owners of the damaged ship thereupon instituted an action in the Admiralty Court against the newly-built vessel to recover for the damage done to their ship, and the court pronounced the vessel proceeded against solely to blame for the collision. Afterwards an action for limitation of liability was instituted by the owner of the newly-built vessel, a natural-born English subject, who therein claimed a declaration that he was entitled to a limitation of liability in respect of damage occasioned by the collision. At the hearing of the action it appeared that the newly-built vessel, though registered as a British ship at the time of the institution of the action was not so registered at the time of the collision. *Held*, that as the vessel was not a recognized British ship when the collision occurred, her owner was not entitled to have his liability limited. *The Andalusian*, 3 P. D. 183; 47 L. J. Adm. 165.

13. Accounting for Damages between Part Owners.

1429. All sums of money paid for or on account of any loss or damage in re-

spect whereof the liability of the owners of any ship is limited by the ninth part of this act, and all costs incurred in relation thereto may be brought into account among part owners of the same ship, like money disbursed for the use thereof. See M. S. Act, 1854 (c. 104), s. 515.

14. Practice.

See tit. PRACTICE, Pt. III. c. 10.

3. Limitation under repealed Statutes.

1. Generally.*

1430. The liability of a shipowner for damage done by the collision of his ship with another vessel was limited by 53 Geo. 3, c. 159, s. 1, to the value of his ship at the time of, that is immediately before, the collision. He was not therefore exempted from liability where, by the same collision, his own ship instantly foundered. *Brown v. Wilkinson*, 15 M. & W. 391; 15 L. J. Exch. 34; *Dobree v. Schroeder*, 6 Sim. 291; 2 My. & Cr. 489; *Wilson v. Dickson*, 2 B. & A. 2; *The Mary Caroline*, 3 W. Rob. 101; 6 Notes of Cases, 539; 12 Jur. 945.

1431. The same construction put upon sect. 504 of the M. S. Act, 1854. *African Steamship Co. v. Swanzy*, 2 K. & J. 660; 25 L. J. Ch. 870; *Leycester v. Logan*, 4 K. & J. 725.

1432. The 53 Geo. 3, c. 159 (which first afforded such limited liability) never applied to foreign vessels. *The Wild Ranger*, 7 L. T. N.S. 752; 32 L. J. Adm. 49; 1 Lushington. See also *Cope v. Doherty*, 4 Kay & J. 367; 4 Jur. N.S. 451; 2 De Gex & J. 614; 27 L. J. Ch. 600.

1433. The provisions of the M. S. Act, 1854, c. 104, limiting liability, apply to a case of damage done by a British ship to a foreign vessel, when such damage occurs within three miles of the coast of this country. *General Iron Screw Collier Company v. Schurmanns*, 1 Johns. & H. 180; 6 Jur. N.S. 883; 8 W. R. 732; 29 L. J. Ch. 880.

2. Value of Ship.†

1434. The V. came in collision with

* (469) Under the repealed statutes of 7 Geo. 2, c. 15; 26 Geo. 3, c. 86; 53 Geo. 3, c. 159; and ss. 504 and 505 of the M. S. Act, 1854, the responsibility of shipowners was limited to the value of ship and freight.

(470) The repealed acts limiting the responsibility of shipowners were *held* not to

extend to lighters and gabbets. See *Hunter & Co. v. M'Gowan and others*, 1 Bligh, 573; *Morewood v. Pollok*, 1 El. & Bl. 743; 21 L. T. 87; 17 Jur. 881; 22 L. J. Q. B. 250.

† (471) For other cases under repealed statutes, see *Potts v. Pollock*, March 15, 1837; 15 S. 879. [SCOTCH.]

the E., which was lost; a passenger on board the E. being drowned. An action was entered in the Admiralty Court in the sum of £1,500 by the owners of the E. The ship was appraised by the officers of the Court at £450. *Held*, under the M. S. Act, 1854 (c. 104), s. 504, now repealed, that notwithstanding there had been loss of life, the value of the E. must be assessed at the sum named in the appraisal. *Nixon v. Roberts*, 1 Johns. & H. 739; 7 Jur. N.S. 820; 30 L. J. Ch. 844; 9 W. R. 890; 4 L. T. N.S. 679.

1435. When claimants of both kinds appear, the owners of property damaged are entitled to have the compensation for loss of life and personal injury marshalled, so as to throw it primarily on the excess (if any) of the value at £15 per ton over the actual value of the ship. *Ibid*.

1436. But when all demands in respect of personal injury or loss of life have been settled, and the only claimants against the ship are the owners of property, which has been damaged, the ship is not to be estimated at more than her actual value, notwithstanding the fact that loss of life or personal injury has occurred. *Ibid*.

1437. The 53 Geo. 3, c. 159, s. 1 (containing similar provisions to those of the M. S. Act, 1854 (c. 104), s. 504) is to be construed as if the words "with all her appurtenances" had been inserted after "ship or vessel." *Gale v. Laurie*, 7 D. & R. 711; 5 B. & C. 156; *The Dundee*, 1 Hagg. 109.

1438. As to the meaning of the term "appurtenances," see Pt. I. p. 1216.

1439. The ship of the defendants, who were foreigners, remained under arrest and was subsequently sold in satisfaction of the plaintiffs' claim for damage, to discharge which the gross proceeds were insufficient. *Held*, that as against the plaintiffs' claim the expenses of sale and possession fees formed a proper deduction from the gross proceeds, and that the defendants could not be called upon to repay them. *The Europa*, 9 L. T. N.S. 781.

1440. A ship had run down another, and was sold in the damage action in the Admiralty. *Held*, in proceedings under the M. S. Act, 1854, in the Court of Chancery, that her owners were accountable for the gross proceeds of the sale, without deduction in respect of disbursements and fees retained by the Admiralty. *Leycester v. Logan*, 4 Kay & J. 725.

1441. For further cases under repealed statutes as to the value of the ship doing the damage, see *Dobree v. Schroeder*, 6 Sim. 291; 2 Mylne & C. 489; *African Steamship Co. v. Swanzy*, 2 K. & J. 660; 25 L. J. Ch. 870; *Leycester v. Logan*, 4 Kay & J. 725.

3. Freight.

1442. For cases as to the calculation of freight liable for loss or damage under the repealed statutes, see *Cannan and others v. Meaburn*, 1 Bing. 465; *The Benares*, 14 Jur. 580; 7 Notes of Cases, Supp. li.; *The Tribune*, 3 Hagg. 114; *The Linda Flor*, 4 Jur. N.S. 172; *Wilson v. Dickson*, 2 B. & Ald. 2; *The Leo*, 6 L. T. N.S. 58; 31 L. J. Adm. 78.

1443. It is every-day practice to require the owners of a vessel which has committed damage to bring in the amount of freight she has earned in the course of the voyage in which she was engaged when the damage was done. This is on the principle that the owners are responsible to the amount of the property in their possession. *The Mellona*, 3 W. Rob. 25; 12 Jur. 271; *The Jersey Tar*, 8 (IRISH) Jur. 317.

1444. The owners of cargo on board a vessel proceeded against are liable only for the net freight for which they would be liable to the shipowner. *The Leo*, 31 L. J. Adm. 78; 6 L. T. N.S. 58.

1445. When a vessel which has committed damage has changed owners between the cause of action and the arrest, it is difficult to make the person to whom the property in the ship has passed responsible, beyond the value of the ship, for the amount of freight which the former owner may have received, who may have gone to a distant part of the world. In such a case the court would be very cautious in enforcing the bringing in of the freight, and on proof that there had been a change of owners declined to do so. *The Mellona*, 3 W. Rob. 25, 26; 12 Jur. 271.

4. Interest and Costs.

See tit. Costs, c. 34, p. 403.

5. Owner in fault or privy to Damage.

1446. The 53 Geo. 3, c. 159, limiting the responsibility of shipowners to the value of their vessel, does not affect the case of a master, also part owner, having

charge of the vessel, and occasioning a collision. *The Triune*, 3 Hagg. 114.

1447. In a cause of collision in which an appearance had been given for the master and principal owner of the vessel proceeded against, motion *ex parte* before the hearing, founded on affidavit of the insufficiency of ship and freight to cover the alleged damage, for warrant of arrest against the master, rejected. A further motion for a monition against him to pay the surplus reported by registrar and merchants to be due for damage and costs, made after the damage had been pronounced for, also rejected, the ship, which was in possession of the court, not having been sold. A subsequent motion for such a monition, after sale of the ship and the amount of the deficiency had been thereby ascertained, granted, and the monition not having been obeyed an attachment decreed and issued, under which he was imprisoned. *Ibid.* 115, 117.

1448. In a cause of collision in which the damaging vessel had been arrested and an appearance given for the master, who was also a part owner, and the damage was pronounced for, application to condemn the master, as such part owner, in the excess of damage beyond the proceeds of the ship, under the 53 Geo. 3, c. 159, rejected, the court holding that it was not competent to it to engraft a personal action against the master as part owner upon a proceeding *in rem*. *The Hope*, 1 W. Rob. 154.

1449. To render a master, being also a part owner and guilty of neglect, responsible beyond the value of the ship and freight, he must be sued as master in the first instance. The proceeding must be by charging him with being the cause of the damage by his misconduct; and that cannot be done, directly or indirectly, in another suit. In an action of collision in which the damage had been pronounced for, motion to condemn a part owner, who was on board and in command of the damaging vessel at the time of the collision, in the excess of the damage beyond the proceeds of the ship, rejected. *The Volant*, 1 W. Rob. 385, 390.

1450. In an action on the case against several defendants as shipowners, one of whom was also the master by whose fault the loss had arisen, *held*, that the true construction of the 53 Geo. 3, c. 159, s. 1, founded on 7 Geo. 2, c. 15, was that if a sole owner be sued, and the fault or pri-

vity be in him, he would be excluded from the protection of the statute; but that where several owners are sued, there must be the fault or privity in each so to exclude them. *Wilson v. Dickson*, 2 B. & A. 2.

1451. There had been improper treatment and a wrongful sale of cargo at an intermediate port. The shipowners received the proceeds, and retained them with a view to deduct freight. *Held*, that they were privy to the sale, having adopted the acts of the master, and were therefore liable beyond the value of ship and freight. *Heydorn v. Bibby*, Court of Exchequer, 1st March, 1855.

1451a. For cases under the M. S. Act Amendment Act, 1862, now in force, see p. 1346.

Part VII.—COMPULSORY PILOTAGE.

1. Liability by Common Law.

1452. The common law of the Admiralty, before any statute law on the subject, was that the taking on board of a pilot (but not by compulsion of law), though he was duly authorized to act as a pilot, did not exempt the owners from responsibility for his acts. *The Eden*, 10 Jur. 297; 4 Notes of Cases, 460; *The Neptune the Second*, 1 Dodson, 467.

1453. Upon general principles, a party compellable to take a pilot is not responsible for his acts. *The Maria*, 1 W. Rob. 102; *The Protector*, *ibid.* 54; *The Agricola*, 2 W. Rob. 19; *The Gipsy King*, 5 Notes of Cases, 287; *The Christiana*, 7 Moore, P. C. C. 171, overruling *The Neptune the Second*, 1 Dodson, 467; *The Transit*, 1838, 1 Monthly Law Mag. Notes of Cases, 582; *The Girolamo*, 3 Hagg. 169; *Bennett v. Moita*, 7 Taunt. 258; *Fletcher v. Braddick*, 2 N. R. 182; *Bowcher v. Noidstrom*, 1 Taunt. 568; *The Attorney-General v. Case*, Exch. 3 Price, 302; *Carruthers v. Sidebottom*, Q. B. 4 Maule & Sel. 77; *Mackintosh v. Slade*, 6 B. & C. 657.

1454. Apart from the M. S. Act, 1854, the owner of a ship is not responsible for damage done by his ship when such damage is occasioned solely by default of a licensed pilot employed by compulsion of law. *The Annapolis and Johanna Stoll*, 4 L. T. N.S. 423; 1 Lush. 311; 30 L. J. Adm. 201.

1455. In a case of loss sustained in the navigation of a prize, *held* that the taking a pilot released the captor from responsibility for the navigation of the vessel, unless it could be shown that the loss arose from want of obedience in the crew to the orders of the pilot, or from any cause assignable to the want of that control which the captor is bound to exercise over the crew. Demand for damage pronounced against accordingly. *The Portsmouth*, note to *William Hastie*, 6 C. Rob. 317.

2. Liability by Statute.

1. Before the M. S. Acts.*

1456. Before the General Pilot Act, 1812 (c. 39), a master was not discharged from his responsibility for the acts of his crew, although done under the direction of a pilot, who, by the regulations of a statute, superseded the master for the time in the government of his ship. *Bowcher v. Nordstrom*, 1 Taunt. 568; but see *Aldrich v. Simmons*, 1 Stark. 210.

1457. Owners are not responsible for the acts of a pilot taken on board by compulsion of law. *The Eden*, 10 Jur. 296; 4 Notes of Cases, 460.

1458. Nor where they are expressly absolved from the responsibility by statute. *Ibid.*

1459. But in all other cases they are responsible for the acts of the pilot. *Ibid.*

1460. In a cause of collision the mischief was found to have arisen from the fault of a duly-licensed pilot in charge of the vessel doing the damage. The pilot had been in the permanent employment of the owners, and engaged in navigating the ship for many years. *Held*, that the owners were exonerated from responsibility under 6 Geo. 4, c. 125. *The Batavier*, 10 Jur. 19; 4 Notes of Cases, 456; 2 W. Rob. 407.

1461. A pilot appointed under the Cork Pilot Act was solely to blame for the collision. *Held*, that the owners were responsible, the employment of the pilot not being compulsory by that act, and

the 6 Geo. 4, c. 125, not extending to the local act. *The Eden*, 2 W. Rob. 442; 10 Jur. 296; 4 Notes of Cases, 460.

1462. Owners were, under 6 Geo. 4, c. 125, exempt from responsibility for damage arising from the default of the pilot, whether the pilot was taken on board in obedience to the compulsory enactment of the statute, or under certain other clauses thereof. *The Duke of Sussex*, 1 W. Rob. 273; *The Christiana*, 2 Hagg. 188; *The Protector*, 1 W. Rob. 45; *Lucey v. Ingram*, 6 M. & W. 302.

2. Since the M. S. Acts.

1463. The fifth part of this act relating to pilotage applies to the United Kingdom only. See the M. S. Act, 1854 (c. 104), s. 330.†

1464. In the construction of this act "the United Kingdom" means Great Britain and Ireland. "The Trinity House" means the Corporation of the Trinity House of Deptford Strond. "Pilotage authority" includes all bodies and persons authorized to license pilots, to fix rates of pilotage, or to exercise jurisdiction in respect of pilotage. "Pilot" means any person not belonging to a ship who has the conduct thereof. "Qualified pilot" means any person duly licensed by any pilotage authority to conduct ships to which he does not belong. *Ibid.* s. 2.

1465. No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship, within any district where the employment of such pilot is compulsory by law. *Ibid.* s. 388.

1466. The 388th section of the M. S. Act must, as it takes away a remedy from persons who have received an injury, be construed strictly. *The General de Caen*, Swabey, 10.

1467. The exoneration conferred on shipowners by the 388th section of the M. S. Act, 1854, is more limited than that which was conferred by the 55th

* (472) Owners having voluntarily taken a pilot (under the provisions of 6 Geo. 4, c. 125), *held* absolved from responsibility, the accident having been entirely caused by the misconduct of the pilot alone, and having occurred within the waters for which he was licensed. *The Fama*, 2 W. Rob. 184; and

Lucey v. Ingram, therein cited.

† (473) This is in effect an extension beyond former statutes, the General Pilotage Act (6 Geo. 4, c. 125), having been *held* to apply to England only. *The Eden*, 2 W. Rob. 443, 448.

section of the 6 Geo. 4, c. 125. *The Lion*, L. R. 2 P. C. 525; 38 L. J. Adm. 51; 3 Asp. 266; 6 Moore, P. C. N.S. 163.

1468. If a master who is not under any compulsion to take a pilot does take a pilot (even assuming that such pilot is bound to act), this does not exonerate the owners from responsibility for the errors committed by such pilot. *Ibid.*

1469. The construction of the 388th section of the M. S. Act, 1854, held not to be affected by the case of *Lucey v. Ingram* (6 M. & W. 302), decided on the 55th section of the 6 Geo. 4, c. 125. *Ibid.**

1470. The enjoining by statute the taking a pilot, and enacting in case of refusal payment notwithstanding of pilotage dues, held to amount to a compulsion to take a pilot. *The Maria*, 1 W. Rob. 102. But if a pilot be taken merely in pursuance of the provisions of an act of parliament, *quare*, how far is the liability of the owners on general principle thereby discharged? *The Agricola*, 2 W. Rob. 19; 7 Jur. 157.

1471. The learned judge of the Admiralty Court must in the case of *The Maria* be understood as assuming that the master was bound to take the first licensed pilot who offered himself. *Martin v. Temperley*, 4 Q. B. 298; 3 G. & D. 497; 7 Jur. 15; 12 L. J. Q. B. 122—Denman, C. J.

1472. If there be a power of selection, the servant hired is the servant of the person hiring. *Ibid.*; but see No. 1460, p. 1350.

1473. The fact that the master has the power of selecting a pilot from a particular qualified class is not sufficient to render the owner responsible for the acts of the pilot. *The Hibernian*, L. R. 4 P. C. 511; 42 L. J. Adm. 8; 9 Moore, P. C. N.S. 340; 1 Asp. N.S. P. C. 491. *Semble*, overruling *Martin v. Temperley*, *supra*.

1474. Where a ship is under the com-

pulsory charge of a licensed pilot, the owners are not responsible for damage occasioned by his fault or incapacity, although they must meet and rebut any relevant allegation of negligence on their own part. Per Lord Chelmsford, under the M. S. Act, 1854, where the shipowners have proved fault on the part of the pilot sufficient to cause and in fact causing the calamity, they must be held to have satisfied the condition on which their exemption from liability depends; and they are not to be called upon to adduce proof of a negative character to exclude the mere possibility of contributory fault. But if in the course of the evidence certain acts or omissions on the part of the crew come out, it will then be incumbent on the owners to show satisfactorily that these acts or omissions in no degree contributed to the damage. Per Lord Selborne, when it is proved that a qualified pilot was acting in charge of the ship, that such charge was compulsory, and that it was the pilot's fault or incapacity which caused the damage, the burden of proving the defenders' contribution to the loss is cast upon the pursuers. The defenders are not obliged to travel into the indefinite region of negatives, or to anticipate by denial that for which no foundation is laid, to call upon them to deal with it. They are, however, bound to rebut evidence actually brought against them of contributory negligence. *Clyde Navigation Co. v. Barclay*, L. R. 1 App. Cas. 790.

1475. When the employment of a pilot is within the provision of s. 139 of the Mersey Docks Consolidation Act, 1858 (c. xcii), such employment is compulsory. The object of the master when the vessel left dock was to get to sea as soon as he could, and he arranged with the pilot that the vessel should anchor in the Mersey for

* (474) Held, that the words "wanting a pilot," in the 72nd section of 6 Geo. 4, c. 125, were not to be confined to such vessels as were by the provisions of the act bound to take a pilot, but were to be construed as applying to any vessel, the master or owner of which thought fit to require one, and that inasmuch as under the 72nd section the pilot could not lawfully refuse to go on board and take charge of any vessel wanting a pilot when required by the owner to do so, he must be considered, when so required and employed, as acting under some of the provisions of the act, and not as the private servant of the owner. *Lucey v. Ingram*, 6 Mee.

& W. 302.

(475) The 388th section of the Merchant Shipping Act, 1854, having given immunity to owners for the acts of pilots when taken compulsorily, and the 353rd section having defined the compulsion to mean, besides such as is especially declared in that act, also such as existed immediately previous, it is still necessary to regard the antecedent state of the law for the compulsions and exemptions then existing, and among others to notice those enacted in the 6 Geo. 4, c. 125, notwithstanding the repeal of that act generally by the Merchant Shipping Repeal Act, 1854 (c. 120).

the night, but should go so far on the way as would enable her to cross the bar on the next morning's tide. *Held*, that the ship was proceeding to sea within the meaning of sect. 139 at the time she left the dock, and that the anchoring was not a discontinuance of her progress to the sea, but an act proper and reasonable to be done in the course of it. (The doctrine laid down in *The Christiana*, 7 Moo. P. C. C. 171, and *The Lochlibo*, *ibid.* 430, concerning the relative duties of pilot and crew recognized and approved.) *Wood v. Smith*, L. R. 5 P. C. 451.

1476. In a case of collision occasioned by a vessel under compulsory pilotage, where no contributory negligence on the part of the master and crew is proved, the pilot in charge is solely responsible, and the owners are exempt from the consequences of his neglect or default. *The Calabar*, L. R. 2 P. C. 238; see also *The Ocean Wave*, 3 *ibid.* 205.

1477. The 388th section of the M. S. Act, 1854 (c. 104), does not require that the pilot should be compulsorily employed where the accident happened, but only that he should have been compulsorily employed within the district where it happened. *The General Steam Navigation Co. v. British Colonial Steamship Co., Limited*, L. R. 3 Ex. 330, and 4 *ibid.* (Ex. Ch.) 238; 27 L. J. Ex. 194; 38 *ibid.* (Ex. Ch.) 97; 3 Asp. 168 and 237.

1478. A collision happened between Yantlett Creek and Gravesend through the fault of a pilot taken on board the defendant's vessel, coming up channel at Dungeness. The vessel belonged to the port of London, and was exempt from compulsory pilotage within such port. The court found that for pilotage purposes the port of London ended at Gravesend, and not at Yantlett Creek. But *held*, affirming the judgment of the court below, that even assuming that the port of London extended to Yantlett Creek, the effect of sects. 333, 378, and Schedule U. of the M. S. Act, 1854 (c. 104), was such as to prevent the relation of master and servant existing between the owners of the defendant's vessel and the pilot, during any portion of the transit from Dungeness to Gravesend, and that sect. 388 was not inconsistent with this, and that, therefore, the defendant's vessel was not liable. *Ibid.*

1479. Sect. 96 of the Thames Conservancy Act, 1857, enacting that the

owner of every vessel navigating the Thames shall be answerable for damages done by such vessel, "or by any of the boatmen or other persons belonging to or employed in or about the same, by any means whatsoever," to the property of the conservators, does not apply where the damage is occasioned through the fault of a pilot compulsorily employed. *The Conservators of the River Thames v. Hall*, L. R. 3 C. P. 415; 3 Asp. 73.

1480. The power to license pilots does not, *per se*, render the pilotage compulsory. *The Killarney*, 6 L. T. N.S. 908; 1 Lushington, 427.

1481. A French vessel coming up the Thames took on board a pilot, and, as none of her crew understood English, a waterman to take the wheel. The waterman put her helm up instead of luffing as the pilot ordered, whereby a barge was run into and damaged. The French owner claimed exemption under the 388th section of the M. S. Act. *Held*, that the pilot was not answerable for the waterman's incapacity or fault, and that the owners were liable. *General de Caen*, Swabey, 9.

1482. *Semble*, owners are not deprived of the benefit of compulsory pilotage by the fact that, after a collision, their vessel did not render the assistance required by sect. 33 of the M. S. Act Amendment Act, 1862 (c. 63). *The Queen, The Lord John Russell*, L. R. 2 A. & E. 354; 38 L. J. Adm. 39; 3 Asp. 242.

1483. The Canadian Statutes (27 & 28 Vict. c. 58, s. 10, and 27 & 28 Vict. c. 13, s. 14) are to be read and construed together as being *in pari materid*, constituting a compulsory pilotage, and exonerating the owner from liability for damage occasioned by his vessel when in charge of a pilot by compulsion of law. *The Hibernian*, L. R. 4 P. C. 511; 42 L. J. Adm. 8; 9 Moo. P. C. N.S. 340; 1 Asp. N.S. 491.

1484. No owner of any vessel, in charge of a duly-licensed pilot taken by compulsion of law, is answerable to the undertakers of the harbours and piers, within the act, for any damage done by such vessel to the harbour, dock, pier, or the quays or works connected therewith, when such damage has been caused solely by such pilot. See the General Pier and Harbour Act, 1847 (c. 27), s. 74; and see also Pt. II. c. 6, p. 1233.*

* (476) The master being an intermediate agent is not liable to his owner for the wrong-

ful acts of the pilot, and the better opinion appears to be that he would not be liable to

1485. The General Pilot Act (52 Geo. 3, o. 39), now repealed, did not confine the exemption to loss or damage happening to the piloted ship and cargo, but extended to damage done by that ship to others. *Ritchie v. Bousfield*, 7 Taunt. 309.

3. Crown Ships.*

1486. This act, except as therein specially provided, does not apply to ships belonging to her Majesty. See M. S. Act, 1854 (c. 104), s. 4.

a stranger. See 1 Maude & Pollock (4th ed. by Pollock & Bruce), p. 281, and the cases therein referred to.

(477) The compulsion to take a pilot has generally been considered to consist in the liability to a penalty for refusal to employ a duly-qualified pilot in a district for which he is duly licensed. The penalty, therefore, in such cases would seem to be the gist of the compulsion. It may, however, be questioned whether this be not too rigid a statement of the law, and whether if an act of parliament provided that duly-qualified pilots should be licensed for a district, and, without prescribing a penalty in case of refusal, directed that owners of vessels should employ them, the direction by statute would not of itself amount to a legal compulsion sufficient to exempt an owner from responsibility for the acts of a pilot so employed. See *The Maria*, 1 W. Rob. 102; *The Fama*, 2 W. Rob. 184; *The Agricola*, 2 *Ibid.* 19; *The Duke of Sussex*, 1 *Ibid.* 273; *The George*, 4 Notes of Cases, 161. *Sed contra The Killarney*, Lushington, 427.

(478) In America a collision was caused solely by the negligent conduct of the pilot in charge, taken by compulsion of law, but the owners were notwithstanding condemned in the damages caused by the collision. (Supreme Court of the United States.) *The China*, 7 Wallace, p. 61. See also a report thereof in Appendix to Report of Select Committee on Pilotage Bill (Parliamentary Return 343 of 1870, p. 521). See also *The Carolus*, 2 Curtis, C. C. 269; *The Hallock*, 1 Sprague, 539; *Yates v. Brown*, 8 Pickering, 23; *Williamson v. Price*, 4 Martin, N.S. 399; *Flanigan v. Washington Insurance Co.*, 7 Barr. 31; *Dennison v. Seymour*, 9 Wendell, 1; *Smith v. Condrety*, 1 Howard, 28; *The Lotty*, Olcott, Adm. 329; *The Creole*, 2 Wallace, jun. 511; *The Rescue*, 2 Sprague, 16; 3 Kent's Commentaries, p. 135; *Reeves v. The Constitution*, Gilpin, 579. [AMERICAN.]

(479) The principle appears to be that the pilot is substituted in the place of the master, and the master ceases therefore to be liable as master, but the owners remain answerable for the conduct of the new temporary master, the pilot, in the same way and to the same extent that, so far as the navigation of the ship was concerned, the owners were liable for the conduct of the master himself. *Bussey v. Donaldson*, 4 Dallas, 206. [AMERICAN.]

(480) The Pennsylvania Pilot Act of 29th March, 1803, which obliges vessels going out

of or coming into the port of Philadelphia to receive a pilot under a "penalty" and "forfeiture" of half pilotage which the act makes a lien upon the ship, and recoverable in the Admiralty, not being, as is decided, compulsory but optional, the master of the ship need not take a pilot if he prefers to pay the penalty or forfeiture. *Smith v. The Creole and The Sampson*, 2 Wallace, jun. 485. [AMERICAN.]

(481) Hence, there being a direct privity between the pilot and the ship, the latter is liable in Admiralty for damage caused by his acts. *Ibid.*

(482) See the policy of the law in this respect vindicated, and all the authorities on the subject reviewed. *Ibid.*; and Stuart's Vice-Adm. Rep. (Lower Canada), p. 199.

(483) Prior to the Canadian Statutes (27 & 28 Vict. c. 58, s. 10, and *Ibid.* c. 13, s. 14), held, in the Vice-Admiralty Court of Lower Canada, that the owners were liable notwithstanding pilot in charge. *The Cumberland*, *ibid.* 85; *The Lord John Russell*, *ibid.* 190.

(484) But held, that the master is not answerable to the owners or other persons for the acts of the pilot. *The Sophia*, *ibid.* 97; *Molloy*, B. 2, c. 9, 1 & 2; 3 Kent's Com. 135; *Snell v. Rich*, 1 Johns. 305. [AMERICAN.]

(485) Under the old Pilot Acts, held, that an action could not be maintained against the master of a vessel for running down a ship in the river Thames while, in pursuance of the Pilot Act, he had a pilot on board, no positive default in the master being proved. *Bennet v. Moita* (1815), 7 Taunt. 258; 1 Moore, 4; *Holt*, 359; S. P. *Ritchie v. Bousfield* (1816), 7 Taunt. 309; and see *Coatts v. Herbert*, 3 Stark. 12; and *Fletcher v. Braddick*, 2 N. R. 182; *Stort v. Clements*, N. P. 107.

(486) The 6 Geo. 4, c. 125, is repealed by the M. S. Repeal Act, 1854 (c. 120), but see note (475).

* (487) The provisions of the old Pilot Acts, now repealed, were held to apply to the Crown as well as to the subject. See *Att.-Gen. v. Case*, 3 Price, 302.

(488) But by 6 Geo. 4, c. 125, s. 86, now also repealed, but in force up to the time of the M. S. Act, 1854 (c. 104), coming into operation, it was enacted that nothing therein contained should extend to any ships or vessels belonging to his Majesty, his heirs and successors, as to their being compelled to take pilots on board. See 6 Geo. 4, c. 125, s. 86.

4. Ships one or both Foreign.

1. Generally.

1487. The British legislature has no authority over foreign vessels on the high seas out of British jurisdiction, but may impose any conditions on foreign vessels entering a British port, and consequently an obligation on foreign ships inward bound to take a pilot at a convenient station beyond three miles from the British shore. *The Annapolis* and *Johanna Stoll*, 1 Lush. 295; 30 L. J. Adm. 201; 1 Asp. 69; 4 L. T. N.S. 417.

1488. A statute, imposing in general terms on all inward-bound vessels the obligation to take a pilot at a convenient station beyond three miles from the British shore, is binding on foreign vessels, such construction being justified on grounds of public policy. *Ibid.* 1 Lush. 295.

1489. National jurisdiction in pilotage matters, by custom and general policy, extends beyond the three miles limit. *Ibid.* 306.

1490. The British legislature may appoint a pilot station more than three miles from the British shore, for vessels inward bound to a British port, and an enactment general in terms, requiring inward-bound vessels there to take pilots, is binding on foreign vessels entering the port. *Ibid.*

1491. Many sections of Part V. of the M. S. Act, 1854, apply to foreigners in British waters. *Ibid.* 311.

1492. *Held*, that the 388th section of the M. S. Act, 1854 (c. 104), applies to foreign vessels sued for damage done in British waters. *Ibid.*

1493. The provisions of the 6 Geo. 4, c. 125, now repealed, exempting owners from responsibility for damage arising from the default of a duly-licensed pilot, extended to cases where the damage was done by a British ship to the property of foreigners as well as to cases entirely between British subjects, on the general principle of international law, that the party seeking a remedy must take it according to the law of the country in which it is to be enforced. *The Vernon*, 1 W. Rob. 317, 319.

1494. *Held*, that the above provisions of 6 Geo. 4, c. 125, were applicable to foreign ships. *The Atlas*, 5 Notes of Cases, 54; *The Eolides*, 3 Hagg. 367; *The Vernon*, 1 W. Rob. 317; *The Christiana*, 2 Hagg. 188; *The Maria*, 1 W. Rob. 95; *The Protector*, *ibid.* 45; over-

ruling *The Girolamo*, 3 Hagg. 169; and *The Carolus*, note to *The Gladiator*, *ibid.* 343.

1495. A foreign ship, without a British register, was not exempted from compulsory pilotage by the 59th section of 6 Geo. 4, c. 125. *The Hanna*, L. R. 1 A. & E. 283; 36 L. J. Adm. 1; 2 Asp. 434.

1496. A collision took place in foreign waters between an English and a foreign ship, and it appeared from the pleadings that, by Belgian or Dutch law, pilotage was compulsory, but that by that law the owner was not relieved from his responsibility by having given the sole charge of the vessel to a duly-licensed pilot. *Held* (overruling the decision of the Court of Admiralty in L. R. 2 A. & E. 3; 2 Asp. 556), that the defendant (the English ship) was not liable for the damage. *The Halley*, L. R. 2 P. C. 193.

1497. No foreign ship, whether in ballast or with cargo or passengers, navigating between any port of the United Kingdom or the Channel Islands or Isle of Man, is subject to any other rule for the employment of pilots or other restriction than British ships so employed. See the Customs Laws Consolidation Act, 1876 (c. 36), s. 141.

1497*a*. Charges for compulsory pilotage on foreign vessels are not differential dues within the meaning of the Harbour and Passing Tolls Act, 1861. *The Vesta*, 7 P. D. 240; 51 L. J. P. D. 25; 4 Asp. 515.

1498. For powers enabling her Majesty in Council to authorize vessels belonging to countries having treaties of reciprocity with the United Kingdom to be piloted in certain cases without having a licensed pilot on board, see 3 & 4 Vict. c. 68; and for similar powers enabling the crown, with the advice of the Privy Council, to permit vessels not exceeding sixty tons and not having British registers, to be navigated without pilots on the same terms as British ships of like burthen, see 6 Geo. 4, c. 125, s. 60.

1499. By laws of April 14th, 1865, and April 17th, 1868, the coasting trade of Denmark, Iceland, and the Faro Islands, is thrown open to foreign vessels under conditions of reciprocity. See same in 14 Hertslet, p. 1022.

2. In the Mersey.

See c. 26, s. 2, p. 1384.

5. Ships carrying Passengers.

1500. The master of every ship carrying passengers between places in the United Kingdom, Guernsey, Jersey, Sark, Alderney, and Man, when navigating upon any waters within the limits of any pilotage district, or any part thereof, must, unless he or his mate has a pilotage certificate for such district, employ a qualified pilot. Penalty for breach not exceeding £100. See the M. S. Act, 1854 (c. 104), s. 354.

1501. *Held*, that this section applied to a steamer carrying passengers within the limits of the port of Dublin. *The Dublin Port and Harbour Board v. Shannon*, L. R. 7 C. P. 116. [IRISH.]

1502. Subject to any alteration to be made by any pilotage authority, all exemptions from compulsory pilotage existing at the time when this act came into operation continue in force. See the M. S. Act, 1854 (c. 104), s. 353.

1503. The 354th section of the M. S. Act, 1854 (c. 104), making pilotage compulsory upon certain vessels, is not to be restricted by the provision of the 353rd section, that all existing exemptions from compulsory pilotage should continue in force. *The Temora*, 1 Lushington, 17; 1 L. T. N.S. 418.

1504. A vessel carrying passengers and trading between London and Belfast is under the 354th section of the M. S. Act, 1854 (c. 104), compellable to take a pilot. *Ibid.*

1505. To constitute a passenger within the meaning of the 354th or 379th sections of the M. S. Act, 1854 (c. 104), the payment of a fare is necessary. *The Lion*, L. R. 2 A. & E. 102; 2 P. C. 325; 37 L. J. Adm. 39; 38 L. J. P. C. Adm. 51; 3 Asp. 133; and P. C. 266; 6 Moore, P. C. C. N.S. 163.

1506. The wife and father-in-law of the master were, by invitation from the master, without the privity of the owners, on board a vessel usually carrying passengers, but not on a passage voyage at the time. They had neither paid, nor agreed to pay, any fare before a collision took place, but their passage-money was paid by the master, as sworn to by him, after the collision, although no receipt was produced. *Held*, that such persons were not passengers within the meaning of the

354th or 379th sections of the M. S. Act, 1854, c. 104. *Ibid.*

1507. A vessel having on board a man who did not pay anything for his passage, but messed with the captain and performed some work on board, *held*, under the 379th section of the M. S. Act, 1854 (c. 104), exempt from compulsory pilotage. *The Hanna*, L. R. 1 A. & E. 283; 36 L. J. Adm. 1; 2 Asp. 434.

1508. The following ships, when not carrying passengers, are exempted from compulsory pilotage in the Trinity House, London and outport districts:—Ships employed in the coasting trade of the United Kingdom. See M. S. Act, 1854 (c. 104), s. 379; and Bye-law of the Trinity House, Deptford Strond, confirmed by Order in Council of 16th July, 1857.*

1509. Also ships of not more than 60 tons burden. *Ibid.*

1510. Also ships trading to Boulogne, or to any place in Europe north of Boulogne. *Ibid.*

1511. Also ships from Guernsey, Jersey, Alderney, Sark or Man, which are wholly laden with stone, being the produce of those islands. *Ibid.*

1512. Also ships navigating within the limits of the port to which they belong. *Ibid.*

1513. Also ships passing through the limits of any pilotage district on their voyage between two places, both situate out of such limits, and not being bound to any place within such limits nor anchoring therein. *Ibid.*

1514. All ships mentioned in the above 379th section are exempted from compulsory pilotage, as well when carrying passengers as when not carrying passengers, if the master or mate of any such ship has a proper pilotage certificate. See Bye-law of Trinity House, confirmed by Order in Council of 16th July, 1857, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 72.

1515. This Order in Council can only extend, it cannot abridge, an exemption. *The Earl of Auckland*, 1 Lushington, 164, 387; 30 L. J. Adm. 121; 3 L. T. N.S. 786; 5 *Ibid.* 558; 10 W. R. 124; 1 Asp. 27, 177.

1516. And so far as it restricts any previously-existing exemption it is *ultra vires*. *Ibid.*

* (489) The result of the construction put by the decided cases upon the two statutes is to render the words "when not carrying passengers" contained in the 379th section

of the M. S. Act, 1854, of no effect. Possibly the cases may some day be reconsidered by an appellate tribunal. 1 Maude & Pollock (4th ed. by Pollock & Bruce), p. 279.

1517. And the Order in Council, being based on a construction of the law held erroneous by the Court of Queen's Bench, imposes no new pilotage obligation, and adds no new exemption from compulsory pilotage. *The Earl of Auckland*, 1 Lushington, 164, 387; 30 L. J. Adm. 121; 3 L. T. N.S. 786; 5 *Ibid.* 558; 10 W. R. 124; 1 Asp. 27, 177.

1518. A British ship trading between Boulogne and the Baltic, whether carrying passengers or not, is not bound to employ a licensed pilot in the Thames. *Ibid.*; *Reg. v. Stanton*, 8 E. & B. 445; 4 Jur. N.S. 10, 332; 27 L. J. M. C. 105. As to foreign ships, see *The Vesta*, in Nos. 1589—1591, p. 1362.

1519. In the 379th section of the M. S. Act, 1854 (c. 104), the description "ships trading to any place in Europe north of Boulogne," extends to vessels coming from a place north of Boulogne to the port of London. A vessel not carrying passengers on a voyage from Cronstadt to London, is exempted from compulsory pilotage in the river Thames. *The Wesley*, Lushington, 268.

1520. The master of a vessel belonging to the port of London and bound up the Thames, on a voyage from Australia to London with passengers on board, is required by law to employ a licensed pilot within the limits of the port of London. *The Hankow*, 4 P. D. 197; 4 Asp. 97.

1521. A certain number of persons, freemen of the Watermen's Company, are licensed by the Corporation (of the Trinity House, London), as pilots to pilot home-trade passenger steamers and no others up and down the Thames, between London Bridge and Gravesend. They are designated "Watermen Pilots for home-trade passenger ships." See Bye-Laws of the Corporation of Trinity House. Approved by Order in Council of May 1, 1855, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 69.

1521a. For exemption when master or mate has a pilotage certificate, see c. 6; and when passing through pilotage districts, see c. 9, p. 1363.

6. Pilotage Certificates.

1. Generally.*

1522. A master possessing a proper pilotage certificate, enabling him to do so, may pilot his ship without employing a licensed pilot. See M. S. Act, 1854 (c. 104), ss. 353—355.

1523. A master of a steam vessel trading between Hull and Rotterdam passed an examination as to his qualification to pilot such vessel into and out of the port of Goole. On the next day, he having then sailed for Rotterdam, a certificate, enabling him to pilot his vessel into and out of the port, was completed, sealed, and dated, but remained in the office of the Commissioners until after the collision. *Held*, that such certificate had not been granted, and was not possessed by the master so as to exempt his ship from compulsory pilotage. *The Killarney*, 30 L. J. Adm. 41; 5 L. T. N.S. 21; 1 Lushington, 202.

1523a. *Semble*, when the master or mate of a vessel is duly licensed under the 5th part of the M. S. Act, 1854, so as to render it unnecessary for him to take a pilot on board, the employment of such pilot does not bring his owners within the immunity of the 388th section. *Ibid.*

1524. A pilotage certificate issued to a master under sect. 355, describing the ship as the property of a person who was not the owner either at the time of the granting of the certificate, or at the time of a collision subsequently occurring, is invalid at the time of that collision. *The Earl of Auckland*, *supra*, No. 1515.

2. By Board of Trade.

1525. As to the grant of pilotage certificates by the Board of Trade to any master or mate of any ship carrying passengers between any places in the United Kingdom or Channel Islands, see M. S. Act, 1854 (c. 104), ss. 342, 355, and tit. PILOTS.

3. By Pilotage Authorities in General.

1526. As to the grant of pilotage certificates by pilotage authorities generally, see M. S. Act, 1854 (c. 104), ss. 340, 341, and tit. PILOTS.

* (490) Whenever a master desires to act as pilot, and furnishes the necessary evidence of his ability, the local inspectors for the district where the licence is issued shall endorse the route on the master's certificate; and, in like manner, when a first-class pilot desires to act as mate, if the inspectors are

satisfied of his ability, they shall endorse the fact on the pilot's certificate. See Regulations of Supervising Inspectors, circa anno 1876, rule 53. [AMERICAN.]

(491) But a mate's licence cannot be endorsed as first pilot. *Ibid.*

4. *By Trinity House, London.*

1527. As to the conditions upon which pilotage certificates are granted by the Trinity House, London, to masters and mates of ships, and the duties which holding such certificates entail, see Trinity House Bye-laws, confirmed by Order in Council of 1st May, 1855, in 2 Maude & Pollock (4th ed. by Poll. & Bruce), p. 71.

1528. Any master or mate who holds a pilotage certificate, granted by the Trinity House, London, under the M. S. Act, 1854 (c. 104), is qualified to pilot any other ship or ships belonging to the same owner or owners, within the limits described in such certificate, without being compelled to employ a pilot, but under the conditions that the ship which he is so qualified to pilot is of no greater draught of water than the ship in respect of which his certificate was granted, and that the name and description of every such ship is added to his certificate. See *Ibid.* No. 6, in *Ibid.* p. 72.

1529. All ships employed in the coasting trade of the United Kingdom: or of not more than sixty tons burthen: or trading to Boulogne or to any place in Europe north of Boulogne: or from Guernsey, Jersey, Alderney, Sark, or Man, which are wholly laden with stone, being the produce of those islands: or navigating within the limits of the port to which they belong: or passing through the limits of any pilotage district on their voyages between two places, both situate out of such limits, and not being bound to any place within such limits, nor anchoring therein, are, even when carrying passengers, exempted from compulsory pilotage if the master or his mate has a pilotage certificate, enabling him to pilot the ship within the district. *Ibid.* No. 7, in *Ibid.* p. 73.

5. *By Trinity House, Hull.*

1530. No certificate granted by the Corporation of the Trinity House, Hull, will authorize the person therein named to pilot any other ship than the ship or ships therein specified, and of which he may be actually master or mate at the time. See Bye-laws of the Trinity House, Hull, No. 9, confirmed by Order in Council of July 31, 1858.

7. Board of Trade.

1. *Generally.*

1531. As to the powers of the Board of

Trade by provisional order to create, transfer and re-arrange pilotage authorities, see tit. *PILOTS*, c. 5, s. 1.

2. *Exemptions.*

1532. The Board of Trade has power by provisional order to constitute a pilotage authority and fix its limits in any place in the United Kingdom where there is no such authority, but there is to be no compulsory pilotage in such new district. See M. S. Act Amendment Act, 1862 (c. 63), s. 39, sub-s. 3.

1533. The Board of Trade has the like power to exempt the masters and owners of all ships or classes of ships from being obliged to employ or pay pilots in any pilotage district or part thereof, and to annex any conditions to such exemptions. *Ibid.* sub-s. 4.

8. Pilotage Authorities in General.

1. *Powers and Jurisdiction.*

1534. As to the powers and jurisdiction of pilotage authorities in general, see tit. *PILOTS*, c. 5.

1535. Every qualified pilot on his appointment receives a licence, which must be duly registered, and he is not entitled to act as such until his licence is so registered; and any qualified pilot acting beyond the limits in his licence is to be considered as an unqualified pilot. See the M. S. Act, 1854 (c. 104), s. 349.

2. *Compulsion.*

1536. Subject to alteration by any pilotage authority, the employment of pilots shall continue to be compulsory in all districts in which the same was by law compulsory immediately before this act. *Ibid.* s. 353.

1537. Penalty against every master of any unexempted ship navigating within any such district, after a qualified pilot has offered or made a signal to take charge, piloting such ship without a proper pilotage certificate, or continuing to employ an unqualified person to do so, double pilotage. *Ibid.*

1538. The exemptions from compulsory pilotage given by 6 Geo. 4, c. 125, and *semble*, therefore previous compulsions, are continued by sect. 353 of the M. S. Act, 1854, and qualify sects. 376—379 of that act. *The Earl of Auckland*, 1 Lush-

ington, 164; 30 L. J. Adm. 121; 3 L. T. N.S. 786; 10 W. R. 124; *Reg. v. Stanton*, 8 E. & B. 445; 4 Jur. N.S. 10, 332; 27 L. J. M. C. 105.

3. Exemption.

(a) Generally.

1539. Subject to alteration by any pilotage authority, all exemptions from compulsory pilotage existing before this act, are to continue in force. See M. S. Act, 1854 (c. 104), s. 353.

1540. As to new districts, the Board of Trade has power by provisional order to constitute a pilotage authority and to fix the limits of its district in any place in the United Kingdom where there is no such authority; so, however, that in the new pilotage district so constituted there shall be no compulsory pilotage, and no restriction on the part of duly-qualified persons to obtain licences as pilots. See M. S. Act, 1862 (c. 63), s. 39, sub-s. 3, and *The Stettin*, 6 L. T. N.S. 613; 31 L. J. Adm. 208.

1541. The exemptions from compulsory pilotage given by 6 Geo. 4, c. 125, are continued by sect. 353 of the M. S. Act, 1854, and qualify sects. 376—379 of that act. *The Earl of Auckland*, 1 Lushington, 164; 30 L. J. Adm. 121; 3 L. T. N.S. 786; 10 W. R. 124; *Reg. v. Stanton*, 8 E. & B. 445; 4 Jur. N.S. 10, 332; 27 L. J. M. C. 105; *The Stettin*, 6 L. T. N.S. 613; 31 L. J. Adm. 208; *The Moselle*, 2 Asp. N.S. 586.

1542. As to the exemptions from compulsory pilotage in the London and Outport districts, see Nos. 1574—1642, pp. 1361—1366.

1543. The effect of sect. 353 of the M. S. Act, 1854, is not to take away any of the express exemptions of sect. 379 of that act. *Hadgraft v. Hewith*, L. R. 10 Q. B. 350; 44 L. J. M. C. 140; 2 Asp. N.S. 573.

1544. Every pilotage authority has power by bye-law, approved by Order in Council, to exempt the masters of any ships, or classes of ships, from being compelled to employ qualified pilots, to annex any conditions thereto, and to revise and extend any exemptions now existing on such conditions as may appear desirable. See the M. S. Act, 1854 (c. 104), s. 332.

1545. As to the powers of the Board of Trade to grant exemptions, see Nos. 1532, 1533, *supra*.

1546. As to the grant of pilotage certificates enabling the masters or mates of

certain ships to pilot them in lieu of their being compelled to take a licensed pilot, see c. 6, p. 1356.

1547. Compulsory pilotage is not a "charge" upon vessels under the 2nd section of the Convention of Commerce and Navigation between Great Britain and Sweden, dated 18th of March, 1826 (for which see 3 Hertlet's Commercial Treaties, p. 433). *The Hanna*, L. R. 1 A. & E. 283; 36 L. J. Adm. 1; 2 Asp. 434.

(b) Vessels under Sixty Tons.

1548. For provisions exempting British vessels under sixty tons from compulsory pilotage, see p. 1365.

1549. As regards the ports of Kingston-upon-Hull and Newcastle-upon-Tyne, and the ports and places respectively members thereof, and all other ports and places in respect of which the power vested in her Majesty by virtue of 4 Geo. 4, c. 77, is still subsisting, all vessels belonging to France, Sardinia, Portugal and Texas, bound from or to ports of the countries to which they respectively belong, or if in ballast any other places, and being of less than sixty tons burthen, are exempted from compulsory pilotage in all cases where British vessels of less burthen than sixty tons are so exempted. See Order in Council of 13th December, 1843, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 67.

1550. As regards all other ports and places in the United Kingdom, vessels belonging to Sweden and Norway, Russia, Denmark, Hanover, Prussia, the Free Hanseatic cities of Bremen, Lübeck, Hamburg and Frankfort, the Netherlands, Greece, the United States, Mexico, Columbia, Venezuela, Brazil, Bolivia, Peru, the united provinces of Rio de la Plata and Uruguay, being of less than sixty tons burthen, entering or clearing out of any such ports and places, are exempted from compulsory pilotage upon the same terms and conditions as British vessels, not exceeding the like burthen, under 6 Geo. 4, c. 125. *Ibid*.

1551. For similar provisions as to ships belonging to Austria, Mecklenburg-Schwerin, Mecklenburg-Strelitz, and Oldenburg, irrespective of the places from or to which they are bound, see Order in Council of 3rd September, 1844, gazetted 14th September.

1551a. For similar provisions as to the Two Sicilies, see Order in Council of 8th August, 1845.

9. Trinity House London District.

1. Generally.*

1552. See as to the powers and authority of the Trinity House, London, generally, and within the London District, tit. *Pilots*, c. 6.

1552a. The Cinque Ports district and the pilotage authority thereof have been included in and transferred to the Trinity House, London. See M. S. Act, 1854 (c. 104), s. 370, and 16 & 17 Vict. c. 129.

1553. Rochester is included in this district. See Parliamentary Returns as to Pilotage, Sessions Paper, No. 325 of 1882, p. 230; and for rates and regulations of pilots between Rochester and the Nore, *Ibid.* p. 186.

1553a. Maldon forms part of this district; and as to its limits, *Ibid.* p. 219, and Trinity House Regulations of July, 1874.

1554. The Trinity House London District comprises the waters of the Thames and Medway as high as London Bridge and Rochester Bridge respectively, and also the seas and channels leading thereto or therefrom as far as Orfordness to the north and Dungeness to the south. See M. S. Act, 1854 (c. 104), s. 370.

2. Compulsion.

1555. Subject to alteration by the Trinity House, and to the exemptions in this act, the pilotage districts of the Trinity House within which the employment of pilots is compulsory are the London, Outport and English Channel Districts (as therein defined). The master of every ship navigating within any part of such districts, who, after a qualified pilot has offered to take charge, or has made a signal for that purpose, either himself pilots such ship without possessing a pilotage certificate, or employs an unqualified person to pilot her, shall (in addition to the penalty of double pilotage), if the Trinity House certify under their seal that the prosecutor may proceed for the recovery of such additional penalty, incur an additional penalty not exceeding £5 for every fifty tons burden of such ship. *Ibid.* s. 376.

1556. Subject to alteration by the Trinity House every master of any ship coming from the westward, and bound to

any place in the Thames and Medway (unless exempted), shall, on the arrival of such ship off Dungeness, and thenceforth until she has passed the south buoy of the Brake, or a line to be drawn from Sandown Castle to that buoy, or until a qualified pilot has come on board, display and keep flying the usual signal for a pilot. If any qualified pilot is within hail, the master shall give charge of his ship to such pilot. Penalty for breach not exceeding double pilotage. *Ibid.* s. 378.

1557. Every pilot who shall have taken charge of any ship from the Thames to the Downs or elsewhere, shall, without additional compensation, wait on board for three complete days while such ship may be detained at Gravesend or elsewhere by any casualty, nor shall he at the end of three complete days be at liberty to quit such ship, or receive additional compensation, if she shall be further detained by winds, weather, or tides. See Bye-Law, No. 6, of Trinity House, Deptford Strond, confirmed by the King's Bench, 16th April, 1826, pursuant to 6 Geo. 4, c. 125, s. 11.

1558. Should the ship be detained beyond three complete days on any other account, except winds, weather, or tides, the pilot shall nevertheless (if required) remain in charge if a compensation of six shillings per day is offered to him by the master or owner. *Ibid.*

1559. When a vessel comes to anchor the duty of the pilot is at an end, but if he continues on board she is still under his charge. *The Christiana*, 7 Moore, P. C. C. 170; 7 Notes of Cases, 6; *ibid.* Supp. xlv.

1560. Pilot might have left the ship when she anchored in the Downs, but he did not. *Held* still in charge. *Ibid.*

1561. See also Nos. 1839—1842, p. 1383.

1562. *Seemle*, the limits of the port of London vary for different purposes. *The General Steam Navigation Co. v. The British and Colonial Steam Navigation Co., Limited*, L. R. 4 Ex. (Ex. Ch.) 238; 38 L. J. *ib.* 97; 3 Asp. 237.

1562a. For customs purposes it may extend to a line drawn from the Naze to the North Foreland. *Ibid.*

1563. For conservancy purposes it may

* (492) See as to the legal status of the London District of the Trinity House, 2 Maude & Pollock (4th ed. by Pollock &

Bruce), p. 110; and Orders in Council in *Ibid.* pp. 68—81.

extend from Staines Bridge to Yantlett Creek. *The General Steam Navigation Co. v. The British and Colonial Steam Navigation Co., Limited*, L. R. 4 Ex. (Ex. Ch.) 238; 38 L. J. *ib.* 97; 3 Asp. 237.

1564. The limits of a port may also from time to time vary, and increase with the increase of population and of buildings. *Ibid.*

1565. For pilotage purposes the port of London extends down the river to Gravesend and no further. *Ibid.* 4 Exch. 238.

1566. But even assuming that the port of London extends for pilotage purposes to Yantlett Creek, and that therefore a vessel belonging to the port of London would be exempt from compulsory pilotage above Yantlett Creek, yet the effect of sects. 378, 383 and Schedule U. of the M. S. Act, 1854 (c. 104), is such as to prevent the relation of master and servant existing between the owners of such vessel and a pilot taken on board off Dungeness, during any portion of the transit from Dungeness to Gravesend. *Ibid.* L. R. 3 Exch. 330; 37 L. J. Ex. 194; 3 Asp. 168.

1567. *Held*, also, that the exemption contained in sect. 388 of the M. S. Act, 1854 (c. 104), does not require that the pilot should be compulsorily employed where the accident happens, but only that he should have been compulsorily employed within the district where it happens. *Ibid.* 4 Exch. 238.

1568. The effect of 6 Geo. 4, c. 125, s. 59, and the 353rd section of the M. S. Act, 1854 (c. 104), is that pilotage is compulsory upon a vessel belonging to the port of London in the river Thames above Gravesend, inasmuch as the Trinity House charter makes provision for the appointment of pilots in those ports. (*The Killarney*, Lush. 427; 30 L. J. Adm. 41 followed; and *The Stettin*, Br. & L. 199, 202; 31 L. J. Adm. 208 doubted.) *The Hankow*, 4 P. D. 197; 48 L. J. P. D. 29; 4 Asp. 97.

1569. The 354th section of the M. S. Act, 1854 (c. 104), making pilotage compulsory upon certain vessels, is not to be restricted by the provision of the 353rd section, that all existing exemptions from pilotage should continue in force. An Irish trader (as described by 6 Geo. 4, c. 125, s. 159) therefore carrying passengers is compelled to employ a licensed pilot in the river Thames. (*R. v. Stanton*, 8 E. & B. 445, distinguished.) *The Temora*, Lush. 17.

1570. The 374th section of the M. S. Act, 1854 (c. 104), provides that no licence granted by the Trinity House

shall "continue in force beyond the 31st day of January next ensuing the date of such licence; but the same may, upon the application of the pilot holding such licence, be renewed on the 31st day of January in every year, or any subsequent day, by indorsement under the hand of the secretary of the Trinity House, or such other person as may be appointed by them for that purpose." *Held*, that a pilot's licence renewed by indorsement made on the 22nd of January operated as a renewal from the 31st January, and was therefore effective on the 6th May following. *The Beta*, Br. & Lush. 328.

1571. A vessel ordinarily occupied in the foreign trade going from Liverpool to London in order to sail from London under advertisement for foreign parts, not carrying passengers but having a cargo shipped at Liverpool and deliverable at London, is not a "ship employed in the coasting trade of the U. K." within the meaning of the 379th section of the M. S. Act, 1854 (c. 104), and is compellable by the 376th section to take a pilot in the London district of the Trinity House. *The Lloyd's or Sea Queen*, Br. & Lush. 359; 2 N. R. 497; 9 L. T. N.S. 236; 32 L. J. N.S. Adm. 97.

1572. A duly-qualified pilot being intrusted with the navigation of a foreign vessel, the owner is exonerated under stat. 6 Geo. 4, c. 125, s. 55, which applies equally to foreign ships as to British ships. Foreign owner and bail dismissed. *The Christiana*, 2 Hagg. 183.

1573. As to compulsion in regard to ships carrying passengers and what constitutes a passenger, see c. 5, p. 1355.

3. Exemption.

(a) Generally.

1574. The master of any collier, or of any ship or vessel trading to Norway, or to the Cattegat or Baltic, or round the North Cape, or into the White Sea, on their inward or outward voyages, or of any constant trader inwards, from the ports between Boulogne inclusive and the Baltic, all such ships and vessels having British registers, and coming up either by the North Channel (or South Channel, see No. 1582, *infra*), or of any Irish trader using the navigation of the rivers Thames and Medway, or of any ship or vessel employed in the regular coasting trade of the kingdom, or of any ship or vessel wholly laden with stone from Guernsey, Jersey, Alderney, Sark, or Man, and being the production thereof,

or of any ship or vessel not exceeding the burthen of sixty tons, and having a British register, except as hereinafter provided, or of any other vessel whatever, whilst the same is within the limits of the port or place to which she belongs, the same not being a port or place in relation to which particular provision hath heretofore been made by any act of parliament, or charter for the appointment of pilots, may, without being subject to any of the penalties in this act, pilot his own vessel so long as he shall pilot the same without the aid of any other person than the ordinary crew of the vessel. See 6 Geo. 4, c. 125, s. 59.*

1575. Subject to any alteration to be made by any pilotage authority, in pursuance of the powers given by sects. 332—336, all exemptions from compulsory pilotage existing when this act came into operation continue in force. The M. S. Act, 1854 (c. 104), s. 353.

1576. The exemptions from compulsory pilotage given by 6 Geo. 4, c. 125, s. 59 (supplemented by Order in Council, 18th February, 1854), are maintained by sect. 353 of the M. S. Act, 1854 (c. 104), and qualify sects. 376, 379 of that act. (*R. v. Stanton*, 8 E. & B. 445, followed.) *The Earl of Auckland, supra*, No. 1515; *The Hankow, supra*, No. 1520.

1577. By sect. 353 of the M. S. Act, 1854 (c. 104), all exemptions from compulsory pilotage which existed at the time when that act came into operation continue in force. *The Stettin*, 6 L. T. N.S. 613; 31 L. J. Adm. 208; B. & L. P. C. 199.

1578. A foreign ship not having a British register is not exempted from compulsory pilotage by the 59th section of the 6 Geo. 4, c. 125. *The Hanna*, L. R. 1 A. & E. 283; 36 L. J. Adm. 1; 2 Asp. 434.

1579. The following ships, "when not carrying passengers,"* are exempted from compulsory pilotage in the London District, and in the Trinity House Outport Districts: (1) Ships employed in the coasting trade of the United Kingdom; (2) Ships of not more than sixty tons burden; (3) Ships trading to Boulogne or to any place in Europe north of Boulogne; (4) Ships from Guernsey, Jersey, Alderney, Sark, or Man, which are wholly laden with stone, being the produce of those islands; (5) Ships navigating within the limits of the port to which they be-

long; (6) Ships passing through the limits of any pilotage district on their voyages between two places, both situate out of such limits, and not being bound to any place within such limits, nor anchoring therein. See the M. S. Act, 1854 (c. 104), s. 379; and Bye-Law of the Trinity House, Deptford Strond, confirmed by Order in Council, 16th July, 1857.

1580. As to exemptions in regard to ships carrying passengers, and what constitutes a passenger, see c. 5, p. 1355.

(b) *Ships trading to Norway, &c.*

1581. The master of any vessel trading to Norway, or to the Cattegat, or Baltic, or round the North Cape, or into the White Sea, on their inward or outward voyages, all such ships and vessels having British registers, and coming up by the North Channel (or South Channel, see No. 1582, *infra*), may, without being subject to penalties, pilot his own ship, so long as he does so without the aid of any other person than his ordinary crew. 6 Geo. 4, c. 125, s. 59.

1582. Ships trading to Norway, or to the Cattegat or Baltic, or round the North Cape, or into the White Sea, when coming up by the South Channels, are similarly exempted from compulsory pilotage. See Regulations of Trinity House, confirmed by Order in Council of Feb. 18, 1854, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 68.

1583. The exemptions contained in the Order in Council of Feb. 18, 1854, do not apply to a vessel coming up by the North Channel. *The Hanna*, L. R. 1 A. & E. 283; 36 L. J. Adm. 1; 2 Asp. 434.

1584. A person to whom the master, without the owner's consent, gives a passage gratuitously, and who messes with him, but who, having had some experience at sea undertakes in return to help in the working of the ship, is neither a passenger nor a seaman. *Ibid.*

(c) *Ships trading to Boulogne or North of Europe.*

1585. Ships trading to Boulogne or to any place in Europe north of Boulogne, are, when not carrying passengers, exempted from compulsory pilotage in the Trinity House, London, and outport dis-

* (492a) See these exemptions referred to separately, *infra*.

tricts. See M. S. Act, 1854 (c. 104), s. 379.

1586. The Order in Council of 16th July, 1857 (purporting to approve a bye-law of the Trinity House, purporting to restrict the exemptions then existing within the London District, being based on a construction of the law held erroneous by the Court of Queen's Bench, imposes no new pilotage obligation, and adds no new exemption from compulsory pilotage. *The Earl of Auckland*, 1 Lushington, 164, 387; 30 L. J. Adm. 121; 3 L. T. N.S. 786; 5 *ibid.* 558; 10 W. R. 124; 1 Asp. 27, 177.

1587. A British ship, trading between Boulogne and the Baltic, and carrying passengers, is not bound to employ a licensed pilot in the river Thames. *Ibid.*

1588. Under the 32nd section of the M. S. Act a pilotage authority, with the consent of her Majesty in Council, has no authority to create a new penal obligation to employ a licensed pilot, but only authority to create or extend an exemption from compulsory pilotage with or without condition. *Ibid.*

1589. The exemptions from compulsory pilotage created by the Order in Council of the 18th February, 1854, for vessels navigating the Thames, apply only to British ships. *The Vesta*, 7 P. D. 240; 51 L. J. P. D. 25; 4 Asp. 515.

1590. Sects. 353 and 376 of the M. S. Act, 1854 (c. 104), render foreign vessels trading with cargo and passengers from the port of London to ports between Boulogne and the Baltic subject to compulsory pilotage on their outward passage between London and Gravesend, unless their masters or mates have certificates from the London Trinity House; and the operation of these sections, so far as such vessels are concerned, is not affected either by the Order in Council of February 18, 1854, or by provisions contained in the Harbour and Passing Tolls Act, 1861. *Ibid.*

1591. Charges for compulsory pilotage on such foreign vessels are not differential dues within the meaning of the Harbours and Passing Tolls Act, 1861, and are not abolished by that act. *Ibid.*

(d) *Constant Traders inwards from Ports North of Boulogne.*

1592. The master of any constant trader inwards, from the ports between Boulogne inclusive and the Baltic, all such vessels having British registers, and coming up either by the North Channel or South Channel (see No. 1593, *infra*), may pilot his own vessel so long as he navigates her without the aid of any other person than his ordinary crew. See 6 Geo. 4, c. 125, s. 59.

1593. The masters of vessels trading to ports between Boulogne inclusive, on their outward passages, and when coming up by the South Channels are similarly exempted from compulsory pilotage. See Regulations of Trinity House, confirmed by Order in Council of 18th Feb. 1854, in 2 Maude & Pollock (2nd ed. by Pollock & Bruce), p. 68.*

1594. A vessel, not carrying passengers, on a voyage from Cronstadt to London, is exempted from compulsory pilotage in the Thames. *The Wesley*, 1 Lushington, 268.

(e) *Ships trading between Great Britain and Ports North and East of Brest.*

1595. All ships trading within the Trinity House, London, or Outport Districts, between the port of Brest, in France, or any port or place in Europe north and east of Brest, and any port or place in Great Britain, when not carrying passengers, are exempted from compulsory pilotage within such districts. See By-law of Trinity House, London, approved by Order in Council of 21st December, 1871, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 78.

(f) *Ships in Coasting Trade.*

1596. The master of any vessel employed in the regular coasting trade of the kingdom may pilot his own vessel so long as he navigates her without the assistance of any other person than his ordinary crew. See 6 Geo. 4, c. 125, s. 59.

1597. As to the continuance of this

* (493) As to the construction put on these words, see *The Earl of Auckland*, No. 1576.

(494) A vessel trading to and from London and Belfast, and proceeding down the Thames on her voyage to Belfast, and not laden with corn, grain, meal, flour, bread, or biscuits,

held, not within sect. 2 of 52 Geo. 3, c. 29 (now repealed), which exempted from the obligation of taking a pilot all coasting vessels and all Irish traders using the navigation of the Thames as coasters. *Davison v. McKibben*, 3 Brod. & Bing. 112.

exemption, notwithstanding the act is repealed, see Nos. 1575—1579, *supra*.

1598. Ships employed in the coasting trade of the United Kingdom, when not carrying passengers, are exempted from compulsory pilotage in the Trinity House, London, and Outport Districts. See M. S. Act, 1854 (c. 104), s. 379.

1599. The reason why coasting vessels are exempted from the obligation of taking a pilot is, that from their frequent egress and ingress to the particular port, their masters must be presumed to be perfectly acquainted with the locality. *The Agricola*, 2 W. Rob. 10; 7 Jur. 157.

1600. As to such exemptions in regard to vessels in the coasting trade running in and out of Liverpool, see No. 1847, p. 1384.

1601. A vessel ordinarily occupied in the foreign trade going from Liverpool to London in order to sail from London on such foreign trade, without passengers, but having on board a cargo shipped at Liverpool, and deliverable at London, is not "a ship employed in the coasting trade of the United Kingdom" within the meaning of the 379th section of the M. S. Act, and is compellable to take a pilot. *The John Mowlem v. The Lloyd's or Sea Queen*, 2 N. R. 497; 9 L. T. N.S. 236; 32 L. J. N.S. Adm. 97.

See also No. 1497, p. 1354; and No. 1777, p. 1378.

(g) *Ships navigating between Ports of the United Kingdom in Ballast.*

1602. All ships navigating in ballast

from any port or place to any other port or place both in the United Kingdom are, when not carrying passengers, exempt from compulsory pilotage within the pilotage jurisdiction of the Trinity House, London. See Bye-law of the Trinity House, approved by Order in Council, July 25, 1861,* in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 73.

(h) *Ships navigating between Ports of the United Kingdom and the Channel Islands.*

1603. All ships trading within the Trinity House, London, or Outport Districts, or either of them, between any port or place in Great Britain, and the Islands of Guernsey, Jersey, Alderney, Sark, or Man, when not carrying passengers, shall be exempted from compulsory pilotage within such districts. See Bye-law of Trinity House, London, approved by Order in Council of 21st December, 1871, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 78.

(i) *Ships passing through Pilotage Districts.*†

1604. Ships passing through the limits of any pilotage district on their voyages between two places, both situate out of such limits, and not being bound to any place within such limits, nor anchoring therein, are, when not carrying passengers, exempted from compulsory pilotage

* (495) This bye-law in effect supersedes a bye-law of 21st Nov. 1855, of the same corporation, granting to vessels coming from foreign ports in ballast to the United Kingdom exemption, under certain limitations, from compulsory pilotage.

† (496) The Trinity House, London, construes the 41st section of the M. S. Act Amendment Act, 1862 (c. 63), as follows:—1st. That a ship passing through the limits of a pilotage district, on a voyage between two places, both situate out of such district, may enter into a port within such district, and remain there for a time, and sail again to her destination, without being liable to compulsory pilotage, provided she does not load or discharge within the district. 2ndly. That a ship, in the circumstances before mentioned, does not incur liability to compulsory pilotage by reason of her entering a port within the district to repair or to receive orders (not being bound to such port for orders), or for any temporary purpose, other

than loading or discharging. 3rdly. That a ship bound to a port within a pilotage district for orders, her ultimate destination being indefinite, is not exempt from compulsory pilotage, although the place from which she has come may be without the district, and the port to which she may be ultimately directed may be also out of the district, such ship having in fact at the moment of her calling for orders no port of final destination, and therefore no actual destination beyond the limits of the pilotage district. 4thly. That a ship discharging her cargo at a port within a pilotage district to which she is not bound, and reloading the same cargo under casual circumstances (such as having shifted her cargo at sea, or requiring repairs), is not exempted from compulsory pilotage, the terms "loading or discharging" used in the 41st section of the act appearing to counsel to signify loading or discharging under any circumstances, or for any purpose.

in the London District, and in the Trinity House Outport Districts. See the M. S. Act, 1854 (c. 104), s. 379.

1605. The masters and owners of ships passing through the limits of any pilotage district in the United Kingdom on their voyages between two places both situate out of such districts, are exempted from any obligation to employ a pilot, or to pay pilotage rates, within such district; unless such ships are loading or discharging at any place within or above such district on the same river or its tributaries. See the M. S. Act Amendment Act, 1862 (c. 63), s. 41.

1606. The masters of vessels passing through the limits of any pilotage district on their voyage from one port to another, and not bound to any port or place within such limits, nor anchoring therein, are similarly exempted from compulsory pilotage. See Regulations of Trinity House, confirmed by Order in Council of 18th Feb. 1854, in 2 Maude & Pollock (4th ed. by Poll. & Bruce), p. 68.

1607. The word "loading," in the M. S. Act Amendment Act, 1862 (c. 63), s. 41, is not confined to taking on board cargo, but also includes taking on board coals for the purpose of the voyage. Therefore where a steamer anchored in Dartmouth Harbour, and took on board twenty tons of coal for the purposes of the voyage, and was bound from a place out of the outport district to a destination also out of it; *held*, that she was not exempt from the obligation to employ a pilot. *The Winston*, 8 P. D. 176; 52 L. J. P. D. 72; 53 *Ibid.* 69; 9 P. D. C. A. 85; 5 Asp. 143.

(j) *Ships within their own Ports.*

1608. The master of any vessel, whilst the same is within the limits of the port or place to which she belongs, the same not being a port or place as to which particular provision has been made for pilots, may pilot his own vessel so long as he navigates her without the aid of any other person than his ordinary crew. See 6 Geo. 4, c. 125, s. 59.

1609. As to the continuance of this exemption notwithstanding this act is repealed, see No. 1576, *supra*.

1610. The provisions of the Pilotage Act, 1825 (c. 125), as to compulsory pilotage and exemptions therefrom, are preserved by the M. S. Act, 1854 (c. 104), s. 353; *The Hankow*, 4 Asp. 97.

1611. A vessel within the limits of her

own port at a place where, previous to the passing of the Pilotage Act, 1825, there were provisions in force for the appointment of pilots, is not exempt from compulsory pilotage. *Ibid.*

1612. The provisions of the Trinity House charter granted by James II., and of the acts of parliament relating to the pilotage of the rivers Thames and Medway, and the approaches thereto, are "particular provisions" relating to the port of London, within the meaning of sect. 59 of the 6 Geo. 4, c. 125, so far as that port is contained in the pilotage district. *Ibid.*

1613. Ships navigating within the limits of the port to which they belong, when not carrying passengers, are exempted from compulsory pilotage in the Trinity House, London, and Outport Districts. See the M. S. Act, 1854 (c. 104), s. 379.

1614. *Held*, overruling the decision in the court below (see 6 L. T. 613), that the words "navigating within" in the 379th section of the M. S. Act, 1854 (c. 104), mean "being within," and that therefore a vessel belonging to the port of London and coming from a foreign port is exempt from compulsory pilotage in the Thames. *The Stettin*, B. & L. P. C. 199; 31 L. J. Adm. 208; 6 L. T. N.S. 613.

1615. A steam vessel belonging to the port of London on a voyage from Bordeaux to London, whilst off the Regent's Canal in the river Thames, came into collision with a brig at anchor, solely by the fault of the pilot of the steamer. *Held*, that the collision having taken place when the steamer was within the limits of the port to which she belonged, her owners were at such time not compelled to take a pilot, and were therefore answerable for his misconduct. *Ibid.*

1616. *Seemle*, that but for 6 Geo. 4, c. 125, s. 59, the taking of the pilot would, notwithstanding the M. S. Act, 1854 (c. 104), s. 379, have been under the circumstances compulsory upon the owners. *Ibid.*

1617. By 6 Geo. 4, c. 125, s. 59, vessels within the limits of the port to which they belong, the same not being a port or place in relation to which particular provision hath heretofore been made by any act of parliament, or by any charter or charters for the employment of pilots, are exempted from compulsory pilotage. *The Killarney*, 6 L. T. N.S. 908; 1 Lushington, 427.

1618. *Held*, that the 6 Geo. 3, c. 39,

having before this enactment made particular provision for the employment of pilots by the masters of inward-bound vessels from Kingston-upon-Hull to Goole, the exemption is inapplicable to such a vessel. *Ibid.*

1619. A ship belonging to the port of London, and bound to London from Australia with passengers, is obliged to employ a pilot by compulsion of law, under the provisions of sect. 59 of the Pilotage Act, 1825 (c. 125), when within the limits of the port of London, by reason of there being at that time "particular provisions" for the appointment of pilots for the rivers Thames and Medway below bridge. (*The Stettin*, Br. & Lush. 199; 6 L. T. N.S. 613; 1 Asp. 229, not followed. *The Kil-larney*, Lush. 427; 6 L. T. N.S. 908; 1 Asp. 238, approved.) *The Hankow*, 4 P. D. 197; 4 Asp. 97.

(k) *Irish Traders in Thames and Medway.*

1620. The master of any Irish trader navigating the Thames and Medway may pilot his own ship so long as he navigates her without the aid of any one but his ordinary crew. See 6 Geo. 4, c. 125, s. 59, and note (494) *supra*.

1621. As to the continuance of this exemption, notwithstanding the act is repealed, see Nos. 1575—1579, p. 1361.

(l) *Colliers.*

1622. The master of any collier may, without being subject to any penalties, pilot his own ship so long as he pilots her without the assistance of any person than the ordinary crew of the ship. See 6 Geo. 4, c. 125, s. 59.

1623. As to the continuance of this exemption, notwithstanding the act is repealed, see Nos. 1575—1579, p. 1361.

(m) *Ships with Stone from the Channel Islands.*

1624. The master of any ship or vessel wholly laden with stone from Guernsey, Jersey, Alderney, Sark, or Man, and being the production thereof, may pilot his own vessel so long as he navigates her without the aid of any other person than his ordinary crew. See 6 Geo. 4, c. 125, s. 59.

1625. As to the continuance of this

exemption, notwithstanding the act is repealed, see Nos. 1575—1579, p. 1361.

1626. Ships from Guernsey, Jersey, Alderney, Sark, or Man, wholly laden with stone, the produce of those islands, are, when not carrying passengers,* exempted from compulsory pilotage in the Trinity House London Outport Districts. See 6 Geo. 4, c. 125, s. 379.

1627. See also as to the exemption of ships trading between the United Kingdom and the Channel Islands; No. 1603, p. 1363.

(n) *Ships not exceeding Sixty Tons Burthen.*

1628. Ships of not more than sixty tons burthen, when not carrying passengers,† shall be exempted from compulsory pilotage in the London District, and in the Trinity House Outport Districts. See the M. S. Act, 1854 (c. 104), s. 379.

1629. The master of any vessel not exceeding the burthen of sixty tons, and having a British register, may pilot his own vessel so long as he navigates her without the aid of any other person than his ordinary crew. See 6 Geo. 4, c. 125, s. 59.

1630. His Majesty may, by any Order in Council, authorize vessels not exceeding the burthen of sixty tons, and not having a British register, to be piloted without having a duly-licensed pilot on board upon the same conditions as are by this act imposed on British vessels not exceeding the like burthen. *Ibid.* s. 60.

1631. As to the continuance of these exemptions, notwithstanding the act of 6 Geo. 4, c. 125, is repealed, see Nos. 1575—1579, p. 1361.

(o) *Ships carrying Provisions.*

1632. The Trinity House of Deptford Strond may make regulations as to the piloting of ships not having British registers bringing fish, corn, or other provisions into the port of London, and which ought to be piloted by their licensed pilots. For the exemption of such ships from any regulations as to pilotage, see 6 Geo. 4, c. 125, s. 51.

1633. As to the continuance of this exemption, notwithstanding the act is repealed, see Nos. 1575—1579, p. 1361.

* (497) See as to the construction put on these words, c. 5, p. 1355.

† (498) See as to the construction put on these words, *ibid.*

(p) *Masters and Mates Part-owners residing at Dover, &c.*

1634. Nothing in this act extends to subject to any penalty the master or mate of any ship being the owner or part-owner thereof, and residing at Dover, Deal, or the Isle of Thanet, for piloting his own ship from any of the places therein mentioned up or down the Thames or Medway, or into or out of any port or place within the jurisdiction of the Cinque Ports. See 6 Geo. 4, c. 125, s. 62.

1635. As to the continuance of this exemption, notwithstanding the act is repealed, see Nos. 1575—1579, p. 1361.

1636. *Held*, that the above exemption was limited to vessels navigated from Dover, Deal, or the Isle of Thanet. *Peake v. Screech*, 7 Q. B. 603; 9 Jur. 797; 14 L. J. Q. B. 133; S. P. *Williams v. Newton*, 14 M. & W. 747; 15 L. J. Exch. 11.

1637. The 2nd section of the 6 Geo. 4, c. 125, enacts that all vessels sailing as well up and down or upon the rivers Thames or Medway between Orfordness and London Bridge to the Downs, &c. (except as thereafter provided) shall be piloted by pilots licensed by the Trinity House. The 58th section imposes penalties on masters acting as pilots after a licensed pilot has offered to take charge of the vessel. Section 62 provides that "nothing in that act contained shall extend or be construed to extend to subject to any penalty the master or mate of any ship or vessel, being the owner or part-owner of such ship or vessel, and residing at Dover, Deal, or the Isle of Thanet, for conducting or piloting such his own ship or vessel from any of the places aforesaid up and down the rivers Thames or Medway, or into or out of any port or place within the jurisdiction of the Cinque Ports." *Held*, that the "places aforesaid" in this section mean Dover, Deal, and the Isle of Thanet; that therefore the clause exempts from penalties such masters only as navigate their vessels from Dover, Deal, or the Isle of Thanet; and consequently that the penalties in sect. 58 were recoverable from a master

piloting his own vessel on a foreign voyage commencing in the port of London, although he was a part-owner and resident in the Isle of Thanet. *Williams v. Newton*, 14 M. & W. 747.

(q) *Removal of Ships in Port.*

1639. When any vessel has been brought into any port in England by any duly-licensed pilot, the master or other person in command thereof, or if in ballast, any person appointed by the owner, master, or owner's agent, may afterwards remove the vessel in such port for the purpose of her entering or leaving any dock, or changing her moorings. See 6 Geo. 4, c. 125, s. 63.

1640. As to the continuance of this exemption, notwithstanding the act is repealed, see Nos. 1575—1579, p. 1361.

1641. Prior to the collision the vessel had, on completing a voyage from India, been brought by a licensed pilot into the St. Katharine's Dock, and having there discharged her cargo, was at the time of such collision in the course of removal, for the purpose of going out of that dock to a dry dock in the port of London to be repaired, and was not at such time otherwise navigating or passing upon the Thames. *Held*, that the circumstance brought the case within the exception in the 63rd section of 6 Geo. 4, c. 125. *Lucey v. Ingram*, 6 M. & W. 302.

1642. As to its being unnecessary to employ a licensed pilot to change a ship's moorings, see *Rex v. Lambe*, 5 T. R. 76; *Rex v. Neale*, 8 T. R. 241.

10. Trinity House Outport Districts.

1. *Generally.*

1643. The Trinity House Outport Districts comprise any pilotage district for the appointment of pilots within which no particular provision is made by any act of parliament or charter. See M. S. Act, 1854 (c. 104), s. 370.

1644.* An act of parliament adopting

* (499) On the case of *Hadgraft v. Hewith* (2 Asp. N.S. 573), the learned editor makes the following note:—"It would appear to follow, from this decision, that wherever the appointment of pilots is by the Trinity House, all exemptions and compulsions existing before the M. S. Act, 1854, are con-

tinued, and that the existence of an act of parliament or charter under which the Trinity House appoint, is not a 'particular provision' within the meaning of the M. S. Act, 1854, or the 6 Geo. 4, c. 125, s. 59, so as to continue the exemption or compulsion."

the general provisions of 6 Geo. 4, c. 125, s. 5, for the appointment of pilots is not a "particular provision" within the meaning of the M. S. Act, 1854 (c. 104), s. 370. *Hadgraft v. Hewith*, L. R. 10 Q. B. 350; 44 L. J. M. C. 140; 2 Asp. N.S. 573.

1645. The Ipswich Dock Act, 1852 (c. cxvi), does not therefore prevent the Ipswich District from being a Trinity Outport District. *Ibid.*

1646. The Trinity House Outport Districts include the ports of Aberdovey, Beaumaris, Bridgwater, Bridport, Caernarvon, Carlisle, Colchester, Cowes, Dartmouth, Exeter, Falmouth, Fleetwood-on-Wyre and Barrow, Fowey, Harwich, Holyhead, Ipswich, Isle of Wight, Lowestoft, Milford, Neath, Newhaven, Padstow, Penzance, Plymouth, Poole, Portmadoc, Portsmouth, Rye, St. Ives (Hayle), Scilly, Shoreham, Southampton, Teignmouth, Wells, Weymouth, Woodbridge, Yarmouth. *Ibid.* s. 371; and 2 Maude & Pollock on Merc. Sh. (4th ed. by Pollock & Bruce), pp. 111—116.

1647. As to the legal status of the Trinity House Outport Districts, see 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 111; and for bye-laws, regulations and rates, see Parliamentary Returns as to Pilotage, No. 325 of 1882, pp. 186—244; and for regulations and rates of pilotage for exempted ships between the Nore and Rochester, *Ibid.* p. 186.

2. Compulsion.

1648. Subject to alteration by the Trinity House, and to exemptions in this act, the pilotage districts of the Trinity House within which the employment of pilots is compulsory are the London and Outport Districts, as therein before defined. The master of every ship navigating within any part of such districts, who, after a qualified pilot has offered to take charge of such ship, or signalled for that purpose, either pilots such ship without a pilotage certificate, or employs an unqualified person to pilot her, shall, in addition to the penalty of double pilotage, if the Trinity House certify under their

common seal that the prosecutor may proceed for the recovery of such additional penalty, incur an additional penalty, not exceeding £5 for every fifty tons burden of such ship. See the M. S. Act, 1854 (c. 104), s. 376.

1649. Pilotage is compulsory in the Falmouth district. *The Juno*, 1 P. D. 135; 45 L. J. P. D. & A. 105; 3 Asp. N.S. 217.

3. Exemptions.

1650. The following ships, when not carrying passengers, are exempted from compulsory pilotage in the London District, and in the Trinity House Outport Districts:—(1) ships employed in the coasting trade of the United Kingdom; (2) ships of not more than sixty tons burden; (3) ships trading to Boulogne, or to any place in Europe north of Boulogne; (4) ships from Guernsey, Jersey, Alderney, Sark, or Man, which are wholly laden with stone, being the product of those islands; (5) ships navigating within the limits of the port to which they belong; (6) ships passing through the limits of any pilotage district on their voyages between two places, both situate out of such limits, and not being bound to any place within such limits, nor anchoring therein. See the M. S. Act, 1854 (c. 104), s. 379; and Bye-Law* of the Trinity House, London, confirmed by Order in Council, 16th July, 1857.†

1651. The masters and owners of vessels passing through the limits of any pilotage district in the United Kingdom on their voyages between two places, both situate out of such districts, shall be exempted from any obligation to employ a pilot within such district, or to pay pilotage rates when not employing a pilot within such district. Provided that the exemption contained in this section shall not apply to ships loading or discharging at any place within such district, or at any place situate above such district on the same river or its tributaries. See the M. S. Act, 1862 (c. 63), s. 41.

1652. All ships navigating in ballast between any ports or places in the United Kingdom, when not carrying passengers,

* (500) This bye-law in effect supersedes a bye-law of 21st Nov. 1855, of the same corporation, granting to vessels coming from foreign ports in ballast to the United King-

dom exemption from compulsory pilotage under certain limitations.

† (501) See as to these separately, Nos. 1574—1579, pp. 1361—1366.

are exempt from compulsory pilotage within the pilotage jurisdiction of the London Trinity House. See their Bye-law, confirmed by Order in Council, July 25, 1861.

1654. All ships trading from any port or place in Great Britain, within the London District or any of the Trinity House Outport Districts to the port of Brest, in France, or any port or place in Europe north and east of Brest, or to the islands of Guernsey, Jersey, Alderney, Sark or Man, or from Brest or any port or place in Europe north and east of Brest, or from the islands of Guernsey, Jersey, Alderney, Sark or Man to any port or place in Great Britain within either of the said districts, when not carrying passengers, shall be exempted from compulsory pilotage within such districts. See Order in Council of the 21st December, 1871; 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. 78.

1655. No master of a vessel is compellable to take a pilot within the Beaumaris District when not coming in or going out of port. See Parliamentary Return as to Pilotage, No. 516 of 1855, p. 23.

1656. No master of a vessel is compellable to take a pilot for Mount's Bay and Penzance within the Penzance District until he comes within a line drawn from St. Clement's Isle to Trewavas Head. *Ibid.* p. 61.

1657. Pilotage is not compulsory for vessels proceeding to Tor Bay, but should the master of any vessel choose to employ a pilot to the anchorage therein, the pilotage shall be two-thirds less than that chargeable to vessels proceeding to the harbour of Brixham and Torquay. *Ibid.* No. 276 of 1874, p. 16.

1658. See as to exemptions in the London District applicable to these districts also, Nos. 1574—1642, p. 1361—1366.

4. *Aberdovey.*

1659. Definition of limits: from two miles beyond the outside of the bar, off the entrance of the river Dovey, up the river to Aberdovey, and *vice versa*. See Parliamentary Return as to Pilotage, No. 325 of 1882, p. 195; and No. 264 of 1863; and see Trinity House Regulations of November, 1862.

5. *Beaumaris.*

1660. Definition of limits: from Port Dinorwic or Moel-y-Don through the

Swellies to a line drawn from Great Orme's Head to Point Linas, and *vice versa*, and into and out of all ports and places within those places. See P. R. No. 325 of 1882, p. 196; No. 206 of 1870; and Trinity House Regulations of December, 1869.

See also No. 1655, *supra*.

6. *Bridgwater.*

1661. The corporation of Bristol and the pilotage authorities of Cardiff, Newport, and Gloucester having agreed that the limits of the Trinity House Outport District for the port of Bridgwater should be altered and extended, the limits of the Trinity House Outport District for the port of Bridgwater are all such parts of the Bristol Channel and adjacent rivers and creeks as lie on the south side of, and are comprised within an imaginary straight line drawn from Anchor Head on the east to Watchet on the west, both in Somersetshire. See Bye-laws of these Pilotage Authorities, approved by Order in Council of 17th May, 1867, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 82; Trinity House Regulations of April, 1875; P. R. No. 325 of 1882, p. 197; and No. 1766 and note (527), p. 1377.

1662. Sub-commissioners of pilotage are appointed for the port of Bridgwater by the Trinity House under 8 & 9 Vict. c. lxxxix. ss. 70—76.

7. *Bridport.*

1663. Definition of limits: from sea into the harbour of Bridport, and from the harbour to sea. P. R. No. 325 of 1882, p. 199; and see Pilotage Commission, 1870; P. R. No. 276 of 1875; and Trinity House Regulations of July, 1874.

8. *Caernarvon.*

1664. Definition of limits: from the outwardmost buoy on the Bar of Caernarvon, into and out of Caernarvon harbour, and in the Menai Strait to Port Dinorwic, or Moel-y-Don, and *vice versa*, and into and out of all ports and places within those limits. See P. R. No. 325 of 1882, p. 199; Pilotage Commission, 1870; P. R. No. 276 of 1875; and Trinity House Regulations of July, 1874.

9. *Carlisle.*

1665. Definition of limits: in the English Channel of the Solway Firth between the anchorage ground off the bar-

bour of Maryport and the entrance of Port Silloth and Annan Water Foot from the said Frith.* P. R. No. 325 of 1882, p. 201.

10. Colchester.

1666. Definition of limits: from a line drawn from the Naze Tower to the buoy of the Gunfleet up the Colne river to Colchester and *vice versd*.† *Ibid*.

11. Cowes.

1667. This is now comprised in the Isle of Wight district. See Nos. 1681, 1682, *infra*.

12. Dartmouth.

1668. Definition of limits: from Bob's Nose to the Bolt Head and *vice versd*, and into and out of all ports and places within those limits.‡ P. R. No. 325 of 1882, p. 202.

1669. See also No. 1657, *supra*.

13. Exeter.

1670. Definition of limits: from Lyme to Bob's Nose, and *vice versd*, and to and from, and into and out of, all ports and places within those limits.§ *Ibid*. p. 204.

14. Falmouth.

1671. Definition of limits: from the Dodman to the Lizard and *vice versd*, and to and from, and into and out of, all ports and places within those limits. *Ibid*. p. 207.

1672. Pilotage is compulsory within this district. See *The Juno*, No. 1649, p. 1367.

15. Fleetwood-on-Wyre and Barrow.

1673. Definition of limits: from sea (that is, Morecambe Bay Light Ship) into and out of the harbour of Fleetwood-on-Wyre, and along the coast from Formby Point to Havering Point of Dudden.¶ P. R. No. 325 of 1882, p. 208.

1674. No pilot shall lay a vessel aground in the harbour of Barrow, with-

out a written order from the officer in charge of such vessel. *Ibid*. p. 209, reg. 9.

16. Fowey.

1675. Definition of limits: from Looe (inclusive) to the Dodman, and into and out of all ports and places within those limits. *Ibid*. p. 210.

17. Harwich.

1676. Definition of limits: to and from the Wallet, Hoseley Bay, or the Sunk Light, into and out of Harwich harbour, and up the river Stour to Manningtree, and *vice versd*, and to and from all ports and places within those limits. *Ibid*. p. 211.

18. Holyhead.

1677. Definition of limits: to and from the anchorages at Great Orme's Head, along the coast of the Isle of Anglesea and Wales, as far as Bardsey Island, and to and from, and into and out of, all ports and places within those limits, except the bar and harbour of Caernarvon, and the Swellies.¶ *Ibid*. p. 212.

19. Ipswich.

1678. Definition of limits: from Ipswich quays to Harwich harbour, and *vice versd*. *Ibid*. p. 213.

1679. See also as to this district, 1 Vict. c. lxxiv, ss. 121—130, and for regulations for conducting the pilot service, *ibid*.

1680. See also No. 1645, p. 1367.

20. Isle of Wight.

1681. Definition of limits: from the Owers, within and without the Isle of Wight to Peverell, and *vice versd*, and to and from, and into and out of, all ports and places within those limits, excepting those within the Poole and Southampton Districts. The pilots for Cowes and Portsmouth may supersede London or Cinque Ports pilots licensed for the Isle of Wight, arriving near the channels leading to the

* (502) The sum of 5s. per day is to be allowed the pilot for every day he may be detained on board. P. R. No. 325 of 1882, p. 201.

† (503) London pilots are to be paid from Orfordness to Eastness 6s. per foot of the draft of the vessel piloted. *Ibid*.

‡ (504) The pilotage to Torbay is not compulsory. *Ibid*. p. 203.

§ (505) A pilot taken on board off the Bill of Portland or the Start is to receive additional remuneration beyond the pilotage from Bob's Nose to Lyme. *Ibid*. p. 205.

¶ (506) A pilot employed whilst at anchor is to be paid 7s. 6d. per day. *Ibid*.

¶ (507) Pilot detained on board in consequence of quarantine, &c. is to receive 7s. 6d. per day. *Ibid*.

Isle of Wight ports and harbours; but no master of a vessel is compelled to take an Isle of Wight pilot until at St. Helen's, if piloted thereto by a London or Cinque Ports pilot. See P. R. No. 325 of 1882, p. 215.

1682. See, for rates for shifting berths in Portsmouth or Cowes Harbours, *ibid.*

21. Lowestoft.

1683. Definition of limits: from, in, to and out of the harbour. *Ibid.* p. 218. See also as to this district, the Rules and Regulations of November, 1862, P. R. No. 264 of 1863, p. 30; and Trinity House Regulations of July, 1878.

22. Maldon.

1683*a*. Definition of limits: from a line drawn from the Naze Tower to the buoy of the Gunfleet up the Blackwater River to Maldon, and *vice versd.* See Trinity House Regulations, July, 1874.

1683*b*. See for rates of pilotage, *ibid.*

23. Milford.

1684. Definition of limits: from Caldy Island along the coast of St. David's Head, and from thence to Cardigan Island, and *vice versd.*, and to and from, and into and out of, all ports and places within those limits. See P. R. No. 325 of 1882, p. 220; and Trinity House Regulations of November, 1862.

24. Neath.

1685. Definition of limits: from the outside of Neath Bar into the port and harbour of Neath, and *vice versd.* See P. R. No. 325 of 1882, p. 222. See also as to this district, 6 & 7 Vict. c. lxxi, ss. 182—187; and Trinity House Regulations of July, 1874.

1686. Save as by this act provided the provisions of 47 Geo. 3, sess. 2, c. xxxiii.

shall not be altered. See 6 & 7 Vict. c. lxxi. s. 187.*

25. Newhaven.†

1687. Definition of limits: from Dungeness westward to Brighthelmstone (inclusive), and from Brighthelmstone (inclusive) to Dungeness; and to and from, and into and out of, all ports and places within those limits. See P. R. No. 325 of 1882, p. 223.

26. Padstow.‡

1688. Definition of limits: between the Moule eastward of Pentyre Point and the Quays westward of Trevoise Head. *Ibid.* p. 224.

27. Penzance.§

1689. Definition of limits: from the Lizard to Cape Cornwall, and *vice versd.*, and to and from, and into and out of, all ports and places within those limits. *Ibid.* p. 225. See also No. 1656, p. 1368.

28. Plymouth.

1690. Definition of limits: to the westward to Looe, and eastward to the Start; and to and from, and into and out of, all ports and places within those limits. See P. R. No. 325 of 1882, p. 227.

1691. Rate for lay-days 7*s.* 6*d.* a day. *Ibid.*

1692. All ships drawing less than eight feet are to pay the same amount of pilotage as if they were of that draft. *Ibid.*

1693. Ships returning by distress of weather, contrary winds, or accident into ports in the Plymouth district pay half pilotage. *Ibid.*

29. Poole.

1694. Definition of limits: from Christchurch (inclusive) to St. Alban's Head, and *vice versd.*, and to and from, and into

* (508) Question as to whether pilotage was of the same nature as in the other Trinity House districts for vessels in ballasts raised in *The Ardeer*, Adm. Div. 1877, but not decided, see p. 1377.

† (509) The coast pilotage within the Newhaven district is optional (Trinity House Regulations, Apr. 1879). Ships taken charge of in distress are to pay according to circumstances, to be settled by the sub-commissioners of the port.

‡ (510) Claims by pilots for services rendered in distress are not to be made without

the previous sanction of the sub-commissioners of the port; and vessels piloted from Padstow to sea, and returning in consequence of distress of weather, contrary winds, or accident within thirty-six hours into harbour are to pay half pilotage only. P. R. No. 325 of 1882, p. 225.

§ (511) No master of a vessel is compelled to take a pilot for Mount Bay and Penzance within this district until he comes within a line drawn from St. Clement's Isle to Trewaves Head. *Ibid.* p. 226.

and out of, all ports and places within those limits. *Ibid.* p. 228; and see Trinity House Regulations of Nov. 1862.

30. *Portmadoc.*

1695. Definition of limits: from sea into the harbour of Portmadoc, and from the harbour to sea. See P. R. No. 325 of 1882, p. 228.

31. *Portsmouth.*

1696. This is now comprised in the Isle of Wight district. See Nos. 1681, 1682, *supra*. There are no recent Parliamentary Returns as to this port.

32. *Rye.*

1697. Definition of limits: into and out of the port and harbour of Rye, and along the coast, between Dungeness and Beachey Head, and to and from all anchorages and places within those limits. See P. R. No. 325 of 1882, p. 230.

1698. Ships taken charge of in distress are to pay according to circumstances to be settled by the commissioners.* *Ibid.*

33. *St. Ives, Hayle.*

1699. Limits of pilotage district: from Cape Cornwall to Trevoze Head, and *vice versa*; and to and from, and into and out of, all ports and places within those limits.† *Ibid.* p. 231.

34. *Scilly.*

1700. Definition of limits: to and from, and into and out of, all ports and places in and about the Islands of Scilly.‡ *Ibid.* p. 232.

35. *Shoreham.*

1701. Definition of limits: from Bright-helmstone (exclusive) westward to the Owers, and from the Owers eastward to Bright-helmstone (exclusive), and to and

from, and into and out of, all ports and places within those limits.§ *Ibid.* p. 234.

1702. The rates are chargeable both inwards and outwards; but vessels inward bound not boarded until within the bar at the entrance of the harbour are to be charged only one-fourth the usual rates. Ships going into Shoreham and unloading near the harbour's mouth are to be subject to half pilotage only; but if such ships are afterwards removed by pilots to any dock or wharf near the town for the purpose of taking in a cargo, the full pilotage is to be due. *Ibid.*

36. *Southampton.*

1703. Definition of limits: from a line drawn from Lepe Buoy to Lee Point to all ports and places within the Southampton Water, and from all ports and places within the Southampton Water to sea.¶ *Ibid.* p. 235. See also Trinity House Regulations of April, 1875.

37. *Teignmouth.*

1704. Definition of limits: from Lyme to Bob's Nose, and *vice versa*, and into and out of all ports and places within those limits, excepting the harbour of Exmouth.¶ See P. R. No. 325 of 1882, p. 236; and Trinity House Regulations of November, 1862.

38. *Wells.*

1705. Definition of limits: from Burnham Overy (exclusive) westward, to Morston Sluice (exclusive) eastward, and *vice versa*, and into and out of the harbour of Wells. *Ibid.* p. 237, and *Ibid.*

39. *Weymouth.*

1706. Definition of limits: from St. Alban's Head to Lyme, and *vice versa*, and to and from, and into and out of, all ports and places within those limits.** *Ibid.* p. 238, and *Ibid.* 1st May, 1863.

* (512) Wind-bound vessels entering the port are subject to two-thirds only of the pilotage rates. *Ibid.* p. 230.

† (513) Pilots detained on board vessels under any circumstances are to be paid 6s. per day of twenty-four hours. 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. 116.

‡ (514) A pilot remaining on board at the master's request is to receive 10s. 6d. for every twenty-four hours or any part thereof. P. R. No. 325 of 1882, p. 232.

§ (515) See notes to Newhaven, s. 25, *supra*. The rates for this district are for harbour pilotage only. *Ibid.* p. 234.

¶ (516) Lay-days 7s. 6d. per day, not including the days of coming in or going out. *Ibid.* p. 235.

¶ (517) See notes to Exeter, s. 13, *supra*. The pilots are to moor vessels to the satisfaction of the harbour master as well as of the master or owner. *Ibid.* p. 236.

** (518) The pilot of any vessel shall, if required by the owner or master, provide a boat with four men to attend her from the roads to the quays, or from the quays to the roads, for which service each man is to be paid 4s. per tide, the owner of the boat to be paid the same as a man. *Ibid.* p. 239.

40. *Woodbridge.*

1707. Definition of limits: from sea over the Bar into Bawdsey Haven, and up the haven, and the river Deben, to Woodbridge, and *vice versâ*. See P. R. No. 325 of 1882, p. 239; and Trinity House Regulations of November, 1862.

41. *Yarmouth.*

1708. Definition of limits: from Yarmouth to and from the Dudgeon Light Vessel, and from Yarmouth to and from Orfordness; thence across the Kentish Knock to and from the Downs, and into and out of the several harbours and roadsteads within those limits. *Ibid.* p. 240, and *Ibid.* June, 1873.

11. Trinity House English Channel District.

1709. The Trinity House English Channel District, comprises the seas between Dungeness and the Isle of Wight. See the M. S. Act, 1854 (c. 104), s. 370.

1710. Subject to alteration by the Trinity House, and to exemptions in this act, the pilotage districts of the Trinity House within which the employment of pilots is compulsory are the London and Outport Districts as thereinbefore defined.* *Ibid.* s. 376.

1711. See also the Outport Districts, Isle of Wight, s. 20, p. 1369; Newhaven, s. 25, p. 1370; and Shoreham, s. 35, p. 1371.

12. Trinity House, Hull.

1. *Generally.*

1712. The Trinity House of Kingston-upon-Hull is required to license pilots for conducting vessels into and out of the port of Great Grimsby and upon any part of the river Humber below the port of Kingston-upon-Hull, and so far out at sea as to bring the North Ness of Dimlington, on the coast of Holderness, to bear or be seen clear of the land to the southward of it, so as to pass clear of the New Land, and also so far along the coast to the northward as the North Ness

of Dimlington and to the southward as the headland called Donna Nook. See the Hull Pilot Act (2 & 3 Will. 4, c. cv.), s. 89.

1713. The Trinity House of Kingston-upon-Hull is the authority to license Humber pilots: but pilotage commissioners are appointed for the port of Kingston-upon-Hull and the Humber. *Ibid.* s. 22.

1714. The Trinity House of Kingston-upon-Hull is the pilotage authority to license pilots for the port of Grimsby. See 12 & 13 Vict. c. lxxxi. s. 251.

1715. For the general bye-laws made by the Trinity House of Kingston-upon-Hull for the port and all its members, see P. R. No. 325 of 1882, pp. 36—37.

1716. And see for rates of pilotage charged in this port and its members, *ibid.* pp. 44—58.

See also tit. PILOTS, c. 7.

2. *Compulsion.*

1717. Every master of any ship outward bound from the port of Kingston-upon-Hull, required by this act to take a pilot, must apply at the pilot office, whereupon the commodore of pilots must appoint a pilot to take charge of the ship; and any master of any such ship, or of any ship outward bound required to take a pilot, who himself acts as pilot, or employs as a pilot any unlicensed person within the limits for which pilots are licensed under this act, or being inward bound himself acts as pilot, or employs as a pilot within those limits any unlicensed person, after any Humber pilot has offered to take charge, or made a signal for that purpose; penalty, double pilotage, and £5 for every fifty tons burthen of the ship if the commissioners proceed for the further penalty. See 2 & 3 Will. 4, c. cv. s. 34.

1718. For provisions requiring masters of vessels inward bound and liable to pilotage on coming within pilot limits, to display a signal for pilot, and facilitate his coming on board (penalty for default, double pilotage). *Ibid.* s. 36.

1719. An unlicensed pilot, after a duly licensed pilot had offered his services,

* (519) It seems, therefore, that pilotage is not compulsory in the English Channel district.

(520) The pilotage is voluntary except for home-trade ships carrying passengers (see *The Temora*, Lush. 17; No. 1503, p. 1355; *The General Steam Navigation Co. v. The*

London and Edinburgh Steam Co., 2 Ex. Div. 467); and not having on board a master or mate with a pilotage certificate, nor exempted under the M. S. Act, 1862 (c. 63), s. 41, for which see No. 1605, p. 1364. See 2 Maude & Poll. (4th ed. by Poll. & Bruce), pp. 110, 111.

took charge in the river Ouse of the A., bound from Goole to Hamburg. *Held*, in a *qui tam* action for penalties against the unlicensed pilot, under the charters of the Trinity House, Hull, of 23 Eliz., and 13 Car. 2, and 6 Geo. 4, c. 125, that the Trinity House, Hull, had authority under those charters to license pilots from Goole, and that the defendant was properly convicted. *Beilby v. Raper*, 3 B. & A. 284.

1720. *Held*, that by 52 Geo. 3, c. 39; 6 Geo. 4, c. 125; 2 & 3 Will. 4, c. cv, s. 52, and the M. S. Act, 1854, together, pilotage is compulsory upon masters of inward-bound vessels from Kingston-upon-Hull to Goole, provided that neither such master nor mate possesses a pilotage certificate. *The Killarney*, 6 L. T. N.S. 908; 1 Lushington, 427.

1721. By 6 Geo. 4, c. 125, s. 59, vessels within the limits of the port to which they belong, the same not being a port or place in relation to which particular provision hath heretofore been made by any act of parliament, or by any charter or charters for the employment of pilots, are exempted from compulsory pilotage. *Ibid*.

1722. *Held*, that the 6 Geo. 3, c. 39, having before this enactment made particular provision for the employment of pilots by the masters of inward-bound vessels from Kingston-upon-Hull to Goole, the exemption is inapplicable to such a vessel. *Ibid*.

1723. Under sect. 22 of 2 & 3 Will. 4, c. cv, pilotage is not compulsory where a vessel is being towed from one dock to another, both being within the port of Kingston-upon-Hull. *The Maria*, L. R. 1 A. & E. 358; 2 Asp. 528.

1724. A collision occurred in the Humber Dock, Hull, between a fly-boat and a Danish schooner bound for the Princes Dock. The schooner was in charge of a licensed Humber pilot, who had taken the charge of her at the Island pier from another licensed pilot, who had brought her in from sea. One sum was paid for the whole pilotage service. *Held*, that on the construction of the Hull Pilot Act, 1833 (c. cv), pilotage was compulsory, and that the change of pilots did not determine the compulsory pilotage. *The Rigborgs Minde*, 8 P. D. 132; 52 L. J. P. D. 74; 5 Asp. 123.

3. Exemption.

1725. Nothing in this act obliges the master or person in command of any ship

employed in the coasting trade of Great Britain or Ireland, whether laden or in ballast, or of any ship or vessel of less than six feet draught of water, and the property of British subjects; or of any ship putting into the Humber for shelter, or for obtaining stores or provisions only, to employ a pilot, nor to prevent any owner, master, mate, or other person belonging to any ship inward bound from piloting her into and up the Humber in case no Humber pilot shall be ready, and offer to pilot her, nor to prevent any person from assisting any ship in distress. See 2 & 3 Will. 4, c. cv, s. 24.

1726. Ships not exceeding sixty tons burden are exempt from pilotage between the port of Goole and Hull Roads, and this exemption is extended to ships not exceeding 150 tons register, and to ships not exceeding ten feet draught of water. See Bye-Law of Trinity House, Hull, approved by Order in Council of 20 Nov. 1873, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 83. See also Order in Council, 3 Sept. 1845, exempting small foreign vessels.

1727. Upon the construction of 2 & 3 Will. 4, c. cv, *held*, that pilotage of inward-bound vessels from Kingston-upon-Hull to Goole is not rendered compulsory by that act. *Seemle*, the charters granted by Queen Elizabeth and Charles 2nd to the Corporation of Kingston-upon-Hull do not apply to inward-bound vessels from that place to Goole, so as to render compulsory the pilotage of such vessels. The case of *Beilby v. Raper* (3 B. & A. 284) is applicable only to such vessels when outward-bound. But *held*, that by 52 Geo. 3, c. 39; 6 Geo. 4, c. 125; 2 & 3 Will. 4, c. cv, s. 52; and the M. S. Act, 1854, together, pilotage is compulsory upon masters of inward-bound vessels from Kingston-upon-Hull to Goole, provided that neither such master nor mate possesses a pilotage certificate. *The Killarney*, 1 Asp. 238.

1728. By 6 Geo. 4, c. 125, s. 59, vessels within the limits of the port to which they belong, the same not being a port or place in relation to which particular provision hath heretofore been made by any act of parliament, or by any charter or charters for the employment of pilots, are exempted from compulsory pilotage. *Held*, that the 6 Geo. 3, c. 39, having before the enactment made particular provision for the employment of pilots by the masters of inward-bound vessels from Kingston-upon-Hull to Goole, the exemption

is inapplicable to such a vessel. The power to license pilots does not *per se* render the pilotage compulsory. *The Killarney*, 1 Asp. 328.

1729. The employment of a Humber pilot is not compulsory upon a vessel which is being towed from one dock to another in the port of Hull, as a vessel is not, in such circumstances, either passing "into or out of" the port of Hull within the terms of sect. 22 of the Hull Pilot Act, or "bound to or from the port" within the terms of sect. 89 of the act. *The Maria*, L. R. 1 Adm. & E. 358.

See also No. 1549, p. 1358.

4. Port of Gainsborough.

1730. For the General Bye-laws of the Trinity House, Hull, applying to this port, see P. R. No. 325 of 1882, pp. 36—37; and for rates, *ibid.* p. 54.

1731. For provisions as to the appointment by the Trinity House of Kingston-upon-Hull of sub-commissioners of pilotage for this port, and for the bye-laws issued by the Trinity House for the guidance of such sub-commissioners, *ibid.*; and 6 Geo. 4, c. 125, s. 6; and the M. S. Act, 1854 (c. 104), s. 387.

5. Port of Goole.

1732. The pilots shall take charge of ships and vessels inwards from Hull Roads, and outwards from the port of Goole to Hull Roads. P. R. No. 325 of 1882, p. 72, Bye-law 3.

1733. See for the bye-laws of the Trinity House, Hull, for this port, *ibid.* pp. 31, 32.

1734. For provisions as to the appointment by the Trinity House of Kingston-upon-Hull of sub-commissioners of pilotage for this port, and for the bye-laws issued by the Trinity House for the guidance of such sub-commissioners, *ibid.*; and 2 & 3 Will. 4, c. cv, s. 52; and the M. S. Act, 1854 (c. 104), s. 387.

1735. Goole was first constituted a port in the year 1828. See *The Hull Dock Co. v. Brown*, 2 B. & Ad. 52.

1736. *Held*, that the description of the port of Hull, in the charters of 23 Eliz. and 13 Car. 2, includes the port of Goole. *Beilby v. Raper*, 3 B. & Ad. 286.

6. The Humber.

1737. For the bye-laws as to pilotage in the River Humber, see P. R. No. 325 of 1882, pp. 30, 31.

7. Port of Spalding.

1738. The pilots shall take charge of vessels inwards from the Welland Setway at sea to Spalding High Bridge, and outwards from that high bridge to the Setway; and each ship or vessel shall be brought up from the Setway, if required by the pilots, in their regular turns. *Ibid.* p. 35, Bye-law 3.

1739. For the bye-laws of the Trinity House, Hull, for this port, *ibid.* pp. 34, 35.

1740. For provisions as to the appointment by the Trinity House of Kingston-upon-Hull of sub-commissioners of pilotage for this port, and for the bye-laws issued by the Trinity House for the guidance of such sub-commissioners, *ibid.*; and 6 Geo. 4, c. 125, s. 6; and the M. S. Act, 1854 (c. 104), s. 387.

8. Port of Wisbech.

1741. The pilots shall take charge of vessels into and out of the port and harbour of Wisbech and the waters thereof, and from the town of Wisbech through the Cross Keys Bridge to the lower roads at sea outwards, and from the said lower roads at sea through the Cross Keys Bridge to the town of Wisbech inwards, and from and to all intermediate places between the said town and the said lower roads; and each ship or vessel shall be brought up from the Eye or from the said lower roads, if required by the pilots, in regular turns. See P. R. No. 325 of 1882, p. 33.

1742. See for the bye-laws of the Trinity House, Hull, for this port, *ibid.* pp. 33, 34.

1743. For provisions as to the appointment by the Trinity House of Kingston-upon-Hull of sub-commissioners of pilotage for this port, and for their bye-laws for the guidance of such sub-commissioners, *ibid.*; and 6 Geo. 4, c. 125, s. 6; and the M. S. Act, 1854 (c. 104), s. 387.

9. East Coast Pilotage District.

1744. The charters of the Trinity House of Kingston-upon-Hull give that corporation power to license pilots to conduct ships and vessels "from the Humber to cross the seas." The licences held by some of the younger brethren of the Trinity House of Kingston-upon-Hull enable their holders to act as pilots from the Humber north to Flamborough Head, &c., up to Leith Roads; east to the

Naze of Norway, through the Cattegat, the Sound and Baltic to Stockholm, Cronstadt, Dantzic, Riga, to the Elbe and Heligoland; and south through Yarmouth Roads into the Downs, and through Yarmouth Roads and the Swin and up to the Nore. See P. R. No. 269 of 1877; for rates, see P. R. No. 325 of 1882, p. 46.

10. *Exemption.*

1744a. Pilotage is voluntary outside the Humber district. *Ibid.*

13. Trinity House, Newcastle-upon-Tyne.*

1. *Generally.*

1745. The Corporation of the Trinity House of Newcastle-upon-Tyne are authorized to licence pilots for the port. See 41 Geo. 3, c. lxxxvi. Foreign ships are obliged to employ a licensed pilot there, but British ships are not obliged to do so. *Ibid.* s. 6.†

1746. The pilotage jurisdiction of the Trinity House of Newcastle-upon-Tyne formerly extended over the River Tyne, and into and out the port of Newcastle-upon-Tyne, and the creeks and members belonging thereto. The Hartlepool Pilotage Order, 1864, the Tyne Pilotage Order, 1865, and the Sunderland Pilotage Order, 1865, have, however, transferred the pilotage jurisdiction of the Trinity House of Newcastle over the several ports and areas mentioned in such orders respectively to Pilotage Commissioners appointed under their provisions; and the Trinity House of Newcastle-upon-Tyne consequently now only retains pilotage jurisdiction over such ports and places within its ancient jurisdiction as are not comprehended in the operation of such orders. See Hartlepool Pilotage Order Confirmation Act, 1864 (c. 58), s. 11; Sunderland Order Confirmation Act, 1865 (c. 59), s. 9; Tyne Pilotage Order Con-

firmation Act, 1865 (c. 44), s. 11; and the Tyne Pilotage Amendment Act, 1867 (c. 78); and 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. 118. The transfer took place in January, 1883. See P. R. No. 325 of 1882, p. 82.

1747. The bye-laws made by the corporation of the Trinity House of Newcastle-upon-Tyne for the regulation of the sea and river pilots of the ports within their jurisdiction, namely, Whitby, Seaham Harbour, Blyth, Amble, Alnmouth, North Sunderland, and Holy Island, approved. See Order in Council of 9th February, 1883, gazetted 14th February. For the bye-laws, see the Schedule to that Order in Council.

1747a. The bye-laws are the same as those made by the Tyne Pilotage Commissioners for the Tyne. See P. R. No. 325 of 1882, p. 82.

2. *Compulsion.*

1748. The owners or masters of any foreign ships coming into or departing from the port of Newcastle, or any of the creeks or members thereto, are required to receive and employ in the piloting of their ships pilots licensed by the Newcastle Trinity House; and if they neglect or refuse to do so, they are nevertheless bound to pay pilotage. See 41 Geo. 3, c. lxxxvi, s. 6.†

1749. All differential dues cease on and after the first day of January, 1862. See the Harbours and Passing Tolls, &c. Act, 1861 (c. 47), s. 10.

1750. The expression "differential dues" includes any dues, rates, or taxes levied on foreign ships, or on goods carried in foreign ships, which are not levied in like circumstances on British ships, or on goods carried in British ships; and also any excess of dues, rates, or taxes levied on foreign ships, or on goods carried in foreign ships, over those levied under like circumstances on British ships,

* (521) The members of the port of Newcastle-upon-Tyne are Middleborough and the Tees, Blyth, Seaham, Holy Island, Whitby, Warkworth, Amble, Alnmouth, and North Sunderland. See 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 118.

† (522) *Held*, that the provisions of sect. 6 of the local act (41 Geo. 3, c. lxxxvi) relating to pilotage remain in force, and are unaffected by any of the general acts of parliament, viz. the 6 Geo. 4, c. 125, ss. 58, 59, 89;

the M. S. Act, 1854 (c. 104), ss. 332, 353, 388; the Harbour and Passing Tolls Act, 1861 (c. 47), ss. 2, 10; the M. S. Act, 1862 (c. 63), s. 39; Huskisson's Act, 4 Geo. 4 (c. lxxxvii), s. 5; the Tyne Pilotage Order Confirmation Act, 1865 (c. 44), or by the Convention between this country and Sweden and Norway of March, 1826. *The Johan Sverdrup*, Newcastle-upon-Tyne County Court, L. T. of 31st Oct. 1885, p. 441.

or goods carried in British ships, excepting such duties as the Commissioners of Customs may be empowered to levy for the use of her Majesty under any act of parliament, in the events therein mentioned. See the Harbours and Passing Tolls, &c. Act, 1861 (c. 47), s. 1. But see *The Vesta*, Nos. 1589—1591, p. 1362.

1751. The master of a vessel having on board a licensed pilot, appointed by the Trinity House of Newcastle-upon-Tyne, under the local act, 41 Geo. 3, c. lxxxvi, s. 6, *held*, not entitled to the protection of the 55th section of the General Pilot Act, 6 Geo. 4, c. 125. *Dodds v. Embleton*, 9 D. & R. 27.

1752. Prior to the Harbours and Passing Tolls, &c. Act, 1861, the owners of a foreign vessel which while proceeding up the river Tyne with a duly-licensed pilot on board, under the provisions of the Newcastle Pilot Act (41 Geo. 3, c. lxxxvi), came into collision with another vessel, *held*, but without costs, not responsible for damage in consequence of that collision, the collision being *held* to be occasioned by the default of the pilot, and the employment of him to be compulsory on the owners. *The Maria*, 1 W. Rob. 95.

3. Exemption.

1753. The owners or masters of British ships or other vessels coming into or departing from the port of Newcastle, or any of the creeks or members thereof, are not obliged to employ a pilot if not amended to do so. See 41 Geo. 3, c. lxxxvi, s. 6.*

1753a. Section 58 of 6 Geo. 4, c. 125, the effect of which is preserved by the M. S. Act, 1854 (c. 104), s. 353, does not make it compulsory on the owners or masters of British vessels to employ pilots while navigating the Tyne. And their exemption under the local act of 41 Geo. 3, c. lxxxvi, s. 6, remains in force, and the owner is not protected by s. 38 of the M. S. Act, 1854 (c. 104). (*Dodds v. Embleton*, 9 D. & R. 27, affirmed.) *The Tyne Improvement Commissioners v. The General Steam Navigation Company*, L.R. 2 Q. B. (Ex. Ch.) 65; 36 L. J. Q. B. (Ex. Ch.) 22; 2 Asp. 431; 8 B. & S. 66.

14. Port of Arundel.

1. Generally.

1754. See 6 Geo. 2, c. 12; 33 Geo. 3, c. 100; and 6 Geo. 4, c. clxx; and Bye-Laws. See Parliamentary Returns as to Pilotage, No. 516 of 1855, p. 84; No. 174 of 1858, p. 70; No. 243 of 1861, p. 63; and No. 269 of 1877; also Bye-laws and Regulations of 6th October, 1864, set out in P. R. No. 325 of 1882, p. 1.

1755. The master of any vessel of thirty tons register or upwards, whether inward or outward bound into the harbour of Littlehampton, must employ a pilot, unless her master or mate holds a pilotage certificate. Penalty, £5. See P. R. as to Pilotage, No. 269 of 1877.

2. Compulsion and Exemption.

1755a. The pilotage for this port is compulsory, except for vessels under 30 tons burthen. *Ibid.* No. 325 of 1882, p. 1.†

15. Port of Berwick-upon-Tweed.

1. Generally.

1756. See 48 Geo. 3, c. 104, repealed; 57 Geo. 3, c. lxx, s. 45; 25 Vict. c. xxxi, ss. 46—65; and Bye-laws. See P. R. No. 325 of 1882, p. 2; and Regulations of January, 1833.

1757. Definition of limits:—from the sea at the mouth of the river Tweed up the river on both sides thereof, partly in the parochial chapelry of Tweedmouth, partly in the borough of Berwick-upon-Tweed, and partly in the county of Northumberland, up to the mouth of the river Whittader where that river flows into the Tweed, and also from the east end of the existing pier, two miles in a straight line in every direction along the coast and into the sea. See P. R. No. 325 of 1882, p. 2.

2. Compulsion and Exemption.

1757a. Pilotage within this district is not compulsory except for home-trade passenger ships not exempted under the

* (523) It seems, therefore, that pilotage is not compulsory for British vessels throughout any part of the district of the Trinity House of Newcastle-upon-Tyne. P. R. No.

264 of 1863, p. 68; but that pilotage there is compulsory on foreign vessels.

† (524) Former bye-laws as to this port are repealed by bye-laws of 1st Jan. 1853.

M. S. Act, 1854 (c. 104), s. 354. See P. R. No. 264 of 1863, p. 12; *ibid.* No. 408 of 1867.

16. Port of Boston.

1. Generally.

1758. See 16 Geo. 3, c. 23; and 32 Geo. 3, c. 79, ss. 9 and 10; 5 Vict. sess. 2, c. lx.; Trinity House Regulations of 5th September, 1856; and Bye-laws. See also P. R. No. 516 of 1855, p. 88; No. 264 of 1877; No. 266 of 1878; No. 268 of 1879; and No. 325 of 1882.

1759. Definition of limits:—So much of the river Witham as runs from the grand sluice in Boston towards and into a certain place called the Scalp, and also the roads and all and singular the deeps commonly called the Norman Deepes, and also all manner of places and parts and watercourses and the streams of the washes near and in the parts of Holland extending to the haven or place called Wainfleet Haven, and to a certain place called Pullye Heads, and to another place or sand called the Knock, and to another place called the Dog's Head-in-the-Pot, and to the uttermost limits of the flowing and ebbing of those waters, and every of them, and adjoining to the sea and floods and streams of the borders and confines of the county of Norfolk. See P. R. No. 325 of 1882, p. 4; and Orders, Rules, and Bye-laws therein set out.

2. Compulsion and Exemption.

1759a. Pilotage is compulsory in this port on all vessels or barges conducted or piloted into and out of the port other than barges not exceeding the burthen of thirty chaldrons of coals, and vessels or barges in distress. See 16 Geo. 3, c. 23, s. 7.*

17. Port of Bristol.

1. Generally.

1760. See 47 Geo. 3, c. xxxiii.; 6 Geo. 4, c. 125, ss. 59—61, 62; and the Bristol Dock Act, 1848 (c. xliii.).†

1760a. Definition of limits:—the limits of the port of Bristol are defined by the

Wharfage Act of 1st August, 1807 (c. xxxiii.), to be the east of Lundy Island; and by the Justices of the Common Pleas Division, in the case of *Hall v. Cardiff Pilotage Board*, 18th November, 1879, that is defined to be "eastward of the meridional line from N. to S. through Lundy," which line is 4°40' W. longitude. See P. R. No. 325 of 1882, p. 6, and Bye-laws and Rates therein.

1761. The jurisdiction of the corporation of Bristol is extended to the appointment of pilots for conducting ships into, out of, and upon the whole of the Bristol Channel, and the several ports, harbours, and creeks belonging to and running from the same. See 47 Geo. 3, c. xxxiii. s. 1.

1762. The corporation of Bristol appoints, and licences and controls pilots within the port of Bristol. See the Bristol Dock Act, 1848 (c. xliii.), s. 66.

1763. For powers to the corporation to make and alter bye-laws to enforce the execution of the provisions of the act of 47 Geo. 3, c. xxxiii. see *ibid.* ss. 18 and 20. For similar powers as to the Bristol Dock Act, 1848 (c. xliii.), see *ibid.* ss. 13 and 67.

1764. A separate system of pilotage is established in the Bristol Channel in connection with the ports of Cardiff, Newport, and Gloucester, with boards for each of such ports, each of such boards being a "pilotage authority" within the meaning of the M. S. Act, 1854. See the Bristol Channel Pilotage Act, 1861 (c. ccxxxvi.) s. 17.

1765. A separate system of pilotage is similarly established for Penarth Harbour. *Ibid.* s. 18, and 19 & 20 Vict. c. cxxii. s. 72.

1766. The ports of Bridgwater and Neath, in the Bristol Channel, are not within the pilotage jurisdiction of the corporation of Bristol, but are included in the Outport District of the Trinity House, London. See, as to Bridgwater, 24 Vict. c. ccxxxvi. s. 11; 8 & 9 Vict. c. lxxxix. s. 76; and No. 1661, p. 1368; as to Neath, 6 & 7 Vict. c. lxxi. s. 187; and Nos. 1681, 1682, p. 1370; and as to Swansea, 17 & 18 Vict. c. cxxvi. s. 162; and c. 31, p. 1386.

* (525) For the bye-laws of 1st Jan. 1853, see Parliamentary Return as to Pilotage, No. 516 of 1855.

† (526) See also, as to this port, Parliamentary Return, No. 408 of 1867, and No. 325 of 1882, p. 6.

(527) As to the concurrent power of the Trinity House, London, to license pilots for the Bridgwater district, see Order in Council of 17th May, 1867, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 82.

1767. All Bristol Channel pilots licensed before July, 1861, to pilot vessels in that channel are authorized to pilot the like vessels within the same limits, *i.e.* as before the passing of this act, in the ports of Cardiff, Gloucester and Newport, without license from any of their boards. See the Bristol Channel Pilotage Act, 1861 (c. ccxxxvi.) s. 24.

1768. The Bristol Channel pilots, with respect to their pilotage of all ships bound to or from the ports of Newport, Cardiff, and Gloucester, are subject to the government and regulations of the board of the port to or from which any such vessel is bound, and to all bye-laws and regulations issued by it, and to the penalties annexed to the breach thereof, like pilots licensed by such board. *Ibid.* s. 25.

1769. Pilots licensed before July, 1861, for the several ports of Cardiff, Newport and Gloucester continue pilots for the ports for which they are licensed. *Ibid.* s. 26.

1770. For provisions requiring the pilotage authorities of Cardiff, Newport and Gloucester, by supplemental licence to authorize any such thenceforth Bristol Channel pilots to pilot any vessels within the ports under the control of those boards on their applying within a certain period, and passing the necessary examination, see *ibid.* s. 24.

1771. For similar provisions as to the thenceforth pilots of Cardiff, Newport or Gloucester, to act as pilots in those ports, see *ibid.* s. 26.

See also as to Penarth Harbour, c. 28, p. 1385.

2. Compulsion.

1772. All vessels navigating the Bristol Channel to the eastward of Lundy Island, except coasting vessels and Irish traders, must be piloted by pilots duly licensed by the corporation of the city of Bristol, by warrant under their corporate seal. Penalty for default, double pilotage, and £5 per ton on the vessel's burthen. See 47 Geo. 3, sess. 2, c. xxxiii. s. 9.

1773. Any licensed pilot may supersede any unlicensed pilot in the charge of any ship within the limits before mentioned; and every master within those limits, who continues any person not licensed after a

licensed pilot has offered to take charge, incurs a penalty not exceeding £10. *Ibid.* s. 14.

1774. If any person having charge or pilotage of any vessel within the port of Bristol, not being a pilot licensed by the corporation of Bristol, does not, upon the approach of any licensed pilot, shorten sail for and take on board such pilot, and resign to him the charge of such vessel, penalty, not exceeding £10. See 11 & 12 Vict. c. xliii. s. 66.

1775. Pilotage is also compulsory (subject to the exemption in the next section) on all vessels navigating up and down the Bristol Channel to the E. of Lundy Island, in all cases where the provisions of 47 Geo. 3, sess. 2, c. xxxiii. as modified by the following acts and any other similar acts, still apply: 25 & 26 Vict. c. ccxxxvi. ss. 4, 31 (see ports of Cardiff, Gloucester, and Newport. c. 18, *infra*); 6 & 7 Vict. c. lxxi. s. 187 (see Neath Trinity Outport District, c. 10, s. 23, p. 1370); 8 & 9 Vict. c. lxxxix. s. 76 (see Bridgwater Trinity Outport District, c. 10, s. 6, p. 1368); 17 & 18 Vict. c. cxxvi. s. 162 (see Swansea Pilotage District, c. 31, p. 1386); 19 & 20 Vict. c. cxxii. s. 72 (see port of Cardiff, c. 18, *infra*).

1776. Pilotage is payable by all vessels using the port, but those under 80 tons burthen pay a moiety only of the rates chargeable to those of 80 tons burthen, unless a pilot be required, when full rates are chargeable. See P. R. as to Pilotage, No. 408 of 1867, pp. 72, 73.

3. Exemption.*

1777. Nothing in this act extends to subject to any penalty any owner or master of any coasting vessel or Irish trader using the navigation of the Bristol Channel, or the rivers Severn or Avon, upwards or downwards, nor any owner or master of any other ship who employs any person or acts himself as pilot of his ship when a licensed pilot cannot be procured. See 47 Geo. 3, sess. 2, c. xxxiii. s. 10.

1777a. Foreign vessels in the coasting trade are subject to the same rates as British vessels. See the Customs Consolidation Act, 1876 (c. 36), s. 141.

* (528) It would seem that pilotage in this district is not compulsory as regards vessels under 80 tons. See P. R. No. 516 of 1853, p. 96.

(529) But they must pay a moiety of the rates chargeable to vessels of 80 tons even if no pilot be employed. *Ibid.* No. 408 of 1867, p. 72.

18. Ports of Cardiff, Gloucester, and Newport, including Penarth.*

1. Generally.

1778. Definition of limits: The port of Cardiff and that portion of the Bristol Channel which lies E. of Lundy Island up to and including King Road, and the river Rhymney to Rhymney Bridge. See P. R. No. 325 of 1882, p. 10.

1779. That portion of the Bristol Channel which lies E. of Lundy Island, including the river Severn to the city of Gloucester, and the river Wye to Chepstow Bridge. *Ibid.* p. 16.

1780. That portion of the Bristol Channel which lies to the E. of Lundy Island up to and including King Road and the river Usk, as far as Caerleon Bridge. *Ibid.* p. 86.

1781. For bye-laws, rates, and regulations of these ports, see as to Cardiff, P. R. No. 325 of 1882, p. 10, and No. 222 of 1884, p. 5; as to Gloucester, P. R. No. 325 of 1882, p. 16; and as to Newport, *Ibid.* p. 86; and as to all of them, P. R. No. 276 of 1875, pp. 43, 67 and 72.

1782. A separate system of pilotage is established in the Bristol Channel for the ports of Cardiff, Newport, and Gloucester, with boards for each of such ports, each of such boards being a "pilotage authority" within the meaning of the M. S. Act, 1854 (c. 104). See the Bristol Channel Pilotage Act, 1861 (c. ccxxxvi.).

2. Exemption.

1783. It is not obligatory on the master of any vessel bound to or from any of the ports of Cardiff, Newport, or Gloucester, other than a ship carrying passengers, to employ a pilot, so long as such vessel is navigated by the master or any officer thereof. *Ibid.* s. 31.

1784. No person, except the master of the vessel, shall act as pilot in navigating any vessel upon the canal who has not received a licence to do so from the directors of the company, and no master of any vessel shall employ any person, other than a pilot licensed by the directors of the company, to navigate or direct the movements of any vessel upon the canal. See Bye-laws of the Gloucester and

Berkeley Canal Co., confirmed 27 January, 1871, No. 23.

1785. Masters of vessels are not compelled to employ a pilot on the canal; but if any person be employed in that capacity it must be one of the licensed pilots. The company will not be responsible for any damage done to or by any vessel whilst in the charge of a licensed pilot. *Ibid.*

1785a. The 10s. 6d. per day to which a licensed pilot taken without his consent to sea, or beyond the limits of his pilotage district in any ship, is entitled by the M. S. Act, 1854 (c. 104), s. 357, are not "pilotage dues" for which the ship brokers are liable under s. 363. *Mortco v. Julian*, 4 C. P. D. 216.

19. Port of Chester.

1786. Definition of limits of pilotage district: From Great Orme's Head to Chester. See P. R. No. 325 of 1882, p. 15; and for bye-laws, rules, and regulations, *Ibid.* No. 222 of 1884, p. 9; and as to the constitution of the port the Point of Ayr Lighthouse Act, 16 Geo. 3, c. 61.

1787. Pilotage is made compulsory on all inward-bound vessels boarded to the West of Chester Bar, except coasting vessels, Irish vessels, and vessels in distress. See 16 Geo. 3, c. 61, s. 44. As to outward-bound vessels, *Ibid.* ss. 24, 37; the M. S. Act, 1854 (c. 104), ss. 354, 362; the Customs Consolidation Act, 1876 (c. 36), s. 141; and 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. 122.

20. Port of Clay, or Blakeney (Norfolk).

1788. Definition of limits: From harbour to sea, see P. R. No. 325 of 1882, p. 3.

1788a. For constitution, bye-laws, and regulations, see 57 Geo. 3, c. lxx. ss. 25, 45—50; and P. R. No. 266 of 1878 and No. 325 of 1882.

1788b. The pilotage in this port is compulsory except for exempted ships. An exemption is made in favour of ships under fifty tons, or in distress. See 53 Geo. 3, c. lxx. s. 46; and 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. 120.

* (530) Penarth is now included in the Cardiff pilotage district, and two of the members of the Cardiff Pilotage Board are now appointed by the Penarth Harbour Dock

and Railway Co. P. R. No. 276 of 1875; 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. 121, note; and see c. 28, p. 1385.

21. Port of Douglas, Isle of Man.*

1789. For the constitution of this port, see 54 Geo. 3, c. 143; and the Isle of Man Harbour Act, 1872 (c. 23), s. 12.

1790. For the bye-laws as to pilotage for this port, see P. R. as to pilotage, No. 408 of 1867, p. 79.

1791. Pilotage is not compulsory in this port. *Ibid.*

22. Port of Hartlepool.

1792. Definition of limits: The Bay of Hartlepool inside an imaginary line drawn from Black Hall Rocks, about three miles north of Hartlepool, to a point about two miles south of the river Tees. See P. R. No. 325 of 1882, p. 25.

1793. Separate pilotage commissioners are constituted for this port. See the Hartlepool Pilotage Order, 1864 (c. 58), Sched.

1794. Nothing in this order obliges the owner or master of any vessel to employ any pilot in piloting such vessel within the Hartlepool pilotage district, if he is not desirous so to do. *Ibid.* s. 16.†

1795. See, also, as to the bye-laws and regulations of this port, P. R. No. 269 of 1877, and No. 325 of 1882.

See also No. 1746, p. 1375.

23. Port of Hastings.

1796. Hastings is one of the Cinque Ports, which are a pilotage authority and a local authority, within the meaning of the M. S. Act, 1854 (c. 104), with all the powers by that act conferred on pilotage authorities and on local authorities. See Provisional Order of the Board of Trade as to the Hastings Pier and Harbour Company, cited in the Pier and

Harbour Orders Confirmation Act, 1862 (c. 51), s. 26.

1797. As to the limits of this harbour, see the Hastings Harbour (Alexandra Pier) Order, 1866 (s. 31).

1798. All pilotage in this port is voluntary. See the M. S. Act Amendment Act, 1862 (c. 63), s. 39.

24. Port of King's Lynn.

1. Generally.

1799. Definition of limits: Into and out of the port of King's Lynn, or between St. Edmund's Ness, otherwise Gore End, and a certain place called Staple Ware, being the utmost bounds southwards of the jurisdiction of the mayor, aldermen and burgesses of King's Lynn. In practice the pilots conduct between Lynn Harbour southwards and the Bell Buoy in Lynn Lower Roads northwards. See P. R. No. 325 of 1882, p. 20.

1800. For constitution, bye-laws and regulations, see 13 Geo. 3, c. 30; 4 & 5 Vict. c. xlvii; Bye-Laws of 4th Feb. 1831; and P. R. No. 516 of 1855, p. 138; No. 204 of 1874, p. 12; No. 325 of 1882, p. 20; and No. 222 of 1884, p. 17.

2. Compulsion.

1801. The pilotage is compulsory for all vessels above thirty tons, builder's measurement, lighters or barges in ballast, and vessels or barges in distress. See 13 Geo. 3, c. 30; 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 122.

1802. All vessels shall be piloted as far down as the Bell Buoy. See P. R. No. 243 of 1865, p. 62.‡

1803. Inward-bound vessels must, if practicable, be boarded by pilots at the Bell Buoy. *Ibid.* p. 13.

1804. *Semble*, therefore inward pilotage commences and outward pilotage ceases at the Bell Buoy. *Ibid.*

* (531) So much of any general act for the time being in force as relates to pilotage shall extend to the Isle of Man. See the Isle of Man Harbour Act, 1872 (c. 23), s. 12.

(532) The pilotage, therefore, on the Harbour Commissioners exercising their powers under the above act, c. 23, s. 12, will apparently become compulsory for home-trade ships carrying passengers, and not having a certificated master or mate. See M. S. Act, 1854 (c. 104), s. 354; and 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. 122.

† (533) There has been no decision as to

the construction of this provision with the 41 Geo. 3, c. lxxxvi. s. 6, and the 39 & 40 Vict. c. 36, s. 141, or with the M. S. Act, 1854 (c. 104), s. 354. See 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. 119; and note (d) thereto.

‡ (534) This provision, however, is not repeated in terms in the later bye-laws, but No. 23 provides that pilots appointed to pilot vessels down the channel shall not, unless by permission of the masters, leave them before arriving at the Bell Buoy. See P. R. as to Pilotage, No. 204 of 1874, p. 12.

3. *Exemption.*

1805. The pilotage is optional for inward-bound vessels having arrived "without a pilot" within the Marsh Cut Banks. Note to 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 122.

1806. All vessels, whether inward or outward bound, to or from Lynn, are exempt from the payment of pilotage if unable to procure a pilot, and if any vessel arrives within the Marsh Cut Banks without a pilot, the employment of a pilot is optional. See P. R. No. 204 of 1874, p. 13.

1807. See also such exemptions as are applicable in Nos. 1574—1642, pp. 1361—1366.

25. Port of Lancaster.

1. *Generally.*

1808. Definition of limits: Inwards—within imaginary lines from Morecambe Bay Light vessel to Formby Point and Haverrigg Point respectively. Outwards—Glasson Dock to No. 1 Buoy or Danger Patch Buoy as required by masters of vessels. See P. R. No. 325 of 1882, p. 59; and for Bye-Laws and Regulations, *Ibid.*

1809. For the constitution, bye-laws and regulations of the port, see 47 Geo. 3, c. xxxvii; Bye-Laws of 24th Jan. 1809; and P. R. No. 516 of 1855, p. 142; No. 408 of 1865, p. 86; No. 266 of 1878; and No. 325 of 1882, p. 59.

2. *Compulsion.*

1810. Pilotage is compulsory on vessels sailing into, out of, or within the port of Lancaster or the River Lune. Penalty, full pilotage. See P. R. No. 408 of 1865, p. 86.

3. *Exemption.*

1811. Vessels in ballast and coasting vessels under 100 tons burthen are exempt. *Ibid.* See also such exemptions as are applicable in c. 9, Nos. 1574—1642, pp. 1361—1366; and M. S. Act Amendment Act, 1862 (c. 63), s. 41, in c. 9, p. 1363.

26. Port of Liverpool.

1. *Generally.**

1812. Definition of limits of pilotage district: Compulsory inward pilotage extends from the Middle Mouse on the coast of Anglesey to the River Mersey; and compulsory outward pilotage from the Mersey to the Fairway buoys of the sea channels of the Mersey. See P. R. No. 325 of 1882, p. 61.

1813. For provisions as to pilotage in relation to the Liverpool and Birkenhead Docks, and the port and harbour of Liverpool, see the Mersey Docks Acts Consolidation Act, 1858 (c. xcii), Pt. VI. ss. 118—164.

1814. As to the terms master, owner, pilot, and vessel, *Ibid.* s. 3.

1815. Every pilot taking charge of any vessel must, if so required by the master, pilot such vessel, if sailing out of the port of Liverpool, through the Queen's Channel, so far to the westward as the Formby north-west buoy, or Fairway buoy of the Queen's Channel; and if sailing through the Rock Channel, so far to the westward as the north-west buoy of Hoyle. *Ibid.* s. 127.

1816. If the master of any vessel requires the attendance of a pilot on board during her riding at anchor, or being at Hoylake, or in the Mersey, the pilot so employed is to be paid five shillings, and no more, for every day or portion of a day he so attends; but the pilot who shall have the charge of any vessel shall be paid for every day of his attendance whilst in the river. No such charge shall be made for the day on which the vessel, being outward bound, leaves the Mersey to commence her voyage, or being inward bound, enters the Mersey. *Ibid.* s. 138.

1817. If any vessel is in want of and unable to obtain a pilot, the pilot on board any other vessel going into or coming out of the port of Liverpool, may lead the way for, and conduct the vessel into or out of the port, and the master of any vessel so piloted shall pay the same rates of pilotage as if the pilot had actually been on board his own vessel. *Ibid.* s. 126.

1818. The Mersey Docks Act, 1881 (c. xlix), makes further provision as to

* (535) The following acts of Parliament relate to pilotage of the port of Liverpool:—37 Geo. 3, c. 78; 5 Geo. 4, c. lxxiii; The Mersey Docks and Harbour Act, 1857 (c. clxii);

The Mersey Docks Acts Consolidation Act, 1858 (c. xcii); the Mersey Docks Act, 1864 (c. ccxiii); and the Mersey Docks Act, 1881 (c. xlix).

the pilotage service of the port of Liverpool, and for controlling the working, &c. of pilots and pilot vessels and boats.

1819. The pilot in charge of any inward-bound vessel must cause the same (if need be) to be properly moored at anchor in the Mersey, and pilot her into some one of the wet docks within the port of Liverpool, whether belonging to the Board or not, without making any additional charge for so doing, unless his attendance is required on board the vessel while at anchor in the river Mersey and before going into dock, in which case he is entitled to five shillings per day for such attendance. See the Mersey Docks Acts Consolidation Act, 1858 (c. xcii), s. 128; P. R. No. 325 of 1882, p. 69; and Bye-law 128.

1820. The 138th section of the Mersey Docks Acts Consolidation Act, 1858 (c. xcii.), which provides in certain cases of extra attendance for additional remuneration to pilots, does not relate only to pilots who are voluntarily engaged, but a pilot who is compulsorily engaged under the 139th section of the act, may, by the ship's detention in the river, become entitled to extra remuneration under the 138th section. *The City of Cambridge*, L. R. 5 P. C. 451; L. R. 4 A. & E. 161; 43 L. J. Adm. 11; *Ibid.* P. C. 72; 2 Asp. N.S. 193, 239.

1821. *Semble*, the channel near the Bell buoy, outside the Queen's Channel leading into the port of Liverpool, is not a narrow channel within the meaning of the 297th section of the M. S. Act, 1854 (c. 104), repealed by M. S. Act, 1862 (c. 63), s. 2, but re-enacted in the Sea Collision Rules of 1879, for which see tit. COLLISION, Pt. VIII. p. 273; and in the Mersey Channels Act, 37 & 38 Vict. c. 52, s. 1. *The Meander and The Florence Nightingale*, 1 Moore, P. C. C. N.S. 63.

1822. The bye-laws and regulations now regulating pilotage in this port are those contained in P. R. No. 325 of 1882, p. 61, and those contained in No. 207 of 1883, p. 34. The latter came into force on the 1st of June, 1882, and repeal all previous bye-laws made under the authority of the Mersey Docks Acts Consolidation Acts, 1858.

2. Compulsion.

(a) Generally.

1823. The provisions of the M. S. Act, 1854 (c. 104), s. 353, are extended to the Liverpool Pilotage District, but without prejudice to the exemption conferred by the Mersey Docks Acts Consolidation Act,

1858 (c. xcii), s. 130, on inward-bound coasting vessels under the burden of 100 tons. See the Mersey Docks Act, 1864 (c. ccxiii), s. 7.

1824. If the master of any vessel, outward bound and not being a coasting vessel in ballast, nor under the burthen of 100 tons, proceeds to sea and refuses to employ a pilot; penalty full pilotage and expenses. See the Mersey Docks Acts Consolidation Act, 1858 (c. xcii), s. 139.

1825. If the master of any inward-bound vessel, other than a coasting vessel in ballast or under the burthen of 100 tons, refuses to employ a pilot who has offered his services; penalty full pilotage. *Ibid.* s. 130.

1826. The master of every inward-bound vessel liable to pilotage must, on coming within the pilot stations fixed by the bye-laws, display and keep flying the usual signal for a pilot to come on board; penalty for default not exceeding £5. *Ibid.* s. 129.

1827. And if any pilot comes within a reasonable distance of such vessel, the master must render all necessary assistance (so far as consistent with the safety of such vessel), to enable such pilot to come on board. *Ibid.*

1828. The compulsion to employ a pilot is till the completion of the voyage, or so long as the pilot is bound to perform services. *The Annapolis and Johanna Stoll*, 30 L. J. Adm. 201; 4 L. T. N.S. 423; 1 Lushington, 295; 1 Asp. 69.

1829. A foreign vessel inward bound for Liverpool is required by 21 & 22 Vict. c. xcii. ss. 129, 130, to make a signal for a licensed pilot on coming to the usual pilot station, and to employ the first pilot offering his services. *Ibid.*

1830. An inward-bound vessel conducted by a pilot into the port of Liverpool, and anchoring in the Mersey, is required by 21 & 22 Vict. c. xcii. s. 128, to employ the pilot in removing from the river into dock. *Ibid.*

1831. A foreign vessel, bound for Liverpool, took a pilot off Point Lynas, was brought to anchor in the Mersey and there lay two or three days, waiting for want of water to dock. She was then conducted by the same pilot into dock. In proceeding towards the dock, a collision was occasioned by the pilot's default. *Held*, that the pilotage was compulsory, and that the vessel was therefore not liable for the damage. *Ibid.*

1832. The pilot had been taken on

board to pilot the vessel to the Queen's Docks at Liverpool, and the ship having arrived in the Mersey too late by reason of the tide to enter the Queen's Docks, she was anchored off the Albert Docks till next tide. She then proceeded to the Queen's Docks, and on her way the collision occurred. *Held*, that she was bound to have a pilot on board, and that the engagement with him did not terminate on the ship's anchoring off the Albert Dock. *The Montreal*, 17 Jur. 538; 1 Spinks' *Ecll. & Adm. Rep.* 154.

1833. In the 128th section of the Mersey Docks Acts Consolidation Act, 1858 (c. xcii.), the words "unless," &c. do not restrict the meaning of the 129th and 130th sections, so as to render it less compulsory upon the owner to employ a pilot to dock the ship, or upon the pilot to perform such service. *The Annapolis and Johanna Stoll*, 4 L. T. N.S. 423; 1 Lushington, 295; 30 L. J. Adm. 201.

1834. By the Liverpool Act, 37 Geo. 3, c. 78, s. 24 (since repealed), the master of a vessel inward bound was liable to pay pilotage if he refused to take a pilot. *Held*, that such a vessel was, upon general principles, and under that act, and the 55th section of the General Pilot Act, 6 Geo. 4, c. 125, compellable to take a pilot, and that her owners were therefore not responsible for his acts. *Carruthers v. Sidebottom*, 4 Maule & Selwyn, 77.

1835. See the apparent contradiction between this case and *The Att-Gen. v. Chase*, explained in *The Maria*, 1 W. Rob. 102.

1836. A vessel sailed from Calcutta and arrived in London, where she discharged her cargo, and thence proceeded in ballast to Liverpool. *Held*, that the original voyage was not so completed by her arrival and delivery of cargo in London as to admit of the voyage from London to Liverpool being considered as a coasting voyage within the meaning of the Liverpool Pilot Act (5 Geo. 4, c. lxxiii), s. 25; that, therefore, under that act the master of such a ship, though in ballast, was compellable to take a pilot on entering the port of Liverpool; and that the owners were, therefore, exempted from responsibility for a collision occasioned by the default of the pilot only. *The Agricola*, 2 W. Rob. 10; 7 Jur. 157.

1837. A vessel ordinarily occupied in the foreign trade going from Liverpool to London in order to sail from London on such foreign trade, without passengers, but having on board a cargo shipped at

Liverpool, and deliverable at London, is not "a ship employed in the coasting trade of the United Kingdom" within the meaning of the 379th section of the M. S. Act, and is compellable to take a pilot. *The John Mowlem v. The Lloyd's or Sea Queen*, 2 N. R. 497; 9 L. T. N.S. 236; 32 L. J. Adm. 97.

1838. A vessel, in order that she might be ready to cross the bar of the Mersey on the morning tide, was brought out of dock over-night in charge of a pilot, and was anchored in the river. During the night she drifted, and came into collision with another vessel. *Held*, by the Privy Council, affirming the decision of the Court of Admiralty, that the vessel was "proceeding to sea" within the meaning of sect. 139 of the Mersey Docks Acts Consolidation Act, 1858 (c. xcii), and that, therefore, the employment of the pilot at the time of the collision was compulsory by law. *The City of Cambridge*, No. 1820, *supra*.

1839. A barque came out of dock into the Mersey with a pilot on board, and anchored ready to be towed to sea the next morning. While the barque was still at anchor, an accident happened to her mainyard, which would have taken two days to repair. The tug was accordingly sent away. A collision having occurred shortly afterwards, *held*, that the barque was not proceeding to sea within the meaning of the Mersey Docks Consolidation Act, 1858 (c. xcii), s. 139, and was not under compulsory pilotage. *The Cachapool*, 7 P. D. 217; 4 Asp. 502.

1840. An inward-bound vessel in charge of a pilot coming to anchor in the Mersey, and remaining at anchor several days, does not continue during that time to be in charge of a pilot by compulsion of law. *The Woburn Abbey*, 38 L. J. Adm. 28; 3 Asp. 240.

1841. The W. A., an inward-bound vessel in charge of a pilot, came to anchor in the Mersey, and gave the B. T. a foul berth. The master of the W. A. knew that his vessel was improperly anchored, and after several days the vessels, in swinging to the tide, came into collision. *Held*, that the W. A. was not, at the time of the collision, in charge of a pilot by compulsion of law. *Ibid*.

1842. A pilot was compulsorily employed to take a vessel into dock. Owing to the weather the vessel was anchored outside the dock in the Mersey. While she was so anchored a collision took place. *Held*, that the pilot was, at the time, in

charge by compulsion of law. *The Prince-ton*, 3 P. D. 90; 3 Asp. N.S. 562; 47 L. J. P. D. & A. 33.

See also No. 1475, p. 1351, and No. 1812, *supra*.

(b) *Ships, one or both Foreign.*

1843. Objection that the 129th and 130th sections of the Mersey Docks Acts Consolidation Act, 1858 (c. xcii), do not apply to a foreign ship so as to render the taking of a pilot off Point Lynas compulsory upon her owners, overruled. *The Annapolis and Johanna Stoll*, 4 L. T. N.S. 421; 30 L. J. Adm. 201; 1 Lushington, 295.

1844. A foreign vessel inward bound for Liverpool is required by the Mersey Docks Acts Consolidation Act, 1858 (c. xcii), ss. 129, 130, to make a signal for a licensed pilot on coming to the usual pilot station, and to employ the first pilot offering his services. *Ibid.*

1845. Every vessel, whether British or foreign, lying in the Mersey inward bound, is required by the Mersey Docks Acts Consolidation Act, 1858 (c. xcii), s. 128, to employ a pilot in removing from the river into dock. *Ibid.*

1846. A foreign vessel bound for Liverpool took a pilot off Point Lynas, was brought to anchor in the Mersey, and there lay two or three days waiting, for want of water, to dock. She was then conducted by the same pilot into dock. In proceeding towards the dock a collision was occasioned solely by the pilot's default. *Held*, that the ship and her owners were not liable for the damage. *Ibid.*

3. *Exemption.*

1847. The master of any coasting vessel in ballast, or under the burthen of 100 tons, may pilot his vessel into or out of the port of Liverpool. See the Mersey Docks Acts Consolidation Act, 1858 (c. xcii), s. 141.

1848. See as to the exemption of vessels in distress, 21 & 22 Vict. c. xiii; and also the exemptions contained in M. S. Act, 1854 (c. 104), ss. 353, 354, 362; the M. S. Act Amendment Act, 1862 (c. 63), s. 41, and 39 & 40 Vict. c. 63, s. 141,

in c. 9, Nos. 1574—1642, pp. 1361—1366.

1849. Such of the exemptions from compulsory pilotage under 6 Geo. 4, c. 125, as may be applicable, together with such other exemptions, if any, as existed before the 10th August, 1854 (and for which see c. 9, s. 3, p. 1360), are also in force within this district. See the Mersey Docks Act, 1864 (c. cxxiii), s. 7.

1850. The Liverpool Pilot Act, 5 Geo. 4 (c. lxxiii), s. 35 (now repealed), enacted, that in case the master of any ship outward bound should proceed to sea, and refuse to employ a licensed pilot, such master should pay the pilot, who first offered his services, and was so refused, the same pilotage as if the pilot had been employed in piloting the vessel out of the port, and all expenses incurred in the recovery of the same. A ship left the Liverpool Docks with a pilot on the 2nd December. On the 3rd the plaintiff was engaged to raise an anchor of the ship, lost in the river, and in doing so, by some mismanagement of those on board, the plaintiff's boat alongside was sunk. At the time of the accident the ship was at anchor in the Mersey; was in the service of the Post-office, and was under contract to sail on the following day, but the master was not on board, and the riggers were engaged in completing her rigging. *Held* (assuming that under the act an outward-bound vessel, when proceeding to sea, is bound to take a pilot), that under the circumstances this ship was not at the time proceeding to sea. *Rodrigues v. Melhuish*, 10 Exch. 110; 24 L. J. Exch. 26; 23 L. T. 177.

1851. By the 31st and 34th sections of the Liverpool Act (37 Geo. 3, c. 78, since repealed), it was provided that any vessel, whilst lying at anchor in the Mersey, might require a pilot to remain on board on payment of five shillings a day for his services. *Held*, that the so taking a pilot was optional, and that the owners were therefore responsible for his acts. *Att.-Gen. v. Case*, 3 Price, 302.*

1851a. See also such exemptions as are applicable in c. 9, s. 3, Nos. 1574—1642, pp. 1361—1366.

See also Nos. 1839, 1840 and 1841, *supra*.

* (536) See the apparent contradiction between this case and *Carruthers v. Sidebottom*, explained in *The Maria*, 1 W. Rob. 102.

27. Port of Llanelly.*1. Generally.*

1852. Definition of limits of pilotage district: All vessels bound in over Burry Bar shall hoist a pilot signal immediately they pass a line drawn from the Helwick Lightship to Caldly Light. P. R. No. 325 of 1882, p. 78; Bye-Law 3.

1853. As to the constitution, &c. of this port, see the Burry Navigation and Llanelly Harbour Act, 1858 (c. lxxii.); 27 & 28 Vict. c. cciii.; and 41 & 42 Vict. c. lxxxiii.

1854. For the bye-laws regulating pilotage in this port, see P. R. No. 516 of 1855, p. 160; No. 244 of 1859, p. 82; No. 287 of 1860, p. 81; No. 243 of 1861, p. 76; No. 408 of 1867; and No. 325 of 1882.

1855. Pilots must remain in charge until the vessels are properly moored. *Ibid.* Bye-Law 23.

2. Compulsion.

1856. (1) All vessels with cargoes, and all vessels above 40 tons register in ballast, bound over the bar of Burry inwards; and (2) all vessels of 30 tons register and upwards in ballast, shall employ the first licensed pilot that offers. *Ibid.* No. 325 of 1882, p. 78; Bye-Law 1.

1857. Vessels requiring assistance in moving within the port must employ a licensed pilot, if one offers his services. *Ibid.* Bye-Law 5.

3. Exemption.

1858. Vessels in ballast under 50 tons register, being inward bound, and vessels with cargoes under 30 tons, or in ballast under 50 tons, are exempt. *Ibid.* Bye-Law 1; and P. R. No. 408 of 1867, p. 98.

1859. Any master unable to procure a pilot to take his vessel out is entitled to repayment of the outward pilotage paid in advance. *Ibid.* Bye-Law 7.

1860. See also such exemptions as are applicable in c. 9, s. 3, Nos. 1574—1642, pp. 1361—1366; and the M. S. Act

Amendment Act, 1862 (c. 63), s. 41, No. 1605, p. 1364.

28. Penarth Harbour.**1. Generally.*

1861. The harbour means that part of the river Ely (lying between a point 46 chains or thereabouts below Cogan Pill and a point 144 chains or thereabouts above the Pill, measured in both cases along the centre of the river) which is by this act authorized to be improved for the purpose of a tidal harbour. The limits of this act mean the harbour, and that portion of the river which lies between Cardiff Roads and the harbour, and also the entrance thereto. See the Ely Tidal Harbour and Railway Act, 1856 (c. cxxii.), s. 2, repealed by the Bristol Channel Pilotage Act, 1861 (c. ccxxxvi.), s. 21.

1862. The Penarth Harbour Company is, as a pilotage board, amalgamated with the Cardiff Pilotage Board, and the district of Penarth Harbour is therefore included by that act in the port of Cardiff. See the Bristol Channel Pilotage Act, 1861 (c. ccxxxvi.), ss. 3, 5, and 21, and note 530, p. 1379.

2. Exemption.

1863. Pilotage is not compulsory within the districts created by this act, and which include the port of Cardiff, and therefore, notwithstanding sect. 9 of 47 Geo. 3, c. xxxiii. pilotage is not compulsory in the district of Penarth Harbour. See the British Channel Pilotage Act, 1881 (c. ccxxxvi.), s. 31; and c. 18, p. 1379.

29. Port of Porthcawl.†

1864. The limits of the Porthcawl pilotage district seawards are the Sker

* (537) No returns are furnished, nor information given as to bye-laws and regulations by this pilotage authority under the provisions of the M. S. Act, 1854 (c. 104), s. 337.

† (538) The bye-laws contain no express provisions for compulsory pilotage. See P. R. No. 268 of 1879, p. 44.

(538a) But a saving clause to one of the bye-laws declares that "nothing therein contained shall affect the provisions of 47 p.

Geo. 3, c. 33, which relate to the exemption from compulsory pilotage of coasting vessels and Irish traders." *Ibid.*

(539) The local act (6 Geo. 4, c. civ. s. 106) gives power to the harbour authority to fix the rates to be charged for pilotage, and to licence pilots for the port, and to make bye-laws enforcing payment of them. But nothing further is contained in the act as to the nature of the pilotage.

and Nash Points and inside sands to the harbour. See P. R. No. 325 of 1882, p. 90.

1865. See for the bye-laws regulating pilotage in this district, *Ibid.*; and No. 268 of 1879, p. 44.

1866. See also for constitution and bye-laws of this port, 6 Geo. 4, c. civ.; 18 Vict. c. 1.; and Bye-laws of 27th Feb. 1857, approved by Order in Council of 6th May, 1857; also Order in Council, 27th Nov. 1878; P. R. No. 174 of 1858, p. 88; No. 268 of 1879; and No. 325 of 1882.

30. Port of Southwold.

1. Generally.

1866*a*. Definition of limits of pilotage district: In and out of Southwold Harbour; and for constitution and bye-laws of this port, see 11 Geo. 4 & 1 Will. 4, c. xlviii. ss. 63—68; and for rates, P. R. No. 204 of 1874, Appendix; and No. 222 of 1884, p. 54.

2. Compulsion and Exemption.

1866*b*. The pilotage is compulsory for all vessels above forty tons register tonnage (see the act, s. 64), subject to such exemptions as are applicable in Nos. 1574—1642, pp. 1361—1366; and 39 & 40 Vict. c. 36, s. 141. See 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. 124.

31. Port of Sunderland.

1. Generally.

1867. Separate pilotage commissioners are constituted for the port of Sunderland. See the Sunderland Pilotage Order Confirmation Act, 1865 (c. 59).

1868. The pilotage district of the port for the purposes of this order extends from the promontory or point called Souter Point, about two miles on the north side, to Ryhope Dene, about two miles on the south side of the harbour of Sunderland. *Ibid.* s. 8.

1869. For the bye-laws regulating

pilotage in this district, see P. R. No. 260 of 1872, pp. 21 *et seq.*; No. 276 of 1875 and No. 325 of 1882, p. 92 (repealing previous bye-laws). See also Orders in Council, 29th June, 1871; 26th June, 1873; 20th Oct. 1874; and c. 13, p. 1375.

1870. See also Order in Council of June 29th, 1882, approving Bye-laws of Sunderland Pilotage Commissioners.

2. Exemption.

1871. Nothing in this act obliges the owner or master of any vessel to employ any pilot in piloting such vessel into or out of the port, if he is not desirous so to do, or to pay any pilotage dues when not employing a pilot. See the Sunderland Pilotage Order Confirmation Act, 1865 (c. 59), s. 14.*

32. Port of Swansea.

1. Generally.†

1872. Definition of limits:—Swansea harbour and so much of the Bristol Channel as is included within the following limits, viz.: “north of the line of the Nash Lights in one,” and east of an imaginary line running north and south of a point four miles west of Helwick Light, near Worms Head. P. R. No. 325 of 1882, p. 98.

1873. As to the constitution and bye-laws of this port, see the Swansea Harbour Act, 1854 (c. cxxvi.) ss. 154—162, 166, 175; Bye-laws of Swansea Harbour Trustees; P. R. No. 5, Sess. 2 of 1857, p. 89; No. 288 of 1860, p. 83; No. 243 of 1861, p. 81; No. 416 of 1864, p. 73; No. 178 of 1871; No. 325 of 1882, p. 98; and No. 222 of 1884, p. 57.

1874. The Swansea Harbour Trustees are the pilotage authority for this port under the provisions of the Swansea Harbour Act, 1854 (c. cxxvi.)

1875. For the regulations as to pilotage made by this authority, see P. R. as to Pilotage, No. 178 of 1871, p. 27; No. 325 of 1882, p. 98; and No. 222 of 1884, p. 57.

* (540) There has been no decision as to the construction of this provision with 41 Geo. 3, c. lxxxvi. s. 6, and 39 & 40 Vict. c. 36, s. 141, or the M. S. Act, 1854 (c. 104), s. 354. See 2 Maude & Poll. (4th ed. by Poll. & Bruce), p. 119.

† (541) For bye-laws providing for and regulating the granting of pilotage certificates for this district to masters and mates, see P. R. as to Pilotage, No. 178 of 1871, p. 29.

2. *Compulsion.*

1876. Pilotage is compulsory for all vessels exceeding sixty tons register, inward or outward bound. See P. R. No. 222 of 1884, p. 57, Bye-law 3.

1877. Masters requiring to move their vessels within the limits of the port (except from one part of the float to another) must employ a pilot. P. R. No. 325 of 1882, p. 98, Bye-law 21.

3. *Exemption.**

1878. Vessels in ballast inward bound, not exceeding 100 tons burthen, are exempt, subject to the provisions of the M. S. Act, 1854 (c. 104). P. R. No. 222 of 1884, p. 97, note to Bye-law 3.

33. The Tyne.

1. *Generally.*

1879. Separate pilotage commissioners are constituted for the pilotage district of the Tyne (exercising the jurisdiction therein formerly possessed by the Trinity House of Newcastle-upon-Tyne). See the Tyne Pilotage Order Confirmation Act, 1865 (c. 44); and the Tyne Pilotage Amendment Act, 1867 (c. 78).

1880. The pilotage district of the Tyne, for the purposes of the above order, includes the whole River Tyne, and extends seaward over a radius of seven miles. *Ibid.* s. 10.

1881. For the bye-laws and rates regulating pilotage in this district, see P. R. No. 325 of 1882, p. 102 (rescinding all previous bye-laws as from the 1st Oct. 1880).

1882. From and after 1st Oct. 1880, the distinction between sea and river pilots is abolished. *Ibid.* Bye-law 3.

1883. Thenceforth there shall be only one class of pilots, who may conduct ships of any tonnage. *Ibid.*

1884. Penalty against any pilot for breach of any of the bye-laws not exceeding £5. *Ibid.* Bye-law 23.

1885. For bye-laws as to apprenticeship and examination of pilots, see

Ibid. Bye-laws 9—14. See also c. 13, p. 1375.

2. *Exemption.*

1886. Nothing in this act extends to oblige the owner or master of any vessel to employ any pilot in piloting his vessel into or out of the district, or within any part thereof, if he is not desirous so to do, or to pay any pilotage dues when not employing a pilot. *Ibid.* s. 16.†

34. The Tees.

1. *Generally.*

1887. The Tees Pilotage Commissioners are incorporated by the Tees Pilotage Order, 1881, as a pilotage authority. See the Tees Pilotage Order, 1881, confirmed by the Tees Pilotage Order Confirmation Act, 1882 (c. 1); and P. R. No. 207 of 1883, p. 53.

1888. The pilotage district of the Tees includes the whole of the river Tees, and the ports of Stockton and Middlesborough, and extends from the southernmost end of the village of Seaton Carew to Huntcliffe, in Yorkshire. See s. 9 of the Order in the Schedule to the Act.

1889. All the bye-laws and rules previously in force within the district are repealed. See Bye-laws of 26th June, 1882, approved by Order in Council of December 16th, 1882.

1890. There shall be two classes of pilots, viz., first and second class. First-class pilots may conduct vessels of any tonnage; second-class pilots may only (except in cases of necessity) conduct vessels not exceeding 400 tons register. *Ibid.* Bye-law 3.

1891. Every pilot shall, within three years from the passing of the bye-laws, qualify himself to pilot vessels up to Stockton Bridge. *Ibid.*

1891a. For the rates of pilotage to be taken by both classes of pilots, see *ibid.* p. 56.

2. *Exemption.*

1892. Pilotage in the Tees is not compulsory. See the Tees Pilotage Order, 1881, *supra*, s. 15.

* (542) See also such exemptions as are applicable in c. 9, s. 3, Nos. 1574—1642, pp. 1361—1366.

† (543) There has been no decision as to the construction of this provision with 41

Geo. 3, c. 86, s. 6, and 39 & 40 Vict. c. 36, s. 141, or the M. S. Act, 1854 (c. 104), s. 354. See 2 Maude & Pollock (4th ed. by Pollock & Bruce, p. 119.)

35. Scotch Ports.

1. *Aberdeen.*(a) *Generally.*

1893. Limits of pilotage district:—

The harbour of Aberdeen and so far as not within the limits thereof as therein-before defined, the rivers Dee and Don upon both sides thereof, the coast between these rivers, and the coast south from the mouth of the river Dee to the extremity of the city's precincts or boundary on the Torry or south side of the river Dee: provided that on the river Dee being diverted, as authorized by the Aberdeen Harbour Act, 1868 (c. cxxxviii.), this enactment shall extend and apply to the river so diverted. See P. R. No. 325 of 1882, p. 111.

1894. For the constitution, bye-laws, and rates of this port, see 31 & 32 Vict. c. cxxxvii. ss. 153—143; and P. R. No. 325 of 1882, p. 111, and No. 222 of 1884, p. 65.

(b) *Compulsion.*

1895. All inward-bound vessels must employ the first pilot who offers his services. Penalty, full pilotage. See P. R. No. 325 of 1882, p. 111; Bye-law 17.

1896. The pilot who first offers himself to a vessel in want of a pilot is entitled to the pilotage dues whether his services be accepted or not, unless another arrangement has been entered into with the sanction of the captain pilot. *Ibid.*

(c) *Exemption.*

1897. *Semble*, pilotage is optional for outward-bound vessels. *Ibid.*

2. *Arbroath or Aberbrothwick.*(a) *Generally.*

1898. Limits of district:—The pilots are licensed for the harbour only. *Ibid.* p. 109.

1899. For constitution, regulations and rates of this port, see 2 & 3 Vict. c. xvi. s. 67; 27 & 28 Vict. c. xxxiii.; and P. R. No. 325 of 1882, p. 109.

1900. For provisions relieving vessels which from stress of weather have entered this port without a pilot, but have received a pilot in the fairway, from warping or pilot's charges other than the pilotage dues. *Ibid.* p. 32; Rule 7.

1901. A pilot so received on board any such vessel must remain on board until she is safely moored. *Ibid.*

(b) *Compulsion.*

1902. Pilotage is levied on all vessels using the harbour whether inward or outward bound. *Ibid.* p. 109; Rule 1.

1902a. Limits of district: The harbour of Ayr and the bed and channel of the river Ayr, and from the harbour to the bay of Ayr. See 18 & 19 Vict. c. cxix. s. 13.

3. *Ayr.*(a) *Generally.*

1903. For the constitution, bye-laws, and rates of this port, see 18 & 19 Vict. c. cxix. ss. 47, 48, 51, 82; 36 Vict. c. li.; and P. R. No. 189 of 1880, p. 53; No. 325 of 1882, p. 115.

1904. For provisions as to the granting and renewal of pilotage certificates to masters of vessels, see P. R. No. 189 of 1880, p. 53.

1905. Pilots not engaged in navigating vessels over the bar must assist in moving vessels and in transporting them from one berth to another. *Ibid.* No. 325 of 1882, p. 115; Bye-law 46.

(b) *Compulsion.*

1906. All vessels of forty tons burthen or upwards must pay pilotage, if pilotage assistance has been duly offered, whether the pilots be employed or not. *Ibid.* No. 189 of 1880, p. 53.

(c) *Exemption.*

1907. Vessels under forty tons register are exempt. *Ibid.*

1908. Vessels whose masters have obtained and held pilotage certificates in accordance with the regulations are also exempt. *Ibid.*

3a. *Port of Burntisland.*

1909. The limits of the district are defined as including the harbour and extending to a distance of one mile and a half W. of the harbour, and to the island of Inchkeith E. thereof, and for a distance from the land of one mile N. of those limits. The Burntisland Harbour Act, 1881 (c. clix.), s. 82.

1910. The Burntisland Harbour Commissioners are incorporated as a pilotage authority by the Burntisland Harbour Act, 1881 (c. clix.). See P. R. No. 222 of 1884, p. 67.

1910a. No shipmaster or other person

shall be bound to employ a pilot, either inwards or outwards. *Ibid.* Regulation 2.

1911. No harbour pilot already licensed shall (unless he holds a Leith Trinity House Firth pilot's licence) proceed in search of vessels or go on board thereof at any place beyond one mile and a half W. of the harbour, and to the island of Inchkeith E. thereof, and for a distance from the land of one mile S. of those limits; and no Firth pilot shall be entitled to go on board any vessel within those limits unless for the purpose of pilotage in the Firth and at full Firth pilotage fees. *Ibid.* Regulation 7.

1912. See for qualifications for pilots, *Ibid.* Supplementary Bye-Laws.

1913. See also Order in Council of 3rd Nov. 1882, approving bye-laws relating to pilotage in the harbour of Burntisland.

4. The Clyde (including Glasgow and Greenock).

(a) Generally.

1914. Limits of pilotage district: The harbour of Glasgow includes, for the purposes of the Clyde Navigation Acts, the channel or waterway, docks, and works of the river Clyde to the east of the river Kelvin and to the west of Huncheson-town Bridge; and the river Clyde includes for the same purposes the channel of the river as far down as to a straight line drawn from the east end of Newark Castle on the south shore of the river to the mouth of Cardross Burn on the north shore of the river. See the Clyde Navigation Consolidation Act, 1858 (c. cxlix.), ss. 74, 75.

1915. See for provisions generally as to pilots in the Clyde, *ibid.* ss. 128 to 144.

1916. The principal acts regulating the navigation of the Clyde are the Clyde Navigation Consolidation Act, 1858 (c. cxlix.); the Clyde Navigation (Glasgow Harbour Tramways) Act, 1864 (c. ccxlviii.); the Clyde Navigation Amendment Act, 1868 (c. cxxiv.); the Clyde Navigation (Stobcross Dock) Act, 1870 (c. liv.), with which are incorporated the Lands Clauses Consolidation (Scotland) Act, 1845 (c. 19); the Railway Clauses Act, 1863 (c. 92); and the Harbours, Docks and Piers Clauses Act, 1847 (c. 27).

1917. By the bye-laws of the Clyde Pilot Board, all steam vessels must be supplied with a captain or sailing master, who shall be an experienced seaman; and

must also be manned with a sufficient number of able-bodied and experienced seamen for the safe navigation of the vessel. *Held*, that even if this bye-law applied to a vessel on her trial trip, and still in the ship-builder's hands, it was sufficiently complied with by the vessel being in charge of a licensed pilot who was assisted by a sufficient crew to obey his orders. *Clyde Navigation Co. v. Barclay*, L. R. 1 App. Cas. H. L. 790; Cases in the Court of Session, 4th series, vol. 2, H. L. 842; 4th series, vol. 3, H. L. 44; 3 Asp. N.S. 390.

(b) Compulsion and Exemption.

1917a. It is unlawful for any person to navigate without a pilot, licensed by the existing pilotage authorities, any vessel exceeding sixty tons burden in any part of the River Clyde as defined by this Act. Penalty for breach, not exceeding £5. The Clyde Navigation Consolidation Act, 1858 (c. cxlix.), s. 136.

1917b. See further as to Glasgow and Greenock, ss. 9 and 10, *infra*.

5. Dingwall Harbour.

1918. As to the pilotage authority of this harbour and the limits of the harbour, see the Dingwall Harbour Order, 1867 (c. 33). The harbour is under the same rules and management as Leith, for which see ss. 13 and 14, *infra*.

6. Dundee.

(a) Generally.

1919. Definition of limits: Six miles outside of the Fairway Buoy at the entrance of the River Tay, up the river as far as Invergowrie on the north, and Balmernocho on the south side of the Tay. See P. R. No. 325 of 1882, p. 117.

1920. For statutory provisions regarding pilotage in the river and harbour, and constituting the trustees of the harbour the pilotage authority, see the Dundee Harbour Act, 1843 (c. lxxxiii.), ss. 125—148; and 38 & 39 Vict. c. cl. ss. 102—126.

1921. The master of any vessel who signals or asks for a pilot, must accept the services of the first who, being duly qualified, offers himself. Penalty, not exceeding £10. See P. R. No. 325 of 1882, p. 117; Reg. 7.

1922. Pilots are required upon a signal from any vessel coming into or going out the River Tay to proceed at once to take

charge of such vessel, if outward bound, from the place of mooring in dock or elsewhere within the precincts of the harbour until one mile east of the Fairway Buoy, or (if required by the master) to any distance not exceeding six miles to the east of the said buoy; or, if inward bound, until the vessel arrives at Dundee or Carolina Roads, or is moored in the harbour, as may be directed by the master, subject to the directions of the harbour-master. Penalty for breach, not exceeding £5, nor under £2 for each offence. See P. R. No. 325 of 1882, p. 117; Reg. 7.

1923. The master of any vessel outward or inward bound who, being unable to obtain the services of a duly-licensed pilot, has placed his vessel under the charge of an unlicensed person, shall, upon being boarded by any qualified pilot in any part of the River Tay below the docks of Dundee, surrender the charge of his vessel to such pilot. Penalty, full pilotage. *Ibid.* p. 118; Reg. 16.

1924. Pilots must attend vessels in the roadstead if required to do so by the masters. *Ibid.* Reg. 7.

1925. Penalty against any master or owner of a vessel who agrees to pilotage at a less rate than those authorized, not less than £5 nor more than £10, and balance of authorized pilotage. *Ibid.* Reg. 17.

(b) *Compulsion and Exemption.*

1925a. Pilotage appears to be compulsory. See P. R. No. 325 of 1882, pp. 117—119.

7. *Fraserburgh.*

(a) *Generally.*

1926. Limits: From Cairnburg Point, about two and a quarter miles south-east of the harbour, to Pitullie Point, about two miles west from the harbour and two miles seaward. *Ibid.* p. 122.

1927. For constitution, regulations, rates, &c. of this port, see the Fraserburgh Harbour Acts, 2 & 3 Vict. c. lxxv.; 20 & 21 Vict. c. xxxiii.; and 41 Vict. c. cii. ss. 42—120; and P. R. No. 325 of 1882, p. 117.

1928. The pilot who first offers himself to a vessel in want of a pilot is entitled to the dues of pilotage, whether his services be accepted or not. See P. R. No. 325 of 1882, p. 123; Reg. 13.

1929. Pilots must remain in charge of

vessels employing them until they are safely moored. *Ibid.* Reg. 8.

(b) *Compulsion.*

1930. The master of every inward-bound vessel must employ the first duly-qualified pilot who offers his services. Penalty, full pilotage and costs of recovering the same. *Ibid.*

1931. *Semble*, all vessels pay pilot master's fees. *Quære*, does this amount to compulsory pilotage on outward-bound vessels? *Ibid.* Regs. 13 and 19.

(c) *Exemption.*

1932. *Quære*, is pilotage optional for outward-bound vessels? *Ibid.*

8. *Girvan Harbour.*

1933. As to the pilotage authority of this harbour, and the limits of the harbour, see the Harbour of Girvan Improvement Order, 1865, confirmed by the Pier and Harbour Orders Confirmation Act, 1865 (No. 3), c. 76.

9. *Glasgow.*

(a) *Generally.*

1934. Limits of pilotage district—between Glasgow and Greenock. P. R. No. 325 of 1882, p. 125.

1935. The pilots who are licensed by the Clyde Pilot Board consist of two classes, viz., river pilots licensed to pilot vessels between Glasgow and Greenock, and deep-sea pilots licensed to pilot vessels between Greenock and the Island of Little Cumbrae, including vessels proceeding outwards from Port Glasgow or inwards to Port Glasgow. *Ibid.* By-law 1.

1936. See for regulations and rates of pilotage in this port, *Ibid.* No. 408 of 1867, pp. 126—128; No. 189 of 1880, p. 58; No. 325 of 1882, p. 125.

See as to the Clyde, s. 4, supra.

(b) *Exemption.*

1937. Pilotage is not compulsory in this port. *Ibid.* No. 189 of 1880, p. 58.

10. *Greenock.*

(a) *Generally.*

1938. Limits of pilotage district—between Greenock and the Island of Little Cumbrae, including vessels proceeding outwards from and inwards to port

Glasgow. See P. R. No. 325 of 1882, p. 129.

1938*a*. The bye-laws and rates are the same as those in force at the port of Glasgow. *Ibid*.

See as to the Clyde, s. 4, *supra*.

(b) *Exemption*.

1939. Pilotage is not compulsory in this port. *Ibid*. No. 189 of 1880, p. 58.

11. *Irvine*.

(a) *Generally*.

1940. Limits of pilotage district—from harbour to two miles from bar at entrance of harbour. *Ibid*. p. 130.

1941. As to the pilotage authority of this harbour, see the Irvine Harbour Improvement Order, 1867, confirmed by the Pier and Harbour Orders Confirmation Act, 1867, No. 2 (c. 73); and see 36 & 37 Vict. c. cxxiv. s. 47.

1942. Pilotage inward is not complete until the vessel is safely moored. See P. R. No. 325 of 1882, p. 130.

1943. See for regulations, bye-laws and rates of this port, *ibid*.

(b) *Compulsion*.

1944. Pilotage is compulsory on all vessels of 25 tons register or upwards. Penalty, full pilotage. *Ibid*. No. 408 of 1867, p. 131.*

(c) *Exemption*.

1945. Vessels under twenty-five tons register are exempt. *Ibid*.

12. *Kirkcaldy*.

(a) *Generally*.

1946. The limits of the district are:—From harbour to roadstead. See 12 & 13 Vict. c. xxx.; 39 & 40 Vict. c. clxxix. ss. 64—71; and P. R. No. 516 of 1855, pp. 201, 202; and No. 325 of 1882, p. 131.

1947. See for the constitution, regulations and rates of this port, *Ibid*.

(b) *Compulsion and Exemption*.

1948. No vessel employed in the coasting trade shall be obliged to employ a pilot; and no vessel under sixty tons burden shall be obliged to pay pilotage,

unless she employs a pilot; and the masters or commanders of ships belonging to the port of Kirkcaldy shall not be liable to pay any fees for pilots or pilotage, except where they make a signal for a pilot, or employ one to navigate their ships or vessels (*semble* pilotage is compulsory on other vessels). *Ibid*. Reg. 6.

13. *Leith Trinity House*.

(a) *Generally*.

1949. Definition of limits: The Firth of Forth from Fife Ness on the N. of St. Abbs' Head. On the S. the corporation also have power to license pilots "for seas and firths and along the coasts and islands of the Northern and German Oceans." See P. R. No. 325 of 1882, p. 132.

1950. The jurisdiction of the Trinity House of Leith under their charter of incorporation of the 27th of July, 1797, and under 1 Geo. 4, c. xxxvii.,† and 5 Geo. 4, c. xxxix., does not extend to the district between Orfordness and the mouth of the Thames, which district is subject to the jurisdiction of the London Trinity House. *Hossack v. Gray, The Ship Oscar*, 34 L. J. M. C. 209; 2 Asp. 229; 6 Best & S. 598.

1950*a*. The jurisdiction of the Trinity House of Leith is confined to the coasts of Scotland. *Ibid*.

1951. For the bye-laws issued by this Trinity House, see P. R. No. 325 of 1882, p. 132.

1952. The Commissioners for the Harbour and Docks of Leith having made a bye-law to the effect that no person shall in future be licensed, nor after being licensed shall continue to act as harbour pilot, unless he holds a Firth of Forth licence (excepting masters or mates licensed for their own vessels), it is enacted (as arranged with the commissioners) that the limits of the harbour pilots shall be extended from a line to be drawn from Granton to Burntisland on the W., and from Pettycur to Portobello on the E., beyond which the harbour pilots are not to proceed in quest of vessels, nor go on board with a view to harbour pilotage. *Ibid*. Bye-law 10.

1953. Firth of Forth pilots in charge of vessels are only to continue in charge when within the limits of Leith Harbour,

* (544) This regulation, however, is not repeated in the bye-laws for this port printed at p. 62 of the P. R. No. 232 of 1873, nor in those of 1882.

† (544*a*) The act 1 Geo. 4, c. xxxvii. is declared to be a public act, and notice is to be taken of it without its being specially pleaded. See the act, s. 69.

in case a harbour pilot should not be forthcoming. See P. R. No. 325 of 1882, p. 132; Bye-law 11.

(b) *Compulsion and Exemption.*

1954. The rates, charges, and prices, therein enumerated, may and shall be lawfully demanded, exacted, and received by every pilot licensed by the Trinity House. (*Quere*, is pilotage compulsory under this bye-law?) *Ibid.* Bye-law 15.

1954a. Pilotage is compulsory except for Queen's ships. See 1 Geo. 4, c. xxxvii. ss. 34, 35, 44.

14. *Leith Harbour and Docks.*

(a) *Generally.*

1955. Definition of limits: The limits of the port and harbour of Leith extend from a point at a bridge beyond or E. of Seafield Toll Bar; on the E. of Leith to Wardie Brow or Brae, to the W. of Newhaven and halfway across the Firth of Forth. See 38 & 39 Vict. c. clx. ss. 7 and 74, but these limits have been extended for pilotage purposes (see Bye-law 10 of Leith Trinity House, *supra*). See P. R. No. 325 of 1882, p. 138.

1956. No person shall in future be licensed, nor after being licensed continue to act as a harbour pilot, unless he holds a Firth of Forth pilot's licence (excepting masters and mates of vessels licensed for their own vessels only). *Ibid.* Bye-law 4.

1957. For constitution, bye-laws, and rates of this port, see Order in Council, 28th July, 1856; *Ibid.* 30th July, 1860; 38 & 39 Vict. c. clx. ss. 69—71; and P. R. No. 325 of 1882, p. 138.

(b) *Exemption.*

1958. There is no compulsory pilotage. See P. R. No. 325 of 1882, p. 138; Bye-law 2.

15. *Lossiemouth.*

1959. Limits of pilotage district: To and from the harbour. See P. R. No. 222 of 1884, p. 81.

1960. An inward and outward pilotage rate of 3*d.* per ton appears to be levied on all vessels. *Ibid.*

1961. There are no bye-laws, orders, or regulations beyond the provisions of the local act, for which see 19 & 20 Vict. c. lxxiii. ss. 57, 58.

16. *Port of Macduff.*

(a) *Generally.*

1962. Limits of district: There is no district, any work that is done beyond a reasonable distance is a matter of agreement between the pilots and shipmaster. Vessels often pick up pilots at the fishery grounds 10 or 12 miles from the harbour, and are piloted in from there without any extra charge. P. R. No. 325 of 1882, p. 141.

1963. Pilotage appears to be levied on all vessels inward or outward bound. For the rates, see *Ibid.*

1964. There are no bye-laws for this port. *Ibid.*

1965. For the constitution of the port, see 10 & 11 Vict. c. cxxvii., and for rates, see Schedule D. to the act.

(b) *Compulsion and Exemption.*

1965a. The pilotage is compulsory, but vessels under twenty tons are exempt. *Ibid.* s. 13.

17. *Port of Peterhead.*

(a) *Generally.*

1966. No additional allowance (beyond those specified in the bye-laws) shall be made to a pilot taking charge within the limits defined by the following bearings:—if a vessel making signals for a pilot, viz. within a line passing through the eastern extremities of the rock of Dunbuy and the promontory of Buchanness, and projected northwards until it intersects a line projecting eastwards, passing through the southern extremity of Mormond Hill and the farmhouse of Kinloch. P. R. No. 325 of 1882, p. 142, Bye-law 12.

1967. For constitution, bye-laws and rates of this port, see 36 & 37 Vict. c. clvii. ss. 67—74; 39 & 40 Vict. c. clxxiv.; and P. R. No. 325 of 1882, p. 142.

(b) *Compulsion.*

1968. Pilotage is compulsory upon all vessels either entering or leaving this port. Penalty £5 and full pilotage. See P. R. No. 325 of 1882, p. 142. Bye-law 8.

(c) *Exemption.*

1969. Masters of vessels are exempt from availing themselves of the services of any pilots who, being required so to do, fail to produce the badges, licences or copies of the regulations with which they are furnished. *Ibid.* Bye-law 19.

18. *Roseheartly.*(a) *Generally.*

1970. Definition of limits: The port extends $2\frac{1}{2}$ miles from the harbour, within a line projected northwards from the spire of the parish church of Fraserburgh, passing through the position of the Kinnaird Head Lighthouse till it meets a line projected eastwards from Troup's Dovecot, passing through the position of the Tamhead or the seaward extremity of the old pier of Roseheartly. See P. R. No. 325 of 1882, p. 144, and No. 222 of 1884, p. 85, Bye-law 12.

1971. There appears to be a rate of $3\frac{1}{2}d.$ per registered ton for every vessel piloted into and out of the harbour with a boat and four men. *Ibid.*

1972. As to the constitution of this port, see Provisional Order of the Board of Trade relating to Roseheartly, confirmed by the Pier and Harbour Orders Confirmation Act, 1863, c. 104.

19. *Sandhaven.*(a) *Generally.*

1973. The port of Sandhaven is incorporated as a pilotage authority. See the Sandhaven Harbour Order, 1873, c. lxxiii.

1974. Pilots for landing passengers shall be entitled to be paid, if they are taken on board within the limits of the port, for one passenger 6s., and for each additional passenger in the same boat 2s. 6d., and if not as may be agreed upon. No. 14 of Bye-laws, gazetted 27th March, 1877.

1975. Pilots shall remain in charge till vessel is duly moored. *Ibid.* Bye-law 6.

(b) *Compulsion and Exemption.*

1976. Pilotage appears to be compulsory. See P. R. No. 222 of 1884, p. 85.

1977. But tug steamers duly licensed while employed only in towing vessels into and out of the harbour are exempt. *Ibid.*

20. *Wick.*

1978. Definition of limits: Within a line drawn from the North Head to the South Head of Wick Bay. P. R. No. 325 of 1882, p. 145.

1979. See, as to the constitution of the port, 25 & 26 Vict. c. clxxx. ss. 22—24.

1980. A pilotage rate of 4d. per registered ton is levied on all vessels above twenty tons entering or leaving the harbour. *Ibid.*

1981. In the event of any vessel carrying a pilot outside the limits and landing him on any part of the coast, his travelling expenses shall be paid. *Ibid.*

1982. Vessels which have sailed from the harbour and put back by stress of weather, or from any other cause, without having accomplished their voyage, are not liable to additional pilot rates. *Ibid.*

36. *Irish Ports.*1. *Ardglass Harbour.*

1983. As to the pilotage authority of Ardglass Harbour, see the Ardglass Harbour Order, 1866 (c. 58). See also 39 & 40 Vict. c. cccxxxvi.

2. *Ballina.*

1984. Limits of pilotage district: Outside—Kilcammin Head, Enniscrone and Pollacheeny; inside—from quay to bar. See P. R. No. 325 of 1882, p. 147.

1985. See, as to constitution of the port, 23 & 24 Vict. c. clxv. ss. 39—44.

1985a. There are no bye-laws as to pilotage for this port. See P. R. No. 189 of 1880, p. 70.

1986. For every ship or vessel coming into or departing from the River Moy and harbour of Ballina, from any port or ports other than a port in the United Kingdom or the British colonies, a sum not exceeding the sum of 3s. per foot of admeasurement for each entry or departure, at the discretion of the Harbour Commissioners, is payable for pilotage. *Ibid.* No. 325 of 1882, p. 147.

1987. And for every ship or vessel from any port or ports in Great Britain or Ireland or the British colonies, a sum not exceeding the sum of 2s. per foot of admeasurement, at the discretion of the Commissioners. *Ibid.*

3. *Belfast.*(a) *Generally.*

1988. Limits of pilotage district: From Larne Harbour, County Antrim, to Ballyhalbert Bay, County Down. See P. R. No. 325 of 1882, p. 148.

1989. See for constitution, regulations and rates of this port, *ibid.* and 10 & 11 Vict. c. lii.

1990. A pilot when on board a vessel is not permitted to take the helm, which must be in charge of one of the crew, to

whom he shall give his orders. See P. R. No. 325 of 1882, p. 148, Reg. 3.

1991. Vessels of a greater draft of water than 16 feet are not to be brought into the mouth of a dock, without the previous consent of the harbour master in charge. *Ibid.* Reg. 12.

1992. It is the duty of the pilot, master, and everyone on board a pilot boat or at the lighthouse, to prevent any breach of the Revenue laws. *Ibid.* Reg. 14.

1993. Pilots employed by outward-bound vessels must not leave them until they are in a safe part of the Whitehouse Roads; but when they are required to take such vessels below Carrickfergus from the Whitehaven Roads, such vessels are to pay an additional rate. *Ibid.* Reg. 23.

1994. For bye-laws giving the regulations to prevent collisions to be observed by pilots who are navigating steamers in this port, *ibid.* Reg. 8.

(b) *Compulsion.*

1995. Pilotage is compulsory in the port and harbour of Belfast under the provisions of the Belfast Harbour Act (10 & 11 Vict. c. lii). *The De Brus*, L. R. 1 Eq. 72; *The Arbutus*, 2 Asp. 136. [IRISH.]

1996. Every vessel, whether inward or outward bound, must employ the first pilot who, being duly qualified, offers his services in accordance with the bye-laws. See P. R. No. 325 of 1882, pp. 150, 151.

(c) *Exemption.*

1997. Masters of inward-bound vessels are exempt from accepting the services of pilots who are not supplied from the pilot smack, one of the pilot boats, or the lighthouse at Holywood Bank. See P. R. No. 325 of 1882, p. 148, Reg. 1.

3a. *Carlingford Bar.*

1998. Limits of pilotage district: The bar of Carlingford Lough to Warrenpoint Roads. *Ibid.* p. 173.

1998a. The Harbour of Carlingford Lough Improvement Commissioners are constituted the pilotage authority of this port. See the Harbour of Carlingford Lough Improvement Order, s. 23, confirmed by the Pier and Harbour Orders Confirmation Act, 1864 (c. 93).

1999. A pilot, when in charge, is not permitted to take the helm, but must give his orders to one of the crew. See P. R. No. 325 of 1882, p. 173, Bye-law 4.

2000. Pilots are not permitted to anchor vessels in their charge either in the Cut on the Bar, or between the Frazer Buoy to the south and the Watson Buoy to the north, except under circumstances of great emergency. Penalty not exceeding £5. *Ibid.* Bye-law 5.

2001. Pilots, when in charge, are not to quit vessels till the service is complete. Penalty not exceeding 40s. *Ibid.* Bye-law 6.

2002. It is the duty of pilots to prevent any breach of the Revenue laws. *Ibid.* Bye-law 7.

2003. As to pilotage rates, see P. R. No. 222 of 1884, p. 90.

4. *Coleraine.*

2004. Limits of pilotage district: The River Bann, from the Salmon Leap above the town of Coleraine to an imaginary boundary line at sea, running through a point northward of the mouth of the river, and distant 500 yards from low-water mark at mouth of river. P. R. No. 325 of 1882, p. 153.

2005. The Coleraine Harbour Trustees are constituted a pilotage authority. See the River Bann Navigation Act, 1879 (c. clxxv.), s. 83; and P. R. No. 222 of 1884, p. 90.

2006. No new bye-laws as to pilotage for this port have as yet been issued by this authority, the bye-laws adopted being those of the Coleraine Town Commission, acting as a harbour authority under the River Bann Navigation Act, 1863 (cap. c.), which has been repealed by sect. 7 of the above-named act. See P. R. No. 222 of 1884, p. 90.

2007. No printed return exists. Owing to the expense incurred by vessels entering the port, the Harbour Commissioners exempt from pilotage rates all vessels towed into the river. The Harbour Commissioners have agreed with a tug-owner that he shall receive all the towage paid by sailing vessels which are supplied with pilots without charge. They are 1s. per register ton in and out if in ballast; 1s. 2d. in and out if in cargo. *Ibid.*

2008. Steamers are charged the ordinary pilot rate, viz.: 1s. 6d. per foot inwards, and 9d. per foot outwards. *Ibid.*

5. *Cork.*

(a) *Generally.*

2009. Limits of pilotage district: The river, harbour, and port of Cork, the S.

or seaward boundary of which is a straight line extending from Poor Head on the E. to Cork Head on the W. See P. R. No. 325 of 1882, p. 154.

2010. As to the constitution, bye-laws, and rates of this port, *Ibid.*; and see 1 Geo. 4, c. lii.

2011. Pilots before leaving a vessel are to moor her, in accordance with the bye-laws. *Ibid.* Bye-law 5.

2012. No pilots are allowed to go as coasting pilots. *Ibid.* Bye-law 8.

2013. When any vessel or lighter in charge of a pilot does or receives any damage, the pilot shall not continue to act as a pilot, but shall deposit his licence with the commissioners until the case is investigated. *Ibid.* Bye-law 12.

(b) *Exemption.*

2014. Pilotage is not compulsory in this port. *Ibid.* p. 154.

2015. *Semble*, the General Pilot Act (c. 125) is confined to England, and was never intended to apply to Ireland at all. Owners of a damaging vessel running into another vessel in Cork Harbour condemned in the damage, the pilot in charge not being taken under compulsion. *The Eden*, 2 W. Rob. 442.

6. *Drogheda.*

(a) *Generally.*

2016. Limits of pilotage district: From that part of the open sea between Clogher Head and the Skerries to quays of Drogheda, and from quays to bay. See P. R. No. 325 of 1882, p. 156.

2017. See for constitution, bye-laws and rates of this port, *ibid.* and 5 Vict. sess. 2, c. lvi. ss. 200—205.

2018. If no pilot offers his services to the master of a vessel before such vessel shall arrive between Clogher Head and the Skerries, or whilst the vessel lies between those points, such vessel having had for at least fifteen minutes previous the usual signal or flag for a pilot flying, then it shall be competent for such master to appoint as pilot thereof any person whom he deems qualified. *Ibid.*

(b) *Compulsion.*

2019. Pilotage is compulsory upon all sailing vessels, whether inward or outward bound. Penalty, full pilotage. *Ibid.*

(c) *Exemption.*

2020. Steamships are exempt from pilotage. *Ibid.*

7. *Dublin.*

(a) *Generally.*

2021. The limits of the Dublin pilotage district are: On the north, an imaginary straight line drawn from a point on the coast of Ireland, between Balbriggan and Skerries, in the same latitude as the Rock-a-bill Lighthouse, and through Rock-a-bill Lighthouse to a point at sea three leagues distant from the nearest land on that part of the Irish coast. On the south, an imaginary straight line drawn from a point on the east coast of Ireland, situated in the same latitude as South Arklow lightship, and through the lightship on the south end of the Arklow Bank, and thence to a point at sea three leagues distant from the nearest land on that part of the Irish coast. On the east, by an imaginary line drawn from the seaward extremity of the northern boundary line of a point at sea three leagues eastward of the headland called the Nose of Howth, thence to a point at sea three leagues eastward of the headland called Wicklow Head, and thence until it joins the seaward extremity of the southern boundary line. See P. R. No. 325 of 1882, p. 158.

2022. See for the constitution, bye-laws and rates of this port, *ibid.* p. 158; and the Dublin Port and Docks Act, 1869 (cap. c.) ss. 20—39.

2023. Pilots in charge of vessels must keep a good look-out, and must not take the helm. They must give directions as to the navigation, and must observe the International Regulations for Preventing Collisions. They must also see that the lead is kept going. P. R. No. 325 of 1882, Bye-law 3.

2024. Pilots in charge of inward-bound vessels other than coasters, must take soundings before berthing to ensure an even keel in case of grounding, and must remain in charge until the vessels are safely moored. *Ibid.* p. 72. Bye-law 4.

2025. Pilots must report to the pilot superintendent any accidents occurring to vessels under their charge. *Ibid.* Bye-law 5.

(b) *Compulsion.*

2026. Vessels entering or leaving the port of Dublin or harbour of Kingstown must employ licensed pilots within the Dublin Pilotage District. *Ibid.* No. 292 of 1876, p. 74.

2027. At the port of Dublin the pilotage is compulsory—per the Lord Chancellor. *The Meteor*, 9 Eq. 573. [IRISH.]

2028. A steam-tug, carrying passengers between Kingstown Harbour and the North Wall, Dublin (both of which places are, under the provisions of the Dublin Port and Docks Act, 1869, cap. c., within the limits of the port of Dublin), is within the meaning of sect. 354 of the M. S. Act, 1854 (c. 104), and obliged to carry a pilot. *Dublin Port and Docks Board v. Shannon*, 7 C. L. 117. [IRISH.]

(c) *Exemption.**

2029. Vessels in ballast and coasting vessels not exceeding fifty tons burden, or being laden with fish in bulk or potatoes, are exempt. See P. R. No. 292 of 1876, p. 74.

8. *Dundalk.*

2030. Definition of limits: From an imaginary line drawn straight from seaward end of Dunany Point to seaward end of Cooley Point, to Dundalk Quays (for inward pilots). Quay to Bar or Lighthouse (for outward pilots). *Ibid.* No. 325 of 1882, p. 163.

2031. See for constitution, bye-laws, and rates, *ibid.* and 18 & 19 Vict. (c. clxxxix), ss. 89—99.

2032. Vessels in ballast taking a tug-boat out, pay no pilotage. See P. R. No. 408 of 1867, p. 151.

9. *Galway.*(a) *Generally.*

2033. Limits of pilotage district: Divided into two districts. The outer extends from a line from Gulin Head in the county of Galway to the west point of the Arran Islands in that county, and from thence to Hags Head in the county of Clare and to the roadstead of Galway in the county of the town of Galway. The inner extends from the roadstead to the docks and quays. See P. R. No. 325 of 1882, p. 165.

2034. See for constitution, bye-laws, and rates, *ibid.* and 16 & 17 Vict. c. ccvii. ss. 62—73; 23 & 24 Vict. c. ccii. ss. 53, 54.

(b) *Compulsion.*

2035. Pilotage is compulsory for vessels proceeding from Galway roadstead to

dock, and *vice versa*. P. R. No. 178 of 1871, p. 66.

(c) *Exemption.*

2036. Vessels proceeding from Arran Island to Galway roadstead, or *vice versa*, are exempt. *Ibid.*

10. *Limerick.†*(a) *Generally.*

2037. Definition of limits: From quays and docks of Limerick to Loop Head and Kerry Head at the mouth of the river Shannon. See P. R. No. 325 of 1882, p. 167.

2038. See for constitution, bye-laws, and rates, *ibid.* and 4 Geo. 4, c. xciv. ss. 72, 73; 10 & 11 Vict. c. cxcviii.

(b) *Exemption.*

2039. Pilotage does not appear to be compulsory. See P. R. No. 266 of 1878, p. 82.

11. *Londonderry.*(a) *Generally.*

2040. Definition of limits: From one mile outside or seaward of the north-east buoy on the Tuns Bank to bridge at Londonderry. See P. R. No. 325 of 1882, p. 169.

2041. See for constitution, bye-laws, and rates, *ibid.* and 19 & 20 Vict. c. lxvii. ss. 57, 58.

2042. Pilots are not to be paid by the commissioners, till they produce a certificate signed by the master of the vessel of which they have been in charge to the effect that they have done their duty. P. R. *Ibid.*

(b) *Compulsion and Exemption.*

2043. Pilotage appears to be compulsory on all vessels except vessels of forty tons register and under, when sailing in ballast. *Ibid.*

12. *New Ross.*(a) *Generally.*

2044. Definition of limits: From the junction of the river Barrow with the river Suir, to the entrance of the canal

* (545) The term "coasting vessel" or "coaster" means a vessel trading from any part of the United Kingdom and coming into the port. See P. R. as to Pilotage, No. 292 of 1876, p. 74.

† (546) Pilots at this port are not incorporated, but merely licensed by the Harbour Commissioners, who have no knowledge of their receipts. *Ibid.* No. 325 of 1882.

at St. Mullins, on the river Barrow, and to the Lock Quay of Inistioge, on the river Suir. *Ibid.* p. 171.

2045. For constitution, bye-laws, and rates, *Ibid.* and 24 & 25 Vict. c. cxl. ss. 59—65; 37 & 38 Vict. c. cxvi.; and see s. 16, *infra*.

(b) *Compulsion.*

2046. All vessels bound to this port must take pilots of the Port of Waterford from the entrance of that harbour to the junction of the rivers Suir and Barrow, where this port commences. See P. R. No. 408 of 1867, p. 154.

13. *Newry.*

(a) *Generally.*

2047. Definition of limits: From Lough Carlingford to the entrance of the Newry Canal, or, in strictness, the river of Newry. See P. R. No. 325 of 1882, p. 174.

2048. See for constitution, bye-laws, and rates, *Ibid.*; see also 10 Geo. 4, c. cxxvi. ss. 67—74; and Order in Council of 16th May, 1878.

(b) *Exemption.*

2049. Pilotage is not compulsory in this port. P. R. No. 325 of 1882, p. 174.

13a. *Portrush.*

2050. A vessel is to be considered piloted to Portrush when safely moored within the harbour, and to be considered piloted out when safely at sea. See P. R. No. 222 of 1884, p. 100.

14. *Sligo.*

2051. Definition of limits: From Wheaton Rock to Quays. *Ibid.* No. 325 of 1882, p. 176.

2052. See for constitution, bye-laws and rates, *Ibid.* No. 222 of 1884, p. 101, and 40 Vict. c. xxxv. ss. 86—106.

2053. In case of steamers or other vessels refusing pilots inward, the men so offering and refused shall immediately report the case to the pilot master, and by letter to the secretary, that day. See P. R. No. 222 of 1884, p. 101, Bye-law 20.

15. *Tralee.*

2054. No returns are furnished for this port. *Ibid.* p. 103.

2055. For constitution, see 9 Geo. 4, c. xcvi. ss. 70—75.

2056. Pilotage appears to be optional. See P. R. No. 266 of 1878, p. 89.

16. *Waterford.*

(a) *Generally.*

2057. Definition of limits: On the E., an imaginary straight line drawn from a point on the coast of Ireland, at or near the headland called Crossfurnoge Point, in the county of Wexford, to a point at sea, three leagues S. of Crossfurnoge Point. On the W., an imaginary straight line drawn from a point on the coast of Ireland, at or near the headland called Great Newtown Head, in the county of Waterford, to a point at sea one league S. of Great Newtown Head. On the S., an imaginary straight line drawn from the seaward extremity of such eastern boundary line to the seaward extremity of such western boundary line. On the N., an imaginary line drawn from Granagh Castle to Bilberry Rock, about one mile above Waterford Bridge. See P. R. No. 325 of 1882, p. 178.

2058. For constitution, bye-laws, and rates of this port, see the Waterford Harbour Act, 9 & 10 Vict. c. cxcii.; and P. R. No. 178 of 1871, p. 71; and No. 325 of 1882, p. 178.

(b) *Compulsion.*

2059. Pilotage is compulsory in this port. See the Waterford Harbour Act, 1846 (c. cxcii.).

(c) *Exemption.*

2060. Although pilotage is compulsory in the port of Waterford under the Waterford Harbour Act, 9 & 10 Vict. c. cxcii. it is not necessary to employ a pilot to remove a vessel from one berth to another within the port, and if while a vessel is being so moored a collision occurs, her owners cannot as a defence set up compulsory pilotage. *The Victoria*, T. R. 1 Eq. 336. [IRISH.]

2061. Coasting vessels not exceeding twenty tons register are exempt. See P. R. No. 178 of 1869, p. 99.

17. *Westport.*

2062. Definition of limits: From Harbour to Inishgort Lighthouse. See P. R. No. 325 of 1882, p. 180.

2063. As to constitution, see 16 & 17 Vict. c. clxxxv. ss. 24—28.

2064. There are no bye-laws as to

pilotage, which appears to be optional. See P. R. No. 189 of 1880, p. 84; and No. 222 of 1884, p. 105.

18. Wexford.

(a) Generally.

2065. Definition of limits: The harbour extends to and comprehends the area lying within an imaginary line drawn straight from Blackwater Head to the N. end of the Long Bank, and thence along the western edge of that bank to the southern end thereof, and thence straight to Greenore Point. See P. R. No. 325 of 1882, p. 181.

2066. See as to constitution, bye-laws, and rates, the Wexford Harbour Act, 1874 (c. xl.), ss. 72—85; Order in Council, 26th Oct. 1875; and P. R. No. 325 of 1882, p. 181, and No. 222 of 1884, p. 106.

(b) Compulsion.

2067. Pilotage is levied on all vessels entering or leaving this port. *Ibid.* No. 325 of 1882, p. 182.

37. Foreign Ports.*

1. Bilbao and Santander in Spain.

2068. Pilotage is compulsory in the port of Santander, in Spain, for vessels exceeding 50 tons. See Royal Order of 17th March, 1855.

2069. Also in the port of Bilbao.

2. Colombo.

2070. All vessels above 200 tons burthen, arriving within this port, and vessels taking pilots, shall pay pilotage at the rate of fifteen shillings inwards and outwards. See Governor's Order of 6th January, 1866.

2071. Pilots detained on board longer than forty-eight hours are entitled to claim eight shillings for every day's detention after that time. *Ibid.*

3. River Hooghly, Calcutta.

2072. A collision took place in the Cowcolly Roads, one of the channels in the Hooghly river, near Calcutta. By an act of the Indian Legislature, it is

made compulsory upon the master to take a pilot on board in every port subject to the provisions of that act. *Held*, that the Cowcolly Roads, the place of the collision, was not a port within the meaning of the act, and that the owners were therefore responsible for the damage, though the fault of the pilot only. *The Peerless*, 1 Lushington, 30, 103; 13 Moore, P. C. C. 484; 30 L. J. Adm. 89.

4. St. Peter Port, Guernsey.

2073. Steamers *held* not bound to take a pilot in entering the harbour of Saint Peter Port (Sir W. Collings dissenting). *Hughes v. Manger*, Royal Court, Guernsey; *Guernsey Star*, 6 L. T. N.S. 915.

5. Australia.

2074. After 1st December, 1884, the employment of a pilot at Port Pirie, and Port Augusta, will not be compulsory, and Port Adelaide will be the only port in South Australia where pilotage is compulsory. See *Nautical Magazine* for January, 1885, p. 96.

6. Canada.

2075. In Canadian waters the Canadian Act, 27 & 28 Vict. c. 58, s. 9, exonerates the owner and master, as in England, from liability for damage inflicted on another vessel, while employing a pilot compulsorily. *The Hibernian*, L. R. 4 P. C. 511; 1 Asp. N.S. 491.

2076. Pilotage is compulsory between Quebec and Montreal for all vessels over 125 tons. *Ibid.*; see also 27 & 28 Vict. c. 58, s. 9.

7. The Bahamas.

2077. For provisions as to pilotage in the Bahamas, see the Bahamas Acts, 33 Vict. c. 16; 43 Vict. c. 6; Prov. Act, 45 Vict. c. 7; and Prov. Acts, 26 Vict. c. 10; 27 Vict. c. 26; and 29 Vict. c. 12.

38. Pilot in charge.

1. Generally.†

2078. When a statute inflicts a penalty for not doing an act, the penalty implies

* (547) In the United States, where there is any choice as to the particular pilot employed, owners remain liable. *Smith v. Condry*, 1 How. 28; Parsons on Shipping, 117, note; *The China*, 7 Wallace, 53, 67, *Law Times*, May 14, 1881. [AMERICAN.]

† (547a) The fact of one of a class of pilots appointed by government being compulsorily employed does not free the shipowner and master from liability for damage sustained by a passenger and his luggage through the fault of the pilot, though the pilot may be

that there is a legal compulsion to do the act, and this principle is not affected by the fact that the penalty has a particular destination. *Redpath v. Allen, The Hibernian*, L. R. 4 P. C. 511; 42 L. J. Adm. 8.

2079. To exempt the shipowner, the pilot must be solely to blame. *The Mobile*, Swabey, 69, 128; 10 Moore, P. C. C. 471; 4 W. R. 708; *The Minna*, L. R. 2 A. & E. 97; *The Diana*, 1 W. Rob. 135; 10 Jur. 135; *The Protector*, 1 W. Rob. 45; *The Massachusetts*, *ibid.* 373; *The Manchester*, 8 Monthly Law Mag. (Notes of Cases), 183; *The Ripon*, 6 *ibid.* 248; *The Fama*, 2 W. Rob. 184; *Stuart v. Isemonger (The Diana)*, 4 Moore, P. C. C. 11; 6 Jur. 157; *The Atlas*, 5 Notes of Cases, 52; *The Christiana*, 7 Moore, P. C. C. 171; *The Lochlibo*, 7 Moore, P. C. C. 427; 14 Jur. 1074; *The Admiral Boxer*, Swabey, 195; *The Schwalbe*, 4 L. T. N.S. 162; 1 Lushington, 239; 14 Moore, P. C. C. 241; *The Netherlands Steamboat Co. v. Styles (The Batavier)*, 9 *ibid.* 286; *Catts v. Herbert*, 3 Stark. 12; *Rodriguez v. Melhuish*, 10 Exch. 110; 24 L. J. Exch. 26; *Bennett v. Moita*, 7 Taunt. 258; *Bowcher v. Noidstrom*, 1 Taunt. 568.

2080. The pilot had left the deck for a few minutes, having given directions to

the mate for the sailing of the vessel in his absence. The mate negligently brought the vessel into a critical position with regard to another vessel. The pilot then returned, and improperly hard-a-ported. The Privy Council found that both the mate and the pilot were to blame for the collision, and held that the owners were liable. 10 Moore, P. C. C. 471; *The Mobile*, Swabey, 71, 128.

2081. *Semble*, owners are not deprived of the benefit of compulsory pilotage by the fact that after a collision their vessel did not render the assistance required by sect. 33, now repealed, of the M. S. Act Amendment Act, 1862 (c. 63). *The Queen, The Lord John Russell*, L. R. 2 A. & E. 354; 38 L. T. N.S. Adm. 39; 3 Asp. 242.

2082. By Art. 4 of the Regulations for the navigation of the Suez Canal, certain vessels must take a company's pilot, whose duty it is to assist the master, but the responsibility as regards the management of the ship is to devolve solely on the master. In an action of collision, held that the company's pilot is not placed in charge of the vessel so as to raise the defence of compulsory pilotage. *The Guy Mannering*, 7 P. D. 52; *ibid.* C. A. 132; 51 L. J. P. D. 17; *ibid.* C. A. 57; 4 Asp. 485; *ibid.* C. A. 553.*

made a defendant. *Sherlock v. Alling*, 15 Alb. Law Jour. 78. [AMERICAN.]

(547b) The learned editor of the Maritime Law Cases, in reference to the American law, observes:—Although the decisions of American courts have been adverse to the English doctrine that compulsory pilotage exempts even without express statutory exemptions, from liability for the acts of a pilot, yet they have held that where an English statute renders pilotage compulsory, and an American ship takes a pilot on board under that statute in English waters, she is entitled in a suit brought in an American court to the exemption given by English law. *Smith v. Couttry*, 17 Peters' (U. S. Supreme Court) Rep. 20; 1 Howard's, *Ibid.* 28. See also *Camp v. The Ship Marcellus*, 1 Clifford's U. S. Circuit Court (1st Circuit) Rep. 481; and *The Alabama*, 1 Benedict, District Court (S. Dist. of N. Y.) Rep. 477.

(548) In Germany (Art. 740), the owners are relieved when the fault is that of the pilot.

(548a) In Portugal (Art. 1583), though the liability of the captain, and through him of the ship, is not removed, yet he has a remedy over against the pilot and the board who appoints him.

(548b) In France a captain remains responsible for the manœuvres of his ship, even

when he has a pilot on board by compulsion of law. D. P. 1875, III. 97.

* (549) As to the relative duties and obligations of captains and pilots in the Suez Canal—Art. 1. If the employment of the pilot is voluntary, the captain's responsibility to third parties remains intact. 2. If the employment is compulsory, and the captain is bound to give up the conduct and command of his ship to him, the responsibility of the captain and owner is suspended, and that of the person who has imposed the pilot substituted (say his remedy over against the pilot himself). 3. If the employment of the pilot is compulsory, but only as an expert counsellor, the captain who has not been ousted from his command preserves his liability towards third parties. But the pilot-counsellor and the person who has compelled his employment, are responsible to the captain for erroneous direction as to the route, and faulty intelligence as to the condition of any places given by the pilot. The person who has compelled the employment of the pilot is responsible to third parties for the bad judgment (*mauvais avis*) of the pilot in respect of his local knowledge, whilst in this case the pilot is not responsible to third parties. In short, as to third parties, the full responsibility of the captain in command avers that of the pilot-counsellor, whilst he who ap-

2083. A British steamer in Belgian waters, and by Belgian law compulsorily in charge of a pilot, damaged a Norwegian barque. The owners of the steamer claimed exemption from liability for the collision on the plea of compulsory pilotage. By Belgian law the compulsory employment of a pilot does not exempt owners from liability for damage caused solely by his negligence or want of skill. *Held*, by the Judicial Committee (reversing the decision of the Admiralty Court) that the case was ruled by the provisions of English statute law and by the practice of the Admiralty Court, under which the owners of the steamer were exempt from liability. *The Halley*, L. R. 2 A. & E. 3; 2 P. C. 193.

2084. *Semble*, the owners of a vessel proceeded against in a cause of collision, and decreed solely to blame, having been dismissed from the suit by reason of the vessel being in charge of a compulsory pilot and having neither appealed from the decree nor adhered to the appeal brought by the owners of the vessel injured (the plaintiffs in the court below), cannot, in such circumstances, raise the question whether their vessel was free from blame, or whether both vessels were equally in fault, but are confined to the points raised by the appeal, whether the pilot was solely to blame, or whether there was not contributory negligence on the part of the master and crew of the vessel causing the damage. *The Cababar*, L. R. 2 P. C. 238.

2085. A general enactment in a later statute does not repeal a particular enactment in an earlier statute, unless the intention to do so is manifest, or the implication irresistible. Sect. 388 of the

M. S. Act, 1854 (c. 104), enacts that, no owner or master of any ship shall be answerable for any damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship within any district where the employment of such pilot is compulsory. Sect. 96 of the Thames Conservancy Act, 1857 (c. cxlvii.), enacts that the owner of every vessel navigating the Thames shall be answerable for "all trespasses, damages, spoil, or mischief that shall be done by such vessel, or by any of the boatmen or other persons belonging to or employed in or about the same, by any means whatsoever, to any of the property or effects of the conservators," &c.; and that the owner of every such vessel shall, for every such trespass, &c., upon conviction before a justice, pay such compensation as shall be fixed by him not exceeding £20, besides costs; but that, in case the damage shall exceed £20, the owner may be sued. Sect. 97 provides that the boatmen or other persons so offending shall be answerable for and shall repay all such damages, &c., to his master or owner. *Held*, that the owner of a vessel navigating the Thames is not responsible for damage done by her to property belonging to the conservators through the fault of a pilot compulsorily in charge of her; for that, though the words of sect. 96 of the Thames Conservancy Act are general, they are not to be read as including pilots, and do not by implication repeal the provisions as to pilotage in the Merchant Shipping Act, 1854. *Conservators of the River Thames v. Hall*, L. R. 3 C. P. 415.

2086. As to owners of vessels or floats of timber not being responsible to the

points the pilot gives reason to believe that he will give, and undertakes to give, skilful and faithful pilots, an engagement which he makes with all ships navigating his waters, not only with respect to their own pilots, but also with respect to the pilots of all the other vessels so navigating. But in the meanwhile this is a presumption against the captain, and he is bound to prove rigorously against the person appointing the pilot that the collision was caused by default of right information on the pilot's part. Art. 4 of the Regulations nowhere says that the pilot is to take the place of the master. Arts. 8, 9, sects. 8 and 11 (2) do not alter the position of the pilot as stated in Art. 4, because the first does not compel obedience to the pilot, and the two latter only do so when they are considered as based on his special and local knowledge.

Hence it results that the master is responsible—1. For all grounding and other accidents resulting from the conducting and manœuvring of his ship, which are distinguished by Art. 10, sect. 2, from a grounding caused by an erroneous direction given by the pilot. 2. That the responsibility for the manœuvring of the ship remains entirely with the master; and that the company, as manager of the Canal, and by its regulations, is now the less unable to diminish its responsibility in respect to the pilots, and to furnish every security for the navigation, which depends not less on the proper information of the pilots than on the preservation in good condition of the Canal itself. *Philippe v. C. & Canal de Suez*, J. de D. I. P. 1878, p. 168. See also *The Guy Mannering*, No. 1153, p. 326.

undertakers for any damage done thereby to harbours, docks, piers, or works when caused by the fault of a pilot taken by compulsion of law, see the Harbours, Docks, and Piers Clauses Act, 1847 (c. 27), s. 74, and as to actions by dock proprietors, tit. COLLISION, Pt. VIII. p. 282.

2087. As to the liabilities of owners having pilots, taken by compulsion of law, in charge of their vessels, in reference to the authority of harbour and dock masters, see tit. COLLISION, p. 284, Nos. 849, 851, 852, 853.

2088. The damage done by a collision not being attributable to the master and crew of the vessel doing the damage, *held*, that whether the collision was the result of accident, or the fault of the pilot, the suit against the owners of such vessel must be dismissed with costs. *The Castor*, 6 L. T. N.S. 106.

2089. Although the pilot has charge of the ship the owners are responsible to third persons for the sufficiency of the ship and her equipments, the competency of the master and crew, and their obedience to the orders of the pilot in everything that concerns his duty. *The Christiana*, 7 Moore, P. C. C. 171.

2090. If a vessel in charge of a pilot is out of ordinary trim, so that she is carried by force of the tide more than a ship in ordinary safe trim would have been, and this helped to bring about the collision, the owners are responsible for the damage, the trim of the ship being within the province of the master. *The Argo*, Swabey, 462.

2091. But if she is in ordinary safe trim, then, although she might be in handier trim, and although the trim of the ship in part contributed to the collision, they are not responsible. *Ibid.*

2092. The catching of the cable on the windlass in running out, *held* not to be a fault on the part of the master and crew, so as to render the owners liable, the collision being in other respects attributable to the pilot. *The Peerless*, 1 L. T. N.S. 125; 1 Lushington, 30; 2 L. T. N.S. 25; 13 Moore, P. C. C. 484.

2093. *Quere*, whether knowledge of a duly-licensed pilot taken by compulsion of law as to the state of a dock is to be considered knowledge which affects the shipowners. *Thompson and others v. North Eastern Railway Co.*, 1 Asp. 17, 207; 6 L. T. N.S. 127; 2 B. & S. 106; and, in error, 119.

2094. The pilot in charge of a ship is solely responsible for getting the ship

under weigh in improper circumstances, *e. g.* without employing her steam-tug, which was in attendance. *The Peerless*, *supra*, No. 2092.

2095. It is a want of due caution to move, by means of a steam-tug, a ship from one dock to another at night-time. *The Borussia*, Swabey, 94.

2096. Under such circumstances, a pilot on board the ship being towed has no such charge or control over her movements as to exculpate the owners. *Ibid.*

2097. A ship towed by a steam-tug, and in charge of a pilot taken on board compulsorily, came into collision with another ship at anchor; the damage which ensued was in great part caused by the anchor of the tow, which was hanging over her bow, and was alleged to have been improperly catted. *Held*, that the owners were exonerated, first, because the primary cause of the collision was the improper steering or towing of the ship, which it was the duty of the pilot to attend to; secondly, that even if the improper cating of the anchor could be considered a cause of damage, it was the duty of the pilot to attend to the hanging of the anchor. *The Gipsy King*, 11 Jur. 357; 5 Notes of Cases, 203; *Sills v. Brown*, 9 Car. & P. 601.

2098. See also as to the relative duties of crew and pilot, ss. 3, 4, and 5, *infra*.

2099. A collision occurred in the day-time between the steamer W. C. at anchor below Dartmouth, at the mouth of the Dart, and the steamer W. coming down the river. The collision was principally owing to error in judgment of the pilot. The master had shortly previously left the deck on ship's business, and the pilot was alone on the bridge. The W. was steered from the bridge, and the engine-room telegraph was on the bridge. *Held*, that the master was to blame for leaving the bridge without putting any officer in his place to assist the pilot; but whether his neglect in this respect did or did not contribute to the casualty so as to make the owners responsible for the collision, the court considered it was not required to decide. Wreck Commissioner and Assessors, No. 1534, 18th October, 1882.

2100. A French vessel coming up the Thames took on board a pilot, and, as none of her crew understood English, a waterman to take the wheel. The waterman put her helm up instead of luffing as the pilot ordered, whereby a barge was run into and damaged. The French owner claimed exemption under the 388th section

of the M. S. Act, 1854. *Held*, that the pilot was not answerable for the waterman's incapacity or fault, and that the owners were liable. *General de Caen*, Swabey, 9.

2101. See the same rule applied to hoblors appointed by a pilotage authority in *Holman v. Irvine Harbour Trustees*, 4 Court of Sess. Cases, 4th series, p. 406 (Scotch), and tit. COLLISION, No. 844, p. 284.

2102. Salvors having brought the vessel salvaged into pilotage waters, gave up charge of her to a duly-licensed pilot who boarded her, and by whose negligence the ship sustained damage. *Held*, that the salvors rightly gave up charge to the pilot, and ought not to suffer in their claim of salvage on account of the pilot's negligence. *The Bomarsund*, Swabey, 77.

2. Burthen of Proof.

2103. See tit. EVIDENCE, c. 19, s. 8, p. 450.

3. Master and Crew generally.*

2104. Although the pilot has charge of the ship the owners are responsible to third persons for the competency of the master and crew. *The Christiana*, 7 Moore, P. C. C. 171; 7 Notes of Cases, 6, and Supp. xiv.

2105. Although the directions of the pilot may be imperative as to the course the vessel is to pursue, the management of the ship itself is still under the control of the master. It is his duty to secure the safe conduct of his vessel by issuing the necessary orders, and that of the crew to carry those orders into execution, and for the due performance of their relative duties the master and crew are still respectively responsible, and through them the owners. *The Diana*, 10 Jur. 135.

2106. When there is a local usage as to navigation depending on local circumstances it is the exclusive duty of the pilot to take care that such usage is complied with. *Ibid.*

2107. A vessel is only under the direction of the pilot for the purpose of navigation. In a case of collision the master is the proper party to give directions for the cutting away a lanyard, where such a course may be necessary to prevent further damage. He is not to wait for the pilot's directions, which would tend to create great confusion and delay. *The Massachusetts*, 10 Jur. 373.

2108. In a cause of collision, blame is not imputable to a vessel as being insufficiently manned, unless it can be shown that in consequence of the deficiency of hands on board her she was not under sufficient control. *The Hope*, 1 W. Rob. 156.

2109. *Semble*, though the ship was in charge of a pilot, the master would be to blame for allowing her to proceed in port in a fog. *The Girolamo*, 3 Hagg. 169; but see *The Lochlibo*, 3 W. Rob. 320, No. 2195, *infra*.

2110. The A. and J. S. came into collision in the river Mersey, and the steam-tug towing the A. was compelled to cut adrift and leave her. The A. and J. S. then drifted up the river, and after some time cleared each other, when the J. S. brought up, and the A. continued drifting until she came into collision with the G. L. While the A. was drifting she had let go her starboard anchor and the chain of the port anchor, the port anchor itself having been broken in the first collision. A.'s steam-tug had also thrown a line on board, which was not attended to. *Held*, that the master and crew were to blame for not having veered out more cable to the starboard anchor, for not having bent on a hawser to the line thrown from the steam-tug, and for not having squared the foreyard and set sail upon it, and that the neglect in these respects occasioned the second collision. The owners of the A. *held* responsible accordingly for the damage to the G. L. *The Annapolis and Golden Light*, 5 L. T. N.S. Adm. 692.

2111. See also Nos. 2092—2098, *supra*.

* (550) The pilot is an officer of the ship when on board in the exercise of his duty, but when the captain is on board he is master, and the orders of the pilot are considered the master's. *The United States v. Forbes*, Crabbe, 558. [AMERICAN.] And see note 547, p.

(551) If the collision was caused by the negligence or fault of the pilot, and the owners had the means of knowing that he

was careless and reckless, they are responsible for the injury. *Cook v. Parham*, 24 Ala. 21. [AMERICAN.]

(552) For provisions of the American law rendering the master and owners liable for accidents when the ship is allowed to proceed through darkness or fog, after the pilot has reported it unsafe to do so, see Act of Congress, Aug. 30, 1852; and 1 Conkling's U. S. Adm. Prac. 413. [AMERICAN.]

2112. *Semble*, where a collision is brought about solely through the default of a pilot, by compulsion of law, in charge of the wrong-doing vessel, a failure on the part of her master to render assistance will not deprive the owners of exemption from liability in respect of the compulsory employment of a pilot. *The Queen*, *The Lord John Russell*, L. R. 2 A. & E. 354.

2113. In order to entitle the owner of a ship having, by compulsion of law, a pilot on board, to the benefit of the exemption contained in the M. S. Act, 1854 (c. 104), s. 388, from liability for damage by default of the pilot, it is not enough to prove that there was fault or negligence on the pilot's part, but the owner must show that there was no default on the part of the master and crew which might have in any degree been conducive to the damage. *The Iona*, L. R. 1 P. C. 426.

2114. See also Nos. 2088—2091, p. 1401, and No. 2115, *infra*.

4. Obedience to Pilot's Orders.

2115. When a collision is caused by a vessel in charge of a licensed pilot, the owners, in order to exonerate themselves from liability, must prove not merely that the crew were under the pilot's orders at the time, but that the order which caused the damage was actually given by the pilot, the *onus probandi* being on them. *The Schwalbe*, 4 L. T. N.S. 160; and see No. 2113, *supra*.

2116. Although the pilot has charge of the ship the owners are responsible to third persons for the obedience of the master and crew to the orders of the pilot in everything that concerns his duty. *The Christiana*, 7 Moore, P. C. C. 171.

2117. Imperfect obedience is disobedience. *The Christina*, 6 Moore, P. C. C. 380.

2118. If the orders of the pilot are disobeyed, or the duties which belong to the master and crew are not properly performed, and an accident under these circumstances occurs, the owners remain liable. *The Lochlibo*, 7 Moore, P. C. C. 429; 14 Jur. 1074; 3 W. Rob. 317; *The Diana*, 10 Jur. 135; 4 Moore, P. C. C. 11.

2119. A hail from any of the crew on the look-out to alter the helm, if such advice be adopted by the pilot as in his judgment a proper measure, will exonerate the owners; otherwise if the advice be adopted by the pilot unthinkingly and

on the mere report of the look-out. *The Lochlibo*, 7 Moore, P. C. C. 427.

2120. As a general rule it is the master's duty to repeat, if necessary, the pilot's orders, and for any manœuvre so carried out the pilot remains solely responsible. *The Admiral Boxer*, Swabey, 193.

2121. See also s. 3, *supra*, and s. 5, *infra*.

5. Interference with Pilot.

2122. Under ordinary circumstances the orders of the pilot are to be obeyed. If from sudden illness or intoxication he becomes incompetent to command, the supreme authority would revert to the master during the period of the pilot's incapacity. *The Christiana*, 7 Moore, P. C. C. 172; 7 Notes of Cases, Supp. xiv.

2123. It would be a most dangerous doctrine to hold, except under extraordinary circumstances, that the master could be justified in interfering with the pilot in his proper vocation. *The Maria*, 1 W. Rob. 110; *The Admiral Boxer*, Swabey, 196; *The Argo*, *ibid.* 464.

2124. But it is his duty to look after the pilot, and in the case of the pilot's palpable incompetency, intoxication, or loss of faculties, to interpose his authority for the preservation of the property of his employers. *The Duke of Manchester*, 2 W. Rob. 480; 4 Notes of Cases, 582; 10 Jur. 865.

2125. In cases of obvious danger the master is bound to interfere in the management of the vessel, although a licensed pilot be in charge of her. *The Girolamo*, 3 Hagg. 169, 176.

2126. *Held*, that it would be the duty of the master of a steamer navigating the Thames with a licensed pilot on board when a thick fog came on to insist on anchoring, and to overrule the pilot on this head if necessary. *Ibid.*; and see the observations of Dr. Lushington on this decision in *The North American and The Wild Rose*; 2 Asp. 320.

2127. There may be cases in which the master of a ship is justified in interfering with the pilot in charge, but they are very rare. If the pilot is intoxicated, or is steering a course to the certain destruction of the vessel, the master ought to interfere, but only in urgent cases. *The Peerless*, 1 L. T. N.S. 125; 1 Lushington, 30; 2 L. T. N.S. 25; 13 Moore, P. C. C. 484.

2128. Considering the duties imposed on pilots, their experience and local know-

ledge, it would be most dangerous to sanction the interference of the master in any way in the performance of those duties. *The Lochlibo*, 3 W. Rob. 321; 14 Jur. 1074; 7 Moo. P. C. C. 427.

2129. If the pilot was utterly incompetent to the proper discharge of his duties, it would clearly be incumbent upon the master to interfere for the protection of the lives and property on board his vessel. *Ibid.* 3 W. Rob. 321.

2130. Interference with the pilot, as distinguished from suggestion, is the doing of that which the pilot alone ought to have done. *Ibid.*

2131. It would be very dangerous to hold that there can be any divided authority in the ship between the master and the pilot with reference to the same subject. *Ibid.* 7 Moo. P. C. C. 430.

2132. To consult the pilot or suggest the propriety of his adopting or not adopting any particular measure, would not amount to illegal interference with him. *Ibid.* 3 W. Rob. 321.

2133. There may be circumstances in which the measures to be adopted are so obvious, that though the pilot ought to have ordered them and did not do so, his neglect will be no excuse for the master and crew omitting to adopt them. *The Diana*, 4 Moo. P. C. C. 11; *The Christiana*, 7 Moo. P. C. C. 160; *The Lochlibo*, *Ibid.* 430.

2134. Owners held (reversing the decision of the court below) not responsible for the collision, on the ground that the collision was caused by the starboarding of the helm, which act was ordered by the pilot, and not, as suggested, by the master. *The Lochlibo*, 7 Moo. P. C. C. 430.

2135. The doctrine laid down in *The Christiana* (2122, *supra*) and *The Lochlibo* (2128, *supra*) concerning the relative duties of pilot and crew recognized and approved. *The City of Cambridge*, L. R. 5 P. C. 451; 43 L. J. Adm. P. C. 11; 2 Asp. N.S. P. C. 239.

2136. A vessel is only under the direction of the pilot for the purpose of navigation. In a case of collision the master is the proper party to give directions for the cutting away a lanyard, where such a course may be necessary to prevent further damage. He is not to wait for the pilot's directions, which would tend to create great confusion and delay. *The Massachusetts*, 10 Jur. 373.

2137. In criminal proceedings against a master of a vessel who has a compul-

sory pilot on board, such master is not bound to prove that at the time of the act or omission, the subject of such proceedings, he was not interfering with the navigation of his vessel, and he cannot be convicted unless it is shown against him that he was so interfering. *Oakley v. Speedy*, 4 Asp. 134.

2138. The R. in charge of a tug was dropping stern foremost up the Humber with the tide, and was eventually brought athwart the tide to go into dock. The R. was exhibiting, in addition to the masthead and side lights, a white light from the main peak showing astern, and placed there by order of the pilot, who was by compulsion of law in charge of the R. The rules for the navigation of the river Humber made by Order in Council in pursuance of the M. S. Act Amendment Act, 1862 (c. 63), s. 32, incorporate the regulations for preventing collisions at sea. The E. coming down the Humber came into collision with the R. At the hearing of an action between them it was admitted that the E. was to blame. *Held*, that the R. was also to blame, for that, as the Humber rules were within the purview of the M. S. Act, 1873 (c. 85), s. 17 (as to which see tit. COLLISION, Pt. IV. c. 2, s. 3, p. 215), there had been, by the exhibition of a stern light, a breach of a statutory regulation, viz., of Art. 2, which it was impossible to say might not have contributed to the collision, and there were no circumstances to make a departure from the regulation necessary. *Held*, also, that the fact of the light having been exhibited by order of the pilot, did not exempt the owner of the R. from liability, as the master should not have permitted an infringement of the regulations. *The Ripon*, 10 P. D. 65.

See also ss. 3 and 4, *supra*.

6. Look-out.

2139. A hail from any of the crew on the look-out to alter the helm, if such advice be adopted by the pilot as in his judgment a proper measure, will exonerate the owners; otherwise if the advice be adopted by the pilot unthinkingly, and on the mere report of the look-out. *The Lochlibo*, 14 Jur. 1074; 3 W. Rob. 319; 7 Moo. P. C. C. 427.

2140. The owners, not the pilot, are responsible for the insufficiency of the look-out. *The Batavier*, 1 Spinks' Ecl. and Adm. Rep. 378; 10 Jur. 19; *Netherlands Steamboat Co. v. Styles*, 9 Moore,

P. C. C. 286; *Stuart v. Isemonger (The Diana)*, 4 *ibid.* 11; 1 W. Rob. 136; 6 Jur. 157; *The Lochlibo*, 2 W. Rob. 319; 14 Jur. 1074; 7 Moore, P. C. C. 430. *The Iona*, L. R. 1 P. C. 426; 4 Moore, P. C. N.S. 336; 2 Asp. 479; *The Velasquez*, L. R. 1 P. C. 494; 36 L. J. Adm. 19; 4 Moore, P. C. N.S. 426; 2 Asp. 544.

2141. A steam-vessel was sighted by a barque three miles off. The two vessels continued their course until near together, when the steamer starboarded her helm. The barque, to avoid a collision, ported her helm, but a collision ensued. The barque was not seen by those on board the steamer until the vessels were about three-quarters of a mile apart. *Held*, that the steamer was alone to blame, and that her owners had not substantiated their defence of compulsory pilotage, as had the barque been reported to the pilot earlier, it might reasonably be inferred that he would have avoided the collision. *The Velasquez*, L. R. 1 P. C. 494; 36 L. J. Adm. 19; 2 Asp. 544; 4 Moore, P. C. C. N.S. 426.

2142. Owners *held* liable for collision with a barge, as sufficient notice of the approach of the barge had not been given to the pilot. *The Minna*, L. R. 2 A. & E. 97. See also *The Queen*, *The Lord John Russell*, L. R. 2 A. & E. 354; 38 L. J. Adm. 39; 3 Asp. 242.

2143. A steamer in charge of a pilot by compulsion of law, came into collision with a sailing barge off Blackwall Point. The pilot did not see the barge, nor was it reported to him until it was too late to avoid the collision, but both the pilot and a man on the look-out forward might have seen the barge much earlier. *Held*, that there was neglect of duty on the part of the look-out man; that this neglect of duty conduced to the collision, and that it was such default on the part of the crew of the steamer as to disentitle the owners to set up the defence of compulsory pilotage. *The Iona*, L. R. 1 P. C. 426; 4 *ibid.* N.S. 336; 2 Asp. 479; 4 Moore, P. C. C. N.S. 336.

2144. As to the duties generally in regard to the look-out, see tit. COLLISION, Pt. IV. c. 5, p. 219.

See also No. 2145, *infra*.

7. Speed.

(a) Generally.

2145. A steamer in charge of a duly-licensed pilot, proceeding up the river caused such a swell that a barge laden with coals was thereby sunk. *Held*, that

the owners of the steamer were to blame for a bad look-out, and that the pilot was to blame for not stopping the speed of the steamer. *The Batavier*, 1 Spinks' Eccl. and Adm. Rep. 378; 10 Jur. 19; 9 Moore, P. C. C. 286.

2146. A barge was moored in the Thames in a place where she was particularly exposed to the action of the wind and tide. A steamer passing by her in charge of a pilot and navigated at a proper rate of speed, caused a swell, and the barge sank. *Held*, that the sinking of the barge was occasioned partly from the exposed locality in which she was moored, and partly from the swell of the steamer. Action by the barge against the steamer dismissed with costs. *The Duke of Cornwall*, April 16, 1862.

2147. The L. sailed through the Downs at a time and with a speed which made it hardly possible that she should pass without danger to other vessels. *Held* (affirming the judgment of the court below), that such sailing was improper; but that her so sailing was exclusively the fault of the pilot. *The Lochlibo*, 7 Moore, P. C. C. 429.

2148. It is the duty of a pilot, in giving directions for the navigation of a vessel to determine the rate of speed at which she should proceed. *The Calabar*, L. R. 2 P. C. 238; 3 Asp. 195; 5 Moore, P. C. C. N.S. 291.

2149. See also No. 2161, *infra*.

2150. As to the duties generally in regard to speed, see tit. COLLISION, Pt. IV. c. 7, p. 222.

(b) Stopping and reversing of Engines.

2151. A brig moored in the Thames was in midday run into by a steamer having a duly-licensed pilot on board, who ordered the engines to be stopped and reversed. *Held*, that the engines were not reversed so promptly as they might have been, and as the evidence of the engineers was not produced that the pilot was not solely and exclusively to blame, the owners therefore were not exonerated. *The Ripon*, 6 Notes of Cases, 245.

2152. As to the duty generally of stopping and reversing engines on risk of collision, see tit. COLLISION, Pt. IV. c. 7, ss. 4 and 5, p. 230.

8. Steering.

2153. When there is a local usage as to navigation depending on local circumstances it is the exclusive duty of the

pilot to take care that that usage is complied with; but where the mode of sailing is such as every master, according to the ordinary course of navigation, ought to adopt in every open roadstead where many vessels are lying and in blowing weather, it is as much the master's as the pilot's duty to see that the proper course is taken. If, however, the pilot gives express orders to the contrary, the owners might be excused from responsibility for the consequences of the pilot's orders. *The Christiana*, 7 Moore, P. C. C. 173; 7 Notes of Cases, Supp. xiv.

2154. The pilot has the sole direction of a vessel in those respects where his local knowledge is presumably required; the direction, the course, and the manœuvres of the vessel when sailing, belong to him. *Ibid.* 172.

2155. A collision having been occasioned by the improper sailing and steering of a vessel, the exclusive act of the pilot, the owners of the vessel were held (reversing the judgment of the court below) entitled to exemption. *The Lochlibo*, 3 W. Rob. 318; 14 Jur. 1074; 7 Moore, P. C. C. 435.

2156. It is the duty of the pilot to decide whether and when to shorten sail. *Ibid.*

2157. *Prima facie* it would be presumed that the pilot gives all the directions for altering the helm, and that if erroneous he alone is responsible for them. *Ibid.*

2158. The steering and amount of sail to be carried are matters to be regulated by the pilot. *The Julia*, 14 Moore, P. C. C. 233.

2159. A steamer in charge of a pilot was navigated on her wrong side of the channel. Held, that the pilot was solely responsible for her navigation in that respect. *The Argo*, Swabey, 464.

2160. A steamer in charge of a pilot proceeding down the Thames on her port side of the river, came into collision with a barge. In an action for damage against the pilot, held, that it was his duty to have kept the steamer on the starboard side, but within the fair-way, and when he saw risk of collision to have ported her helm, and therefore it was properly left to the jury to say whether, at the time of the collision, the steamer was so on the starboard side, and, whatever her position, whether the collision was caused by the negligence of the pilot or not. *Smith v. Voss*, 29 L. T. 97; 2 H. & N. 97; 26 L. J. Exch. 233.

2161. The defendants in a cause of collision pleaded compulsory pilotage, and proved that the pilot had ordered the helm to be put to port, and that this order had been obeyed. Held, that the court could not assume that the vessel did not obey the helm from the fact of her being covered with barnacles, but that it was for the plaintiffs to prove by substantive evidence that she did not obey the helm. *The Livia*, 1 Asp. N.S. 204.

2162. As to the duties generally as to steering, see tit. COLLISION, Pt. VII. c. 1, p. 254.

9. Actions between Tugs and Tows.*

2163. A ship in charge of a pilot, and also in tow, is to be considered, under

* (553) By analogy to the common law relation in which a pilot stands to the owners, and to the master and crew of the ship in his charge, it would seem that the master and crew of the tug are agents of the owners of the ship, and that for damage done to a stranger solely through the fault or incapacity of the crew of the tug, both parties are answerable, and that if the master and crew of the ship have, through fault or incapacity on their part, contributed to the damage, there is no right of action between the ship and the tug to recover over. It would seem also that the same analogy to the case of a pilot would place the master and crew of the ship under the orders of the tug in all things proper to the due and safe fulfilment of the contract, subject only to analogous exceptions as to the right of the master of the ship, under extraordinary circumstances, to interfere and refuse to execute the orders from the tug,

and this opinion appears to be justified by the presumed local knowledge and experience of those who have been by the contract entrusted with the command of the moving power, and the selection of the course. Mac-lachlan on Merchant Shipping (3rd ed.), p. 287.

(554) When a pilot is taken on board a ship which is being towed by a steam-tug, the pilot's control of the conduct of the ship extends also to that of the tug which has her in tow; and without exempting the master and crew of either vessel from the duty of exercising diligence, care, and skill in the working of their own vessel, such exercise must be in strict subordination to the orders of the pilot, subject to exceptions under extraordinary circumstances. *Ibid.* p. 288.

(555) The absolute rights and liabilities of each of the three parties are not changed, the legal relation of either pair of them is not

ordinary circumstances, as still in the charge of the pilot. If the course pursued by the tug is in conformity with the directions of the pilot, or not against his directions, and a collision takes place, the pilot is responsible, and not the owners nor the tug, which ought to obey the pilot. If, however, the tug disregards the directions of the pilot, then the owners of the tow would be responsible, as for the acts of their servant, and the owners of the tug might be responsible over to them in another form of action. *The Gipsy King*, 5 Notes of Cases, 288.

2164. The general rule is that a steam-tug engaged in towing or performing salvage services is bound to obey the directions of the pilot on board the vessel salvaged. *The Minnehaha*, 1 Lushington, 353; 15 Moore, P. C. C. 162.

2165. Steam-tugs employed in an ordinary towage service, are bound to be subservient to the orders of the pilot on board the vessel in tow. *The Christina*, 3 W. Rob. 27; 6 Moore, P. C. C. 371; 6 Notes of Cases, 4.

2166. The master of the tug must implicitly obey the orders of the pilot, except in the case of wilful misconduct or gross mismanagement on his part. *Ibid.*

2167. Imperfect obedience is disobedience. *Ibid.*, 6 Moore, P. C. C. 380.

2168. *Held*, that although the pilot might not have exercised a sound discretion in the orders he gave, there was no sufficient justification for the master of the steam-tug refusing to carry those orders into effect. *Ibid.*

2169. *Quare*, whether prior to the Judiciary Acts, notwithstanding such misconduct, the tug could recover towage from the owners of the vessel under the contract, and leave the vessel towed to a cross action for the damage. *Ibid.*

2170. A ship with a duly-licensed pilot on board was in tow of a tug. The tug having become detached, the master of the tow against the advice of and unknown to his pilot ordered the tug to be re-attached, and in consequence a collision occurred between tug and tow. *Held*, that the tow was responsible for the damage. *The Julia*, 14 Moore, P. C. C. 210; 1 Lushington, 233.

2171. A pilot on board of a ship being moved by means of a steam-tug from one dock to another at night-time, has no such charge or control over her movements as to exculpate the owners. *The Borussia*, Swabey, 94; 27 L. T. 72.

2172. The A. and J. S. came into collision in the river Mersey, for which the pilot of the A. was solely to blame. The steam-tug towing the A. was compelled to cut adrift and leave her. The A. and J. S. then drifted up the river, and after some time cleared each other, when the J. S. brought up, and the A. continued drifting until she came into collision with the G. L. While the A. was drifting she had let go her starboard anchor and the chain of the port anchor, the port anchor itself having been broken in the first collision. A.'s steam-tug had also thrown a line on board, which was not attended to. *Held*, that the master and crew were to blame for not having veered out more cable to the starboard anchor, for not having bent on a hawser to the line thrown from the steam-tug, and for not having squared the foreyard, and set sail upon it, and that the neglect in these respects occasioned the collision. The owners of the A. accordingly *held* responsible for the damage to the G. L. *The Annapolis and Golden Light*, 5 L. T. N.S. 692.

2173. A tug is not relieved from the

altered by their co-relation when it becomes triple. The tug is the agent of the ship in tow, and liable over to her owners for any damage due to fault in it alone. The pilot is at common law the agent of the same owners, when appointed by them, and liable over in like manner for the consequences of his own fault, inclusive of immediate damage by the tug when that is the result of his orders. *Ibid.* p. 289.

(556) In respect of tug and of pilot at common law the owners of the ship in tow are primarily liable to third persons suffering damage by the acts of either. *Ibid.*

(557) Any disobedience of tug or ship in tow disentitles the owners of the latter to the statutory protection. *Ibid.* p. 290.

(558) If the damage done by a ship in tow while a qualified pilot is compulsorily on board is, at least partly, due to the fault of those in the tug, the owners of the ship in tow are in the first instance liable, with a right to recover over in case their own master and crew are clear of blame. *Ibid.*

(559) A steamboat was hired for the purpose of towing a vessel, to which she was fastened, and both were under the direction of a licensed pilot. The owner of the steamboat *held* not entitled to damages on account of injury sustained in the course of the navigation, and not caused by undue negligence of the pilot. *Reeves v. The Constitution*, Gilpin, 579. [AMERICAN.]

responsibility of watching the course ordered by the pilot on board the tow. *The Duke of Manchester*, 2 W. Rob. 470; 4 Notes of Cases, 582.

2174. If the master of the tug sees that the course pursued by the pilot will lead the tow into danger, it is his duty to make the circumstance known to the master of the tow. *Ibid.*

2175. A sailing vessel, under charge of a pilot, grounded upon the Goodwin Sands. On being got off she was taken in tow by a steamer, and whilst so in tow and in charge, no warning being given by the steamer, got upon the Sandwich Flats, which the steamer might have prevented by ordinary care and skill. *Held*, that the steamer was guilty of gross negligence and disregard of duty, and her claim for salvage pronounced against with costs. *Ibid.*

2176. Where the master of a coasting vessel hired a steam-tug *bonâ fide* for the purpose of towing his vessel up the river, *held*, that although the employing such power necessarily devolved the selection of the course and management of the ship, yet the object being solely the employment of the moving power, the party so employed was not within the meaning of the 6 Geo. 4, c. 125, s. 70, as a pilot, and that he could not be deemed to have the charge or conduct of the vessel. *Beilby v. Scott*, 7 M. & W. 93.

2178. Where a vessel is under the charge of a licensed pilot, compulsorily taken and in tow of a steam tug, the tug is bound to obey the orders of the pilot of the tow. *Spaight v. Tedcastle*, 6 App. Cas. 217; 44 L. T. 589; 29 W. R. 761; 4 Asp. 406.

2179. The R., while under compulsory pilotage, employed the T. to tow her. The pilot, though he did not direct it, allowed the T. to tow the R. dangerously near a bank. The tug then ported, and would have cleared the bank, but, misunderstanding the pilot's signals, improperly starboarded, and ran the R. on to the bank. The starboarding was the immediate cause of the accident; but in an action against the tug, it was alleged that the pilot had been guilty of contributory negligence in not casting off the tow rope when the danger was imminent. *Held*, by the House of Lords, that the negligence of the pilot in allowing the vessel to get near the bank was, under the circumstances, immaterial. *Ibid.*

2180. *Held*, further, that the pilot's not adopting at the last the doubtful

manœuvre of casting off the tow rope did not amount to contributory negligence, and that the tug was alone in fault. *Ibid.*

2181. *Quare*, would contributory negligence on the part of the pilot, who was taken by compulsion of law, have affected the owners of the R.? *Ibid.*

2182. Great injustice might be done if in applying the doctrine of contributory negligence to a case of this kind, the maxim *causa proxima non remota spectatur* were lost sight of. *Ibid.*

2183. To constitute contributory negligence, it must be shown that the injured party, or those with whom he is identified, might, by proper care exerted subsequently to the negligence of the party committing the injury, have avoided the consequence of such party's negligence—per Lord Blackburn. *Ibid.*

2183a. *The Julia* (14 Moore, P. C. C. 210) commented on and approved. *Ibid.*

2184. *Quare*, whether in an action between tug and tow, owners of the tow are answerable for the contributory negligence of their pilot employed by compulsion of law. *Ibid.*

2185. Where a collision is caused by a tug executing a wrong manœuvre, the fact that the person in charge of the ship was a pilot employed by compulsion of law, and gave no orders, does not relieve the owners of the ship in tow from liability. *The Singuasi*, 4 Asp. 383.

2186. A steam-tug employed in towing a barque attempted to cross the bows of the M., and a collision ensued between the M. and the barque. The owners of the M. having recovered damages against the barque, the owners of the barque instituted a suit to recover from the tug the amount of the damage done both to the M. and to the barque. *Held*, that the steam-tug was to blame, but that the pilot in charge of the barque by compulsion of law was also to blame, as he might have avoided the collision had he ordered the tug to cast off the tow rope. Action dismissed without costs. *The Energy*, L. R. 3 A. & E. 48; 39 L. J. Adm. 25; 3 Asp. 503.

2187. The pilot in charge of a ship in tow is not bound to direct every movement of the towing vessel, but may allow the tug a discretion as to the way in which to tow past other vessels, without by such conduct delegating his authority to the master of the tug. *The Singuasi*, 4 Asp. 383.

See also next section.

2187*a*. As to the duties generally between steamers and ships in tow, see tit. COLLISION, Pt. IV. c. 8, p. 231.

10. *Actions between Tug or Tow and Third Ship.**

2188. A steam-tug employed in towing a vessel, held not responsible for damage occasioned by the vessel in tow coming in contact with another vessel, the vessel in tow having had a licensed pilot on board at the time, under whose orders the steam-tug acted, and there having been no default on the part of the steam-tug. *The Duke of Sussex*, 1 W. Rob. 270.

2189. Where a tug, whilst towing a vessel, which is under compulsory pilotage, comes into collision with another vessel, the tug is not entitled to set up the defence of compulsory pilotage. (*Ibid.* distinguished.) *The Mary*, 5 P. D. 14; 48 L. J. P. D. 66; 4 Asp. 183.

2190. Because, *semble*, there is no obligation upon the tug to obey the orders of the pilot. *Ibid.*

2191. A vessel in charge of a duly-licensed pilot, the last of three in tow of a steamer, came in collision with a vessel at anchor. The collision was owing to the swinging of the string of vessels out of the straight line, which was owing to the improper steering of the last vessel, and was the fault of the pilot alone. *Held*, that the owners were exonerated. *The Gipsy King*, 5 Notes of Cases, 282; 11 Jur. 357.

2192. The S. was being towed while under compulsory pilotage in the Thames. The pilot gave such orders as he considered necessary, but left the tug to alter her course to clear craft, so long as she seemed to be going right. The tug improperly, and without any order from the pilot, ported, and the S. thereby came into collision with a pier. *Held*, that the pilot was not bound to direct every movement of the helm of the tug, and that the S. was liable. *The Sinquasi*, 5 P. D. 241; 50 L. J. P. D. 5; 4 Asp. 383.

2193. A steam-tug employed in towing a barque attempted to cross the bows of the M., and a collision ensued between the M. and the barque. The owners of the M. having recovered damages against the barque, the owners of the barque instituted a suit to recover from the tug the amount of the damage done, both to the M. and to the barque. *Held*, that the steam-tug was to blame, but that the pilot in charge of the barque by compulsion of law might have avoided the collision had he ordered the tug to cast off the tow-rope, and that, therefore, the suit must be dismissed, but without costs. *The Energy*, L. R. 3 A. & E. 48; 39 L. J. Adm. 25; 3 Asp. 503.

2194. In a cause of damage by collision occasioned by a vessel while being towed, and while in charge of a pilot by compulsion of law, no blame attaching to the crew, *held*, that the owners were protected from liability. *The Ocean Wave*, L. R. 3 P. C. 205; 3 Asp. 482; 6 Moore, P. C. N.S. 492.

11. *Ship anchoring and weighing Anchor.*

(a) *Generally.†*

2195. It is the duty of the pilot, and not that of the master, to determine where, and whether or not, the ship shall be brought up. *The Lochlibo*, 3 W. Rob. 310; 14 Jur. 1074; 7 Moore, P. C. C. 430; but see *The Girolamo*, 3 Hagg. 169, No. 2109, *supra*.

2196. When a vessel is in charge of a pilot the master is not bound to interfere with him in the exercise of his discretion whether he should bring the vessel up, or run her through a crowded roadstead at night in a tempestuous season of the year. *Ibid.*

2197. The time and manner of dropping the anchor are exclusively within the province of the pilot. *Ibid.*

2198. In the case of a vessel taking up her berth in dock, the time and manner of dropping the anchor is exclusively within the province of the pilot. *The Agricola*, 2 W. Rob. 10.

* (560) See notes 553—558, pp. 1406—1407.

(561) Where a steam-tug with a ship in tow, both vessels being in charge of a pilot appointed by the owners of the ship, negligently caused the ship to collide with another vessel, it was *held* that the tug was liable. *The Rescue*, 2 Sprague, 16. [AMERICAN.]

† (562) The authority of a licensed pilot in securing a vessel in her berth is not paramount to that of her master; the latter is deemed in full command, and the acts of the pilot are regarded as done with the direction or approval of the master. *The Lotty*, Olcott, Adm. 329. [AMERICAN.]

2199. It is the sole duty of the pilot to select the proper anchorage place, and mode of anchoring and preparing to anchor. *The Christiana*, 7 Moore, P. C. C. 161, 172; 7 Notes of Cases, 6; *Ibid.* Supp. xli.

2200. When a vessel comes to anchor the duty of the pilot is at an end, but if he continues on board she is still under his charge. *Ibid.*

2201. A ship, having a licensed pilot on board, whilst at anchor in the Downs in bad weather, was run into by another vessel and made to start from her anchorage, and was driven into a vessel at anchor. *Held* (affirming the judgment of the court below), that her owners were responsible for the damage, because, 1st, the ship, notwithstanding the bad weather, and a large number of vessels lying wind-bound in the Downs, had neglected to send down her topgallant and main royal yards, and her short fore and mizen topgallant masts; and because, 2ndly, she did not set her staysail and jib, so as to drag her anchor off shore. *Held*, further, that though the latter was the fault of the pilot alone, the former was the joint fault of the pilot and master, that step being one which every master, according to the ordinary course of navigation, ought to have taken in blowing weather in every open roadstead where many vessels were lying. *Ibid.*

2202. Had the pilot given express orders to the contrary, *semble*, the owners might have been exempted from responsibility. *Ibid.*

2203. The pilot in charge of a ship is solely responsible for getting the ship under weigh in improper circumstances, *e.g.* without employing her steam-tug, which was in attendance. *The Peerless*, 1 L. T. N.S. 125; 1 Lushington, 30; 2 L. T. N.S. 25; 13 Moore, P. C. C. 484.

2204. The catching of the cable on the windlass in running out *held* not to be a fault on the part of the master and crew, so as to render the owners liable, the collision being, in other respects, attributable to the pilot. *Ibid.*

2205. It is the pilot's duty to see that the anchor is properly catted, and to take care that everything is properly done to bring the vessel to anchor in the port to which he is conducting her. *The Gipsy King*, 2 W. Rob. 538; 5 Notes of Cases, 292; 11 Jur. 357.

2206. The manner in which a ship should be brought into a roadstead is entirely within the province of the pilot

in charge, by whose judgment the master of the ship must be guided. Collision in consequence of the pilot's error in this respect. *Held*, that the owners were not responsible. *The George*, 9 Jur. 670; 4 Notes of Cases, 161.

2207. The pilot *held* solely responsible for a foul berth. *The Northampton*, 1 Spinks' Eccl. & Adm. Rep. 152, 160.

2208. A vessel dragging her anchor and coming into collision with another, *held* to blame for not letting go another anchor. *Held*, also, that this was the fault of the pilot alone, and that the owners were therefore not liable. *Ibid.*

2209. The C. *held* liable for a collision caused by the neglect of her crew in not having the anchor clear and ready to let go, in consequence of which, when the pilot ordered it to be dropped, it got foul of the head-rails. *The Centurion*, Oct. 27, 1854.

2210. If the collision is partly the fault of the pilot (in not coming to an anchor in sufficient time), and partly the fault of the owners (the weight of the anchors being defective), the owners will be *held* responsible. *The Massachusetts*, 1 W. Rob. 371.

2211. A vessel, whilst under the command of a duly-licensed pilot, and doing everything which was right and incumbent upon her to do, came into collision with another vessel, solely from her anchors not holding, the weight of the anchors being defective. *Held*, that the owners were responsible for the damage. *Ibid.*

2212. A foreign ship was moored in Falmouth harbour, and a British ship, having a licensed pilot on board, in anchoring near ran foul of her and caused damage. *Held*, that some blame being imputable to the pilot, and there not being sufficient evidence to fix any blame on the crew of the British ship, her owners were exonerated and the suit dismissed accordingly, but without costs. *The Atlas*, 5 Notes of Cases, 52.

2213. A collision occurred owing to a vessel dragging her anchor. *Held*, that it was the duty of the pilot in charge to have seen that the vessel was dragging and to have ordered a second anchor to be dropped. *The Princeton*, 3 P. D. 90; 47 L. J. P. D. & A. 33; 3 Asp. N.S. 562.

2214. As to the duties generally in regard to vessels anchoring and weighing anchor, and as to vessels anchored or moored, see tit. COLLISION, Pt. VIII. cc. 4, 5, 6, pp. 287—291.

2215. As to the duties generally in regard to vessels mooring or docking, *Ibid.* p. 288.

(b) *In the Mersey.*

2216. Every pilot and apprentice shall execute and obey all orders given by the Board or the superintendent of pilotage, the master or the acting shoremaster, for the time being on shore, of the boat to which he is attached, and shall also obey all orders given by the water bailiff, harbour masters or dock and pierhead masters, relative to the docking, towing, transporting, or removing of vessels under their charge. Bye-law No. 1, of the Mersey Docks and Harbour Board; P. R. No. 325 of 1882, p. 61.

2217. He (the pilot) shall duly keep the lead going when in charge of any ship or vessel while under weigh. *Ibid.* Bye-law 9.

2218. A pilot in charge of a vessel shall not leave her until she is safely anchored in the river, and then only with the written permission of the officer in command, or on being relieved by a qualified pilot by order of the acting shoremaster of such boat for the time being on shore. *Ibid.* Bye-law 10.

2219. So far as the same can be done consistently with the safe and proper anchorage of vessels, pilots shall avoid anchoring vessels in the fairway between the Liverpool and Woodside Stages within the following limits, viz.: Northern limit—an imaginary line drawn from No. 4 Bridge of Princes Landing Stage to the entrance of Morpeth Dock; Southern limit—an imaginary line drawn from Manchester Basin to the first graving dock S. of the Woodside Landing Stage. *Ibid.* Bye-law 11.

2220. If a pilot does anchor a vessel within such limits he shall send to the superintendent of pilotage a written report of his reasons for so doing. *Ibid.*

2221. When leaving the dock in charge of a vessel, the pilot shall see that the cables are bent and that the anchors are got over the bows and ready for letting go immediately after clearing the pier-head. *Ibid.* p. 62, Bye-law 25.

2222. A screw steamship, in charge of a pilot, having been brought up by her port anchor in the Mersey with an improperly short length of cable, parted the cable about 12 o'clock at night. Although her fires were banked and her steam was up at the time she was allowed to drift down the river for a mile and a half, when she came into collision with a vessel

at anchor. *Held*, that the pilot in charge of the steamship was solely to blame for the collision. *The City of Cambridge*, L. R. 5 P. C. 451; L. R. 4 A. & E. 161; 43 L. J. Adm. 11; *ibid.* P. C. 72; 2 Asp. N.S. 193; *ibid.* 239.

12. *Sufficiency of Ship and Equipment.*

(a) *Generally.*

2223. Although the pilot has charge of the ship the owners are responsible to third persons for the sufficiency of the ship and her equipments. *The Christiana*, 7 Moore, P. C. 171; 7 Notes of Cases, 6; and *ibid.* Supp. xli.

2224. In a cause of collision blame is not imputable to a vessel as being insufficiently manned, unless it can be shown that in consequence of the deficiency of hands on board her she was not under sufficient control. *The Hope*, 1 W. Rob. 156.

2225. All vessels are more or less unwieldy, and it is the duty of a pilot on board an unwieldy vessel, so to handle her as to prevent collision as far as practicable. *The Presto*, Nov. 17, 1853.

2226. The catching of the cable on the windlass in running out *held* not to be a fault on the part of the master and crew, so as to render the owners liable, the collision being, in other respects, attributable to the pilot. *The Peerless*, 1 L. T. N.S. 125; 1 Lushington, 30; 2 L. T. N.S. 25; 13 Moore, P. C. C. 484.

2227. A vessel, whilst under the command of a duly-licensed pilot, and doing everything which was right and incumbent upon her to do, came into collision with another vessel, solely from her anchor not holding, the weight of the anchor being defective. *Held*, that the owners were responsible. *The Massachusetts*, 1 W. Rob. 371.

2228. *Held* to be a want of caution to move by means of a steam-tug a ship from one dock to another at night-time. Under such circumstances a pilot on board a ship being towed has no such charge or control over her movements as to exculpate the owners. *The Borussia*, Swabey, 94.

2229. It is the duty of a pilot going down a river to make allowance for the effect of the tide, and if he does so, and a collision occurs from an inherent defect in the ship, occasioning her not answering her helm with the same facility as an ordinary ship, no blame will attach to the pilot, and the owners will be liable

for the damage. *Held*, that the owners were responsible by reason of such a defect. *The Peru*, July 16, 1857.

2230. The position in which the anchor is placed is a matter under the control of the pilot. *The Rigborgs Minde*, 8 P. D. C. A. 132; 52 L. J. P. D. 74; 5 Asp. 123.

2231. A master, if he knows of anything whatever in the state of his vessel or her crew which would, or might, injuriously affect her behaviour at a moment of emergency, must disclose it to the pilot, or he will be prevented from establishing the defence of compulsory pilotage. Per Christian, L. J., in the Court of Appeal in Chancery. *The Meteor*, I. R. 9 Eq. 567. [IRISH.]

2232. The master informed the pilot that his vessel was drawing twelve feet of water aft and nine forward, whereas, in fact, it was drawing fourteen feet of water aft and nine forward. *Held*, by the Court of Appeal in Chancery, that there was contributory negligence on the part of the master, and that the owners had failed to prove their defence of compulsory pilotage. *Ibid*.

(b) *Trim*.

2233. If a vessel in charge of a pilot is out of ordinary trim, so that she is carried by force of the tide more than a ship in ordinary safe trim would have been, and this helped to bring about the collision, the owners are responsible for the damage, the trim of the ship being within the province of the master. *The Argo*, Swabey, 462.

2234. But if she is in ordinary safe trim, then, although she might be in handier trim, and although the trim of the ship in part contributed to the collision, they are not responsible. *Ibid*.

Part VIII.—PART OWNERS.

1. Generally.

2235. As to the division of the property in a ship into sixty-four shares, and the provision that not more than sixty-four individuals shall be entitled to be regis-

tered as owners of any one ship; as to no person being entitled to be registered as owner of a fractional part of a share in a ship; as to the registration of joint owners of a ship or share; and as to a body corporate being registered as owner by its corporate name, see Pt. I. p. 1185, No. 47.

2236. As to shares in ships being deemed stock under the Trustee Act, 1850, *Ibid*. No. 50.

2237. As to no notice of any trust being entered in the register-book, or receivable by the registrar, and as to each registered owner's power of disposal of his share, *Ibid*. No. 51.

2238. As to who may be owners, and of what vessels, and as to evidence of ownership, *Ibid*. Nos. 165—178, p. 1198.

2239. As to beneficial interests in ships, *Ibid*. No. 47, p. 1185; and Nos. 261—265, pp. 1207, 1208.*

2240. As to persons beneficially interested in any ships or shares, but not registered as owners, see No. 594, p. 1245.

2241. As to the forfeiture of interests of unqualified persons, *Ibid*. Nos. 586, 587, p. 1244.

2242. All sums of money paid for or on account of any loss or damage in respect whereof the liability of the owners of any ship is limited by the ninth part of this act, and all costs incurred in relation thereto, may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof. See M. S. Act, 1854 (c. 104), s. 515.

2243. A part owner of a ship is not necessarily a partner. *Helme v. Smith*, 7 Bing. 709; 5 M. & P. 744. See *Ex parte Harrison*, 2 Rose, 76; *Ex parte Young*, 2 V. & B. 242; *Green v. Briggs*, 6 Hare, 402, overruling the dictum of Lord Hardwicke in *Doddington v. Hallett*, 1 Vesey, sen. 496.

2244. The owners of a ship are not interested in it as joint-tenants, but as tenants in common. *Ex parte Harrison*, 2 Rose, 76; *Ex parte Young*, 2 Ves. & B. 242.

2245. Part owners are tenants in common of a ship, but jointly interested in her use and employment; and the law as to the earnings of a ship, whether as

* (563) See the observations on section 3 of the M. S. Act Amendment Act, 1862, c. 63, in MacLachlan's Supplement, p. 3 (anno

1862), to his treatise on the law of shipping. For the law prior to this act, see notes to Pt. I. c. 4, pp. 1206, 1207.

freight, cargo, or otherwise, follows the general law of partnership. *Green v. Briggs*, 6 Hare, 395, 632; 12 Jur. 326; 17 L. J. Chanc. 323.

2246. One who is interested in the freight alone, held liable to contribute his proportion of the expenses incurred by the ship in earning the freight. *Lindsay v. Gibbs*, 22 Beav. 522; 2 Jur. N.S. 1039.

2247. A purchaser of shares in a ship is entitled to share in the ship's earnings only after deduction of the expenses incurred in making those earnings. *Green v. Briggs*, *supra*; *Lindsay v. Gibbs*, *supra*.

2248. The possession of one owner is the possession of all. *Ex parte Machel*, 1 Rose, 447; 2 V. & B. 216.

2249. Held, prior to the M. S. Act Amendment Act, 1862 (c. 63), s. 3, that one shipowner could not bind another unless the names of both appeared together as owners in the same registry, Lord Eldon being of opinion, under the circumstances, that the two persons were not co-owners. *Campbell v. Stein*, 6 Dow. 135. And see No. 2264.

2250. One part owner cannot recover damages against another by an action at law on a charge of wilfully and deceitfully sending the ship to foreign parts, where she was lost. *Graves v. Sawcer*, Sir T. Raym. 15; 1 Keb. 38; 1 Lev. 29.

2251. One part owner cannot have redress in equity against another for the loss of a ship sent to sea without his assent. *Strelley v. Winson*, 1 Vern. 297; Skin. 230.

2252. If a ship be chartered for the purpose of trade and warfare, and afterwards be sent on a voyage of discovery against the consent of the owners, whereby the ship is lost, the owners may sue for the value of their property. *Aliter*, if one of the owners consent to the voyage. *Lewin v. The East India Co.*, Peake, 318.

2253. A vessel belonging to a number of part owners was forcibly taken by the minority out of the possession of the majority, and sent by the former upon foreign voyages, on one of which it was ultimately lost. Held, that trover could not be maintained. One tenant in common of a chattel, cannot maintain trover for it against his co-tenants while the right of recaption remains; but when that right has been put an end to by the act of the co-tenant, an action of trover lies. *Knight v. Coates*, 1 L. R. Exch. 53. [IRISH.]

2254. A part owner of a ship is entitled to sue for recovery of his share of the

damage occasioned by her having been destroyed. *Lawson v. Leith and Newcastle Packet Co.*, 13 D. 175; 23 Jur. 51. [SCOTCH.]

2255. If part owners of a ship are connected together so as to be considered partners, a payment made by one will revive a joint debt as against the other, and will prevent the operation of the Statute of Limitations, though the payment is made for the express purpose of so reviving the debt. *Griffiths v. Hicks*, 15 L. T. 349.

2256. The objection that a partner cannot sue his co-partners is a technical objection, and in a case in which the proceedings are *in rem*, the rule does not apply that the rest of the partners cannot recover as against the ship, partly owned by one of them. *The West Friesland, otherwise Twentje*, 5 Jur. N.S. 659.

2257. A partner may arrest the ship (the property of himself and co-partner) in a suit for necessaries. *Ibid.*

2258. Covenant by the master of a vessel with the several part owners and their several executors, administrators, and assigns, to pay certain moneys to them in such proportions as were set against their several names. Held, a several covenant, that each covenantee must therefore sue separately, and not all jointly. *Servante v. James*, 10 B. & C. 411.

2259. No question arises as to the jurisdiction of the court in enforcing the rights of some against the other part owners of a ship with regard to the management of the ship, and the possession of the certificate of registry, when those rights are regulated by an agreement entered into between all the owners of the ship. *Darby v. Baines*, 9 Hare, 369; 21 L. J. Chanc. 801.

2260. *Semble*, the master, though the original hypothecator of the ship and a part owner, is not precluded by the practice of the Court of Admiralty from joining his co-owners in impugning the bond. *Soares v. Rahn (The Prince of Saxe Cobourg)*, 3 Moore, P. C. C. 1.

2261. Restitution had passed, *in solidum*, of three-fourths of the property claimed, to an American house of trade. Afterwards, on petition, it appeared that one of the partners was an English merchant, and a bankrupt. His assignees prayed a severance of his particular share, to be paid to them as his representatives, for the benefit of his creditors. The court refused it, as no part of the duty of the Prize Court of

Admiralty, saying, the petitioners must resort to some other authority to make the discrimination between this American partnership stock, for the purpose of subjecting a particular share to a British bankruptcy. *The Jefferson*, 1 C. Rob. 325.

2262. The ship and the several portions of cargo having been each specifically claimed as the property of various individuals, the Prize Court refused to entertain a subsequent claim of another party for ship and cargo. *The Little William*, 1 Acton, 148.

2263. A. and B. were joint owners of a ship; A. working the ship, defraying all the expenses, and taking the uncontrolled management of her, and paying himself by taking two-thirds of the gross earnings; B. taking the remaining one-third as his portion. *Held*, that A. was a hirer of the share of B., and not the servant or agent of B., so as to render B. liable in any action for damages caused by the negligence of A. *Bernard v. Aaron*, 9 Jur. N.S. 470.

2264. A managing owner of a vessel has power to bind his co-owner as his agent, to release the vessel from an arrest in the Admiralty Court in a suit for collision, by procuring bail for damages and costs in such suit. *Barker v. Highley*, 32 L. J. C. P. 270; 11 W. R. 968; 9 L. T. N.S. 228.

2264a. Where, therefore, such managing owner has obtained the release of the vessel by procuring such bail, and the suit in the Admiralty Court has terminated against the vessel, the bail is entitled to recover from the other owner the amount which such bail has had to pay under the bail-bond. *Ibid*.

2265. For provisions that a surety or co-debtor discharging his liability shall be entitled to an assignment of all the securities held by the creditor, and to all his rights and remedies against the debtor or co-surety, co-contractor, or co-debtor, see the Mercantile Law Amendment Act, 1856 (c. 97), s. 5.

2266. For provisions protecting the rights of persons acquiring title to goods before they have been seized or attached under a writ against the vendor, see *ibid*. s. 1.

2267. A part owner acting as master may be guilty of barratry as against his co-owners. *Jones v. Nicholson*, 10 Ex. 28; 23 L. J. Ex. 330.

2268. The plaintiffs repaired a vessel upon the order of the ship's husband, and the cost of such repairs was apportioned amongst the co-owners according to their shares. One of the co-owners paid, through the ship's husband, his proportion by a bill, which was dishonoured at maturity. *Held*, that the remaining co-owners were bound by the mode of payment adopted, that they were not in the position of sureties, and that they were liable for the amount of the bill. *Mould v. Andrews*, 35 L. T. N.S. 813.

2269. Where a vessel is at a home port and the owners are easily accessible, a managing part owner cannot without specific authority bind the other part owners for unusual and structural alterations in the vessel. *Steele v. Dixon*, Cases in the Court of Session, 4th series, vol. 3, p. 1003. [SCOTCH.]

2270. The other part owners are liable in respect of their shares as well as the master, also a part owner, for short delivery of cargo. *The Emilien Marie*, 44 L. J. N.S. Adm. 9.

2271. In a suit for limitation of liability where it appeared that the master, who was on board at the time of the collision, was a part owner, the court limited the liability of the remainder of the owners without prejudice to any right of action against the master in respect of his negligence. *The Cricket; The Endeavour*, 5 Asp. 53.

2272. The agents of a foreign ship in a British port who have paid for necessaries supplied to her, or who have rendered themselves liable to pay for such necessaries, may sue the ship for such advances as were made on the ship's account, but not for the balance of a general account against her owners. A co-owner in a ship may sue the ship for such advances made by him, but *semble*, not if the co-owner is interested in the particular voyage for which the ship is supplied.* (*The West Friedland*, Swabey, 455, followed). *The Underwriter*, 1 Asp. N.S. 127.

* (564) As to the rights and remedies *inter se* of partners generally, see Tudor's Leading Cases in Mercantile and Maritime Law, 3rd ed. pp. 464—590.

(566) As to the rights and liabilities of

part owners, *inter se*, see 1 Maude & Pollock on Merchant Shipping (4th ed.), pp. 101—108.

(566) As to the joinder and non-joinder of part owners in actions by and against them, see Maclachlan on Merchant Shipping (3rd

2. Possession.

1. Generally.*

2273. The court inclines against disposition, and requires the plaintiff's claim to be clearly proved. *The Victoria*, Swabey, 408; 5 Jur. N.S. 204.

2274. The party holding the bill of sale has the legal title, and is entitled to the possession against the asserted equitable interest in others. Sentence accordingly in a cause of possession. *The Sisters*, 5 C. Rob. 155.

2275. In a cause of possession, held, that the interest of a shareholder who had died since the commencement of the proceedings, and whose personal representative had not given the practitioner any

authority to proceed in the cause, is to be deducted from the estimate of the quantum of interest claiming a transfer of possession. *Ibid.*

2276. In a cause of possession the court will not, at the hearing, listen to the suggestion that certain of the owners had not authorized the proceedings taken on their behalf, the defendant's remedy being to call for a proxy in an early stage of the cause. *The New Draper*, 4 C. Rob. 290. As to proxies, see tit. PRACTICE, Pt. II. c. 10.

2277. In causes of possession it is to be presumed that all those shareholders who do not apply are satisfied that the possession of the vessel should not be altered. *The Valiant*, 1 W. Rob. 67.

ed.), p. 124; and 1 Maude & Pollock on Merchant Shipping (4th ed.), by Pollock & Bruce, pp. 109, 110.

(567) If one tenant in common deprives the other of possession of the common chattel, and carries it away, no action lies against him, but if he destroys it he is liable to be sued by his companion. Maclachlan on Merchant Shipping (3rd ed.), p. 100; and 1 Maude & Pollock on ditto, p. 101 (4th ed.).

(568) The owners, whatever be their mutual relation in respect of the ship as property, become, by the joint employment of her, partners in respect of the adventure, and the adjustment of their mutual claims and disputes in connection therewith is a question of partnership that can seldom be dealt with at common law. Maclachlan on Merchant Shipping (3rd ed.), p. 103.

(569) For the specific cases in which an action will lie, see *Ibid.* (3rd ed.), pp. 103, 104.

(570) In respect of the obligations incurred by the owners upon contracts with strangers, it is clear if they hold the ship as partners that all are jointly liable on the contract of each made in the name and for the purposes of the partnership. *Ibid.* p. 107.

(571) If they are part owners and not partners, as is much more commonly the case, the law is that they are severally liable, each upon his own contract, made by himself, or by a duly-authorized agent on his behalf. Between partners the relation of principal and agent is implied by law; between part owners it remains to be proved in fact. *Ibid.*

(572) Part owners are not liable on contracts for the ship made by the master, merely because they are owners, or appear on the register as such, or hold themselves out as owners, and are in possession of the ship at the time of the contract, or because the contract is made by the registered master, acting as master with the privity and consent of the owners, and making the contract with their privity, and the goods and work are supplied

and done on the credit of the owners, being fit, proper, and necessary for the ship under the circumstances existing at the time of the contract, unless the master is also held out by the defendants as their master of the particular ship acting on their behalf in the conduct, management, and direction of the vessel, and in ordering the goods and repairs. *Ibid.* p. 111.

(573) When part owners are liable to third parties their liability is not limited by the extent of their separate shares. 1 Maude & Pollock on Merchant Shipping (4th ed.), p. 95.

(574) The American law is the same. See *French v. Price*, 24 Pick. 13; *Williams v. Sheppard*, 1 Green, 76; *Milburn v. Guylther*, 8 Gill. 92. [AMERICAN.]

* (575) The majority of owners in amount of interest have a right to the general control of the vessel, to direct repairs, supplies, &c. *Revens v. Lewis*, 2 Paine, C. C. 202. [AMERICAN.]

(576) A part owner may sustain a petitory suit against a merely fraudulent possessor, without joining the other part owners; and if they do not appear, or object, and the libellant establishes his title, the court will decree the possession to him. *The Friendship*, 2 Curtis, C. C. 426. [AMERICAN.]

(577) In America Courts of Admiralty have no jurisdiction to try questions of equitable title, and can only give possession to the owner of the legal title. *The W. D. Rice*, 20 L. R. 501; *Kellum v. Emerson*, 2 Curtis, C. C. 79. See also *Bogart v. The John Jay*, 17 How. 399; *Kynoch v. The S. C. Ives*, 1 Newb. Adm. 205; *The Taranto*, 12 L. R. 5. [AMERICAN.]

(578) A Court of Admiralty cannot hold an equitable title sufficient to justify its interposition against a legal title to obtain possession, though it may consider such title as sufficient to prevent any interference with an existing possession under it. *The S. C. Ives*, 1 Newb. Adm. 205. [AMERICAN.]

2278. In a cause of possession promoted by the original owner against a purchaser under a sale by the master abroad, possession decreed (on motion, and *semble*, by consent) to the original owner, on giving bail to answer the other party's interest, and to cover freight, &c., while in his possession. Application of the purchaser to release the ship to him on bail, refused. *The Partridge*, 1 Hagg. 81.

2279. In consequence of the representations which have been made in numerous instances of the damages sustained by ships arrested in causes of possession lying for a length of time in harbour, the court has recently been induced to release them on bail. *The Peggy*, 4 C. Rob. 306.

2280. Ship released on bail in this case. *Ibid.*

2281. *Ibid.* In a cause of possession bail is taken as a substitute for the substance of the ship, but does not include a stipulation for any earnings that may be made. Application for bail to cover intermediate earnings refused. *Ibid.*

2282. In a cause of possession brought by the owner of 43 sixty-fourth shares against the master, owning the remaining shares, *held*, that the latter was not entitled to retain possession of the vessel upon an offer of security to the amount of his co-owner's interest. *The Kent*, 1 Lushington, 495.*

2283. Possession of a ship, time having been allowed for an appearance by the defendant, decreed to the plaintiffs, on affidavits and motion *ex parte*. *The Lagan*, otherwise *Mimax*, 3 Hagg. 418.

2284. In a cause of possession, motion in proceedings by default, to decree possession to the executor of a moiety owner, refused; but a monition against the parties having the remaining interest, to appear and show cause, granted. *The Egyptienne*, 1 Hagg. 346, n.

2285. In the Prize Court of Admiralty restitution had passed *in solidum* of three-fourths of the property claimed to an American house of trade. Afterwards it appeared that one of the parties was an English merchant and a bankrupt. His assignees prayed a severance of his particular share to be paid to them as his representatives for the benefit of his cre-

ditors; application refused. *The Jefferson*, 1 C. Rob. 325.

2286. The ship and the several portions of cargo having been each specifically claimed as the property of various individuals, the Prize Court refused to entertain a subsequent claim of another for the ship and cargo. *The Little William*, 1 Acton, 148.

2287. It was agreed among the purchasers of a ship that two of them should be the ship's husbands, and not be removed except on certain specified grounds. In May, they obtained a charter-party for her, and privately stipulated for a weekly payment in addition to the sum payable by the terms of the charter-party. In consequence of this, upon the other owners obtaining full information of their dealings, notice was given to the ship's husbands of their dismissal in the following October. The ship's husbands denied the right to dismiss them, and possessed themselves of the machinery of the ship, which was then being repaired; *held*, on its appearing that a decree for possession could not be obtained in the Admiralty Court in time to enable the vessel to fulfil her engagement, that the Court of Chancery had power to appoint a receiver of the machinery and direct the possession of it to be delivered to him. *Brenan v. Preston*, 2 De Gex, M. & G. 813.

2288. The plaintiff alleged that by bill of sale duly registered the defendant, as sole owner of the vessel, transferred for valuable consideration a moiety of his interest to T. W., who, by a subsequent bill of sale duly registered, transferred that moiety to the plaintiff for value. The defendant denied that he had at any time signed any such bill of sale to T. W., and alleged that if any such bill of sale had been registered, it was registered fraudulently. The execution and registration of the bills of sale were proved, and the court directed the question whether the fraud alleged could affect the rights of the plaintiff to be raised on demurrer. The plaintiff thereupon demurred to so much of the defence as alleged fraud. Demurrer sustained on the ground that the legal ownership in the moiety of the vessel having passed to

* (579) According to the present practice the court will not, in a cause of possession, release the ship on bail, except when both parties consent to that course.

(580) In the American courts it is the practice, though not of very ancient date, to

release the ship on bail in causes of possession. *Dunlap's Adm. Prac.* (2nd ed.), 165; *The Alligator*, 1 Gall. 145. [AMERICAN.]

(581) Bail in such cases is given for the value of ship, and her intermediate earnings. *Ibid.*

the plaintiff for valuable consideration by execution and registration of a bill of sale without notice of fraud, the plaintiff had thereby acquired a title thereto against the defendant. *The Horlock*, 2 P. D. 243; 36 L. T. 622.

2289. The United States Government having instituted a cause of possession, the defendant pleaded that the late Government of the Confederate States, through whom the plaintiff claimed, having contracted to purchase the vessel fraudulently dispossessed him of it without paying the purchase-money, and prayed that possession might not be decreed to the United States Government until it had satisfied his lien for unpaid purchase-money. On motion by the plaintiff to reject the plea, *held*, that the plea was good, and that if substantiated the court would grant the prayer. *The Beatrice*, otherwise *The Rappahannock*, 36 L. J. Adm. 9.

2290. As to displacing the master at the suit of the owners or major owners, see tit. MASTERS, c. 3, p. 1118.

2291. As to practice in actions of possession, see tit. PRACTICE, Pt. III. c. 1462.

2. Between Foreigners.

2292. See Pt. I. p. 1182.

3. Jurisdiction of the Admiralty Division.

See tit. JURISDICTION, Pt. I. p. 638.

4. Jurisdiction of the High Court of Admiralty before the Judicature Acts.*

2293. The Court of Admiralty (prior to its abolition by the Judicature Acts), had jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession instituted in the court. See 3 & 4 Vict. c. 65, s. 4.

2294. The Court of Admiralty had jurisdiction to decide all questions arising between co-owners, or any of them, touching the ownership or possession, employment and earnings of any ship registered at any port in England or Wales, or any share thereof, and might settle all accounts outstanding and unsettled between the parties in relation

thereto, and might direct the said ship or any share thereof to be sold, and might make such order in the premises as to it should seem fit. See the Admiralty Court Act, 1861 (c. 10), s. 8.

2295. This section *held* to be retrospective. *The Idas*, Br. & Lush. 65; 2 N. R. 45.

2296. In a cause of possession when the Court of Admiralty was applied to at the instance of a legal owner it would not enforce his claim in disregard of equitable rights. A. was legal owner of thirty-six shares of a vessel, the master B. was legal owner of the other twenty-eight shares, and equitable owner as to four of A.'s shares, so that their beneficial interests were equal. *Held*, that A. had not such a title to the ship as entitled him to the aid of the court to take the possession out of the hands of the master. *The Victoria*, Swabey, 408; 5 Jur. N.S. 204; 7 W. R. 330.

2297. In a cause instituted between co-owners under sect. 8 of the Admiralty Court Act, 1861, an order granted against a dock company to bring in freight detained by them under a stop order of the defendants. *The Meggie*, L. R. 1 A. & E. 77.

2298. The mortgagee of a vessel duly sold the vessel under a power of sale contained in the mortgage deed. By mistake a discharge of the original mortgage was indorsed on the mortgage deed and registered. On the vendee of the vessel subsequently presenting his bill of sale for registration, registration was refused, on the ground that the property in the vessel had passed to the mortgagor. The mortgagee and the vendee of the vessel having instituted a suit praying that the vendee might be pronounced the sole owner of the vessel, *held*, that the court had jurisdiction under the 3 & 4 Vict. c. 65, ss. 3 and 4, and the 11th section of the Admiralty Court Act, 1861, to entertain the suit, and order made in terms of the prayer. *The Rose*, L. R. 4 A. & E. 6; 42 L. J. Adm. 11; 1 Asp. 567.

2299. For cases as to the court's jurisdiction as to possession before 3 & 4 Vict. c. 65, see *The Elizabeth and Jane*, 1 W. Rob. 278; *The Egyptienne*, 1 Hagg. 346; *The John of London*, 1 Hagg. 342; *The Valiant*, 1 W. Rob. 67.

* (582) As to the full jurisdiction of American Admiralty Courts over causes of possession and title, see *The Tilton*, 5 Mason, 465; *Ward v. Peck*, 18 Howard, 267. [AMERICAN.]

2300. See further, as to the jurisdiction of the Court of Admiralty as to title and change of possession of a ship, Pt. I. pp. 1180—1182; as to prohibition of dealing with a ship or share, *ibid.* p. 1204; and as to sale on non-qualified owner becoming entitled, *ibid.* p. 1205.

5. *Right to displace Master.*

2301. See tit. MASTERS, c. 3, p. 1118.

3. Actions of Restraint.*

1. *Generally.*

2302. Where there are several part owners of a ship, the minority may arrest the ship in the Admiralty Court, and compel a security to be given by the others before they shall be permitted to navigate out of port. *Ouston v. Hebden*, 1 Wils. 101.

2303. The court has authority to arrest a ship upon the application of a part owner who dissents from her intended employment, to compel the other part owners to give security to him, to the value of his share, for her safe return, and to enforce the same on the vessel being lost. *The Apollo*, 1 Hagg. 306, 311; *The Margaret*, 2 Hagg. 278; *King v. Perry*, 3 Salk. 23; *More v. Rowbotham*, 6 Mod. 162; *Dimmock v. Chandler*, 2 Stra. 890; *Blacket v. Ansley*, 1 Ld. Raym. 235; *Lambert v. Acretree*, *ibid.* 223; *Ouston v. Hebden*, 1 Wils. 101; *Degrave v. Hedges*, 2 Ld. Raym. 1285;

(overruling *Justice v. Brown*, Hardres, 473; and *Knight v. Berry*, Rep. temp. Holt, 647; 1 Show. 13; Comb. 109; Carth. 26).

2304. The Court of Admiralty is open all the year round to applications by part owners to restrain the sailing of ships without their consent, until security be given to the amount of their respective shares. *Haly v. Goodson*, 2 Mer. 77; 2 Dod. 420.

2305. A mortgagee not in possession of a share of a ship is not entitled to arrest a vessel for the purpose of enforcing bail for her safe return to this country. Motion on behalf of a mortgagee for such purpose rejected. *The Highlander*, 2 W. Rob. 109.

2306. If a British merchant embark his property in shares of a foreign vessel, he becomes, as regards her government and management, subject to the law of the foreign state to which she belongs. *The Graff Arthur Burnstorff*, 2 Spinks' Ecl. and Adm. Rep. 30.

2307. The court has no power, at the suit of a British part owner of a foreign ship, to arrest her until bail is given for her safe return to her own port abroad. *Ibid.*

2308. Application, at the instance of British part owners, for warrant to arrest a foreign vessel until she gave bail for her return, refused, it not being shown that such was the law of the country to which she belonged. *Ibid.*

2309. Security having been decreed and given by part owners to another part owner

* (583) The ordinances upon this subject of the several commercial nations of continental Europe are different, and all of them differ from the law of England, which possesses this important advantage over them, that while, in common with them, it authorizes the majority in value to employ the ship "upon any probable design," it takes care at the same time to secure the interest of the dissentient minority from being lost in the employment of which they disapprove, by exacting security for her safe return. See Conkling's American Adm. Prac. (2nd ed.), 321, 322; Maclachlan on Merchant Shipping (3rd ed.), p. 99.

(584) By the major part is meant value, not number. 2 Brown, Civil and Adm. Law (2nd ed.), 131.

(585) The law of America is the same in these respects as that of England, except that when the minority are in favour of employing the ship it has been held that their opinion ought to prevail. *The Steamboat New Orleans v. The Phœbus*, 11 Peters, 175; 12

Curteis, D. S. C. 391. See Conkling's Adm. Prac. (2nd ed.), 323; Dunlap's Adm. Prac. (2nd ed.), 82; Parsons on Admiralty Law, vol. ii. p. 555; *Stedman v. Feidler*, 20 N. Y. (6 Smith), 437; *Willings v. Blight*, 2 Pet. Adm. 288; *Steamboat Orleans v. Phœbus*, 11 Pet. 175. [AMERICAN.]

(586) Part owners to the extent of an equality of interest may similarly arrest the ship and compel security for her safe return. Introduction to Godolphin's Adm. Jur.; and Molloy, Book 2, ch. 1, s. 2, p. 308 (9th ed.).

(587) The owner of one-eighth of a vessel, and known to be such by the other owners, omitted, without fraudulent intent, to comply with the requisitions of the revenue laws, and the other owners projected a voyage of which he disapproved, and prayed for the usual security. Ordered that the other owners should give security to double the value of his share for the return of the vessel. *Fox v. The Lodemia*, Crabbe, 271. [AMERICAN.]

for the safe return of the ship from a voyage of which he disapproved, the vessel having been lost thereon, and the amount of bail, in consequence, brought into court, application of the major part owners for a reference to the registrar and merchants to inquire and report as to losses, demurrage, &c., incurred by them in consequence of certain alleged vexatious proceedings in Chancery, which had been taken by the part owner, and had delayed the vessel; and that such amount might be deducted from the amount of bail brought in and paid over to them, refused, with costs, on the ground that the proceedings were not vexatious, nor such as to subject the party to the claim set up. *The Apollo*, 1 Hag. 306.

2310. The court has jurisdiction to arrest a vessel in an action of restraint at the suit of a part owner holding a minority of shares, notwithstanding that the vessel is about to proceed on a voyage approved of by a majority of the part owners, and is being employed under a charter entered into by the ship's husband, appointed to act on behalf of all the owners. *The Talca*, 5 P. D. 169; 4 Asp. N.S. 226.

2311. It is not a bar to the claim that the manager or ship's husband who arranged the employment of the ship was appointed with their acquiescence if they give reasonable notice of their objection to the employment of the ship. *Ibid.*

2312. Bill by one part owner against the master and other part owners, prayed an account of past earnings of the ship. *Held*, that the plaintiff's right to that

relief was no ground for granting an injunction to restrain the sailing of the ship until bail had been given for her safe return. *Ibid.*

2313. As to the jurisdiction on this head of courts of equity prior to the Judicature Acts, see *Castelli v. Cook*, 7 Hare, 89; 13 Jur. 675; *Haly v. Goodson*, 2 Mer. 77; 2 Dodson, 420; *In re Blanshard*, 2 B. & C. 244; *Christie v. Craig*, 2 Mer. 137.

2314. As to practice and bail in such actions, see tit. PRACTICE, pp. 1456, 1462.

2. Employment and Earnings.*

2315. Security having been given in the Court of Admiralty by the majority of the owners of a ship for the share of an owner dissenting from the proposed voyage, and the ship having earned freight on that voyage, *held* (after reference to Sir Leoline Jenkins, who certified the Law Marine and course of the Admiralty so to be), that the dissentient part owner was not entitled to any share of the freight earned on that voyage. *Anon.* (32 Car. 2), 2 Chan. Cases, 36; 6 Vin. Abr. 514; *Boyon v. Sandforth*, Carth. 63; *Wynne's Life of Jenkins*, vol. 2, p. 792.

2316. A part owner of a ship, which had been let to the East India Company for a voyage to India, after the other part owner had expended a large sum in repairing and fitting her out for the voyage, arrested the ship by process out of the Admiralty Court, and compelled the other part owner to give security for his share. The ship afterwards sailed to India and

* (588) The owners of the minority of shares who have obtained bail for the safe return of the ship from a voyage of which they disapprove, cannot derive the slightest advantage from the employment of the ship, and are not entitled to any compensation for her diminished value occasioned by the natural wear and tear of the voyage. The dissentients bear no portion of the expenses of the outfit, and are not entitled to share in the profits of the undertaking, but the ship sails wholly at the charge and risk, and for the profit of, the other owners. See *Maclachlan on Merchant Shipping* (3rd ed.), p. 99; and *Conking's Amer. Adm. Prac.* (2nd ed.), pp. 321, 322.

(589) On the refusal of one part owner of a vessel to give bond to dissolve an attachment on his share, the other part owners gave such bond, and took possession of the vessel, and agreed with the master to sail her on shares. *Held*, that the first part owner could not maintain an action against the master for any portion of the subsequent earnings of

the vessel, especially while the suit in which the attachment was made was still pending. *Taylor v. Richard*, 3 Gray (Mass.) 326. [AMERICAN.]

(590) The owner of a minor part of a vessel having refused to consent to a proposed voyage, his share was appraised, and a bond given to him by the other owners, conditioned that, at the end of the voyage, which was to the West Indies and back, they would restore him his share in the vessel unimpaired, or, if she should be lost, would pay him the appraised value. Instead of returning her directly from the West Indies, they employed her several months in trade from thence to southern ports and back, and thence home. *Held*, that the obligee might maintain an action on the bond for the detention of the vessel. *Rodick v. Hinckley*, 8 Greene, 274. [AMERICAN.]

(591) *Held*, also, that the rate for which she might have been chartered was a reasonable rule for the estimation of damages. *Ibid.*

returned home. *Held*, that the part owner who had taken the security was not entitled to any share of the profits of the voyage, but was bound to pay his proportion of the repairs and outfit, he having been cognizant of the negotiations for the voyage, and having assented to the outfit prior to his arrest of the vessel. *Davis v. Johnston*, 4 Sim. 539.

2317. Where one part owner of a ship freighted her expressly against the consent of the other, and the ship and cargo were lost, *held*, that the loss fell wholly on the partner who freighted. *Horn v. Gilpin*, Amb. 255.

2317a. A vessel chartered for a foreign voyage was arrested in execution of a decree obtained against a part owner for a debt, not the debt of the vessel. A bill for special loosing of arrestments having been presented by the other owners, *held*, that the vessel be allowed to proceed on her voyage, upon caution being found by the owners to make the vessel forthcoming to abide the result of the diligence by placing her within the jurisdiction of the court on her return in as good a condition as at the date of the arrestment; or otherwise, that they should pay the value of the interest validly attached by the arrestment; their rights and interests, and pleas in the matter, being reserved generally to all parties. *Malcolm v. Cook*, 16 Court of Session Cases, 262. [SCOTCH.]

4. Actions for Accounts.

2318. The Court of Admiralty, prior to its abolition by the Judicature Acts, had jurisdiction to decide all questions arising between the co-owners, or any of them, touching the ownership, possession, employment, and earnings of any ship registered at any port in England or Wales, or any share thereof. See the Admiralty Court Act, 1861 (c. 10), s. 8.*

2319. It might settle all accounts outstanding and unsettled between the parties in relation thereto. *Ibid*.

2320. It might direct the ship or any share thereof to be sold. *Ibid*.

2321. And it might make such order in the premises as to it shall seem fit. *Ibid*.

2322. By the 8th section of the Admiralty Court Act, 1861 (c. 10), the Admiralty Court had jurisdiction, on a petition being filed by a part owner of a British ship, alleging that his co-owner, the ship's husband, had rendered false accounts, to order an account to be taken of the earnings and disbursements of the ship and of moneys received upon insurances of ship and freight. *The Idas*, Br. & Lush. 65; 2 N. R. 45.

2323. Under the 8th section of the Admiralty Court Act, 1861 (c. 10), the court had jurisdiction over matters that had occurred between co-owners in relation to the employment of the ship, notwithstanding that the plaintiff might have parted with his shares in the ship prior to the institution of the suit. *The Lady of the Lake*, L. R. 3 A. & E. 29; 39 L. J. Adm. 40; 3 Asp. 317.

2324. The court will appoint a receiver in a co-ownership suit where circumstances exist which, in the opinion of the court, render such a course just and convenient. *The Amphyll*, 5 P. D. 224.

2325. All sums of money paid in respect of any loss or damage, as to which the liability of the owners of any ship is limited by the ninth part of this act, and all costs incurred in relation thereto, may be brought into account among part owners of the ship as money disbursed for the use thereof. See the M. S. Act, 1854 (c. 104), s. 515.

2326. A part owner of a vessel, shortly after her return from a voyage, sold his shares in the vessel and her appurtenances to his co-owner, who was also ship's husband. Prior to the sale the ship's husband had made certain disbursements for stores for the next voyage. *Held*, that the ship's husband could not make the disbursements a charge against the vendor in the account between them of the profits of the previous voyage, but must bear them himself. *Robertson v. Dennistoun*, Court of Sessions Cases, 3rd series, vol. 3, p. 829. [SCOTCH.]

* (592) To give the court jurisdiction under this act, the ship concerned must be one registered in England or Wales, the parties to the suit must be co-owners, and the questions between them such as touch ownership, possession, employment, or earnings, the power of settling accounts and of sale being subordinate and simply administrative to the principal questions. *MacLachlan on Merc. Shipping*, Supplement to 3rd ed. p. 60.

(593) To settle accounts means to discharge

them by payment, see the M. S. Act, 1854 (c. 104), s. 191. To assume that it means here to take the accounts, and then to institute a suit for that purpose principally, would be a construction of the language contrary to usage, and an assignment of equity jurisdiction to this court in its largest sense; a construction not justified by the terms employed, and quite contrary to the caution manifested throughout the act against unnecessarily creating concurrent jurisdictions. *Ibid*.

2327. A ship's husband, part owner, in his account of earnings and disbursements, must allow his co-owners the benefit of a deduction allowed by the broker on the commission for the charter-party. *Ibid.*

2327a. When a co-owner acts as ship's agent (not managing owner) for a coasting steamer at one of her ports of call, he cannot in a co-ownership action for the settlement of ship's accounts recover amounts due to him as agent. *The Eider*, 4 Asp. 104.

2328. In an action by one co-owner of a ship against the other co-owners under the Admiralty Court Act, 1861, for a settlement of accounts between the co-owners, the plaintiff is entitled to a settlement of such accounts only as have been or ought to have been rendered to the co-owners prior to the date of the writ in the action, and cannot recover any sum due upon accounts, which in the due course of the ship's business could not be rendered to the co-owners until after such date. *Ibid.*

2329. The plaintiff was owner of eight shares, and the defendant was owner of twenty-eight shares of the schooner *Albion*. The plaintiff having filed his petition under the provisions of the Admiralty Court Act, 1861, an *ex parte* motion on behalf of the plaintiff, and upon the consent of James Willshire, owner of eight shares, and Elizabeth Hellier, who claimed to be equally entitled to four shares of the schooner, was made for an account of the earnings of the vessel since November, 1853, and for a sale. The court (the defendant having had notice of the motion and not having appeared) granted the application. *The Albion*, 1 Asp. 206.

2330. Ship lost; suit by one against the other part owner in the High Court of Admiralty for account. Account ordered to be taken of the earnings and disbursements of the ship, and of moneys received upon insurances of ship and freight. *The Idas*, Br. & Lush. 65; 2 N. R. 45.

2331. A vessel was chartered for twelve months, and during the currency of the charter the charterers made default in certain payments, and the charter lapsed. The vessel was re-chartered by a voyage charter from K. to E. During the performance of this voyage the defendant purchased a share in the vessel. *Held*, on objection to the registrar's report in a co-ownership action, that the defendant was not liable to bear any of the losses

occasioned by the time charter. *The Meredith*, 10 P. D. 69.

2332. All the part owners must be made parties to a bill filed for an account of the profits of the ship. *Moffat v. Farquharson*, 2 Brown, C. C. 338; *Collyer on Partnership*, 683.

2333. Before a voyage it is the duty of each owner to contribute his share of capital for the expenses of the outfit. A ship's husband (part owner) may therefore at once sue his co-owners for their shares of these expenses, and need not wait till the accounts are stated. *Helme v. Smith*, 7 Bing. 715.

2334. Construction of an agreement entered into by the part owners of a ship, with regard to the management of the ship and allowances for brokerage and commission. *Ibid.* See also *Ouston v. Ogle*, 13 East, 538.

2335. Part owners being jointly interested in the use and employment of the ship, the law as to earnings follows the law in partnership cases. *Green v. Briggs*, 6 Hare, 402; 12 Jur. 326; 17 L. J. Ch. 323.

2336. Freight is not in this respect distinguished from other earnings. *Ibid.*

2337. The gross earnings of a ship are liable as between co-owners, and before division amongst them, to the expenses incurred in the fittings up, outfit, and repairs of the vessel, necessarily made to enable her to proceed on the voyage in which the earnings have been gained. *Ibid.*

2338. *Semble*, for this purpose the repairs need not have been exhausted by the voyage. *Ibid.*

2339. Before division of profits among the part owners, a part owner of a ship has a right to require the gross freight to be applied in payment of the expenses of repairs to the hull of the ship, when such repairs were done with a view to the particular adventure in which the earnings were made and without which that adventure could not have been undertaken. *Ibid.*; 6 Hare, 395.

2340. It would seem that the circumstance that the repairs are not exhausted in the adventure does not create any exception to the rule. *Ibid.*

2341. As between mortgagee of a ship and owners, *held*, that before any division of profits the proceeds of the cargo must be applied in payment of the expenses of the outfit of the ship and of the voyage. *Alexander v. Simms*, 18 Beav. 80; 23 L. J. Ch. 721.

2342. As to the mortgagor's right to the gross profits of a voyage without deducting the expenses, *held*, that the rights between a mortgagor and mortgagee of a ship are distinct from the rights between the mortgagee and the other part owners. *Alexander v. Simms*, 18 Beav. 81.

2343. A mortgagor cannot give a mortgagee higher rights against the part owners than he, the mortgagor, himself had. *Ibid*.

2344. Nor can the mortgagee by taking possession acquire any such right. *Ibid*. 82.

2345. Part owners are not partners. *Ex parte Young*, 2 V. & B. 242; *Ex parte Harrison*, 2 Rose, 76.

2346. The share of one therefore is not liable for debts constituting a lien on the share of the others. *Ibid*.

2347. One part owner has upon the profits of another part owner a claim for the latter's share of the disbursements. *Holderness v. Shackles*, 8 B. & C. 612.

2348. The separation of the share and the placing of it in casks marked by his name, *held*, not under the circumstances to operate to divest his co-owners of such claim. *Ibid*.

2349. A ship was abandoned to the underwriters by the assured, and was afterwards liberated, and earned freight, and returned home. *Held*, that the charges of provisions, wages, &c., before the abandonment, were charges on the owner. *Thompson v. Rowcroft*, 4 East, 34, 52.

2350. And that those, after abandonment, were charges on the underwriter. *Ibid*.

2351. A ship owner has no power to insure the interests of his co-owners, unless they specially direct him so to do. *French v. Blackhouse*, 5 Burr. 2728, 2730.

2352. A direction to insure given by one part owner only would not bind the rest. *Ibid*.

2353. As between the owners of a ship and the assignee of the freight the payment of wages and the expense of insuring the ship are proper deductions to be made from gross freight. *Lindsay v. Gibbs*, 4 Jur. N.S. 776; 28 L. J. Ch. 692.

2354. A ship having been arrested in

the Court of Admiralty, the plaintiff, at the request of P., the owner of 62-64ths, entered into a bond for her release. This took place in the absence of the defendant, who was owner of the remaining two 64ths. Judgment was given against P., who became insolvent, and the plaintiff therefore had to pay the amount for which he was bound. *Held*, that he was entitled to recover the sum he had so paid from the defendant. *Barker v. Highley*, 2 N. R. 489.

2355. An account of the profits of a voyage settled by the major part of the owners shall conclude the rest. *Robinson v. Thompson*, 1 Vern. 465.

2356. Accounts certified by one of the partners, *held*, under the circumstances, to be binding on the executors of the deceased partner. *Seemle*, an authority to a member of a dissolved partnership to wind up the concern, close the books, and collect the debts, authorizes the party to state and settle the accounts. *Luckie v. Forsyth*, 3 J. & L. 388.

2357. An account current stated by one partner while temporarily in Scotland, *held* to be binding on another who was partner in the firm at the time the account was stated but who was then in India. *Fergusson v. Fyffe*, 8 Cl. & F. 121.

2358. Managing owners of a privateer having neglected to render accounts and delayed the distribution of proceeds, charged with interest on the balances, and condemned in the costs of a suit for an account. *Pearse v. Green*, 1 J. & W. 135.

2359. As to the part owners who disapprove of the voyage, and exact bail for the ship's safe return, being disentitled to any share of the profits, see cap. 3, s. 2, p. 1419.

2360. For the principles which regulate a court of equity in opening stated and settled accounts, see *McKellar v. Wallace*, 8 Moore, P. C. C. 378.

2361. As to the limitation of actions on merchants' accounts to suits commenced within six years, see the Mercantile Law Amendment Act, 1856 (c. 97), s. 9.

2362. As to laches, see tit. LACHES, p. 800.

2362a. As to accounts of managing owners or ship's husband, see p. 1424.*

* (594) The outfit of the ship, and all other expenses requisite to carry her through the voyage, being in the nature of capital in the adventure, of which each owner is bound to advance his proportion, the amount may be

recovered in an action against him by the ship's husband without waiting the end of the adventure; and when it has terminated, he is entitled to deduct from the gross earnings of the ship all expenses necessarily in-

2362b. As to practice in such actions, see tit. PRACTICE, p. 1463.

5. Sale by Court.*

2363. The Court of Admiralty has jurisdiction to decide all questions arising between the co-owners, or any of them, touching the ownership, possession, employment, and earnings of any ship registered at any port in England or Wales, and may direct the ship or any share thereof to be sold, and make such order in the premises as to it shall seem fit. See the Admiralty Court Act, 1861 (c. 10), s. 8.

2364. This section is retrospective. See *The Idas*, Br. & Lush. 65; 2 N. R. 45.

2365. Motion on behalf of the owner of 16-64th shares for decree of sale of ship under sect. 8 of Admiralty Court Act, 1861 (c. 10), granted, notice of application having been given to the owners of the

other shares, and no appearance having been given for them. *The Albion*, 6 L. T. N.S. 164.

2366. In a suit instituted by part owners for a sale, the defendants, the co-owners of the vessel, claimed damages alleged to have been occasioned by the plaintiffs negligently refusing to sell the vessel when desired to do so by the defendants, whereby the value of the vessel was depreciated. *Held*, that the court had jurisdiction under the 8th section of the Admiralty Court Act, 1861 (c. 10), to entertain the defendants' claim. *The Ceylon*, 3 Asp. 96.

2367. Under the 8th section of the Admiralty Court Act, 1861 (c. 10), the court has a discretionary power to direct the sale of a vessel, though opposed by a majority of the owners. *The Nelly Schneider*, 3 P. D. 152; 4 Asp. 54.

2368. The court granted an injunction *ex parte*, restraining the defendant in an action of co-ownership from dealing, and

curring for it on the same adventure before distributing the profits among the owners. *Maclachlan on Merchant Shipping* (3rd ed.), p. 104.

(595) An insurance effected on the ship, or the ship and freight, as it is no part necessarily of the joint adventure, cannot be charged upon the joint proceeds without the common consent of the owners. *Ibid.* p. 105.

(596) A prior settlement of accounts by the majority of the owners is binding on the others, and in the absence of fraud or gross error a suit by one owner to re-open the accounts after such a settlement will not be entertained. *Ibid.* p. 104, and the cases there cited.

(597) As to the functions, appointment, and remuneration of ship and insurance brokers, *ibid.* (3rd ed.), pp. 187—193.

(598) One part owner of a vessel and cargo has no lien on the shares of another for advances made on a voyage, or for a general balance of accounts. *Braden v. Gardner*, 4 Pick. 456; *Patton v. The Randolph*, 457; see *Johnson v. The M'Donough*, Gilpin, 101. [AMERICAN.]

(599) On the refusal of one part owner of a vessel to give bond to dissolve an attachment on his share, the other part owners gave such bond, and took possession of the vessel, and agreed with the master to sail her on shares. *Held*, that the first part owner could not maintain an action against the master for any portion of the subsequent earnings of the vessel, especially while the suit in which the attachment was made was still pending. *Taylor v. Richard*, 3 Gray (Mass.) 326. [AMERICAN.]

* (600) As to the court's jurisdiction as to sale prior to the Admiralty Court Act, 1861, see *The Margaret*, 2 Hagg. 275; *Ouston v. Hebden*, 1 Wils. 101.

(601) For the laws of Scotland, France, Hamburg, Rotterdam, and the Hanse Towns, as to the cases in which a dissentient part owner's shares may be sold or forfeited, see *Maclachlan on Merchant Shipping* (3rd ed.), pp. 98, 99.

(602) By an action of Sett, the law of Scotland enables any part owner to fix the price at which his own shares might be purchased by the others, or theirs by him. The commissioners for assimilating the mercantile law of England and Scotland had the point (*viz.*, the difference between the law of England and Scotland as to the sale of a dissentient owner's share) under serious consideration, but were obliged to report without being able to recommend an alteration. *Ibid.* p. 98.

(603) Sale of ship decreed at the instance of the owner of a moiety. *Skinner v. The Sloop Hope*, Bee, 2. [AMERICAN.]

(604) Moiety owners were divided in opinion as to the voyage to be undertaken. Sale of vessel decreed, overruling decision of the court below. *Davis v. The Brig Seneca*, 18 American Jur. 486. [AMERICAN.]

(605) The ordinance of Louis XIV. as to sale of a ship under such circumstances held part of the general maritime law. *Ibid.*

(606) See the opinion of Mr. Justice Story in favour of the Admiralty jurisdiction to decree a sale of the vessel when her owners disputed as to her employment, in *Story on Partnership*, ss. 435—439. [AMERICAN.]

the registrar from registering any dealing, in the shares of the ship, the subject of the action. *The Horlock*, 2 P. D. 243; 36 L. T. 622.

2369. The court will not exercise the power of sale conferred on it by the Admiralty Court Act, 1861 (c. 10), s. 8, by ordering the sale of a ship, unless a part owner—whether he be the owner of a minority or majority of shares—makes out a very strong case. Continued and embittered disagreements between two part owners held not to constitute sufficient reason for the interference of the court. *The Marion*, 10 P. D. 4.

2370. As to sale of ship abroad by the master, see tit. OWNERS, Pt. I. p. 1220.

As to sale on non-qualified owner becoming entitled, *ibid.* p. 1205.

2371. As to registration on sale generally, *ibid.* c. 3, p. 1184; and as to sale of ship generally, and certificates of sale, *ibid.* c. 8, pp. 1214—1227.

2372. As to sale of ship by the court for damage, salvage, costs, &c., see tit. PRACTICE, p. 1461.

6. Managing Owner or Ship's Husband.*

1. Generally.

2373. The name and address of the managing owner for the time being of

* (607) The ship's husband is either a part owner or a stranger, and may be appointed by writing or parol. His duties are to see to the proper outfit of the vessel, to have a proper master, mate, and crew, to see to the furnishing of provisions and stores, and to the regularity of all the clearances from the custom house, to settle the contracts, to enter into proper charter-parties, or engage the vessel for general freight, to settle for freight, to preserve proper certificates and documents in case of future disputes with insurers and freighters, and to keep regular books of the ship. But without special powers he cannot borrow money generally for the use of the ship, though he may settle accounts, and grant bills for them, which will form debts against the concern. Collyer on Partnership (2nd ed.), B. 5, ch. 4, s. 4; and see MacLachlan on Merchant Shipping (3rd ed.), p. 182 *et seq.*

(608) The ship's husband is the accredited agent of the owners, and they are bound by all contracts made on their behalf within the scope of his authority for the purposes of the ship, in connection with her employment, if they are proper and necessary for her at the time; but repairs, it seems, are not improper if necessary to make the ship seaworthy and fit for the voyage, merely because they are too substantial to be exhausted by the intended voyage. He has no implied authority, however, to bind them by a contract of insurance on the ship, for he is the agent of the part owners, not as proprietors, in which respect they are divided and several, but as joint adventurers in her employment, and partners in the trafficker profit or loss. MacLachlan on Merchant Shipping (3rd ed.), p. 185.

(609) A ship's husband is *prima facie* the agent of all the owners for the management of the ship, with the requisite authority for that purpose, and any defence in derogation of such implied authority, either that the agent was not to deal on credit, or only to pledge his own name, must, it seems, be

proved by the owners as being known to the creditor. *Ibid.* p. 113.

(610) See further as to the function, authority, and duties of ship's husband or managing owner, *Ibid.* pp. 182, 186.

(611) As to the appointment and remuneration of ship's husband, see Maude & Pollock on Merchant Shipping (4th ed.), p. 106.

(612) The managing owner of a vessel represents the interest of all, and has the same power which the major part in interest have, with respect to the change of employment, and the preparation and outfit of the vessel in a manner suited to the profitable employment in the business to which he is destined. *Hall v. King*, 10 Shep. 461. [AMERICAN.]

(613) The ship's husband or managing owner may bind the other owners for the outfit, care, and employment of the vessel, but he has no power to purchase a cargo on their credit without authority from them. *Hewitt v. Buck*, 5 *Ibid.* 147. [AMERICAN.]

(614) The ship's husband, in the absence of all special agreement, is presumed to have authority to do everything necessary to be done for the employment of the vessel, and has authority to make repairs and bind the vessel for the same; but as between the owners, he cannot subject them to expenses when forbidden so to do, and such expenses may be charged to his own share. *Revens v. Lewis*, 2 Paine, C. C. 202. [AMERICAN.]

(614a) In France, the managing owners (*armateurs*) are responsible to their co-owners for negligence in the discharge of their functions, and even a ratification of the acts of the managing owner by his co-owners, whilst ignorant of the nature of his conduct, is no bar to their claim; but in estimating the loss they have sustained, it will be taken into account whether or not they have imprudently embarked in a speculation under the direction of a person well known to be inexperienced. D. L. 1879, II. 125.

every British ship, registered at any port or place in the United Kingdom, shall be registered at the custom house of the ship's port of registry. Where there is not a managing owner, there shall be so registered the name of the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner; and any person whose name is so registered shall, for the purpose of the M. S. Acts, 1854 to 1876, be under the same obligations, and subject to the same liabilities, as if he were the managing owner. Penalty for breach against the owner, or if more than one owner, against each owner in proportion to his interest in the ship, £100 each time the ship leaves any port in the United Kingdom. The M. S. Act, 1876 (c. 80), s. 36.

2374. A managing owner registered pursuant to the M. S. Act, 1876 (c. 80), s. 36, is no more and no less than a managing owner before the act. He binds the owners, whose agent he is, but not the other owners. *Frazer v. Cuthbertson*, 6 Q. B. D. 93; 50 L. J. C. L. 277.

2375. Before a voyage it is the duty of each owner to contribute his share of capital for the expenses of the outfit. A ship's husband (part owner) may therefore at once sue his co-owners for their share of these expenses, and need not wait till the accounts are stated. *Helme v. Smith*, 7 Bing. 709, 715.

2376. Agreement between ship's husband (part owner) and each and every of the others that a full account should be made of the ship's earnings on the voyage, and the nett profits divided. *Held*, that for not making out the accounts and dividing the profits within a reasonable time after the ship's return an action lies against the ship's husband, though it be not averred in the declaration that the charges were or could have been ascertained before suit brought, for that is matter of defence. *Owston v. Ogle*, 13 East, 538.

2377. An express authority is necessary from a part owner of a ship to the ship's husband to order works not necessary as repairs, such as lengthening a ship; but such authority once given cannot be revoked after it has been acted upon, and it is for the part owner when sued for contribution to prove that it was revoked before the works were commenced, or a contract for them entered into. *Chappell v. Bray*, 30 L. J. Exch. 24.

2378. In an action against one of the

owners for work done to one of his vessels by order of the ship's husband (himself a part owner as to some of them) such owner will be liable, unless it be shown that the dealing was that the person who directed the work to be done should be looked to exclusively. *Thompson v. Fin-den*, 4 C. & P. 158; but see next case.

2379. Necessaries were supplied to a ship on the order of A., the ship's husband (himself a part owner), by whom alone the ship was managed. The defendant, a co-owner, knew that A. was the ship's husband, and had received a share of the profits. *Held*, to be evidence against the defendant in an action for necessaries, notwithstanding that the plaintiff had accepted in payment the brokers' bills, and the brokers having become bankrupt, had proved against their estate for the amount. *Whitwell v. Perrin*, 4 C. B. N.S. 412.

2380. H. agreed with his co-owners that they should be ship's husbands, and that for £900 they should have the earnings of the vessel for six months. Repairs being necessary during this period, *held*, that the co-owners had power to pledge H.'s credit for the repairs. *Preston v. Tamplin*, 2 H. & N. 363, 684.

2381. Ship's husband kept at his banker's a separate account as to the ship's disbursements and profits. *Held* that the other part owners could not sue the bankers in respect of sums carried to that separate account. *Sims v. Brittain*, 4 B. & Ad. 375; *Ex parte Gribble*, 3 D. & Ch. 339.

2382. A ship's husband, although he has authority to enter into a charterparty, has no authority to cancel the same and to pay the charterers a sum for the cancellation, although such compromise is for the benefit of the owners. *Thomas v. Lewis*, 4 Ex. D. 18; 48 L. J. C. L. 7.

2383. A part owner of a vessel, shortly after her return from a voyage, sold his shares in the vessel and her appurtenances to his co-owner, who was also ship's husband. Prior to the sale, the ship's husband had made certain disbursements for stores for the next voyage. *Held*, that the ship's husband could not make these disbursements a charge against the vendor in the account between them of the profits of the previous voyage, but must bear them himself. *Robertson v. Dennistoun*, 3rd series, vol. 3, 829. [SCOTCH.]

2384. A ship's husband (part owner) in his account of earnings and disbursements must allow his co-owners the

benefit of a deduction allowed by the broker on the commission for the charter-party. *Ibid.*

2385. *Semble*, he must also allow them the benefit, although he is not a part owner. *Ibid.*

2386. A broker who had received money for freight on account of the owners of the ship, offered to pay it by cheque to the master, who was also managing owner. This the master declined, preferring that the broker should open a credit for him at a bank in New Brunswick in favour of H., which the broker did. The bank accordingly paid H. £250, for which H. gave a bill drawn by him in favour of the bank upon the broker, who accepted and paid it when due. The broker having sued the co-owners for the balance of his account, *held*, that this was a good payment of £250 by the broker, and binding on the co-owners. *Anderson v. Hillies*, 21 L. J. C. P. 150.

2387. The ship's husband has authority to do whatever is necessary to enable the ship to prosecute her voyage and earn freight; and where, in order to release his ship, a ship's husband, who was also managing owner, induced a person to become bail in the Admiralty Court, it was *held* that he was acting within his authority, and that his co-owner was liable to the bail. *Barker v. Heighley*, 1 Asp. 353.

2388. As to accounts between part owners generally, see p. 1420, and notes 594—599, pp. 1422, 1423.

2. Remuneration.

2389. A part owner, the manager of a ship, is entitled to remuneration for his

services, but there is no commission or fixed rate applicable. *The Meredith*, 10 P. D. 69.

2390. See also Nos. 2384 and 2385, *supra*.

7. Assignees of Bankrupt Owners.*

2391. No registered mortgage of any ship or share shall be affected by any act of bankruptcy committed by the mortgagor after the date of the record of the mortgage, notwithstanding the mortgagor at the time of his becoming bankrupt may have, in his disposition, and be reputed owner of, such ship or share; and such mortgage shall be preferred to any right, claim, or interest of the assignee of such bankrupt to such ship or share. See M. S. Act, 1854 (c. 104), s. 72.

2392. In an action brought under the 4th section of the Admiralty Court Act, 1861 (c. 10), for building and equipping a vessel, the defendants pleaded that the alleged causes of action became vested in a trustee for the plaintiffs' creditors under a composition deed. The plaintiffs, in reply, alleged that they assigned the causes of action prior to the execution of the deed, and that they were suing as trustees for their assignees. *Held*, that they might sue as trustees, although, subsequent to the assignment, they had executed a composition deed. *Held*, also, that, although the assignment of the causes of action was prior to the arrest of the vessel and the commencement of the action, it carried with it the inchoate

* (615) If any bankrupt, at the time he becomes bankrupt, has, by the consent and permission of the true owner, in his possession, order, or disposition, any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the court has power to order them to be sold for the benefit of the creditors under the bankruptcy; but this shall not affect any transfer or assignment of any ship, or share, made as a security for any debt by way of mortgage or assignment duly registered. The Bankruptcy Law Consolidation Act, 1849 (c. 106), s. 125. This act is repealed by 32 & 33 Vict. c. 38, s. 20. The Bankruptcy Act, 1869 (c. 71) (also repealed), contained no similar exception on this subject, nor does the Bankruptcy Act, 1882 (c. 52) (now in force), probably because

the 72nd section of the M. S. Act, 1854 (c. 104), was considered to render any such provision unnecessary.

(616) A bill of sale of a ship, though not registered, will now be good as against the trustee of the vendor, if the ship is in the possession of the vendee at the time of bankruptcy, the M. S. Act Amendment Act, 1862 (c. 63), having required equitable interests in ships to be recognized (*Stapleton v. Hayman*, 2 H. & C. 318; 10 Jur. N.S. 497; 33 L. J. Exch. 170.) It is apprehended, however, that where the interest and the ship are in a third party, notice of the transaction ought to be given to him. (See *Bank of Liverpool v. Turner*, 1 J. & H. 159; 2 D. F. & J. 502). Robson's Law of Bankruptcy (4th ed.), p. 494.

right to proceed against the vessel. *The Wasp*, L. R. 1 A. & E. 367; 2 Asp. 552.

2393. A shipbuilder sold a ship which he was building, and agreed to complete it. It remained in his possession down to his bankruptcy. *Held*, that it was not within his order and disposition. *Holderness v. Rankin*, 28 Beav. 180; 29 L. J. Ch. 753.

2394. Assignees are not bound to act with the same degree of liberality as the owner himself. As trustees for creditors, they are not at liberty to submit to demands which may appear at all questionable, but must take the best means in their power to render the estate of the bankrupt as beneficial as possible to the persons with the care of whose interests they are intrusted. *The Alexander*, 1 Dodson, 278.

2395. Assignees are in no better situation in opposing a bottomry bond than owners where there is no bankruptcy. *The St. Catherine*, 3 Hagg. 253.

2396. Assignees of a bankrupt shipowner have a *persona standi* to appear for the benefit of the general estate, and contest the appropriation of the proceeds of the ship, against the assignees of the freight seeking to make the ship alone liable in the first instance, and this notwithstanding the shipowner had, prior to his bankruptcy assigned his interest in the ship to other parties not before the court, as a security for money advanced. *The Dowthorpe*, 2 W. Rob. 73.

2397. In a question as to the appropriation of the proceeds of ship and freight in satisfaction of outstanding judgments against them for bottomry, wages, pilotage, &c., where a part owner had become a bankrupt, but had previously assigned to one party his interest in the ship, and to another party his interest in the freight, of whom the assignees under his bankruptcy and the assignees of the freight were before the court, and the other part owner, who was alleged also to have become a bankrupt, was not before the court, the court entered into an investigation of the relative claims of the parties, and apportioned the proceeds among them accordingly. *Ibid.* 73, 86.

2398. *Semble*, a power of attorney to sell a ship is not so revoked by a decree of the grantor's insolvency in a colonial possession as to invalidate a *bond fide* exercise of the power before notice of insolvency. *The Margaret Mitchell*, Swabey, 382; 4 Jur. N.S. 1194.

2399. The owners of a ship are not in-

terested in it as joint tenants, but as tenants in common. Upon a bankruptcy, therefore, the bankrupt's share passes to the creditors under the bankruptcy without being liable specifically to the claims of the other part owners in respect of their disbursements and liabilities for the ship. *Ex parte Harrison*, 2 Rose, 76; *Ex parte Young*, 2 Ves. & B. 242.

2400. One of three partners in a ship and cargo paid only a proportion of his share and then became bankrupt. The remainder of his share was, after the commencement of the adventure, paid by his co-owners. *Held*, that as between the co-owners and the bankrupt's assignees, the co-owners did not, by their payment of the remainder of the bankrupt's share, become preferentially entitled to such share. *Smith v. De Silva*, 2 Cowper, 469.

2401. When the transfer is not expressed to be by way of mortgage, the protection which the Ship Registry Act intended to afford the mortgagee against the creditors of a bankrupt shipowner is not obtained, and the vendee, appearing on the registry to be owner, may be subject to all the liabilities which belong to him in that character. *Langton v. Horton*, 5 Beav. 19.

2402. By the provisions of the Act 1696, a disposition otherwise perfect, valid, and unimpeachable, shall not stand against a trustee in a sequestration, if granted voluntarily within sixty days of bankruptcy in favour of one creditor in preference to others in satisfaction or security of a prior debt. *Held*, that the provisions of this act are not repealed by the provisions of the Registry Act, declaring that a registered mortgage of a ship shall confer an indefeasible right on the mortgagees. In a reduction of a transfer of ships executed within sixty days of bankruptcy, though registered before bankruptcy at the instance of the trustee, a defence founded on the registry act repelled. *Anderson v. Western Bank*, 21 Court of Sess. Cases, 230. [SCOTCH.]

2403. Three partners who carried on a joint trade of shipping goods were registered as part owners of the vessels belonging to the concern, each in the proportion of a third share of each vessel. One of the partners having become bankrupt and his estates being sequestrated; *held*, in a question between his trustee and the other partners, that as the vessels had not been registered in the

name of the company as partnership property, his co-partners were not entitled to claim them as company property to be dealt with according to the provisions of a contract which had been entered into between the partners, and as the shares of the bankrupt stood in the register in his name individually, the shares passed to his trustee. *McArthurs v. McBriar and Johnstone's Tr.*, June 20, 1844; 6 D. 1174; 16 Jur. 513. [SCOTCH.]

2404. See, as to the doctrine of reputed ownership, *Joy v. Campbell*, Tudor's

Leading Cases on Mercantile and Maritime Law (3rd ed.), p. 695.

2405. As to transfer of ship or shares by bankruptcy, see Pt. I. c. 3, s. 24, p. 1204.

2406. As to rights of mortgagees as against assignees, see tit. MORTGAGE, p. 1145; and as to bankrupt mortgagors and mortgagees, see Pt. I. c. 3, s. 24, pp. 1141—1143.

2407. As to the *persona standi* of assignees, see tit. PRACTICE, Pt. II. c. 6, s. 13.*

* (617) As to the adjustment of the interests of part owners on the bankruptcy of one of them, see Abb. Sh. (12th ed.), p. 64, and cases there cited.

(618) As to the effect, on the vendee's title, of bankruptcy of, or execution against, the vendor, see Maude & Pollock on Merchant Shipping (4th ed. by Poll. & Bruce), p. 51.

(619) If the vendor becomes bankrupt between the execution and the registration of the bill of sale, and there be laches on the part of the vendee, the shares pass to the assignees, because they were at the time in the order and disposition of the bankrupt. Mac-lachlan on Merchant Shipping (3rd ed.),

p. 37, citing *Boyson v. Gibson*, 4 C. B. 21, and *Campbell v. Thompson*, 2 Hare, 140.

(620) The interest of part owners in ship and adventure is not affected by the bankruptcy of one of them after the commencement of the voyage, although he has not paid his full share of the outfit. In such a case, if the other part owners have in that character paid the expense of the outfit, or made themselves responsible for it, they will have a right to deduct his share from the portion of the profits to be paid to his assignees. Mac-lachlan on Merchant Shipping (3rd ed.), p. 106; see *Ex parte Harrison*, 2 Rose, 76; *Ex parte Young*, 2 Ves. & B. 242.

PILOTS.

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18. Unqualified—

Generally 1451

1. *Generally.**

1. The fifth part of the M. S. Act, 1854 (c. 104), s. 330, relating to pilotage, applies to the United Kingdom only, and does not apply to Queen's ships. See M. S. Act, 1854 (c. 104), s. 4.

2. The General Pilotage Act, 6 Geo. 4, c. 125, was held to apply to England only. *The Eden*, 2 W. Rob. 443.

3. "Pilot" in this act means any person not belonging to a ship who has the conduct thereof. See M. S. Act, 1854 (c. 104), s. 2.

4. There is no implied contract between the owners of a ship and a pilot whom they are compelled to employ that the pilot shall take upon himself the risk of injury from the negligence of the shipowners' servants, and an action will lie by the pilot against the shipowners for injuries caused to him whilst acting as pilot on board their vessel by the negli-

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"OWNERS," Pt. II. pp. 1254, 1321.

gence of their servants. *Smith v. Steele*, L. R. 10 Q. B. 125; 44 L. J. Q. B. 60; 32 L. T. 195; 23 W. R. 388.

5. And where a pilot went on board a vessel in the course of his duty, in a district in which pilotage is compulsory, and while he was on board a boat which had been negligently slung by servants of the shipowners fell on and killed him; held, that his widow could recover in an action brought by her as executrix under Lord Campbell's Act. *Ibid.*

5a. It is a settled doctrine of the Admiralty Court, that no pilot is bound to go on board a vessel in distress to render pilot service for mere pilotage reward. His refusal, under such circumstances, would subject him to no censure; and, if he did take charge of a vessel so circumstanced, he would be entitled to a salvage remuneration. *The Frederick*, 1 W. Rob. 17.

* (1) The prior statutes relating to pilots were repealed by 6 Geo. 4, c. 125, and that act and 9 Geo. 4, c. 86; 3 & 4 Vict. c. 68; 12 & 13 Vict. c. 88, and the Pilotage Law Amendment Act, 1853, c. 129, comprised the law in regard to them until the passing of the M. S. Act, 1854 (c. 104) (except as to compulsory pilotage, as to which see tit. OWNERS, Pt. VII. p. 1349). The M. S. Act, 1854 (c. 104), and the M. S. Repeal Act, 1854 (c. 120), repealed the above acts to the following extent, viz. 6 Geo. 4, c. 125, except as to rates of pilotage then existing; 12 & 13 Vict. c. 88, altogether; and the Pilotage Amendment Act, 1853 (c. 129), except as to sects. 3, 4, 5, 8, 10, 11, 12, 13, and part of sect. 9, being sections relating to the Cinque Ports.

(2) Sect. 331 of the M. S. Act, 1854 (c. 104), having enacted that all pilotage authorities shall retain the powers and jurisdiction they possessed at the time of the passing of that act, so far as they are consistent with the

provisions of that act; and sect. 353 having enacted that all compulsions and exemptions as to the employment of pilots existing when this act came into operation should continue until altered, some of the provisions of the General Pilot Act, 6 Geo. 4, c. 125, notwithstanding the act is repealed by the M. S. Repeal Act, 1854 (c. 120), are still in force. As to the extent thereof see tit. OWNERS, Pt. VII. pp. 1360—1366.

(3) For the names of pilots and the limits for which they are licensed in the several pilotage districts in the United Kingdom, see Parliamentary Returns as to Pilotage, Nos. 325 of 1882, and 222 of 1884.

(4) For the Commercial Code of Russia as to pilots, see *Nautical Mag.*, Feb. 1885, p. 186.

(5) For the declaration between Denmark and Sweden relative to pilotage in the Sound, signed at Copenhagen, August 14, 1873, see 14 *Hertslet's Treaties*, p. 265.

2. Jurisdiction.

1. Admiralty Branch of the Probate, Divorce and Admiralty Division.

Generally.

See tit. JURISDICTION, Pt. I. p. 638.

2. The Court of Admiralty before the Judicature Act.

(a) Generally.*

6. The Court of Admiralty, prior to its abolition under the Judicature Acts, had jurisdiction to enforce claims for pilotage. *The Nelson*, 6 C. Rob. 227; *The Benjamin Franklin*, *ibid.* 350; *The Bee*, 2 Dodson, 498; *The Dowthorpe*, 2 W. Rob. 73; *The Phæbe*, Stuart's Rep. (Lower Canada), 60; and see 2 Will. 4, c. 51, s. 6.

7. A pilot is a mariner, and as such might sue for his wages in the Court of Admiralty, unless the work was done within the body of a county, in which case he could not sue there. *Ross v. Walker*, 2 Wils. 264.

8. By the ancient maritime law, the Court of Admiralty had an equity to moderate or supersede extortionate contracts made under the pressure of necessity arising out of the situation of a vessel at sea. This jurisdiction might embrace a case of extortionate contract for pilotage services. *The Nelson*, 6 C. Rob. 231.

9. The Court of Admiralty had no

jurisdiction generally, nor under the provisions of the Admiralty Court Act, 1861 (c. 10), s. 7, to enforce a claim against a pilot for damage by collision caused by him while employed as a pilot. *The Urania*, 5 L. T. N.S. 402; 10 W. R. 97.

10. The Court of Passage, and *semble*, an Admiralty County Court, in the exercise of its Admiralty jurisdiction, could not entertain a suit by the owner of a ship injured by collision against the pilot in charge by compulsion of law of the wrongdoing vessel. *The Alexandria*, L. R. 3 A. & E. 574; 41 L. J. Adm. 94; 27 L. T. 565; 1 Asp. N.S. 464.

(b) Bond to Trinity House.†

11. The Court of Admiralty had no jurisdiction to pronounce for the forfeiture of a bond in the sum of £100 given by the pilot to the Trinity House for the faithful discharge of his duties as pilot. *The Urania*, 5 L. T. N.S. 402.

12. The remedy is by proceedings against the pilot in the Queen's Bench Division or in the County Court. *Ibid.* and see *Stort v. Clements*, Peake, 107; *Lawson and another v. Dumlin*, 14 L. T. 350.

3. Admiralty County Courts.

(a) Bond to Trinity House.†

13. A pilot solely to blame for a col-

* (6) A pilot may sue in the Admiralty *in personam* as well as *in rem* for his services in piloting vessels on the high seas, and into and from port. *The Nelson*, 6 Rob. 227; *The Anne*, 1 Mason, 508; and see Conkling's Adm. Prac. (2nd ed.), 298. [AMERICAN.]

(7) The pilot on board a steamboat is entitled to sue for his wages in Admiralty. *The Steamboat Ohio*, Gilpin, 505. [AMERICAN.]

† (8) It seems, however, that such a claim might be entertained in Admiralty by way of set-off. See *The Sophia*, Stuart, 98, and cases therein cited (Lower Canada); and see tit. PRACTICE.

‡ (9) A curious question may arise in consequence of this decision. The whole of the coast line of England has now been placed for the purposes of the act within the jurisdiction of certain county courts, and considering the restrictions placed upon instituting suits in Chancery courts, every "Admiralty cause" must arise within a district framed under the act. If, then, these county courts alone have jurisdiction in Admiralty causes, is there any way whatever in which a proceeding can be taken

against a pilot in a county court? This decision holds that the county courts have no jurisdiction on their Admiralty side, and the 5th section seems to say that no county courts can try a cause of "damage by collision" against a pilot on their common law side, as such a cause is an Admiralty cause within the meaning of those words as used in sect. 3 of the act. Sect. 3, it should be noticed, gives jurisdiction "in the following causes (in this act referred to as Admiralty causes);" it does not expressly say that the county courts are to have an Admiralty jurisdiction, and it therefore would seem reasonable to suppose that "damage by collision" did not refer only to such damage as is cognizable by the High Court of Admiralty. The only way out of the difficulty, however, would seem to be to take the words "Admiralty cause" as meaning such a cause as the High Court has jurisdiction over, and considering all other causes, although of an exactly similar nature, as common law causes. Such a cause as this would then be cognizable by any county court. 1 Asp. 464, n.

lision may be sued in respect thereof under his bond, in a County Court to the extent of the bond, but not in an Admiralty action in an Admiralty County Court. *Flower v. Bradley*, 44 L. J. Exch. 1; 2 Asp. N.S. 489; *The Alexandria*, L. R. 3 A. & E. 574; 41 L. J. Adm. 94; 1 Asp. N.S. 464.

13a. As to the jurisdiction of Admiralty County Courts generally, see tit. JURISDICTION, Pt. I. p. 677.

13b. As to the practice of Admiralty County Courts, see tit. PRACTICE, p. 1464.

4. County Courts.

See Nos. 12 and 13, *supra*.

3. Board of Trade.

14. The Board of Trade has power by provisional order to exempt the masters and owners of all ships or classes of ships from being obliged to employ or pay pilots in any pilotage district or part thereof, and to annex any conditions to such exemptions. See M. S. Act Amendment Act, 1862 (c. 63), s. 39, sub-s. 4.

14a. As to its powers to constitute transfer and re-arrange pilotage authorities, see Nos. 17—19, *infra*.

14b. As to its powers to grant pilotage certificates, see p. 1443.

4. Pilotage Authorities in general.

1. Powers up to 1854.*

15. Every pilotage authority retains all the powers and jurisdiction it lawfully possessed at the time of the passing of this act, and consistent therewith, but no further. See M. S. Act, 1854 (c. 104), s. 331.

16. "Pilotage authority" in this act includes all bodies and persons authorized to appoint or licence pilots, or to fix or alter rates of pilotage, or to exercise any

jurisdiction in respect of pilotage. *Ibid.* s. 2.

2. Powers of Board of Trade.

(a) To create.

17. The Board of Trade has power by provisional order to constitute a pilotage authority, and to fix the limits of its district in any place in the United Kingdom where there is no such authority; so, however, that in the new pilotage districts so constituted there shall be no compulsory pilotage, and no restriction on the power of duly-qualified persons to obtain licences as pilots. See M. S. Act Amendment Act, 1862 (c. 63), s. 39, sub-s. 3.

(b) To transfer and re-arrange—.*

18. The Board of Trade, by provisional order, has power whenever any pilotage authority residing or having its place of business at one port has jurisdiction in matters of pilotage in any other port:

To transfer so much of the jurisdiction as concerns such last port to any harbour trust or other body exercising jurisdiction in maritime matters at that port, or to any body to be constituted for the purpose by the provisional order, or to the Trinity House of Deptford Strond, or to a new body corporate or body of persons to be constituted for the purpose by the provisional order:

To make the body corporate or persons to whom the transfer is made a pilotage authority within the meaning of the principal act, with such powers for the purpose as may be in the provisional order mentioned:

To determine the limits of the district of the pilotage authority to which the transfer of jurisdiction is made:

To sanction a scale of pilotage rates for the pilots licensed by that pilotage authority:

To determine to what extent and under what conditions pilots shall continue to act under the new pilotage authority:

To sanction arrangements for the apportionment of pilotage funds between the

* (10) The Board of Trade has exercised the powers conferred by these sections by the transfer of the jurisdiction of the port of Newcastle-upon-Tyne to the Tyne, the creation of independent pilotage jurisdiction at the Tyne, Hartlepool, and Sunderland. See tit. OWNERS, Pt. VII. *sub nomine*.

(11) Also by the transfer of the pilotage

jurisdiction previously possessed by the port of Bristol over the various ports of Cardiff, Newport, Gloucester, Penarth, and Swansea, by the creation of a quasi-independent pilotage jurisdiction at each of such ports, and the creation of pilotage jurisdiction at the ports of Burntisland, Sandhaven, Carlingford Bar and Portrush. *Ibid.*

pilots under the jurisdiction of the old and new authorities :

To provide for compensation or superannuation to officers not continued by the new authority. *Ibid.* sub-ss. 1, 2.

19. As to the mode of proceeding for obtaining such provisional orders from the Board of Trade, see *Ibid.* s. 40.

3. *Powers to License for Parts of Seas.*

20. Any pilotage authority, if authorized by Order in Council, may grant special licences qualifying grantees to act as pilots for any part of the sea or channels beyond the limits of any pilotage authority, but so, that no pilot so licensed is entitled to supersede an unlicensed pilot outside the limits of the authority by which he is licensed. See M. S. Act, 1872 (c. 73), s. 11.

4. *Bye-Laws.*

(a) *Power to make and alter—*

21. Subject to this act every pilotage authority, by bye-law made with the consent of her Majesty in Council, may determine the qualifications of pilots; make regulations as to pilot boats and ships, and for the government of pilots generally; and as to their licences; and also as to the granting of pilotage certificates; fix, under certain limitations, penalties for breach of such regulations by pilots, apprentices, masters and mates; also may alter and reduce the rates of pilotage; arrange the limits of pilotage districts; establish funds for the relief of superannuated or infirm pilots or of their wives, widows, or children; make regulations with respect to such funds, and repeal or alter any such bye-laws. See M. S. Act, 1854 (c. 104), s. 333.

22. Every such bye-law before submitted to her Majesty in Council must be published as prescribed by the Board of Trade, and every such Order in Council is to be laid before both Houses of Parliament. *Ibid.* ss. 334, 335.

22a. As to the remuneration of pilots, see p. 1447.

(b) *Power of Appeal.*

23. If the majority of the qualified pilots of any port, or the local marine

board, where there is one, or where there is none, being not less than six masters, owners, or insurers of ships, consider themselves aggrieved by any regulation or bye-law in force when this act came into operation, or thereafter made under some authority other than of this act, or by any defect or omission therein, they may appeal to the Board of Trade, which may thereupon revoke, alter, or amend the same; and every order so made is conclusive. M. S. Act, 1854 (c. 104), s. 336.

(5) *Pilotage Returns.*

24. Every pilotage authority is to deliver periodically to the Board of Trade in such form and at such times as such Board requires, returns with regard to pilotage within their port or district of all bye-laws or regulations in force, the names and ages of all their pilots or apprentices, and their services, and the rates of pilotage, and the rates and descriptions of all charges upon shipping in respect thereof; the total amount received for pilotage, distinguishing the amounts received from British and foreign ships, and in respect of different classes of ships paying different rates of pilotage, and for the several classes of service rendered by pilots; and the amount paid by ships taking two or more pilots, and the numbers of all such ships; and the receipt and expenditure of all monies received in respect of pilots or pilotage, and allow the Board of Trade, or their appointees, to inspect books or documents relating thereto. *Ibid.* s. 337.

25. The Board of Trade is without delay to cause these returns to be laid before both Houses of Parliament. *Ibid.* s. 339.

26. If any of such pilotage authorities, except the Trinity House, or sub-commissioners of pilotage appointed by it, fail to deliver to the Board of Trade these periodical returns within a year their jurisdiction may be transferred to the Trinity House. *Ibid.* s. 338.

5. *Trinity House, London.*

1. *Generally.**

27. The "Trinity House," in this act, means the master, wardens, and assistants

* (12) The Society of the Trinity House of Deptford Strond, London, was incorporated by charter of King Henry VIII. in the year 1515, p.

for the promotion of commerce and navigation by licensing and regulating pilots, and ordering and erecting beacons, lighthouses,

of the corporation of the Trinity House of Deptford Strond. See M. S. Act, 1854 (c. 104), s. 2.

28. The Trinity House, like every other pilotage authority, retains all its powers and jurisdiction so far as consistent with this act, but no further. *Ibid.* s. 331.

29. The Trinity House may alter such of the provisions of this act as are expressed to be subject to alteration by them, as they might if such provisions had been contained in any previous act instead of this act. *Ibid.* s. 368.

30. Subject to alteration by the Trinity House, a sufficient number of qualified

pilots are to be always ready to take charge of ships coming from the westward past Dungeness; and the Trinity House are, by bye-law, to make such regulations as to the pilots under their control as may be necessary to provide an uninterrupted supply of qualified pilots for such ships, and for their constant attendance upon and due performance of their duty by night and day by cruising between the South Foreland and Dungeness, or by going off from shore upon signals for the purpose, or by both, or other means. *Ibid.* s. 377.

31. The Trinity House, London, are empowered from time to time, at their

buoys, &c. McCulloch's Commercial Dictionary, tit. TRINITY HOUSE.

(13) A similar society, for the like purposes, was afterwards established at Hull, and also another at Newcastle-upon-Tyne, in 1537. *Ibid.*

(14) These three establishments, says Hakluyt, were in imitation of that founded by the Emperor Charles V. at Seville, in Spain. Henry VIII., by his charter, confirmed to the Deptford Trinity House Society all the ancient rights, privileges, &c. of the shipmen and mariners of England, and their several possessions at Deptford, from which it appears that the society had existed long previously. *Ibid.*

(15) Besides the power of erecting lighthouses and other sea-marks on the several coasts of the kingdom for the security of navigation, the Master, Wardens, Assistants, and Elder Brethren are invested by charter with various other powers, the principal of which are, the erection of lighthouses and beaconage of channels, the examination of masters and mates for pilotage certificates, and dockmasters, the appointment of pilots to conduct ships into and out of the Thames, settling the several rates of pilotage, &c. *Ibid.*

(16) A Royal Charter of Confirmation was granted to the Trinity House by King James II., on July 8, 1685, and printed in the year 1763, and a supplementary charter was granted in Nov. 1870. See 1 Maude & Poll. (4th ed. by Poll. & Bruce), p. 250.

(17) See as to the legal status of the London District of the Trinity House, 2 Maude and Pollock (4th ed. by Poll. & Bruce), p. 110; and Orders in Council in *Ibid.* pp. 68—81.

(18) The jurisdiction of the Lord Warden of the Cinque Ports, the constable of Dover Castle or his lieutenant, as to the licensing, remuneration and regulation of pilots, is transferred to the Trinity House, London. See No. 35, *supra*.

(19) The pilotage districts under the jurisdiction of the Trinity House, London, are, the London District, the Outports District, and the English Channel District.

(20) For provisions enabling the Trinity House, London, to make bye-laws to be sanctioned by the Chief Justice of the King's Bench or Common Pleas for the regulation of pilots, and imposing penalties for breach thereof, see 6 Geo. 4, c. 125, s. 11, now repealed.

(21) For regulations made by the Trinity House under the 6th section of the Pilotage Amendment Act, 1853 (c. 129), in relation to Pilotage inwards from the Downs to London, and outwards from Gravesend to the Downs, see those approved by Order in Council of 18th Feb. 1854.

(22) All bye-laws of the Trinity House, London, in force at the date of this act were directed to continue in force until altered. See 6 Geo. 4, c. 125, s. 28, now repealed.

(22a) The 52 Geo. 3, c. 39, is repealed by 6 Geo. 4, c. 125, s. 1.

(23) The following acts of Parliament relate to the Trinity House, London: 5 Geo. 2, c. 21; 48 Geo. 3, c. 104; 52 Geo. 3, c. 39; 6 Geo. 4, c. 125; 16 & 17 Vict. c. 129; the M. S. Act, 1854 (c. 104), Pt. V.; the M. S. Act Amendment Act, 1862 (c. 63), ss. 39—42; and the M. S. Act, 1872 (c. 73).

(24) The 48 Geo. 3, c. 104, seems to be still in force, except in so far as it is repealed by 52 Geo. 3, c. 39, s. 1.

(25) For the several bye-laws of the Trinity House, London, from the years 1826 to 1883, see Parliamentary Returns as to Pilotage, No. 516 of 1855, No. 354 of 1856, No. 5 of 1857, No. 174 of 1858, No. 244 of 1859, No. 287 of 1860, No. 243 of 1861, No. 270 of 1862, No. 264 of 1863, and No. 416 of 1864. See also the Rules and Regulations of August, 1865, also Parliamentary Returns as to Pilotage, No. 408 of 1867, pp. 4, 5; of the 8th April, 1867, *ibid.* pp. 5, 6; and of the 21st December, 1871, *ibid.* and No. 260 of 1872, p. 80, and No. 325 of 1882, p. 186.

discretion, to make regulations as to the piloting of ships or vessels not having British registers, bringing fish, corn, or other provisions into the port of London, and which ought to be piloted by pilots licensed by the Trinity House; for the relief of such ships in respect of the rates of pilotage or for the exemption of such ships from any rules or regulations as to pilotage under this or any other act or law or usage. See 6 Geo. 4, c. 125, s. 51; *semble*, revived by sect. 331 of M. S. Act, 1854 (c. 104).

31a. Ships licensed to pilot ships from any place to the westward up to London Bridge, are to be examined as to their qualifications to conduct ships into and out of Ramsgate, Dover, Sandwich and Margate Harbours, and are obliged to pilot any ships into and out of those harbours. Penalty for breach, the pilotage due, and any other fines established by bye-law. See 6 Geo. 4, c. 125, s. 39. *Semble*, revived by sect. 331 of M. S. Act, 1854 (c. 104).

32. Such a number of the persons employed in piloting passenger steamships up and down the Thames, being freemen of the Watermen's Company, as the Trinity House see fit, shall be licensed as pilots by the Trinity House, for piloting home-trade passenger ships up and down the Thames, between London Bridge and Gravesend. Such licence shall authorize the pilot to act as pilot only on board steam passenger ships being "home-trade ships;" all pilots so licensed are to be designated "Watermen Pilots for home-trade passenger ships." See Bye-laws of the Trinity House, approved by Order in Council, May 1, 1855. See also this bye-law as to the regulations applicable to such pilots.

33. As to the control of the Trinity House, London, over lighthouses, buoys, and beacons, in England and Wales, in the islands of Jersey, Guernsey, Sark, and Alderney, and the adjacent seas and islands, and in Heligoland and Gibraltar, see the M. S. Act, 1854 (c. 104), Pt. VI., and the M. S. Act Amendment Act, 1862 (c. 63), ss. 43—48. As to lighthouses, &c. generally, see tit. TRADE, BOARD or—.

34. The Regulations of the Trinity House under 6 Geo. 4, c. 125, approved

by Chief Justice Abbott on the 19th April, 1826, in reference to pilots licensed by them, are for the most part still in force. See 2 Kay's Shipmaster and Seamen (anno 1875), p. 65.

2. *Within the Cinque Ports.**

35. The jurisdiction as to the licensing, employment, and remuneration of pilots within the Cinque Ports is transferred to the Trinity House, London. See the Pilotage Law Amendment Act, 1853 (c. 129), and the M. S. Act, 1854 (c. 104), s. 370.

3. *Seas or Channels beyond Pilotage Districts.*

36. As to the examination and licensing by the Trinity House, London, of pilots for any part of the sea or channels beyond the limits of any pilotage authority, see M. S. Act, 1872 (c. 73), s. 11; Order in Council of 24th Nov. 1873; and Bye-law of Trinity House, therein set forth, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 81.

4. *London District.*

37. The Trinity House London district comprises the waters of the Thames and Medway as high as London Bridge and Rochester Bridge respectively, and also the seas and channels leading thereto or therefrom as far as Orfordness to the north, and Dungeness to the south. See the M. S. Act, 1854 (c. 104), s. 370.

37a. As to the Cinque Ports District being included in the Trinity House, London District, see tit. OWNERS, Pt. VII. p. 1359.

37b. The port of London for pilotage purposes extends to Gravesend. *The General Steam Navigation Co. v. The British and Colonial Steam Navigation Co.*, L. R. 4 Ex. 238; see also tit. OWNERS, p. 1359, Nos. 1562—1567.

38. Rochester is included in this district. See Parliamentary Returns as to Pilotage, Sessions Paper, No. 325 of 1882, p. 230; and for rates and regulations of pilots between Rochester and the Nore, *Ibid.* p. 186. Maldon also forms part of this district; and as to its limits, *Ibid.* p. 219, and Trinity House Regulations of July, 1874, and tit. OWNERS, Pt. VII. p. 1359.

* (26) For the ancient limits of the Cinque Ports District, see 1 & 2 Geo. 4, c. 76, s. 2; 6 Geo. 4, c. 125, s. 14; and tit. JURISDICTION,

p. 676; but that district is now included in the Trinity House, London District, *vide supra*, p. 1359.

38a. The jurisdiction of the Trinity House at Leith is restricted exclusively to Scotland, and the words in the Leith Trinity House charter, giving that body power to grant pilotage licences "through the seas and along the coasts and islands of the Northern and German Oceans," are mere surplusage, as against any right of the London Trinity House, and confer no right whatever to license pilots in respect of any part of the London Trinity House. *The Oscar*, 2 Asp. 229.

39. As to the rates of pilotage for exempted ships in the London district and the licensing of pilots for such ships, see two Orders in Council of 5th February, 1873, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), pp. 78, 79.

5. *Outports District.**

40. The Trinity House outport districts comprise any pilotage district for the appointment of pilots within which no particular provision is made by act of parliament or charter. See the M. S. Act, 1854 (c. 104), s. 370.

41. As to the different ports of which this district is composed, and the limits thereof, see tit. OWNERS, Pt. VII. c. 10, pp. 1366—1372.

41a. As to the regulations and rates for pilotage in this district, *Ibid.*

42. The Trinity House may establish and alter from time to time rates of pilotage for pilotage performed in any river, port or place, or upon any coast, by any pilots licensed by them; such rates to be regulated as therein mentioned. Notice thereof to be given by hanging up the tables at the several custom-houses of those ports, and no greater or less rates are to be given or taken; penalty for breach, £10. Ships returning through stress of weather or accident into ports in the district of the Isle of Wight, Plymouth and Falmouth are subject to one-half pilotage only. See 6 Geo. 4, c. 125, s. 8. *Semble*, revived by s. 331 of the M. S. Act, 1854 (c. 104).

6. *English Channel District.*

43. The Trinity House English Channel district comprises the seas between

Dungeness and the Isle of Wight. See M. S. Act, 1854 (c. 104), s. 370.

44. As to there being no compulsory pilotage within this district, see tit. OWNERS, Pt. VII. c. 11, p. 1372.

45. As to the rates of pilotage for the English Channel District, see Order in Council of 1st November, 1862, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 74.

7. *Licences.*

(a) *Generally.†*

46. The London Trinity House are required, after due examination, to license, under their common seal, competent persons to act as pilots for conducting all ships navigating the rivers Thames and Medway, and the channels, creeks and docks thereof, or leading or adjoining, between Orfordness and London Bridge, and from London Bridge to the Downs, and from the Downs westward as far as the Isle of Wight, and in the English Channel from the Isle of Wight to London Bridge; and all ships so navigating (except as therein provided) are to be piloted, within such limits, by such pilots, and no other. See 6 Geo. 4, c. 125, s. 2, repealed; but *semble*, revived by M. S. Act, 1854 (c. 104), s. 331.

47. The Trinity House is to continue, after due examination, to appoint and license under their common seal pilots for the purpose of conducting ships within the limits of the London district, the English Channel district, the Trinity House Outport districts, but no pilot is to be hereafter licensed to conduct ships both above and below Gravesend. See M. S. Act, 1854 (c. 104), s. 370.

48. Subject to alteration by the Trinity House, the names of all pilots licensed by their authority are to be published by the fixing up at their house in London of a notice thereof, and transmitting a copy of such notice to the Commissioners of Customs in London, and to the principal officers of customs resident at all ports within the limits for which such pilots are licensed; such notices are to be posted up by the Commissioners at the Custom House in London, and by such officers at the custom houses of the ports at which they

* (27) It seems, therefore, that the rates of pilotage within the Trinity House outport districts may be varied without an Order in Council. See 1 Maude & Pollock (4th ed. by Pollock & Bruce), 274, n.

† (28) For provisions as to the qualification, service and apprenticeship of persons to be so licensed, see 6 Geo. 4, c. 125, s. 3, now repealed.

are respectively resident. *Ibid.* s. 371; and see similar provisions in 6 Geo. 4, c. 125, s. 7.

49. Subject to alteration by the Trinity House, no licence granted by them shall continue in force beyond the 31st day of January following, but it may, upon application of the pilot, be renewed on such or any subsequent day in every year, by indorsement under the hand of the secretary of the Trinity House, or other person appointed for that purpose. *Ibid.* s. 374.

50. *Held*, by the Judicial Committee (affirming the decree of the court below), that a pilot's licence renewed on the 20th of January was within the meaning of sect. 374 of the M. S. Act, 1854, so as to be in operation and effect on the 6th of May following. *Mann v. Malcomson; The Beta*, 3 Moore, P. C. C. N.S. p. 85.

(b) *Home-trade Passenger Ships.*

51. The Trinity House have directed that a certain number of freemen of the Watermen's Company shall be licensed as pilots for piloting home-trade passenger ships between London Bridge and Gravesend, and have issued regulations as to the qualification and conditions for licensing such persons, who are designated "watermen pilots for home-trade steam passenger ships." See such Regulations confirmed by Order in Council of 1st May, 1855, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 69.

(c) *Sub-Commissioners.*

52. The Trinity House is to continue to appoint sub-commissioners (not more than five nor less than three), for the purpose of examining pilots in all districts in which they have been used to make such appointments, and may, with the consent of her Majesty in Council, appoint like sub-commissioners for any other district in which no particular provision is made by any act of parliament or charter for the appointment of pilots; but no pilotage district already under the authority of any sub-commissioners appointed by the Trinity House shall be extended, except with such consent, and no sub-commissioners so appointed shall be deemed to be pilotage authorities within the meaning of this act. See M. S. Act,

1854 (c. 104), s. 369, and similar provisions in 6 Geo. 4, c. 125, s. 5.

(d) *Exempted Ships.*

53. As to the qualifications for, and appointments and duties of pilots of ships exempted from compulsory pilotage on the Thames between London Bridge and Gravesend, and called "pilots for exempted ships," see Bye-law of Trinity House, approved by Order in Council of 5th February, 1873, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 79.

54. As to the qualifications, licensing, and duties of persons appointed for piloting ships exempted from compulsory pilotage between the Nore and Rochester, and called "pilots for exempted ships," see Bye-law of Trinity House, London, approved by Order in Council of 6th September, 1880, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 189.

(e) *Bond on granting—*

55. Subject to alteration by the Trinity House, every Trinity House pilot on his appointment is to execute a bond for £100 for the due observance on his part of the Regulations and Bye-laws of the Trinity House, such bond is free from stamp duty, and from any other charge, except the actual expense for preparing it. See M. S. Act, 1854 (c. 104), s. 372.

(f) *Suspension or Revocation.**

56. The Trinity House may revoke or suspend the licence of any pilot appointed by them, as they think fit. *Ibid.* s. 375.

8. *Pilot Fund.*

57. Subject to alteration by the Trinity House, there shall continue to be paid to them, and carried over to the Trinity House Pilot Fund, a poundage of six-pence in the pound, upon the pilotage earnings of all pilots licensed by them; and three pounds three shillings on the first day of January in every year, by every person licensed by them as pilot in any district or port thereof, not under the superintendence of sub-commissioners. *Ibid.* s. 385.

57a. Every qualified pilot giving a false account of his earnings, or making de-

* (29) The Court of Queen's Bench will not grant a mandamus to review the exercise of the discretionary power of the Trinity House

under sect. 375 of M. S. Act, 1854. See 1 Maude & Pollock on Merchant Shipping (4th ed. by Pollock & Bruce), p. 274, n.

fault in payment of any sum so due from him; penalty, double the amount, and he is further liable to suspension or dismissal. See M. S. Act, 1854 (c. 104), s. 385.

58. Subject to prior charges subsisting thereon, the Trinity House Pilot Fund is chargeable in the first instance with such expenses as the Trinity House may duly incur in performance of their duties in respect of pilots and pilotage, and afterwards subject to alteration by the Trinity House, is to be administered by the Trinity House for the benefit of such pilots, licensed by them after October, 1853, as are incapacitated for the performance of their duty, or of the widows and children of pilots so licensed and incapacitated. *Ibid.* s. 386.

59. The Trinity House, London, may make an equitable arrangement in the administration of the Trinity House Pilot Fund mentioned in the principal act, with reference to the interests of pilots of the ports of Newport and Gloucester, ceasing to be licensed by the Trinity House under the Bristol Channel Pilotage Act, 1861. See M. S. Act Amendment Act, 1862 (c. 63), s. 42.

60. By the Pilotage Law Amendment Act, 1853, now repealed, the funds belonging to the Cinque Ports pilots were merged in the Trinity House Pilotage Fund, and power was given to the Trinity House, London, with the approval of the Board of Trade, to make regulations as to the contributions to the fund by Cinque Port pilots. These payments proving larger than was expected, provision is made for repayment by the Trinity House, London, out of the fund to certain of the Cinque Ports pilots or their representatives of certain sums, and for reducing the annual sum to be paid to the fund by those pilots. See M. S. Act, 1872 (c. 73), s. 10.

60a. Pilots having special licences from the Trinity House, London, for parts of the seas or channels beyond the limits of any pilotage authority, are not required to pay poundage to nor are they entitled to the benefits of the pilot fund. See Bye-law of the Trinity House, approved by Order in Council, dated 20th November, 1873, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 81.

61. Pilots for exempted ships are not required to pay poundage to, nor are

they, or their widows and children, entitled to benefit from the pilot fund. See Bye-law of the Trinity House, London, approved by Order in Council of 5th February, 1873, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 79.

62. For provisions that pilots for exempted ships between the Nore and Rochester shall not be liable to contribute to nor entitled to the benefits of the pilot fund, *Ibid.* 6th September, 1880, in *ibid.* p. 189.

9. *Pilotage where compulsory.*

63. With what ships and under what circumstances the taking of a pilot is compulsory or optional, see tit. OWNERS, Pt. VII. p. 1178.

63a. As to foreign ships, *Ibid.* p. 1354; as to ships carrying passengers, p. 1355; in pilotage authorities districts generally, p. 1357; in the Trinity House, London District, p. 1359; in the Outports District of the same Trinity House, p. 1366; in the Trinity House, Hull District, p. 1372; in the Trinity House, Newcastle-upon-Tyne District, p. 1375; in various other ports in England, p. 1376; in Scotch ports, p. 1388; and in Irish ports, p. 1393.

10. *Pilotage Dues.*

*Generally.**

64. Subject to alteration by the Trinity House, there shall continue to be paid to all Trinity House pilots, in respect of their pilotage services, such dues as were immediately before the time when this act came into operation payable to them in respect thereof. See M. S. Act, 1854 (c. 104), s. 380.

65. For provisions enabling the Trinity House, London, by bye-law approved by Order in Council to fix and alter rates of pilotage to be received by their pilots, but not to exceed those specified in Table (M). to this act, *Ibid.* s. 333, sub-s. 5.

66. For the rates of pilotage to be taken by the pilots of the Trinity House, London, for the London and English Channel districts, see their Bye-law and Schedule, approved by Order in Council of 1st November, 1862, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 74; and Parliamentary Returns, Nos. 325 of 1882, p. 186; and 222 of 1884, p. 17.

* (30) For provisions enabling the Trinity House, London, to establish and alter rates of pilotage for their districts, to be regulated

as therein mentioned, and for giving notice of the establishment or alteration thereof, see 6 Geo. 4, c. 125, s. 8.

11. *Pilotage Dues on Foreign Ships.*

(a) *Generally.*

67. Subject to alteration by the Trinity House, there shall be paid in respect of all foreign ships trading to and from the port of London, and not exempted from pilotage, the following pilotage dues: as to ships inwards, the full amount of dues for the distance piloted, and as to ships outwards, the full amount of dues for the distance required by law. See M. S. Act, 1854 (c. 104), s. 381.

68. No foreign ship, whether in ballast or with cargo, or passengers, navigating between any port of the United Kingdom or the Channel Islands, or Isle of Man, is subject to any other rate of pilotage dues than British ships so employed. See the Customs Laws Consolidation Act, 1876 (c. 36), s. 141.

(b) *Interpreter's Fees.*

69. As to the rates to be charged for an interpreter to a pilot taking charge of a foreign vessel, see 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 77.

(c) *Persons liable.*

70. Payment of pilotage dues on foreign ships trading to and from the port of London, shall be made to the collector of customs in the port of London by one or more of the following persons: the master or other person in charge of the ship, or the consignees or agents thereof who have paid or made themselves liable to pay any other charge for the ship in the port of London. See M. S. Act, 1854 (c. 104), s. 381, and similar provisions in 6 Geo. 4, c. 125, s. 44.

(d) *Receipt for Payment.*

71. Subject to alteration by the Trinity House, the collector of customs shall, on receiving pilotage dues in respect of foreign ships, give to the person paying them a receipt in writing. See M. S. Act, 1854 (c. 104), s. 382.

(e) *Refusal of Clearance or Transire until Payment.*

72. No officer of customs in the port of London shall grant a clearance or *transire* for any such foreign ship without production of such receipt. *Ibid.*

(f) *Power of Detention until Payment.*

73. If any such ship attempts to go to sea without such clearance or *transire*, any such officer may detain her until the receipt is produced. *Ibid.*

(g) *Recovery.*

74. Such pilotage may be recovered like other pilotage dues recoverable under this act. *Ibid.* 381.

(h) *Payment over to Trinity House.*

75. Subject to alteration by the Trinity House, the collector shall pay over to the Trinity House the pilotage dues received by him in respect of any foreign ship. *Ibid.* s. 383.

(i) *Application of Payment by Trinity House.*

76. Subject to alteration by the Trinity House it is to apply the pilotage dues received in respect of any foreign ship in paying the pilot who had charge of such ship such dues for such service as if the ship had been British, after deducting the poundage due to the Trinity House; and in paying to any unlicensed person who, in the absence of a licensed pilot had charge, such amount as it may think proper, not exceeding the amount so payable to a licensed pilot; and to pay the residue to the Trinity House Pilot Fund. *Ibid.*

6. *Trinity House, Hull.*

1. *Generally.**

77. The Society of the Trinity House of Hull was established by letters patent of Henry VIII. of 7th November, 1541. By charter of 23 Elizabeth, 1st February, 1581, its rights, privileges, and possessions acquired under the letters patent of Henry VIII. were confirmed, and the society were empowered to make rules and regulations for the safe guiding and conducting of vessels in the port of Kingston-upon-Hull; to enforce penalties for the infringement of its regulations; to examine and licence pilots to conduct vessels sailing and navigating into and out of the port of Kingston-upon-Hull and the limits and liberties

* (31) The following acts of Parliament relate to the Trinity House, Hull:—6 Geo. 3, c. 39; 52 Geo. 3, c. 39; 6 Geo. 4, c. 125;

2 & 3 Will. 4, c. 105; 12 & 13 Vict. c. 81; The M. S. Act, 1854 (c. 104), Pt. V.

thereof, and into and out of and upon the Humber, and from the Humber out to sea, and between Flamborough Head, northward, and Winterton Ness, southward, and into and out of the several ports, creeks, harbours and places situate between those headlands; to prevent unlicensed persons from taking charge of vessels, and to punish such as might do so. By charters of 7 Charles I. and of Charles II. these rights and privileges were further confirmed and extended; and they are also ratified, confirmed and extended by 2 & 3 Will. 4, c. cv.; and the M. S. Act, 1854 (c. 104), s. 387.

77a. The jurisdiction as to pilotage of the Trinity House of Kingston-upon-Hull, includes the port of Hull, river Humber, and New Holland, the ports of Gainsborough, Goole, Grimsby, Spalding, and Wisbech, and the East Coast, with the North and Baltic Seas, and the Catte-gat. See P. R. as to Pilotage, No. 264 of 1863.

78. Full powers are granted to the warden, elder brothers and assistants of the Trinity House of Hull, to prevent any mariner of the port of Hull, or the limits thereof therein specified, from taking charge as master or pilot of any ship to cross the seas, or pass from Humber beyond Flamborough Head northward, or Winterton Ness southward, other than duly-licensed pilots of that Trinity House, and to punish by fine or imprisonment persons offending in that respect. See the charters of 23 Eliz. and 13 Car. 2, to the Trinity House of Kingston-upon-Hull, cited in *The Killarney*, 1 Lush. 436.

79. The limits and liberties of the port of Kingston-upon-Hull are "all havens, creeks and other places where our customer of Hull, by virtue of his office, hath any authority to take any custom by the name of primage, as in times heretofore." *Ibid.*

80. The guild or brotherhood of masters and pilots, seamen of the Trinity House in Kingston-upon-Hull, commonly called "The Corporation of the Trinity House in Kingston-upon-Hull," have, by usage for a long period of years and by virtue of letters patent or charters granted to them by the crown, been empowered to appoint pilots to conduct ships navigating into and out of the port of Kingston-upon-Hull, and the limits and liberties thereof, and into and out of and upon the river Humber, and from that river out to sea, and between Flamborough

Head northward and Winterton Ness southward, and into and out of the several ports, creeks, harbours and places situate between those two headlands or places. See 2 & 3 Will. 4, c. cv. s. 22.

81. The Trinity House in Kingston-upon-Hull are authorized to license pilots for conducting ships into and out of the port of Kingston-upon-Hull, and of the port of Great Grimsby in the county of Lincoln, and upon any part of the river Humber below the port of Kingston-upon-Hull, and so far out at sea as to bring the North Ness of Dimlington on the coast of Holderness to bear or be seen a sufficient distance clear or open of the land to the southward thereof, so as to pass clear of the New Sand, and also so far along the coast to the northward thereof as the North Ness of Dimlington, and to the southward thereof as headland on the coast of Lincolnshire, known as Donna Nook, and the pilots so licensed are for the purposes of this act called "Humber pilots," and all ships so sailing, navigating and passing, except as thereinafter provided, are to be piloted within those limits by such pilots and no others. *Ibid.* s. 89.

82. For provisions when no pilot can be taken on board for a pilot in another vessel or pilot boat leading the way being paid pilotage as if on board, see *Ibid.* ss. 37, 38.

83. Every such Humber pilot taking charge of any ship about to sail out of the port, or from any of the roadsteads of the Humber, is hereby required to take charge of such ship at her moorings in any of the wet docks, or basins, or elsewhere in the port, or in any of the roadsteads where the ship may then be, and to pilot her so far out to sea as to bring the North Ness of Dimlington to bear a sufficient distance clear of the land to the southward thereof, so as to pass clear of the New Sand; and whenever the pilot is required by the master of the ship, whether outward or inward bound, to attend the ship at anchor in any of the roadsteads in the Humber for any purpose, the pilot must attend accordingly, and for such services the pilot is to be paid as therein mentioned. *Ibid.* s. 40.

84. Every such pilot employed to pilot any ship into the port of Kingston-upon-Hull, is required to take her to such place or delivery in the haven or old harbour, or any of the wet docks of the port, as the master shall require, or so near thereto as he can safely get, and

there moor her in some proper situation, without any other payment than that directed for piloting the ship into the port. *Ibid.* s. 41.

85. If the attendance of the pilot is required to take care of the ship from such first mooring, and to conduct her higher up the haven or old harbour, or into any of the wet docks or other places of delivery, the pilot who has brought the ship to such mooring, or some other of the said Humber pilots to be by the commodore of pilots appointed for that purpose, on the application of the master, must attend and be paid for unmooring and removing the ship or vessel to such her place of delivery such pilotage as is therein mentioned. *Ibid.*

86. The corporation of the Trinity House of the port of Hull is to continue to appoint not more than seven nor less than three sub-commissioners, for examining pilots in all districts in which it has been used to make such appointments, and may, with the consent of her Majesty in Council, appoint like sub-commissioners for any other district within its jurisdiction; but no pilotage district under the authority of any sub-commissioners appointed by this corporation is to be extended, except with such consent; and no such sub-commissioners are pilotage authorities within the meaning of this act. See M. S. Act, 1854 (c. 104), s. 387, and similar provisions in 6 Geo. 4, c. 125, s. 6; and 2 & 3 Will. 4, c. cv. ss. 52, 53.

87. For provisions for the Trinity House, Hull, on the certificate of such commissioners, to license such persons as pilots, see 2 & 3 Will. 4, c. 105, ss. 52, 53.

88. For provisions enabling the commissioners appointed under the act to make and alter bye-laws for the regulation of pilots, &c., *Ibid.* ss. 65—68.

89. For provisions defining for the purposes of the act the entrance of the River Humber, and the words "pilots," and "inward bound" and "outward bound," and the port of Kingston-upon-Hull, *Ibid.* s. 89.

90. For provisions as to vessels at Hull carrying ballast for hire being registered,

measured, inspected, &c., *Ibid.* ss. 57—64.

91. See further as to the Trinity House, Hull, and its members, and the exemptions from pilotage there in force, tit. OWNERS, Pt. VII. c. 12, p. 1372.

92. For the bye-laws of the Trinity House, Hull, from 1854 to 1863, see Parliamentary Returns, No. 516 of 1855, p. 107; No. 244 of 1859, p. 44; and No. 325 of 1882, pp. 36, 37.

2. *Pilotage where compulsory.*

93. With what ships and under what circumstances pilotage is compulsory or optional within this district, see tit. OWNERS, Pt. VII. p. 1372.

3. *Pilotage Certificates.*

94. For bye-laws and regulations relating to the granting of pilotage certificates to masters and mates of vessels in this port and its members—Goole, Wisbech, Spalding, and generally. See P. R. No. 325 of 1882, pp. 30—37.

4. *Pilotage Dues.*

95. As to the rates of pilotage of steam vessels and vessels towed by steam vessels in charge of pilots within the district of the Trinity House, Hull, see bye-law of that pilotage authority, approved by Order in Council of 20th November, 1873, in 2 Maudo & Pollock (4th ed. by Pollock & Bruce), p. 83.

96. For provisions as to the payment of pilotage inwards, and as to the payment beforehand of pilotage outwards, see 2 & 3 Will. 4, c. 105, s. 45.

97. For provisions as to pilotage payable to pilots detained on board ships performing quarantine, *Ibid.* s. 42.

7. *Trinity House, Newcastle-upon-Tyne.**

Generally.

98. The jurisdiction of this Trinity House is now transferred to the Pilotage

* (32) The master, pilots, and seamen of the Trinity House of Newcastle-upon-Tyne, have been for a long series of years a corporation, and by long usage, and by virtue of various letters patent granted to them by the Crown, have possessed and enjoyed various powers, privileges, and fran-

chises, and particularly the power of licensing pilots for conducting ships up and down the river Tyne, and into and out of the port of Newcastle, and the creeks and members belonging thereto, and of erecting and maintaining lights, buoys, and beacons in that port and river. See 41 Geo. 3, c. 86, s. 24.

Commissioners of the Tyne. See further thereon, tit. OWNERS, Pt. VII. c. 13, p. 1375.

99. The former pilotage jurisdiction of the Trinity House of Newcastle-upon-Tyne over the ports of Hartlepool, Sunderland, and the Tyne, is transferred to separate Pilotage Commissioners for such ports. *Ibid.*

99a. See as to the port of Hartlepool, *ibid.* p. 1380; the port of Sunderland, *ibid.* 1386; and the Tyne, *ibid.* p. 1387.

8. Mersey Docks and Harbour Board.

100. All pilots shall obey the bye-laws of the Board. See P. R. No. 325 of 1882, p. 61.

101. Every pilot shall use his utmost care and diligence to conduct the vessels under his charge safely and without damage or injury to others. *Ibid.*

102. Pilots in charge of vessels at anchor in the river or channel shall cause white lights to be constantly exhibited at night, one on the forestay, and the other at the gaff end, to be not less than eight feet above the upper top rail of the bulwarks so long as at anchor in pilot water. *Ibid.*

103. All pilots shall obey all orders and directions that may be given to them by the water-hailiff, harbour, dock and pier-head masters, relative to the docking, towing, transporting or removing vessels under their charge. *Ibid.*

104. Every pilot shall duly keep the lead going when in charge of any ship or vessel while under way. *Ibid.*

105. He shall not leave his vessel until she is safely anchored in the river, nor then leave her without a written permission from the officer in command or on

being relieved by a qualified pilot by order of the master of the boat. *Ibid.*

106. He shall not lay any vessel aground without a written order from the owner or commander. *Ibid.*

107. When received on board a pilot boat from an outward-bound ship, or otherwise, he shall submit to the authority and direction of the master while he remains on board such boat in all respects as if he were one of her crew. *Ibid.*

108. During the night the boat on turn for boarding shall exhibit lights in accordance with Art. 8 of the M. S. Act Amendment Act, 1862 (c. 63). *Ibid.*

109. For provisions in regard to pilotage certificates to be granted to masters and mates of ships within the port of Liverpool, see *Ibid.*

110. For Mersey Bye-laws as to pilots, and pilot boats and pilotage annuity fund, see *Ibid.*

111. Every pilot shall report to the Superintendent of Pilotage, within twenty-four hours after leaving the vessel, all accidents which may have happened to or been caused by the vessel while in his charge. See Regulations of 20th July, 1882, as to pilots and apprentices in pursuance of Bye-laws of the Mersey Docks and Harbour Board, No. 8.

112. See for the limits of this port and for further provisions as to pilotage thereon, tit. OWNERS, Pt. VII. c. 26, pp. 1381—1384.

9. Other Pilotage Authorities.

113. For the several other pilotage authorities, their powers, jurisdiction, limits, and rates of pilotage, see tit. OWNERS, Pt. VII. for England and Wales, pp. 1376—1387; for Scotland, pp. 1388—1393; and for Ireland, pp. 1393—1398.

(33) These powers and authorities of the Trinity House of Newcastle-upon-Tyne were ratified and extended by 41 Geo. 3, c. 86, and were further ratified by the Merchant Shipping Act, 1854 (c. 104), ss. 331—333, 387.

(34) The jurisdiction of the Trinity House of Newcastle-upon-Tyne formerly included the ports of Shields, North Sunderland, Seaham, West Hartlepool, Stockton, Whitby, Blyth, Warkworth, Middlesbro', Alnmouth,

Hartley, Camboise Harbour, and Seaton Sluice, and the North Sea, East Coast, and Holy Island. See P. R. No. 264 of 1863, p. 63.

(35) Its jurisdiction as to Holy Island confirmed. See 41 Geo. 3, c. 86, s. 24.

(36) As to the appointment by the Trinity House, Newcastle-upon-Tyne, of sub-commissioners and their authority, see Merchant Shipping Act, 1854 (c. 104), s. 387.

10. Pilotage Certificates.

1. *By Pilotage Authorities generally.*

114. The master or mate of any ship may apply to any pilotage authority to be examined as to his capacity to pilot the ship of which he is master or mate, or any one or more ships belonging to the same owner, within any part of the district of such pilotage authority; and if found competent a pilotage certificate is to be granted to him, enabling him to pilot the ship or ships therein specified, of which he is acting as master or mate at the time, but no other, within the limits therein described, without incurring any penalties for the non-employment of a qualified pilot. See M. S. Act, 1854 (c. 104), s. 340.

114a. A pilotage certificate so granted is only in force for a year unless renewed, which it may be from time to time by indorsement under the hand of the secretary or other proper officer of the pilotage authority by which it was granted. *Ibid.* s. 341; see also tit. OWNERS, Pt. VII. p. 1356.

115. A master possessing a proper pilotage certificate, enabling him to do so, may pilot his ship without employing a licensed pilot. See M. S. Act, 1854 (c. 104), ss. 353—355.

115a. *Semble*, when the master or mate of a vessel is duly licensed under the 5th part of the M. S. Act, 1854, so as to render it unnecessary for him to take a pilot on board, the employment of such pilot does not bring his owners within the immunity of the 388th section. *Ibid.*

116. A master of a steam vessel trading between Hull and Rotterdam passed an examination as to his qualification to pilot such vessel into and out of the port of Goole. On the next day, he having then sailed for Rotterdam, a certificate, enabling him to pilot his vessel into and out of the port, was completed, sealed, and dated, but remained in the office of the Commissioners until after the collision. *Held*, that such certificate had not been granted, and was not possessed by the master so as to exempt his ship from compulsory pilotage. *The Killarney*, 30 L. J. Adm. 41; 5 L. T. N.S. 21; 1 Lushington, 202.

116a. A misdescription of the ownership of a vessel will invalidate a pilotage certificate granted under sect. 355 of the M. S. Act, 1854 (c. 104). *The Earl of Auckland*, *supra*.

117. A pilotage certificate issued to a master under sect. 355, describing the ship as the property of a person who was not the owner either at the time of the granting of the certificate, or at the time of a collision subsequently occurring, is invalid at the time of that collision. *Ibid.*

2. *By Board of Trade.*(a) *Generally.*

118. If upon complaint it appears to the Board of Trade that any such pilotage authority has without reasonable cause refused or neglected to examine any master or mate, and to grant him a pilotage certificate, or that the examination has been improperly conducted, or improper terms imposed, or that the certificate has been improperly withdrawn, the Board may appoint persons to examine such master or mate, and if found competent, grant him a certificate, upon such terms as such Board may think fit. It shall be in force for one year, and may be renewed from year to year. See M. S. Act, 1854 (c. 104), s. 342.

(b) *As to Passenger Ships.*

119. The Board of Trade may, on proof or after examination as therein mentioned, grant a pilotage certificate to any master or mate of any ship carrying passengers between any places in the United Kingdom or Channel Islands, or endorse on his certificate of competency or service a certificate authorizing him to pilot any ship or ships belonging to the same owner, and of a draught of water not greater than that specified in the certificate, within the limits of any pilotage district. The certificate remains in force for such time as the Board of Trade directs, and enables the master or mate therein named to conduct the ship or ships therein specified within the limits therein described. *Ibid.* s. 355.

119a. Under sect. 355 the Board of Trade can only issue certificates to masters or mates for ships described in sect. 354, *i.e.* passenger ships navigating between ports in the United Kingdom and the Channel Islands. *Ibid.*; *The Earl of Auckland*, 1 Lushington, 164; 30 L. J. Adm. 121; 3 L. T. N.S. 786.

120. The master of every ship carrying passengers between ports in the United Kingdom or the Channel Islands, navigating within any district for which

pilots are licensed, or any part thereof, is compelled to employ a pilot within any such district unless he or his mate has a pilotage certificate for such district. See M. S. Act, 1854 (c. 104), s. 354.

3. *By Trinity House, London.*

121. As to the conditions upon which pilotage certificates are granted by the Trinity House, London, to masters and mates of ships, and the duties which holding such certificates entails, see Trinity House Bye-laws, confirmed by Order in Council of 1st May, 1855, in 2 Maude & Pollock (4th ed. by Poll. & Bruce), p. 71.

121a. Any master or mate who holds a pilotage certificate, granted by the Trinity House, London, under the M. S. Act, 1854 (c. 104), is qualified to pilot any other ship or ships belonging to the same owner or owners, within the limits described in such certificate, without being compelled to employ a pilot, but under the conditions that the ship which he is so qualified to pilot is of no greater draught of water than the ship in respect of which his certificate was granted, and that the name and description of every such ship is added to his certificate. *Ibid.* No. 6, in *Ibid.* p. 72.

4. *By Trinity House, Hull.*

122. No certificate granted by the Corporation of the Trinity House, Hull, will authorize the person therein named to pilot any other ship than the ship or ships therein specified, and of which he may be actually master or mate at the time. See Bye-laws of the Trinity House, Hull, No. 9, confirmed by Order in Council of July 31, 1858.

5. *Withdrawal.*

123. If at any time it appears to the Board of Trade, or to any pilotage authority, that any master or mate to whom a pilotage certificate has been granted by such Board or authority has been guilty of misconduct, or has shown himself incompetent to pilot his ship, such Board or authority (as the case may be) may withdraw his certificate. See M. S. Act, 1854 (c. 104), s. 344.

6. *Fees.*

124. As to the fees payable on the grant and renewal of such pilotage certificates, *Ibid.* s. 343.

11. Pilot Ships and Boats.

1. *Generally.*

125. All boats and ships regularly employed in the pilotage service of any district are to be approved and licensed by the pilotage authority of such district, who may, at their discretion, appoint and remove the masters thereof. See M. S. Act, 1854 (c. 104), s. 345.

2. *Flags and other Characteristics.*

126. As to the distinguishing flags, lettering, and other characteristics of every such pilot boat or ship, and the duty of the master thereof to attend thereto; penalty for default not exceeding £20. *Ibid.* s. 346.

126a. Whenever any qualified pilot is carried off in a boat or ship not in the pilotage service, he shall exhibit a flag of the above description, to show that there is a qualified pilot on board; penalty, for breach without reasonable cause, not exceeding £50. *Ibid.* s. 347.

127. If any such boat or ship, not having a licensed pilot on board, displays such a flag; penalty against the owner or master not exceeding £50. *Ibid.* s. 348.

127a. Any pilot, master, or person in charge of any ship coming to any port in the United Kingdom, the Channel Islands, or Isle of Man from or touching at any place abroad where he has reason to apprehend that yellow fever or other highly-infectious distemper prevails, must on arrival hoist and continue the proper signal until the proper officer has given permission to haul it down. Penalty for breach, not exceeding £100, recoverable by information and summons before a stipendiary master or two justices, and in default of payment, imprisonment, not exceeding six months. See the Customs Laws Consolidation Act, 1876 (c. 36), s. 234.

12. Signals for—

128. The signals for a pilot are to be those specified in the second schedule to this act. See the M. S. Act, 1873 (c. 85), s. 19, and tit. OWNERS, Pt. II. p. 1248.

128a. Penalty against any master of a vessel who uses, or permits any person under his authority to use, any of such signals for any other purpose than that of summoning a pilot, or any other signal for a pilot, not exceeding £20. *Ibid.*

13. Draught of Water.*1. False Declaration.*

129. If any master, on being requested by any qualified pilot in charge to declare her draught of water, refuses to do so, or makes, or is privy to the making of, a false declaration to such pilot as to such draught; penalty, not exceeding double pilotage. See M. S. Act, 1854 (c. 104), s. 359.

130. Whenever a difference arises between the master and the qualified pilot of any ship trading to or from the port of London as to her draught of water, the Trinity House shall upon application by either party, made, in case of a ship inward-bound, within twelve hours after her arrival or before she begins to discharge her cargo, and in the case of a ship outward-bound before she quits her moorings, appoint some proper officer who shall measure the ship, and settle the difference accordingly; and there shall be paid to the officer measuring such ship, by the party against whom he decides, one guinea if the ship is below, and half a guinea if above, the entrance of the London Docks at Wapping. *Ibid.* s. 384.

130a. As to the recording of the draught of water on ships generally, see tit. OWNERS, Pt. I. p. 1197.

2. Fraudulent Alteration of Marks.

130b. If any master or person interested in a ship makes, or is privy to the making of, any fraudulent alteration in the marks on the stern or stem post of such ship, denoting her draught of water, penalty not exceeding £500. See M. S. Act, 1854 (c. 104), s. 359.

14. Qualified—.*1. Generally.*

131. "Qualified pilot," in this act, means any person duly licensed by any pilotage authority to conduct ships to which he does not belong. *Ibid.* s. 2.

132. Any qualified pilot acting beyond the limits for which he is qualified by his licence is to be considered as an unqualified pilot. *Ibid.* s. 349.

*2. Licences.**(a) Generally.*

132a. Every qualified pilot on his appointment is to receive a licence specifying therein his name, place of abode and

description, and the limits within which he is qualified to act. The licence must be duly registered, and he is not qualified to act until it is so registered. *Ibid.*

133. The Board of Trade by provisional order has power in cases where pilotage is not compulsory, and there is no restriction on the power of duly-qualified persons to obtain licences as pilots, to enable any pilotage authority to license pilots for any part of the district for which no such licences exist. See M. S. Act Amendment Act, 1862 (c. 63), s. 39, sub-s. 5.

134. It has also power by provisional order to give facilities for enabling duly-qualified persons, after proper examination, to obtain licences as pilots. *Ibid.* sub-s. 8.

(b) Documents with—.

135. Every qualified pilot, upon receiving his licence, is to be furnished with a copy of such part of this act as relates to pilotage, and a copy of the rates, bye-laws, and regulations established within the district for which he is licensed. See M. S. Act, 1854 (c. 104), s. 350.

(c) Registration.

136. The principal officer of customs at or nearest to which any qualified pilot resides is to register the licence; and the pilot must not act as such until his licence is so registered. *Ibid.* s. 349.

(d) Production.

137. Every qualified pilot while so acting is to be provided with his licence, and to produce it to every person by whom he is employed, or to whom he tenders his services as pilot; penalty for breach not exceeding £10, and liability to suspension or dismissal. *Ibid.* s. 357.

(e) Delivery up.

138. Every qualified pilot when required must produce and deliver up his licence to the pilotage authority who appointed him. On his death the person in possession of his licence must without delay transmit it to that pilotage authority. Penalty for breach not exceeding £10. *Ibid.* s. 352.

138a. The pilot cannot aver as an excuse for his non-delivery up of his licence that the pilotage authority has acted capriciously or in an arbitrary manner. *Henry v. Newcastle Trinity House Board*, 8 E. & B. 723.

15. Employment of Qualified—.1. *Generally.*

139. No qualified pilot is entitled to act as such until his licence is registered. See M. S. Act, 1854 (c. 104), s. 349.

2. *Pilotage where compulsory.*

140. With what ships and under what circumstances the taking of a pilot is compulsory or optional; see tit. OWNERS, pp. 1178, 1179.

3. *By Possessors of Pilotage Certificates.*

141. Under the 12 & 13 Vict. c. 88, *held*, that if a master or mate possessing a pilotage certificate employed any pilot to assist him, it must be a duly-licensed, and not an unlicensed, pilot. *Beilby v. Scott*, 7 M. & W. 101.

4. *Right to supersede Unqualified—.**

142. A qualified pilot may supersede an unqualified pilot. See M. S. Act, 1854 (c. 104), s. 360.

142a. Subject to alteration by any pilotage authority, penalty double pilotage against every master of any ship who, though not compellable to take a pilot, employs an unqualified pilot to pilot him within any pilotage district after a qualified pilot has offered or made a signal to take charge. *Ibid.* s. 353.

143. Penalty against an unqualified pilot assuming or continuing in the charge of any ship after a qualified pilot has offered to take charge of her not exceeding £50. *Ibid.* s. 361.

143a. Against the master of every ship compellable to take a licensed pilot in any part of the Trinity House, London, and out-port districts who, after a qualified pilot has offered to take charge or made a signal for that purpose, pilots such ship without a proper pilotage certificate, or employs or continues to employ an unqualified person to pilot her, penalty for breach, double pilotage; and, in addition, if the Trinity House certify in writing under their common seal that the prosecutor is to be at liberty to proceed for it, an additional penalty not exceeding £5 for every fifty tons burthen of such ship. *Ibid.* s. 376.

144. Subject to alteration by the Trinity House, every master of any ship

coming from the westward, and bound to any place in the rivers Thames and Medway (unless having a qualified pilot or exempted from compulsory pilotage), must, on the arrival of the ship off Dungeness, and thenceforth until she has passed the south buoy of the brake, or a line to be drawn from Sandown Castle to the buoy, display and keep flying the usual signal for a pilot; and if any qualified pilot is within hail, or is approaching and within half a mile, and has the proper distinguishing flag flying in his boat, such master shall, by heaving to or shortening sail, or other practicable means, facilitate such pilot getting on board, and give him charge of his ship; or if there are two or more pilots offering at the same time, to such one of them as may, according to the regulations, be entitled to take such charge. Penalty for breach not exceeding double pilotage, to be paid to the Trinity House, and carried to the Trinity House Pilot Fund. *Ibid.* s. 378, and similar provisions in 6 Geo. 4, c. 125, s. 19.

145. Any licensed pilot within the limits of his licence, and qualification, may supersede any unlicensed pilot, or pilot not licensed within such limits, or acting beyond his qualification; penalty against every person continuing in charge without being so duly licensed, after any duly-licensed and qualified pilot has offered to take charge, not exceeding £50, nor less than £20. See 6 Geo. 4, c. 125, s. 70.

146. Under this 70th section, too, it was held, that the prohibition did not preclude the master from applying to his vessel any moving power he might select. Thus, he was entitled to use another vessel, or boats, or a steam-tug for this purpose, and if this could not be done without necessarily devolving upon those who applied the power the selection of the course, and a certain portion or indeed all the charge and conduct of the vessel in that course, still, if the *bonâ fide* object of the employment was the motive power, the person so employed was not a pilot, and was not within the meaning of the act. See 1 Maude & Pollock (4th ed. by Pollock & Bruce), p. 259, n.; and *Beilby v. Scott*, 1 P. & B. 259; 7 M. & W. 93, therein cited.

147. Against every master of any ship

* (37) See an interesting note on these sections and on analogous sections in prior acts as opposed to the decisions in *The Kil-*

larney and *The Hankow*, in 1 Maude & Pollock (4th ed. by Pollock & Bruce), p. 259, note.

who acts as a pilot, or employs any unlicensed pilot, or any licensed pilot acting out of the limits for which he is qualified, or beyond the extent of his qualification, after any licensed and qualified pilot has offered to take charge, or made a signal for that purpose; penalty, double pilotage, and an additional penalty of five pounds for every fifty tons burthen of the ship, if the Trinity House, London, certifies in writing that the prosecutor is at liberty to recover such additional penalty. See 6 Geo. 4, c. 125, s. 58. *Semble*, still in force, see *The Killarney*, 1 Lush. 426.

148. *Held*, under this 58th section, that the master of a ship who navigated her himself, though liable to double the amount of pilotage, was not liable to the penalty imposed by s. 70 of the same act. *Beilby v. Shepherd*, 3 Exch. 40.

149. *Held*, also, that the master was not liable for refusing to employ a pilot unless he produced his licence, even though the licence was not asked for. *Hammond v. Blake*, 10 B. & C. 424. See, also, as to cases thereon decided under earlier statutes, *Usher v. Lyon*, 2 Price, 118; *Peake v. Carrington*, 2 B. & B. 399; 5 B. Moore, 176; *Reg. v. Chaney*, 6 Dowl. 281; and *Chaney v. Payne*, 1 Q. B. 712.

150. As to the mode of reckoning the pilotage penalty under a similar provision in sect. 11 of 52 Geo. 3, c. 59, see *Mackie v. Landon*, 6 Taunt. 256.

5. Pilot in Charge.

Respective Duties of Pilot, Master, and Crew.

151. See tit. OWNERS, Pt. VII. pp. 1398—1411.

6. Detention in the Thames.

152. Every pilot in charge of any ship from the Thames to the Downs or elsewhere, must, without additional compensation, wait on board for three complete days while such ship may be detained at Gravesend or elsewhere, by any casualty, nor shall he at the end of those days quit the ship, or receive additional compensation, if she is further detained by weather, but if the ship is longer detained there on any other account, the pilot must still (if required) remain in charge, if a compensation of six shillings per day is offered to him. See Bye-law, No. 6, of Trinity House, confirmed by the Chief Justice of the King's Bench, 16th April, 1826, pursuant to 6 Geo. 4, c. 125, s. 11.

152a. As to the charges for a pilot's detention in the Thames during quarantine, see No. 166, *infra*.

16. Remuneration of Qualified—.

1. Generally.

153. Pilots *held* not entitled, under 52 Geo. 3, c. 39, now repealed, to charge as lay days the days on which they enter and on which they leave a place of quarantine. *The Bee*, 2 Dodson, 498.

154. The docking of a ship is to be considered as equivalent to bringing her to ordinary moorings. *The Adah*, 2 Hagg. 330.

155. Claim of a pilot for an extra charge for taking a ship, which arrived before the West India Docks, her place of destination, too late, owing to the state of the tide, to be docked that day, into dock on the following day, pronounced against, on the ground that those services were included in the duty of pilots as set forth in the act of 6 Geo. 4, c. 125, and that the remuneration for such services was also included in the table of charges annexed to the act, the duty of docking, admitted under the act to attach on the day of a ship's arrival, being *held* to extend to the next working tide after her arrival. See M. S. Act, 1854 (c. 104), s. 326.

156. *Held*, that the tables A. and B., fixing the rates of remuneration to pilots, in the 6 Geo. 4, c. 125, now repealed, were to be considered together, and the allowances in one to be held as permitted in the other. *Ibid.* s. 328.

2. When leading Ships.

157. If any boat or ship with a qualified pilot on board leads any ship without such a pilot, and which, from particular circumstances, cannot be boarded, the pilot so leading is entitled to the full pilotage for the distance run as if actually on board such ship. *Ibid.* s. 356.

3. When superseding Unqualified—.

158. When a qualified pilot supersedes an unqualified pilot, the master may pay the unqualified pilot a proportionate sum for his services, and deduct the same from the charge of the qualified pilot. In case of dispute the pilotage authority by whom the qualified pilot is licensed shall determine the sums to which each party is entitled. *Ibid.* s. 360.

4. *When taken beyond Limits.*

159. No pilot, except under circumstances of unavoidable necessity, shall without his consent be taken to sea or beyond the limits for which he is licensed in any ship whatever. See M. S. Act, 1854 (c. 104), s. 357.

159a. Every pilot so taken is entitled, above his pilotage, to 10s. 6d. a day, inclusive of the day on which such ship passes the limit to which he was engaged to pilot her, and of the day of his being returned in the ship to the place where he was taken on board, or of such day as will allow him, if discharged from the ship, time to return thereto; and in such latter case he is entitled to his reasonable travelling expenses. *Ibid.*

160. The money due for detention to a pilot carried to sea, under M. S. Act, 1854 (c. 104), s. 357, is not a pilotage due within s. 363, so as to make the amount recoverable by the pilot from the ship's broker under that section. *Morteo v. Julian*, 4 C. P. D. 216; 48 L. J. M. C. 126; 4 Asp. 166.

5. *Beyond Legal Rate.*

161. Any qualified pilot demanding or receiving, and any master offering or paying him any other rate in respect of pilotage services, whether greater or less, than the rate demandable by law; penalty not exceeding £10. See M. S. Act, 1854 (c. 104), s. 358.

162. But the Trinity House may by bye-law, with the sanction of her Majesty in Council, repeal or relax these provisions within the whole or any part of their district, so as to allow any pilot or class of pilots under their jurisdiction to receive, and any master to pay, a less rate. See *ibid.*, as amended by M. S. Act, 1872 (c. 73), s. 9.

163. Licensed pilots for the Thames between Gravesend and London Bridge may, without incurring any penalty, take within those limits pilotage dues less than the legal rate from any ship exempted from compulsory pilotage, and

no master incurs any penalty for paying any such lower rate, notwithstanding the 358th section of the M. S. Act, 1854 (c. 104). See Bye-law of the Trinity House, approved by Order in Council of 5th Feb. 1873, in 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 78.

164. No pilot licensed for exempted ships for the district between the Nore and Rochester incurs any penalty for taking within those limits pilotage from any exempted ship at a rate less than the legal rate, and no master of any such ship incurs any penalty for paying such lower pilotage. *Ibid.* 6th Sept. 1880, in *Ibid.* p. 190.

164a. It is a settled doctrine of the Admiralty Court, that no pilot is bound to go on board a vessel in distress, to render pilot service for mere pilotage reward. His refusal, under such circumstances, would subject him to no censure; and if he did take charge of a vessel so circumstanced, he would be entitled to a salvage remuneration. *The Frederick*, 1 W. Rob. 17. See also tit. SALVAGE.

6. *Detention in the Thames.*(a) *Generally.*

165. As to the remuneration of a pilot detained in the Thames, see No. 152, *supra*.

(b) *During Quarantine.*

166. The master or person commanding any ship bound to the Thames, and repairing to the place appointed for quarantine, is to pay the full charges of pilotage up to Stangate Creek, or the place so appointed, and the pilot in charge is entitled to a further sum of 8s. a day for the days he is obliged to remain in quarantine. See 6 Geo. 4, c. 125, s. 41. *Semble*, revived by sect. 331 of M. S. Act, 1854 (c. 104).

7. *Pilotage Rates and Dues.*(a) *Generally.**

167. The Board of Trade has power by provisional order in cases where pilot-

* (38) As to the rates of pilotage now in force, see The Merchant Shipping Act, 1854 (c. 104), ss. 333 (5), 380, 381, and Sched. W. thereto, and 2 Maude & Pollock (4th ed. by Pollock & Bruce), p. 190.

(38a) See also for the rates of pilotage in force, the returns of the different pilotage authorities to the Board of Trade, pursuant to

s. 337 of the M. S. Act, 1854 (c. 104), in Parliamentary Returns as to Pilotage, No. 516 of the year 1855, No. 354 of 1856, No. 5, Sess. 2, of 1857, No. 174 of 1858, No. 244 of 1859, No. 287 of 1860, No. 243 of 1861, No. 270 of 1862, No. 264 of 1863, No. 408 of 1867, No. 178 of 1871, No. 260 of 1872, No. 204 of 1874, No. 276 of 1875, No. 292 of 1876, No. 269 of

age is not compulsory, and there is no restriction on the power of duly-qualified persons to obtain licences to enable any pilotage authority to fix pilotage rates for any part of the district for which no such rates exist, and to enable that pilotage authority to raise all or any of the pilotage rates in force in that district, or any part thereof. See M. S. Act Amendment Act, 1862 (c. 63), s. 39, sub-ss. 5 and 6.

(b) *Persons liable.*

168. The owner or master of any ship obtaining the services of a qualified pilot, or such consignees or agents thereof as have paid or made themselves liable to pay any other charge on account of such ship in the port of her arrival or discharge as to pilotage inwards, and in the port from which she clears out as to pilotage outwards, are liable to pay pilotage dues under this act; but such recovery shall not take place until a previous demand in writing, and seven days afterwards. See M. S. Act, 1854 (c. 104), s. 363.

169. Every consignee and agent (not being the owner or master) hereby made liable for the payment of pilotage dues in respect of any ship may, out of monies in his hands received on account of such ship, or belonging to the owner, retain the amount of all dues so paid by him, with reasonable expenses incurred by reason of such payment or liability. *Ibid.* s. 364.

170. The master's agreement for pilotage services, not affected by collusion or fraud, would be as binding on the owner as if made in his own person. *The Nelson*, 6 C. Rob. 227.

171. The report by the master of the ship to the owner that certain additional charges were due to the pilot (such charges not being allowable under the table of remuneration for pilot services annexed to the 6 Geo. 4, c. 125), held not to bar or conclude the owner from object-

ing to such charges. *The Adah*, 2 Hagg. 332.

172. The 10s. 6d. a day to which a pilot is entitled by sect. 357 of the M. S. Act, 1854, if he is taken without his consent to sea or beyond the limits for which he is licensed, are not pilotage dues for which the shipbrokers are liable under sect. 363. *Morteo v. Julian*, 4 C. P. D. 216; 48 L. J. M. C. 126; 4 Asp. 166.

(c) *Recovery.**

173. Pilotage dues may be recovered like penalties of the like amount under this act; such recovery shall not take place until a previous demand has been made in writing, and seven days afterwards. See M. S. Act, 1854 (c. 104), s. 363.

174. A pilot cannot sue for his wages earned in navigating a vessel into an enemy's port. It is tantamount to a trading with the enemy. *The Benjamin Franklin*, 6 C. Rob. 350.

175. The Board of Trade has power, by provisional order, in cases where the pilotage is not compulsory, and there is no restriction on the number of pilots, or on the power of duly-qualified persons to obtain licences as pilots, to give additional facilities for the recovery of pilotage rates. See M. S. Act Amendment Act, 1862 (c. 63), s. 39, sub-s. 7.

17. Responsibility of Qualified—.

1. *Generally.*

176. If any qualified pilot commits any of the following offences:—(1) Keeps or is interested in keeping any public-house or place of public entertainment, or sells or is interested in selling any wine, spirituous liquors, tobacco, or tea; (2) Commits any fraud or other offence against the revenues of customs or excise, or the laws relating thereto; (3) Is directly or indirectly concerned in any corrupt practices relating

1877, No. 266 of 1878, No. 279 of 1881, No. 325 of 1882, No. 207 of 1883, No. 222 of 1884.

(38b) As to the different pilotage authorities and the pilotage returns applicable thereto, see tit. OWNERS, Pt. VII. pp. 1178, 1179.

(38c) For powers to lower, modify, and raise those rates, see the Merchant Shipping Act Amendment Act, 1862 (c. 63), s. 39, the M. S. Act, 1872 (c. 73), and the annual

Pilotage Returns to Parliament.

* (39) To constitute pilotage a lien on the ship the contract must have been made by some person in the employment of the owner, duly authorized to make the contract, such as the master or quasi-master. But mere wrongdoers or mutineers have no authority to bind the ship. *The Anne*, 1 Mason, 508. [AMERICAN.]

to ships, their tackle, furniture, cargoes, crews or passengers, or to persons in distress at sea or by shipwreck, or to their monies, goods or chattels; (4) Lends his licence; (5) Acts as pilot whilst suspended; (6) Acts as pilot when in a state of intoxication; (7) Employs or causes to be employed on board any ship of which he has the charge any boat, anchor, cable, or other store, matter or thing beyond what is necessary for the service of such ship, with the intent to enhance the expenses of pilotage for his own gain or for the gain of another; (8) Refuses or wilfully delays, when not prevented by illness or other reasonable cause, to take charge of any ship within the limits of his licence upon the signal for a pilot being made by such ship, or upon being required to do so by the master, owner, agent or consignee, or by any officer of the pilotage authority by whom such pilots is licensed, or by any principal officer of customs; (9) Unnecessarily cuts or slips or causes to be cut or slipped any cable belonging to any ship; (10) Refuses, on the request of the master, to conduct the ship in his charge into any port or place into which he is qualified to conduct the same, except on reasonable ground of danger to the ship; (11) Quits the ship of which he has the charge, without the consent of the master, before the service for which he was hired has been performed; penalty for breach (in addition to any liability for damages at the suit of the person aggrieved) not exceeding £100, and he is liable to suspension or dismissal. See M. S. Act, 1854 (c. 104), s. 365.

177. Penalty for breach against every person who procures, abets or connives at the commission of any such offence (in addition to any liability for damages at the suit of the person aggrieved) not ex-

ceeding £100, and, if a qualified pilot, he is liable to suspension or dismissal. *Ibid.*

178. If a pilot, under known circumstances of danger, acts with reasonable care and prudence, he is not liable for damage that occurs notwithstanding. See *Thompson v. The North Eastern Railway Co.*, 30 L. J. Q. B. 67; 6 L. T. N.S. 127.

179. It is an act of misconduct, and one which the court will take measures to punish, for a pilot to refuse to make an affidavit for a party to a salvage suit. *The Prince of Wales*, 6 Notes of Cases, 43.*

2. *False Representations affecting Safety of Ship.*

180. If any person, by wilful misrepresentation of circumstances upon which the safety of a ship may depend, obtains or endeavours to obtain the charge of such ship, and every other person procuring, abetting, or conniving at the commission of such offence: penalty against him (in addition to any liabilities for damages at the suit of the party aggrieved), not exceeding £100; if the offender is a qualified pilot, he is also liable to suspension or dismissal. See M. S. Act, 1854 (c. 104), s. 367.

3. *Causing Damage to Ship or Person.*

181. If any pilot in charge by wilful breach, or neglect of duty, or drunkenness, does any act tending to the immediate loss, destruction, or serious damage of a ship of which he is in charge, or tending immediately to endanger the life or limb of any person on board; or if any pilot by wilful breach of duty, or drunkenness, refuses or omits to do any lawful act, proper and requisite, to be done by him for preserving such ship

* (40) At this time, affidavits were the usual mode of proof in salvage actions in the Court of Admiralty.

(41) If a pilot undertakes the conduct of a vessel to bring her to St. Malo, or any other port, and fail of his duty therein, so as the vessel miscarry by reason of his ignorance in what he undertook, and the merchants sustain damage thereby, he shall be obliged to make full satisfaction for the same if he hath wherewithal, and if not, lose his head. *Laws of Oleron*, ch. 23.

(42) For provisions that pilots quitting their ships in the Thames or Medway, without the consent of the officer in charge,

before arrival at the place to which they are bound, are to forfeit their pilotage and imposing penalty for breach, see 6 Geo. 4, c. 125, s. 42.

(43) In France, a law of August, 1790, and a decree of December, 1806, which condemned a pilot guilty of having lost a ship by negligence or ignorance to three years at the galleys has not been repealed, but as the punishment of the galleys has been abolished, and in this particular case no alternative enacted, the fault of the pilot does not at the present time give rise to criminal proceedings. D. P. 1875, I. 178.

from loss, destruction, or serious damage, or for preserving any person belonging to or on board such ship from danger to life or limb, the pilot so offending shall for such offence be deemed guilty of a misdemeanour, and if a qualified pilot shall also be liable to suspension and dismissal by the authority by which he is licensed. *Ibid.* s. 366.

4. *To produce Copy, Rates, Bye-laws, &c.*

182. Every qualified pilot must, when required, produce to the master of any ship, or other person employing him, the copies furnished him on receiving his licence, of such part of this act as relates to pilotage, and of the rates, bye-laws, and regulations established within the district for which he is licensed; penalty for breach not exceeding £5. *Ibid.* s. 350.

5. *Bond to Trinity House.*

182a. Subject to alteration by the Trinity House, every Trinity House pilot on his appointment shall execute a bond for £100 conditioned for the due observance on his part of the regulations and bye-laws of the Trinity House. Such bond is to be free from stamp duty, and from any other charge except the expense of preparing it. *Ibid.* s. 372.

6. *Limitation.*

182b. No qualified pilot who has executed the bond required to be given by him to the Trinity House, London, in £100 is liable for neglect or want of skill beyond its penalty, and the amount of pilotage payable to him in respect of the voyage on which he is engaged. *Ibid.* s. 373.

7. *Collision.*

182c. As to the respective duties of a pilot and the crew in order to avoid collision, see tit. OWNERS, Pt. VII. pp. 1398—1411.

8. *To report Loss of Anchors or Chains.*

183. When anchors or cables are lost from any vessel, the pilot in charge is at once to report the occurrence in writing to the secretary of the Trinity House, London, specifying the place and time of the occurrence, the state of the weather, the direction of the wind, time of tide, quantity of cable riding by, whether the

cable was slipped or parted, and the quantity lost; see Regulations of the Trinity House, London, of November, 1853, and July, 1862.

9. *To report Collisions.*

184. Where a ship in charge of a Trinity House, London, pilot comes into collision with another vessel he is to report the circumstances in writing to the Trinity House in the form prescribed. See the Regulations of that House of 28th October, 1853; see also No. 111, p. 1442.

10. *To report a touching of the Ground.*

185. For similar directions when a vessel in his charge touches the ground, see *Ibid.*

18. *Unqualified—*

Generally.

186. Any qualified pilot acting beyond the limits of his licence is to be considered as an unqualified pilot. See M. S. Act, 1854 (c. 104), s. 349.

19. *Employment of Unqualified—*

1. *Generally.*

187. An unqualified pilot may, in any pilotage district, without subjecting himself or his employer to any penalty, take charge of a ship as pilot (1) when no qualified pilot has offered to take charge of her, or made a signal for that purpose; (2) when a ship is in distress, or in circumstances making it necessary for the master to avail himself of the best assistance which can be found at the time; or, (3) for the purpose of changing the moorings of any ship in port or of taking her into or out of any dock, in cases where such acts can be done by an unqualified pilot without infringing the regulations of the port, or the orders the harbour master is legally empowered to give. *Ibid.* s. 362.

2. *Prevention.*

188. The Board of Trade has power, by provisional order, in cases where the pilotage is not compulsory and there is no restriction on the number of pilots, or on the power of duly-qualified persons to obtain licences as pilots, to give additional facilities for the prevention of the

employment of unqualified pilots. See M. S. Act Amendment Act, 1862 (c. 63), s. 39, sub-s. 7.

3. *By Possessors of Pilotage Certificates.*

See c. 15, p. 1446.

4. *Supercession by qualified Pilots.*

See c. 16, p. 1447.

20. Remuneration of Unqualified—

1. *Generally.*

189. The act 3 Geo. 1, c. 13, fixing rates of pilotage, was limited to the particular society of pilots, viz. Trinity pilots, therein described, who had the benefit of a monopoly under the provisions of that act, and the restrictions thereof were *held* to be taken as corresponding with the privileges conferred. Other pilots, therefore, engaged in the same navigation only casually, when the privileged

pilots were out of the way, *held* to be at liberty to make special agreements for higher compensation. Such an agreement pronounced for. *The Nelson*, 6 C. Rob. 227.

2. *When superseded by Qualified—.*

See No. 158, p. 1447.

21. Responsibility of Unqualified—

Improper Use of Licence.

190. An unqualified pilot using a licence which he is not entitled to use for the purpose of making himself appear to be a qualified pilot; penalty not exceeding £50. See M. S. Act, 1854 (c. 104), s. 361; see also Nos. 177, 180, 181, *supra*.

22. Recovery of Penalties.

191. As to the mode of recovering the penalties, referred to in this title, see tit. OWNERS, Pt. II. pp. 1254 and 1321.

PRACTICE:**PART I.—COURTS, JUDGES, OFFICERS AND OFFICES.****II.—IN THE HIGH COURT.****III.—IN PARTICULAR ACTIONS.****IV.—IN INFERIOR COURTS.****Part I.—COURTS, JUDGES, OFFICERS
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 4. *Particulars of Demand.* Ibid. p. 1570.
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- 11. Actions of Possession.**
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 - (b) *Affidavit to lead Warrant.* Ibid.
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 - 3. *Assessors* 1708
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- 7. Magistrates.**
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 - (b) *Costs and Damages* 1710
 - 4. *Seamen's Wages*. See tit. "WAGES," c. 2.
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Part I.—COURTS, JUDGES, OFFICERS AND OFFICES.

1. Courts and Judges.

1. *Generally.**

1. As to the constitution and jurisdiction of the High Court of Justice, the Probate, Divorce and Admiralty Division thereof, and the Admiralty branch of that division, see tit. JURISDICTION, Pt. I. p. 636.

2. As to the tenure of office and oaths of office of the judges of the High Court, see the Supreme Court of Judicature Act, 1875 (c. 77), s. 5.

3. As to their order of precedence, *ibid.* s. 6.

4. All the judges of the High Court have, except as therein mentioned, equal power, authority and jurisdiction. See the Supreme Court of Judicature Act, 1873 (c. 66), s. 5.

5. As to the rank, title, patronage, and powers of appointment or dismissal of the judges of the High Court, *ibid.* ss. 8, 86.

6. As to the transfer of a judge from one division to another, *ibid.* s. 31.

7. As to the mode of vacating the office, as to vacancies therein, and as to the court being deemed duly constituted notwithstanding any such vacancy, *ibid.* ss. 7, 31, 51.

8. As to the salaries and retiring pensions of the judges, *ibid.* ss. 13, 14, 15.

9. As to the secretaries and clerks of the judges and their duties, fees and emoluments, *ibid.* s. 79.

10. The Admiralty branch of the Probate, Divorce and Admiralty Division is presided over either by the President of the division, or the judge of the Admiralty Court, who is, however, styled a judge of her Majesty's High Court of Justice. *Ibid.* ss. 3, 5, 31.

11. These two judges sit together as a divisional Court of Appeal. *Ibid.* ss. 40, 44.

12. But the ordinary business of the Admiralty branch is transacted and disposed of in the first instance by one judge only. *Ibid.* s. 42; and the Appellate Jurisdiction Act, 1876 (c. 59), s. 17.

13. Any cause or matter in the Admiralty branch may, at the request of the President of the division, and with the concurrence of the President of the High Court, be heard by any other judge of the High Court. See the Supreme Court of Judicature Act, 1873 (c. 66), s. 44.

14. Where, from death, vacancy in the office, or other reason, it is impossible or inconvenient for the judge to act, the President of the division may, by special or general order, nominate some other judge to exercise such jurisdiction. See the Appellate Jurisdiction Act, 1876 (c. 59), s. 17, and Ord. LIX. r. 2, No. 885.

15. As to the duties of the judge in reference to his assessors, see c. 2, *infra*.

2. *Sittings.*

(a) *Generally.*

16. As to the sittings of the High Court, see Ord. LXIII. Nos. 945—960, and Archbold's Practice (14th ed. by Chitty), vol. 1, pp. 189 *et seq.*

17. As to the abolition of terms, and the times of sitting of the High Court of Justice in the divisions thereof, see the Supreme Court of Judicature Act, 1873 (c. 66), s. 26.

(b) *In Vacation.†*

18. See as to vacations and sittings in vacations, *ibid.* ss. 27, 28, and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 192.

19. As to the vacation judges and their sittings as a divisional court in vacation, see Ord. LXIII. rr. 11, 12, Nos. 955, 956.

20. As to the four vacations and the commencement and termination thereof, see *ibid.* r. 4, No. 948.

* (1) The Dean of the Arches (the judge of the highest ecclesiastical court of the Archbishop of Canterbury) was authorized to sit for, or with, the judge of the Court of Admiralty, and during a vacancy in the office of judge of that court. See 3 & 4 Vict. c. 65, s. 1.

(2) As to the surrogates or deputies of the judge of the late Court of Admiralty for the despatch of formal business under the old

practice anterior to 1859, see *Ibid.* s. 2 (now repealed); 6 & 7 Vict. c. 38, s. 3; the Admiralty Court Act, 1854 (c. 78), s. 12; *Ibid.* 1861 (c. 10), s. 25; *The Victor*, 1 Lushington, 73; and Pritchards' Adm. Digest, 2nd ed. Vol. 2, p. 619.

† (3) Urgent Admiralty motions are heard in vacation by the Vacation Judge of the High Court.

21. It is not necessary for the Court of Appeal or the High Court of Justice to sit on the day kept as the Queen's birthday. Ord. LXIII. r. 2, No. 946.

22. Any interval between the sittings of the High Court or any division thereof, not included in a vacation, shall, so far as the disposal of business by the vacation judges is concerned, be deemed to be a portion of the vacation. *Ibid.* r. 15, No. 959.

2. Trinity Masters.*

23. The High Court may in any cause or matter in which it may think it expedient to do so call in the aid of one or more assessors specially qualified, and hear the same wholly or partially with the assistance of such assessors. The remuneration to be paid to such assessors shall be determined by the court. See the Supreme Court of Judicature Act, 1873 (c. 66), s. 56.

24. If the judge of the court below differs from his assessors he is bound to decide in accordance with his own opinion. Per Brett, M. R., *The Beryl*, 9 P. D. 137.

25. It is the duty of the judge sitting with assessors to draw his own deductions from the evidence, the assessors have merely to give him their aid and advice in those matters in which they are skilled. *The Magna Charta*, 25 L. T. N.S. 512; 1 Asp. N.S. 153; *The Philotaxe*, 37 L. T. N.S. 540.

26. Nautical assessors summoned to attend the hearing of an action in an Admiralty county court are present merely to advise the judge on questions of nautical science and practice. But it is for the judge to decide the case in accordance with his own opinion as to the law and merits of the case. *The Aid*, 6 P. D. 84; 4 Asp. 432; 50 L. J. Adm. 40.

27. Trinity masters are merely assessors of the judge, and assist him with their advice. The sentence is entirely his, and neither the opinion of the Trinity masters nor the decision of the judge is analogous to the verdict of a jury on a question of fact at common law, which is altogether conclusive. *Williams v. Chapman (The Iron Duke)*, 4 Notes of Cases, 586; 9 Jur. 476.

28. The office of assessor, as distinguished from that of a jury, is that the

* (4) The Court of Admiralty has power to convene and have the assistance of two or more naval and other personages to assist its judgment. See 2 Chitty's Gen. Prac. 510, 514.

(5) *Semble*, on trial of nautical cases at nisi prius it was formerly the custom for the judge to obtain one of the masters of the Trinity House as an assessor. *The Perseverance*, 2 Browne's Civ. and Adm. Law App. 2nd ed. 539.

(6) A rota of the elder brethren is made and kept at the Trinity House, and they attend the court of the Admiralty Division according to it.

(7) The plaintiff's or the defendant's solicitor may obtain the attendance of Trinity masters at the hearing of collision or salvage causes, by filing a præcipe for that purpose in the registry, with a court stamp of 10s. thereon. In other actions the court must be applied to by motion or summons to allow their attendance. See Roscoe's Adm. Prac. (2nd ed.) p. 223. If the præcipe is signed by the solicitors on both sides, each places a 5s. court stamp on the præcipe; but usually one solicitor bespeaks the attendance of the Trinity masters, and pays the whole court stamp of 10s.

(8) The registrar thereupon writes a letter to the secretary of the Trinity Corporation, requesting the attendance of two of the elder brethren at the hearing of the cause.

(9) He at the same time transmits for the perusal of the Trinity masters prints of the

pleadings, and of such evidence, if any, as may have been taken in the cause before the hearing.

(9a) The attendance of Trinity masters should be bespoken on the setting down of the cause for hearing, or some days before the hearing.

(10) If in the course of the taking of the evidence before an examiner or commissioner, any irrelevant matter has been taken down calculated to prejudice the opinion of the Trinity masters against either party in the cause, the judge will, on the application of that party, by motion direct such irrelevant matter to be expunged from the printed papers to be sent to the Trinity masters, and from those to be used at the hearing.

(11) The fees to the Trinity masters are two guineas per diem in each cause. In cases of action and counter-claim double fees are payable to each Trinity master.

(12) The fees to the Trinity masters in each cause are paid by the respective solicitors in whose favour the decree or decrees are made. Where in an action for damage by collision both parties are held to blame, each solicitor pays a moiety of the fees.

(13) Notice from the Admiralty registry of the amount of fees payable in each cause is sent to the solicitor, whose duty it is to pay them. The solicitor then transmits the amount with the notice to the secretary of the Trinity House, who returns the notice with a receipt thereon for the amount paid.

verdict of a jury is imperatively binding on the court, whilst the opinion of an assessor is in the nature of advice only, and the court, in the exercise of its discretion, is at full liberty to act upon it or reject it as it may think proper. *The American Union*, 5 Jur. N.S. 380.

[IRISH.]

29. It is erroneous to suppose that Trinity masters give their opinion on their own view of a case. It is the uniform practice of the court to acquaint itself as well as it can with the grounds on which the Trinity masters proceed, and to understand them to the best of its ability; and if unfortunately the court should think that they were proceeding on erroneous data, it would pronounce a judgment differing from them. *The Speed*, 2 W. Rob. 280; 7 Jur. 1070; *The Alfred*, 3 W. Rob. 234; 7 Notes of Cases, 354; 1 Spinks' Eccl. and Adm. Rep. 27, n.; *The Swanland*, 2 *ibid.* 108.

30. In a cause of damage by collision the Trinity masters differed in opinion as to whether one of the vessels was or was not to blame. The opinion of the judge coincided with that of one of the Trinity masters, and he gave judgment accordingly. *The Immaganda Sara Classina*, 7 Notes of Cases, 583.

31. The sentence of the judge with reference to the facts and the law, and the opinion of the Trinity masters, may be reviewed by the Court of Appeal, though in performing that duty the greatest attention and respect would be paid to the opinion of persons of experience and skill whose advice had been solicited by the judge. *Williams v. Chapman (The Iron Duke)*, 4 Notes of Cases, 586; 9 Jur. 476; *The Christiana*, 7 Notes of Cases, Supp. xli.; *The Friends*, 4 Moore, P. C. C. 321.

32. If the Trinity masters seemed to form their opinion on parts of the evidence which were inadmissible, the court would not adopt their advice. *The Actaon*, 1 Spinks' Eccl. and Adm. Rep. 178.

33. The decision in a cause must be strictly founded on the evidence of the facts, but the judgment of Trinity masters is not to be controlled by evidence with respect to matters of mere nautical practice and experience: upon such points they are to be guided by their own science and knowledge, and not by the opinion of other nautical persons, however numerous or respectable. *The Gazelle*, 1 W. Rob. 474; 2 Notes of Cases, 41.

34. *Semble*, in the case of the two nautical assessors disagreeing the court has power to call in a third. *The Philotaxe*, 3 Asp. N.S. 512; 37 L. T. N.S. 540.

35. Prior to the Judicature Acts the court would not put a question to the Trinity masters as to a fact not pleaded. *The Ebenezer*, 2 W. Rob. 209; *The Speed*, *ibid.* 227.

36. Appeal remitted to the court below, with leave to both parties to plead further, and give further evidence, the Trinity masters having given advice to the judge on a point not mentioned in the pleadings. *The Lady Anne*, 15 Jur. 18.

37. In salvage causes the court, when it has the assistance of Trinity masters, will not be guided by the opinions of witnesses skilled in nautical matters. *The Magdalen*, 5 L. T. N.S. 807.

38. In a cause of damage by collision heard before the judge and Trinity masters, application for leave to give in evidence affidavits of two of the elder brethren of the Trinity House, who had been examined on a trial at common law in reference to the same collision, as to their opinions on the case arising from what they had heard at the trial, rejected, the court observing that it could receive no evidence of what had occurred at the trial but the judge's notes, and that scientific evidence was inadmissible when the court was assisted by Trinity masters. *The Ann and Mary*, 2 W. Rob. 196; 7 Jur. 1001.

39. The judge of the Court of Admiralty in summing up the evidence to the Trinity masters did not do so with the same minuteness as a judge at *nisi prius* would sum up evidence to a jury, because the Trinity masters have greater experience in nautical matters. *The Swanland*, 2 Spinks' Eccl. and Adm. Rep. 108.

40. On appeal in a case of joint-capture, the opinion of the Trinity masters as to the courses, &c. of the ships, deduced from the examination of their log-books, having been impeached; held, that it was necessary to point out obvious neglect on their part to sustain such impeachment, since they must be considered the best judges of such evidence. Further reference to other parties thereon refused. *Le Bon Aventure*, 1 Acton, 237.

41. On motion to expunge written evidence beyond the scope of the pleadings, on the ground that the opinions of the Trinity masters might be biased thereby, the court intimated it would reject the motion as to merely irrelevant

matter, which should be objected to at the hearing and not before, but would grant it as to irrelevant matter of so extraordinary a character that the Trinity masters might have such an undue impression made on their minds as it would be out of the power of the court to efface at the hearing. *The Speed*, 7 Jur. 1068; 2 W. Rob. 230.

42. In a cause of damage by collision the question as to the propriety of the abandonment of the injured vessel by her crew is for the consideration of the court and not of the Trinity masters. *The Blenheim*, 1 Spinks' Eccl. and Adm. Rep. 287.

43. In damage causes the attendance of Trinity masters will be directed as a matter of course on the application of either party. *The Minnehaha*, May 3, 1861.*

44. It is not so much a matter of course in salvage causes as in damage causes to direct the attendance of Trinity masters at the application of either party, but the application if made in due time will generally be granted. *Ibid.* and *The Princess Alice*, 3 W. Rob. 139.*

45. In cases of salvage involving questions of nautical knowledge, e. g. the effect of the tides and winds, and the dangers of the *locus in quo* and its neighbourhood, application should be made for the assistance of Trinity masters. *The James Dixon*, 2 L. T. N.S. 696; *The Balsamas*, 2 Hagg. 270, n.*

46. The judge will sometimes *ex mero motu* direct the attendance of Trinity masters, and even postpone the hearing of the cause for that purpose. *The Sirena*, May, 1846.

47. Application for the attendance of Trinity masters upon a proceeding in the nature of a demurrer to a pleading giving an account of the collision averred to be

nautically impossible. Application refused. *The Vargas*, 15 Jur. 710.

47a. Motion in proceedings in a cause of damage by collision to strike out extra-articulate evidence before the papers were printed and put into the hands of the Trinity masters, granted. *The Neptuneus*, Swabey, 295; 30 L. T. 219.

48. A cause of damage by collision was tried before the judge and Trinity masters and judgment given. Subsequently a cross action was brought in reference to the same collision. The court, on the application of one of the parties, directed the cross cause to be heard before Trinity masters who had not been present at the trial of the first cause. *The North American and Tecla Carmen*, Lushington, 81.

49. The Trinity masters differed in opinion. The judge, with the consent of the parties, allowed the Trinity masters to consult a third Trinity master. *Dale v. Hall*, Marsden's Rep. Cas. temp. Salubury, p. 323.

49a. The P. held, in the Court of Admiralty, solely to blame for a collision. On appeal to the delegates they referred the matter to two Trinity masters present at the hearing to examine into and report upon, taking to their assistance a third Trinity master. Upon their report the delegates reversed the decree appealed from, holding both vessels to blame. *Stoker v. Hutton*, *ibid.* p. 329.

50. As to inspection or view by Trinity masters, see tit. EVIDENCE, c. 6, p. 424, and *ibid.* in Addenda.

3. Counsel.

1. Generally.†

51. All serjeants and barristers-at-law might practise in the High Court of Admi-

* (14) By the old practice, if both parties asked for Trinity masters, the court at once assented to the request. If one party only asked for them, the court read the papers, and exercised its judgment as to whether Trinity masters should attend, but if neither party applied for them the court rarely called them in. *The Houthandel*, 1 Spinks' Eccl. and Adm. Rep. 27.

† (15) The Queen's advocate was one of the advocates of the court appointed standing counsel for the Crown in all suits in the Court of Admiralty in which the interests of the Crown were concerned, including droits of the Crown, and all prize proceedings on behalf of or against the Crown, and by all

commissioned captors claiming under the Crown, in virtue of the prize proclamation in all prize actions before the court. He also advised the ministers of the Crown in all questions of international law on which his opinion was desired. He formerly took precedence of the whole bar, but on the last appointment his rank was fixed next after the attorney and solicitor-general. The appointment was in the gift of the ministers of the Crown for the time being. No Queen's advocate has been appointed since Sir Robert Phillimore vacated the office.

(16) The Admiralty advocate is one of the advocates of the court appointed, by the com-

rality, with the same rights and privileges as advocates of the court, and have the same rank and precedence in that court as before the Judicial Committee of the Privy Council. See 22 & 23 Vict. c. 6, s. 1.

52. The practitioners in the Ecclesiastical Courts, of the degree of doctors of canon and civil law, have precedence of all barristers, Queen's serjeants, Queen's counsel, and serjeants-at-law excepted. With regard, however, to serjeants-at-law, this precedence has been frequently denied. Rogers, Burn's Eccl. Law, 3; Swabey's Law of Divorce and Matrimonial Causes, p. 47.

53. Although, as a general rule, the court will not hear a suitor personally and also by counsel, yet (*semble*) if a suitor, being a barrister, addresses the court as counsel only, the court will not refuse to hear other counsel with him. *Newton v. Ricketts*, 12 Jur. 238.

54. A party to a suit conducting his own cause at the trial, has a right to address the jury as an advocate, without waiving his right to give evidence as a witness in his own behalf. *Cobbett v. Hudson*, 1 Ell. & Bl. 11; 17 Jur. 488; 22 L. J. Q. B. 11.

55. A plaintiff who was a barrister was not allowed to be heard on his own case, after counsel had addressed the court. A barrister, party in an action, civil or criminal, is in the same position as any other party. *Newton v. Chaplin*, 19 L. J. C. P. 374; 10 C. B. 356; 14 Jur. 1121.

56. There is no rule of law requiring that counsel appearing in court for a party who pleads in person should be instructed by a solicitor. *Doe d. Bennett v. Hale*, 15 Q. B. 171; 14 Jur. 830; 19 L. J. Q. B. 353.

57. But the usage which has prevailed at the bar that counsel, unless in some exceptional cases, should take their instructions from solicitors only, is beneficial, and ought to be maintained. *Ibid.*

2. Employment of—

(a) Generally.

58. As to the employment of counsel on summonses and to settle pleadings, see tit. Costs, c. 28, s. 4, p. 385; and on references to the registrar and merchants, *ibid.* p. 358.

(b) Number.

59. See tit. Costs, p. 385, Nos. 465, 466.

3. Right to begin and Reply.

See Pt. II. c. 38, s. 17.

4. Fees.

See tit. Costs, c. 28, s. 4, p. 384.

4. Officers.

1. Generally.*

60. All registrars, chief and other clerks, commissioners to take oaths or affidavits, messengers, and other officers and assistants, at the commencement of this act attached to any court or judge whose jurisdiction is transferred to the High Court, shall be attached to the High Court, and have the same rank and hold their offices for the same tenure and upon the same terms, receive the same salaries, and be entitled to the same pensions, as if this act had not passed. See the Supreme Court of Judicature Act, 1873 (c. 66), s. 77. As to the powers for abolishing or altering the designation or duties of such officers, and reducing their salaries, *ibid.* and the Supreme Court of Judicature Act, 1875 (c. 77), s. 34; the Appellate Jurisdiction Act, 1876 (c. 59), s. 21; and the Supreme Court of Judicature (Officers) Act, 1879 (c. 78).

61. As to the duties, appointment and removal of officers of the High Court of

missioners for executing the office of Lord High Admiral of England, standing counsel for them in all suits in the Court of Admiralty in which the interests of that office are concerned, including droits or perquisites of the Lord High Admiral and prizes made by non-commissioned captors, causes of salvage to vessels of the Royal Navy, or to vessels in the employment at the time of the Lords Commissioners of the Admiralty, and causes

of damage by collision to or by vessels of the Royal Navy.

(17) A waiver of all informalities and irregularities made by a counsel who has the sole charge of a cause is binding upon his clients. *Hanson v. Hoitt*, 14 N. H. 56. [AMERICAN.]

* (18) As to the officers of the High Court of Justice, see 1 Archbold's Practice (14th ed. by Chitty); pp. 23 *et seq.*

Justice, see the Supreme Court of Judicature Act, 1873 (c. 66), s. 84.

62. As to their salaries and pensions, *ibid.* s. 85.

63. For provisions as to patronage not otherwise provided for, *ibid.* s. 86.

64. For provisions as to officers of the Supreme Court, see Supreme Court of Judicature (Officers) Act, 1879 (c. 78).

65. All officers who at the time when these rules come into operation are attached to the Probate, Divorce and Admiralty Division shall remain attached to that division. See R. S. C. Ord. LX. r. 1, No. 890.

66. Officers attached to any division shall follow the appeals from the same division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the registrars and officers of the Court of Chancery usually performed as to rehearings in the Court of Appeal in Chancery, and as the masters and officers of the Courts of Queen's Bench, Common Pleas and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber. *Ibid.* r. 2, No. 891.

67. As to the meaning of the term "proper officer" in the R. S. C. of 1883, see Ord. LXXI. r. 1, No. 1041.

68. The Treasury may, by order made with the concurrence of the lord chancellor and of the judge of the Court of Admiralty, increase or diminish the number of officers in the Court of Admiralty, and the amounts of their salaries, and determine the conditions on which they are to hold their offices, and regulate the expenses incurred in respect of such court and officers. See the Courts of Justice (Salaries and Funds) Act, 1869 (c. 91), s. 14.

69. As to the powers of the lord chancellor to abolish the office, reduce the salary, or vary the designation or duties of any officer within the provisions of this section, see the Judicature Act, 1873 (c. 66), s. 77.

2. Registrar and Assistant Registrar.*

70. In the Probate, Divorce and Admiralty Division a registrar may transact all such business and exercise all such authority and jurisdiction in respect of the same, as under the acts or these rules may be transacted or exercised by a judge at chambers, except in respect of the following proceedings and matters; that is to say—(a) All matters relating to criminal proceedings or to the liberty of the subject; (b) granting leave for service out of the jurisdiction of a writ, or notice of a writ, of summons; (c) the removal of actions from one division or judge to another division or judge; (d) the settlement of issues, except by consent; (e) inspection and other orders under Ord. L. rr. 1—5; (f) appeals from district registrars; (g) prohibitions; (h) injunctions and other orders under sub-s. 8 of s. 25 of the principal act; (i) awarding of costs, other than the costs of or relating to any proceeding before a master, or registrar, and other than any costs which by these rules, or by the order of the court or a judge, he is authorized to award; (k) reviewing taxation of costs; (l) orders absolute for charging stocks, funds, annuities, or shares of dividends, or annual proceeds thereof; (m) acknowledgments of married women. Ord. LIV. r. 12, No. 745.

71. Every witness summoned (by inspectors appointed by the Board of Trade)

* (19) Any advocate, barrister-at-law, or solicitor of ten years' standing, may be appointed registrar, or assistant, or deputy registrar, of the High Court of Admiralty. See the Admiralty Court Act, 1861 (c. 10), s. 27.

(19a) The registrar has hitherto been selected from the proctors.

(20) As to the office and duties of the registrar of the Court of Admiralty, and the ancient fees receivable by him, see the Report of the Commissioners on the Duties, &c. in Courts of Justice. Parliamentary Return, No. 240, anno 1824, pp. 9—53.

(21) The registrar of the Court of Admiralty attended the sittings of the Judicial Committee of the Privy Council on the hearing of all causes and appeals from the Court of Admiralty before such appeals were trans-

ferred to the Court of Appeal. See 3 & 4 Will. 4, c. 41, s. 29; 6 & 7 Vict. c. 38, ss. 5, 13, 14.

(22) He still attends all such sittings on appeals from Vice-Admiralty Courts.

(23) For powers as to the appointment of a deputy or assistant registrar, see 3 & 4 Vict. c. 66.

(24) The registrar of the Court of Admiralty had power to administer oaths in any Admiralty proceedings, and could exercise the same powers as any surrogate of the judge sitting in chambers; and all powers conferred on the registrar might be exercised by any deputy or assistant registrar. See the Admiralty Court Act, 1861 (c. 10), ss. 25, 26. As to the powers of the Registrar of the Admiralty Division, see No. 70, *supra*.

shall be allowed such expenses as would be allowed to a witness before any court of record, or if in Scotland before the Court of Justiciary; and in case of dispute as to the amount of such expenses, the same shall be referred to (among others) the registrar of the Court of Admiralty, who, on a request made to him for that purpose, under the hand of the inspector, shall ascertain and certify the proper amount of such expenses. See the M. S. Act, 1854 (c. 104), s. 15, as amended by the Admiralty Court Act, 1861 (c. 10), s. 24.

3. District Registrars.

72. As to the appointment and qualification of district registrars, their position as officers of the Supreme Court, and their liability to the jurisdiction of that court and of the divisions thereof, see the Supreme Court of Judicature Act, 1875 (c. 77), s. 13, and Order in Council of 12 Aug. 1875, in Wilson's Jud. Acts and Rules, 4th ed., pp. 813, 814.

73. For provisions admitting of two persons being appointed to perform the duties of district registrar as joint district registrars, and for the appointment of the registrar of any inferior court of record as district registrar, see the Supreme Court of Judicature Act, 1875 (c. 77), s. 13.

74. As to the appointment of solicitors of five years' standing as district registrars, *ibid.* 1881 (c. 68), s. 22.

75. As to the persons appointed district registrars, their names, and the places over which they are so appointed, see Order in Council of Aug. 12, 1875, gazetted 24 Aug., p. 4236.

76. As to the appointment by district registrars of deputy registrars, see the Appellate Jurisdiction Act, 1876 (c. 59), s. 22.

77. All such district registrars have power to administer oaths and perform such other duties in respect of any proceedings pending in the High Court of Justice or in the Court of Appeal as may be assigned to them from time to time

by Rules of Court, or by any special order of the court. See the Judicature Act, 1873 (c. 66), s. 62.

78. Where a cause or matter is proceeding in a district registry the district registrar may exercise all such authority and jurisdiction in respect thereof as may be exercised by a judge at chambers, except such as by these rules a master is precluded from exercising. Ord. XXXV. r. 6, No. 406.

79. Every district registrar and other officer of a district registry shall be subject to the orders and directions of the court or a judge, as fully as any other officer of the court; and every proceeding in a district registry shall be subject to the control of the court or a judge, as fully as a like proceeding in London. *Ibid.* r. 11, No. 411.

80. Every district registrar shall account for and pay over to the Treasury all moneys paid into court at the registry of which he is registrar, in such manner and at such times as may be from time to time directed by the Treasury. Ord. XXXV. r. 23, No. 423.

81. As to proceedings in district registries, see Pt. II. c. 23.

4. Examiners.*

82. The office of the examiner of the court is not a public coat, and if the presence of the public is objected to, the examiner has no discretion to admit them. *In re Western of Canada Oil, Lands and Works Company*, 6 Ch. D. 109.

83. Any examiner appointed by any order of the Court of Admiralty has the like power of administering oaths as commissioners under commissions for the examination of witnesses. See the Admiralty Court Act, 1854 (c. 78), s. 6.

84. The examiners of the Court of Admiralty are examiners of the Judicial Committee of the Privy Council in all causes of appeal from any Vice-Admiralty Court. See 6 & 7 Vict. c. 38, s. 3.

84a. As to the duties of examiners in the examination of witnesses out of court, see Pt. II. c. 35, s. 28.

* (25) Any advocate, barrister-at-law, or solicitor may be appointed an examiner of the High Court of Admiralty. *Ibid.* s. 28.

(26) The examiners have hitherto been selected from proctors and solicitors.

(27) The present examiners in the Admiralty Division are:—W. T. Pritchard, E. C. Curry, G. H. Brooks, A. Heales, J. C. Traill, Charles Ford, James Rob Green-

ing, H. D. Pritchard, C. Waddilove, A. J. Pritchard, C. Chabot, R. S. Jackson, and J. R. L. Walmisley, Esquires. They are all solicitors except Mr. Traill, who is an equity draughtsman and conveyancer.

(28) The solicitor whose witnesses are to be examined selects the examiner.

(29) For the fees receivable by the examiners and their duties, see c. 35, s. 28.

5. *Marshal.**

85. As to the office, duties and fees of the marshal, see *The Rendsberg*, 6 C. Rob. 142.

86. The marshal is not liable for property legally in his possession, though not so in fact, being under the king's locks. *The Buena Ventura*, cited in *The Rendsberg*, *ibid.* 157, 174.

87. Motion against the marshal (for whom no appearance was given) for reparation of a loss by pillage sustained while the ship was under his care, granted. *The Hoop*, 4 C. Rob. 145; but see *The Three Friends*, 4 C. Rob. 268, and No. 647, *infra*.

87a. *Semble*, that if an appearance had been given by the marshal, denying neg-

ligent custody, the court would have thrown the proof thereof on the other party. *The Rendsberg*, 6 C. Rob. 157.

88. All fees due to the marshal are paid in stamps. See Order as to Supreme Court Fees, 1884, No. 1.

88a. As to the fees receivable by the marshal, *ibid.* Sched. "Fees in the Marshal's Office, &c."

6. *Commissioners to administer Oaths.†*

89. Every person at the commencement of this act authorized to administer oaths in any of the courts whose jurisdiction is hereby transferred to the High Court of Justice, or Court of Appeal, is a commissioner to administer oaths in all causes and matters depending in the High Court

* (30) The marshal is the executive officer of the court, and performs duties analogous to those of the sheriff at common law. He is charged with the execution of all process of the court, except writs and subpoenas. The marshal is appointed by patent from the Lords Commissioners of the Admiralty, and the duties of the office were formerly performed by deputy, but they are now performed by the marshal himself, or by his substitutes, officers, or clerks, under his immediate supervision and control. The marshal's substitutes in the execution of warrants are the collectors of customs at the different ports. The marshal was formerly remunerated by fees, but by 3 & 4 Vict. c. 66, ss. 5—18 (now repealed), a yearly salary was substituted for them, and he was prohibited from taking any fees for his own use. He attends the sittings of the court, and carries a silver oar, as the emblem of the maritime jurisdiction of the court.

(31) As to the office, duties, and ancient emoluments of the marshal of the Court of Admiralty, see Report of the Commissioners as to the duties, &c. in Courts of Justice. Sees. Paper, Ho. Co. No. 240, anno 1824, pp. 53—65.

(32) By the old practice in force until the Rules and Orders of Court, of Nov. 1854, came into operation, the marshal, except under special circumstances, only executed the process of the court within the port of London, and the practitioners of the court by their agents executed all process at the outports.

† (33) The principal statutes on the subject of commissioners to take oaths and affidavits are the 29 Car. 2, c. 5; 55 Geo. 3, c. 15; 3 & 4 Will. 4, c. 42; 22 Vict. c. 16; 16 & 17 Vict. c. 78; 23 & 24 Vict. c. 127.

(34) The lord chancellor will not appoint any solicitor a commissioner to administer oaths unless he has complied with the following conditions:—(1) Two months prior to

the application to the lord chancellor he must have given notice to the registrar of solicitors, at the Hall of the Incorporated Law Society, of his intention to apply under the present section. (2) He must obtain a certificate from two practising barristers and two practising solicitors as to his fitness for the office of commissioner. (3) He must obtain a certificate from two householders residing in his district, that an additional commissioner is required in the district, and that he is qualified to fill the office. (4) He must have taken out a practising certificate for six years prior to the date to which he gives notice to the registrar of solicitors. (5) He must be in actual practice as a solicitor at the time at which he is appointed commissioner, and the appointment only lasts "so long as he shall continue to practise as a solicitor." (6) He must present a petition to the lord chancellor, stating the length of time for which, and the place where, he has practised, and praying to be appointed a commissioner. (7) The petition must be accompanied by a certificate from the deputy-registrar of solicitors, stating the day on which notice was given to the registrar of solicitors. (8) The petition and certificate must be left at the office of the lord chancellor's principal secretary, or with the lord chancellor's purse-bearer, at the office in Quality Court. (9) A fee of £5 must be paid on the issuing of the commission. (10) The commission must be left for registration at the Hall of the Incorporated Law Society, Chancery Lane, and a further fee of 1s. must then be paid. See Charley's Practice and Pleading under the Judoicature Acts, 3rd ed. p. 198.

(35) See the form of petition to the lord chancellor in C. Ford's Oaths in the Supreme Court, p. 44.

(36) Forms of commission, with the impressed stamp, are sold at the Inland Revenue Office.

and in the Court of Appeal. See the Judicature Act, 1873 (c. 66), ss. 77, 82.

90. All commissioners to take oaths or affidavits in the Supreme Court shall be appointed by the lord chancellor. *Ibid.* s. 84.

91. Every master, and every first and second-class clerk in the Filing and Record Department, shall, by virtue of his office, have authority to take oaths and affidavits in the Supreme Court. Ord. LXI. r. 5, No. 898.

92. No commissioner shall take bail on behalf of any person for whom he or any person in partnership with him is acting as solicitor or agent. Ord. XII. r. 21, No. 91.

92a. No affidavit is sufficient if sworn before the solicitor for the party on whose behalf the affidavit is to be used, or before any agent, correspondent, partner, or clerk of such solicitor, or before the party himself. See Ord. XXXVIII. rr. 16 and 17, Nos. 536, 537.

7. Court Shorthand Writers.*

93. As to the procedure for taking evidence in shorthand, see Pt. II. c. 35, s. 28.

93a. As to the taking of such evidence being confined to the court shorthand writers, see *The Marbella*, 25 April, 1883.

8. Solicitors.

(a) Generally.†

94. From the commencement of this act all solicitors, attorneys or proctors in any court whose jurisdiction is transferred to the High Court or Court of Appeal are to be called "solicitors of the Supreme Court," and are entitled to the same privileges and subject to the same obligations, so far as circumstances will permit, as if this act had not passed. See the Supreme Court of Judicature Act, 1873 (c. 66), s. 87.

95. All such solicitors, attorneys or proctors shall be deemed officers of the Supreme Court, and subject to the same jurisdiction as any of her Majesty's superior courts of law or equity might previously to the passing of this act have exercised in respect of them. *Ibid.*

96. For powers for adapting previous provisions as to attorneys to the solicitors of the Supreme Court, see the Supreme Court of Judicature Act, 1875 (c. 77), s. 14.

* (37) The authorized reporters of the court now are Messrs. Carruthers and Barnett, of No. 203, Strand.

† (38) As to solicitors of the High Court of Justice, their rights, duties, and responsibilities, and their articulated clerks, see Archbold's Practice (14th ed. by Chitty), vol. 1, pp. 39 *et seq.*

(39) As to the preliminary, intermediate, and final examination of persons intending to become solicitors of the Supreme Court, and exemptions from parts thereof and the fees thereon, see the Regulations made by the Incorporated Law Society (under the Solicitors' Acts, 1843, 1860, and 1877), dated 5th December, 1877, in Wilson's Judicature Acts and Rules (2nd ed.), p. 549, and for the fees thereon, *ibid.* p. 564.

(40) The Queen's proctor is standing proctor for the Crown, and charged with the conduct on its behalf of the actions or proceedings in the Court of Admiralty in which the interests of the Crown are concerned, including droits of the Crown, and all prize proceedings on behalf of or against the Crown, and on behalf of all commissioned captors claiming under it in virtue of the prize proclamation in all prize actions before the court.

(41) The Queen's proctor held his office by patent. The appointment is in the gift of the ministers of the Crown for the time being, when a vacancy occurs. The office is now merged in the Solicitor's department of

the Treasury.

(42) The Admiralty proctor is appointed by the Lords Commissioners for executing the office of Lord High Admiral, as standing proctor for them in the same suits or proceedings in the Court of Admiralty, as those in which the Admiralty advocate appears, viz. all suits in the Court of Admiralty in which the interests of the office of Lord High Admiral are concerned, including droits or perquisites of the Lord High Admiral and prizes made by non-commissioned captors, causes of salvage to or by vessels of the Royal Navy, or to vessels in the employment at the time of the Lords Commissioners of the Admiralty, and causes of damage by collision to or by vessels of the Royal Navy. The office is now merged in the Solicitor's department of the Treasury.

(43) All solicitors might practise in the late Court of Admiralty. See 22 & 23 Vict. c. 6, s. 1.

(44) Proctors were forbidden to allow any person not duly qualified to act for them or participate in their fees except as therein mentioned under pain of being struck off the rolls. See 55 Geo. 3, c. 160, ss. 31, 76.

(45) But any proctor of the Court of Admiralty might act as agent of any solicitor, notwithstanding 55 Geo. 3, c. 160. The Admiralty Court Act, 1861 (c. 10), s. 30.

(46) As to proctors in the American Admiralty Courts, see 2 Parsons on Maritime Law, 660. [AMERICAN.]

97. A solicitor not entering an appearance or putting in bail, or paying money into court in lieu of bail, in an Admiralty action *in rem*, in pursuance of his written undertaking so to do, shall be liable to an attachment. Ord. XII. r. 18, No. 88.

98. A solicitor, upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment. Ord. XXXI. r. 23, No. 365.

99. In cases of wages prosecuted on behalf of mariners, the practitioner in the Court of Admiralty has a public as well as private duty to discharge in seeing that the interests propounded for them are in his apprehension just, or at least doubtful. He is justified in submitting to the decision of the court a doubt which it is not his province to decide. Such interests are not to be pursued *per fas et nefas*, but they are so pursued if endeavours are used to stifle the fair circumstances of the case, and knowingly to impose a false case. *The Frederick*, 1 Hagg. 223.

(b) *Disclosure by—*

100. As to disclosure by any solicitor, whether any writ purporting to have been issued by him was so issued, see Pt. II. c. 10.

(c) *Agreements.*

101. As to agreements between solicitors for facilitating proceedings in actions, see SOLICITORS' AGREEMENTS, Pt. II. c. 24, s. 8.

(d) *Change of—*

See tit. COSTS, c. 23, s. 2, p. 376.

(e) *Lien for Costs.*

102. See tit. COSTS, p. 374; and as to priority of such lien, see tit. LIENS, p. 820.

(f) *Costs.*

103. As to costs of solicitors, see tit. COSTS, p. 342; and as to costs against solicitors, *ibid.* p. 376.

5. Offices.

1. Hours of Attendance and Holidays.

104. The office hours in the several offices of the Supreme Court, other than

the Summons and Order, Crown Office, and Associates Departments of the Central Office, shall be from ten in the forenoon to four in the afternoon, except on Saturday and in vacation, when the offices shall close at two in the afternoon. In the excepted departments the hours shall be from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours shall be from eleven in the forenoon to three in the afternoon. Ord. LXIII. r. 9, No. 953.

105. The offices of the Supreme Court, except as therein mentioned, close on Saturdays at two o'clock. *Ibid.* r. 8, No. 952.

106. The offices of the Supreme Court are not open on Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation or thanksgiving. *Ibid.* r. 6, No. 950.

107. As to the days on which the offices of a district registrar are open, *ibid.* r. 7, No. 951.

2. Central Office.

(a) *Generally.*

108. As to the departments into which the Central Office is divided, and the performance of the duties thereof by the several officers and clerks in the office, see Ord. LXI. r. 1, No. 894.

109. The forms contained in the appendices shall be used in or for the purposes of the Central Office, with such variations as circumstances may require. *Ibid.* r. 32, No. 925.

110. As to power to the masters to prescribe the use in or for the Central Office of modified or additional forms. *Ibid.* r. 33, No. 926.

111. No affidavit or record of the court shall be taken out of the Central Office without the order of a judge or master, and no subpoena for the production of any such document shall be issued. *Ibid.* r. 28, No. 921.

111a. As to references to affidavits on the file for the purpose of drawing orders; as to the production of affidavits from the Affidavit Office before a judge or master, and in court; and as to the inspection of original affidavits, see Central Office Notice (as to affidavits) of July, 1880, in Wilson's Judicature Acts and Rules (4th ed.), p. 377.

112. As to the cause books, their distinctive marks and indexes, see Central Office Practice Rules, 1880—1882, in *Ibid.* p. 844.

113. No separate district registry cause book is to be kept. No letter need be sent to the district registrar. *Ibid.* p. 848.

113*a*. As to the attendance by an officer of the Central Office with any record or document at any court or place out of the Royal Courts or at the assizes, and the previous deposit of a sum on account of his fee, see Ord. LXI. r. 29, No. 292.

(b) *Filing of Documents.**

114. As to the filing of documents in the Central Office, see Ord. LXI. r. 16, No. 909; *ibid.* r. 31, No. 924; *ibid.* r. 19, No. 912; *ibid.* r. 20, No. 913.

115. As to entries, as to the filing of documents in the books at the Central Office, and the accessibility of such books, during office hours, to the public on payment of the usual fee, *ibid.* r. 18, No. 911.

116. As to the indexes or calendars to the files or bundles of documents filed at the Central Office, and their accessibility, during office hours, to the public on payment of the usual fee, *ibid.* r. 17, No. 910.

117. As to the deposit of deeds or other documents in the Central Office, *ibid.* r. 30, No. 923.

118. As to the filing in the Central Office of submissions to arbitration, see tit. ARBITRATIONS, Pt. II. c. 42.

(c) *Office Copies.†*

119. Office copies of all writs and documents filed in the High Court of Justice shall be admissible in evidence in all causes and matters, and between all persons or parties, to the same extent as the original would be admissible. See Ord. XXXVII. r. 4, No. 486.

119*a*. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with

the seal of the office. Ord. XXXVIII. r. 15, No. 535.

119*b*. In cases in which an original affidavit can be used, and to which Ord. XXXVIII. r. 15 applies, it shall not be necessary to take an office copy. 'Ord. LXV. r. 27, sub-r. 53, No. 1002.

119*c*. It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used as against such party. *Ibid.* sub-r. 54.

120. All copies, certificates, and other documents appearing to be sealed with a seal of the Central Office shall be presumed to be office copies or certificates or other documents issued from the Central Office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate or other document. Ord. LXI. r. 7, No. 900.

120*a*. Except as provided by Ord. LV. r. 48 (as to claimants filing affidavits in Chancery), the party by or on whose behalf any deposition, affidavit or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed. Ord. LXVI. r. 7, sub-r. (f), No. 1009.

121. The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates. *Ibid.* sub-r. (g).

122. The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies. *Ibid.* sub-r. (m).

123. It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on

* (47) Under ordinary circumstances no documents in Admiralty proceedings are filed at the Central Office, except writs, appearances, and orders for payment. See as to writs, Pt. II. c. 8; as to appearances, Pt. II. c. 13; and as to orders for payment, this Part, c. 10, p. 1483.

† (48) If an affidavit or other proof filed in any other division of the High Court is required to be used in the Admiralty division, an office copy of it should be obtained in the usual way from the central office, and filed in the Admiralty registry.

every office copy and copy furnished to a party. Ord. LXVI. r. 7, sub-r. (k).

124. A folio comprises 72 words. Every figure comprised in a column or authorized to be used is counted as one word. See Ord. LXV. r. 27, No. 1002 (14).*

124a. No alteration, interlineation, or erasure shall on any account be made in any office copy which has been issued from this office. See Central Office Notice (as to affidavits) of July, 1880, in Wilson's Jud. Acts and Rules (4th ed.), p. 377.

125. For general directions as to bespeaking office copies, and as to the marking, stamping, examining and endorsing thereof, at the Central Office, see *Ibid.* p. 376; and as to stamps, *ibid.*, and tit. EVIDENCE, c. 16, p. 442.

(d) Registry of Admiralty Division.

See next chapter.

6. Registry of Admiralty Division.†

1. Generally.

126. Every instrument under seal of the court and prepared in the Admiralty registry shall bear date on the day on which it is issued. See Ord. LXVII. r. 10, No. 1021.

* (49) In the calculation of folios the endorsement of the papers is to be included.

(49a) All office copies of, or of any part of, the documents therein mentioned (*i. e.*, certificates, petitions, written admissions of evidence, and submissions to arbitration made orders of the court), are to be ready for delivery within forty-eight hours after being bespoken. See Ord. LXI. r. 31, No. 924.

† (50) All process in Admiralty proceedings (except writs, which are issued from the central office), including warrants, commissions for bail, and releases from arrest, is issued from the registry of the Admiralty division.

‡ (50a) Under ordinary circumstances, all documents in Admiralty proceedings required to be filed (except writs, appearances, and orders for payment, all which are filed in the central office) are filed in the registry of the Admiralty division.

§ (51) Forms of minutes may be obtained in the registry. The minute is entitled with the usual name and description of the cause, and states that the solicitor for the plaintiff or defendant, as the case may be, setting out his name, files the following documents, a list of them properly described, being sub-

2. Filing of Documents.‡

127. It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party. See Ord. LXVI. r. 7, No. 1009, sub-div. (k).

3. Minutes and Minute Book.§

128. On filing any instrument or document in Admiralty actions, the solicitor shall state, in writing, on a printed form called a minute, to be obtained in the Admiralty registry, the nature of the instrument or document filed, and the date of the filing thereof. *Ibid.* r. 8, No. 1010.

129. In Admiralty actions a record of all such minutes as in the last preceding rule mentioned, and of all actions commenced and appearances entered, and of all orders of the court, shall be entered in a book to be kept in the Admiralty registry, called the "Minute Book." *Ibid.* r. 9, No. 1011.

4. Caveats.

(a) Generally.||

130. In Admiralty actions a caveat, whether against the issue of a warrant,

joined: The minute is dated and duly signed by the solicitor, or by his clerk for him.

(52) The stamps (which are adhesive, and not impressed), payable on the documents filed are placed on the minute and not on the documents themselves. There is no stamp required on the minute itself for the minute.

(53) A copy of the minute book or books was formerly kept in the registry for the use of the practitioners and the public (besides the original minute books, also accessible to them), but this practice is no longer in force, and the minute book is now kept for the use of the officials only, and can no longer be inspected by the practitioners or parties as of right. See Judges' Order of 12th May, 1859.

(54) When the minutes of the proceedings were taken down in court by the registrar, the court would uphold the registrar's entry in the minute book, and not permit it to be questioned. *The Monarch*, 1 W. Rob. 22, 35.

|| (55) *Held*, prior to the Judicature Acts, that a caveat was of no avail in the Court of Admiralty further than as a notice to the other solicitor. *The Soegutten*, 3 Notes of Cases, 270.

the release of property, or the payment of money out of the Admiralty registry, shall not remain in force for more than six months from the date thereof. Ord. LXIV. r. 15, No. 975.

(b) *Against Warrant.*

(aa) *Generally.*

131. A party, desiring to prevent the arrest of any property, may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the principal registry. Ord. XXIX. r. 11, No. 332.

132. For this purpose the party shall cause to be filed in the registry a notice, signed by himself or his solicitor, undertaking to enter an appearance in any action that may be commenced against the property, and to give bail in such action in a sum not exceeding an amount to be stated in the notice, or pay such sum into the registry; and a caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the registry, called the "Caveat Warrant Book." *Ibid.* r. 12, No. 333.

133. Where an action is proceeding in a district registry, the district registrar (unless required to act under Rule 18 of this Order) shall, before issuing a warrant for the arrest of the property, ascertain by telegraph, or otherwise, from the principal registry, whether or not any caveat has been entered against the issue of a warrant for the arrest thereof. *Ibid.* r. 13, No. 334.

134. For form of præcipe for caveat warrant, see R. S. C. 1883, App. A. Pt. 2, No. 18.

135. A solicitor, commencing an action against any property in respect of which a caveat has been entered in the "Caveat Warrant Book," shall forthwith serve a copy of the writ upon the party on whose behalf the caveat has been entered, or upon his solicitor. Ord. XXIX. r. 14, No. 335.

(bb) *Appearance.*

136. Within three days from the service of the writ or copy thereof, the party on whose behalf the caveat has been entered shall, if the sum in respect of which the action is commenced does not exceed the amount for which he has undertaken, give bail in such sum, or pay the same into the registry. *Ibid.* r. 15, No. 336.

(cc) *Proceedings in Default of Appearance.*

137. After the expiration of twelve days from the filing of the notice in Rule 12 mentioned, if the party on whose behalf the caveat has been entered shall not have given bail in such sum, or paid the same into the registry, the plaintiff's solicitor may proceed with the action by default, and on filing his proofs in the registry may have the action placed on the list for hearing. *Ibid.* r. 16, No. 337.

138. If, when the action comes before the judge, he is satisfied that the claim is well founded, he may pronounce for the amount which appears to him to be due, and may enforce the payment thereof by attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property, if it then be or thereafter come within the jurisdiction of the court. *Ibid.* r. 17, No. 338.

139. Nothing in this order shall prevent a solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the "Caveat Warrant Book;" but the party at whose instance any property in respect of which a caveat is entered shall be arrested, shall be liable to have the warrant discharged and to be condemned in costs and damages, unless he shall show, to the satisfaction of the judge, good and sufficient reason for having so done. *Ibid.* r. 18, No. 339.

(o) *Against Release.*

(aa) *Generally.**

140. A solicitor in an action, desiring to prevent the release of any property

* (56) It is unnecessary to issue a warrant in a second action when the property is already under arrest. The issue and service of a writ, and the entry of a caveat release, will suffice, and the expense of possession fees will be thereby saved.

(57) When, as in most cases, the amount of the proposed action cannot be ascertained, it is convenient to insert in the præcipe, as the amount of bail offered, in damage

actions, "any sum not exceeding the statutory liability of the owners" of the vessel whose arrest it is desired to avoid; in salvage causes, "any sum not exceeding the value of the ship, cargo, and freight whose arrest it is desired to avoid," and to add in salvage cases an undertaking to prove values. The stamp on the præcipe is adhesive, not impressed, and the amount five shillings.

under arrest, shall file in the registry a notice, and thereupon a caveat against the release of the property shall be entered in a book, to be kept in the principal registry, called the "Caveat Release Book." Ord. XXIX. r. 8, No. 329.

141. Where an action is proceeding in a district registry, the district registrar shall, before authorizing a release, ascertain by telegraph, or otherwise, from the principal registry, whether or not any caveat has been entered there. *Ibid.* r. 9, No. 330.

142. Where an action is instituted against a vessel already under the arrest of the court, a caveat may be issued in the latter action, to prevent her release in case the other action should be withdrawn. *The Rio Lima*, 2 Asp. N.S. 34; 28 L. T. N.S. 774.

143. For form of præcipe for caveat release, see R. S. C. 1883, App. A. Pt. 2, No. 17.*

(bb) *Responsibility for—*

144. A party, delaying the release of any property by the entry of a caveat, shall be liable to be condemned in costs and damages, unless he shall show to the satisfaction of the judge good and sufficient reason for having so done. Ord. XXIX. r. 10, No. 331.

145. The omission of the plaintiff's country solicitor to order by electric telegraph a caveat release to be withdrawn, *held*, under the circumstances, not to amount to negligence. *The Corner*, 3 N. R. 94; 12 L. T. N.S. 62.

146. As to costs and damages in such cases, see tit. Costs, c. 20, p. 370.

(d) *Against Payment out of Moneys in Court.*

147. A solicitor desiring to prevent the payment of money out of court in an Admiralty action shall file a notice,

and thereupon a caveat shall be entered in the "Caveat Payment Book" in the Admiralty Registry. Ord. XXII. r. 21, No. 275.*

(e) *Withdrawal.*

148. For form of præcipe to withdraw caveat, see R. S. C. 1883, App. A. Part 2, No. 19.*

7. Court Fees, Percentages, and Stamps.†

149. As to court fees and percentages, see tit. Costs, p. 377; and as to stamps, *ibid.* and tit. EVIDENCE, p. 442; and as to the document on which the stamp is to be affixed in case of doubt, see Treasury Order of 28 Oct. 1875, as to stamps, Ncs. 5 and 6.

8. Funds in Court.‡

150. For provisions as to the payment, deposit, or transfer into or out of court, of any money or property, or for dealing therewith, and that the same shall, for that purpose, be deemed provisions as to practice or procedure, and for powers to the lord chancellor to determine to what accounts any such moneys or property are to be carried, and how they are to be entitled, and to modify the forms relating thereto, and requiring the Bank of England and all other companies, bodies corporate, and persons to make such alterations in their books as may be so directed for the purpose of carrying the lord chancellor's orders into effect; see the Supreme Court of Judicature Act, 1875 (c. 77), s. 24.

151. For provisions for consolidating the accounting departments of the Supreme Court of Judicature, and empowering the lord chancellor, with the concurrence of the Treasury, to make rules as

* (58) The præcipe must bear a five shillings adhesive stamp, and be filed in the Registry.

† (59) All stamps required for use in Admiralty proceedings may be obtained on the proper form at Room No. 420, in the Royal Courts.

(59a) As to adhesive stamps being put on the first page of the affidavit in the margin, see Central Office Notice (as to affidavits), of July, 1880, in Wilson's Jud. Acts and Rules (4th ed.), p. 377.

‡ (60) Before the Judicature Acts and Rules, it was not the practice of the Court of Admiralty to order the money of suitors

to be put out at interest, except upon their joint application and consent. *The Princessa Zavala and La Reine Elizabeth*, 2 O. Rob. 31, 49; but see notes 88, *infra*.

(60a) But the court would, on application to it for that purpose by either party, allow money paid into the registry, and likely to remain there some time, to be invested so as to carry interest. *The North American*, 1 Lushington, 79; 5 Jur. N.S. 659.

(61) If, however, no such application was made by either party, interest on money so paid in would not ordinarily be allowed against the defendant. *Ibid.*

to the payment of money in and out of court, see the Judicature Act, 1881 (c. 68).

152. For provisions for the lord chancellor, in concurrence with the Treasury, to give directions as to the placing, transfer, and payment of funds and securities in the High Court, to make, revoke, or alter Rules of Court accordingly in reference thereto, and for remittances by post, see the Supreme Court of Judicature (Funds, &c.) Act, 1883 (c. 29), ss. 3—7.

153. For regulations as to the investment of funds in court, and the payment of money into and out of court in all the divisions of the Supreme Court, see Appendix M. to R. S. C. 1883, Nos. 13—15, and Supreme Court Funds Rules, 1884, c. 7, INVESTMENTS, pp. 29 *et seq.*

154. As to the payment of dividends on such investments, and deduction of income tax, as to investment of dividends, as to the transfer of securities, as to payments to married women and representatives of deceased persons entitled, and as to certificates of funds in court, and other information thereon, by paymaster, see S. C. F. R. 1884, c. 6, pp. 24 *et seq.*

155. Money shall not be placed on deposit in the Admiralty Division. *Ibid.* No. 77.

156. Cash under the control of or subject to the order of the court may be invested in bank stock, East India stock, exchequer bills, and £2:10s. per cent. annuities, and upon mortgage of freehold and copyhold estates respectively in England and Wales, as well as in Consolidated, Reduced, and New £3 per cent. annuities. Ord. XXII. r. 17, No. 271.

157. Every application for the purpose of the conversion of any stocks, funds or securities into any other stocks, funds or securities authorized by the last preceding rule, shall be served upon the trustees thereof, if any, and upon such other persons, if any, as the court or judge shall think fit. *Ibid.* r. 18, No. 272.

158. In any case in which an affidavit is required, an office copy must be produced at the bank. R. S. C. 1883, App. M. No. 18.

159. An office copy of every order in the Admiralty Division to be left with and acted on by the paymaster shall be transmitted by the proper officer to the Audit Office, and in case of any amendment in any such order such office copy shall be likewise amended. See S. C. F. R. 1884, No. 97.

160. The Supreme Court Funds Rules, 1884, do not apply in district registries to

funds in court, or thereafter lodged in court, *ibid.* No. 111.

161. The plaintiff, as third mortgagee, instituted a suit against a ship of which the defendant was first mortgagee in possession, and caused her to be arrested. The defendant, to obtain the release of the ship, paid into court the sum of £500 in lieu of bail. The defendant then sold the ship for an amount insufficient to satisfy the sum secured by his mortgage. The plaintiff, when the cause was ripe for hearing, abandoned the suit, and the £500 was paid out to the defendant.

Held, that the defendant was entitled to interest at the rate of £4 per cent. per annum on the £500 for the time that it remained in court. *The Western Ocean*, L. R. 3 A. & E. 38.

161a. A damage cause was instituted in the Court of Admiralty against a vessel, bail given, and the ship released. The claim of the plaintiff, afterwards proved to be beyond the amount of bail, and the defendants were foreigners. The same vessel was arrested in another cause in the same court, and therein the ship was sold, and the proceeds paid into court. A large surplus remained in court after satisfying the claim of the plaintiff in the second cause. On application by the plaintiffs in the first cause, opposed by the foreign owners, to be paid the balance due to them beyond the amount of bail out of the surplus proceeds; *held*, that such proceeds were as free from the lien of the plaintiffs in the first cause as the vessel itself was after bail and release, and that the court had no authority under the 15th section of the Admiralty Court Act, 1861 (c. 10), to direct such proceeds to be paid to the plaintiff in the first cause as a judgment creditor. *The Wild Ranger*, 2 N. R. 402.

9. Payment into Court.

1. Generally.

162. In the Admiralty Division a lodgment of funds to the account of the paymaster shall be made upon presentation at the Bank (Law Courts Branch) of an authority signed by or on behalf of a registrar. Such authority shall be issued upon a request signed by or on behalf of the person desiring to make such lodgment. The request shall specify the title of the cause or matter (which in Admiralty actions shall include the name of

the ship), and any particulars of the lodgment which may be necessary, and may be in the Form, No. 9,* in the appendix to these rules. See S. C. F. R. 1884, No. 34.

163. All money and securities to be paid into or deposited in court shall be paid or deposited at the Bank of England (Law Courts Branch) and placed in the books of the bank to the account of the paymaster-general for the time being for and on behalf of the Supreme Court of

Judicature; and the bank shall cause a receipt to be given to the person making the payment or deposit. *Ibid.* No. 29.

164. Any party who intends to pay money into court will, on request at the Bank of England (Law Courts Branch), hereinafter called the bank, be furnished with a form of request, which must be filled up as hereinafter provided, and signed by such party or his solicitor. The money will then be received by the bank, and an official receipt for the

* (62) *Semble* r. 19 of Ord. XXII. No. 273, is superseded by Supreme Court Funds Rules, 1884.

(63) The following is form No. 9:—

HIGH COURT OF JUSTICE.—PROBATE, DIVORCE AND ADMIRALTY DIVISION.

I. *Request for Authority for Lodgment.*

Title of Cause or Matter, *v.* ,
188 . A. No.

[In Admiralty actions insert name of ship.]
Lodgment credit to } [If same as title of cause,
which lodged. } state "As above."]
To the Registrar.

I request authority for the lodgment of £ at the Bank of England for the ledger credit above specified; such lodgment being for*

(Signature)

* State here such particulars as may be required.

II. *Authority for Lodgment.*

To the Cashier of the Bank of England (Law Courts Branch).

Please receive the above-stated sum and place it to the account of the paymaster-general for the time being for and on behalf of the Supreme Court of Judicature.

(Signature)

III. *Bank Certificate of Receipt.*

To the Assistant Paymaster-General.

Bank of England , 188 .

The above-stated sum has been this day received.

(Signature)

(64) This form may be obtained at the Royal Courts of Justice Form Office, Room No. 420. A charge of one penny is made for it.

(65) The form, when Part 1 thereof has been filled up for use, must bear a one shilling impressed stamp. The form may be bought, with the stamp affixed, for the price of the stamp in addition; or the practitioner may get the stamp affixed at the stamp office in the Royal Courts, if he prefers to do so.

(66) Part 1 of the form is signed by the practitioner, or his clerk for him.

(67) Part 1, when duly filled up and signed, is taken by the practitioner or his

clerk to the Admiralty registry, which is in the Royal Courts of Justice, and to the office of the chief clerk there (Room No. 734), who signs for the registrar Part 2 of the form, and hands it back to the practitioner or his clerk, who takes it to the Law Courts branch of the Bank of England at the Royal Courts of Justice, Room No. 47, with the money to be paid, or a cheque on a banker's for the amount, crossed "Bank of England, Law Courts Branch." An ordinary paying-in slip from those lying on the counter is at the same time filled up, and the same, and the form so filled up, and the money or cheque, are handed over the counter.

(68) If the amount is paid in money, the clerk thereupon signs Part 3, acknowledging the receipt of the money, and hands back the form.

(69) If the money is paid by a crossed cheque, the clerk receiving it gives in exchange an informal memorandum of the amount paid in, and of the day on which the printed receipt is to be called for, with his initials thereto, and on the practitioner or his clerk calling accordingly, if the cheque has been paid, the form, with Part 3 duly filled up and signed, is handed to him.

(70) The object of this delay is to give time for the payment of the cheque before the receipt for the money is given.

(71) The practitioner or his clerk then prepares a notice to the adverse solicitor, headed with the proper title of the action, and setting forth the amount paid in, the date of payment, and the purpose for which it was paid in.

(72) This notice is signed by the practitioner, or by his clerk for him.

(73) A copy of this notice and of Form No. 9, are served on the adverse solicitor.

(74) The practitioner or his clerk should annex to the notice Form No. 9 so filled up and signed, and endorse on the notice, and sign, a certificate that a copy of the notice and receipt have been served on the adverse solicitor.

(75) The notice, with form No. 9 annexed, should be filed in the registry with a minute recording the filing, and bearing a 5s. adhesive (not impressed) stamp thereon.

money will be given. Where the money is paid in upon a notice or pleading, such notice or pleading must be produced at the bank at the time the money is paid in, and the receipt will be given on the margin thereof. R. S. C. 1883, App. M. No. 1.

165. In filling up the request mentioned in the last preceding regulation, the party paying the money into court shall enter thereon the letter, number and short title of the action, and the name of the party by whom the payment is made, and also such one of the following statements as may be applicable to the circumstances under which the money is paid in, viz. :—

(a) Where the money is paid in under the provisions of r. 5 of Ord. XXII. —(*i. e.* (1) where payment into court is made before delivery of defence, (2) where the liability of the defendant is not denied in the defence, or (3) where the payment is made with a defence setting up a tender of the sum paid), an entry in the following form:—A. paid in in satisfaction of claim of above-named (*name of party*).

(b) Where the money is paid in under r. 6 of Ord. XXII. (*i. e.* where the liability of the defendant is denied in the defence) an entry in the following form:—B. paid in against claim of above-named (*name of party*) with defence denying liability.

(c) Where the money is paid in under the provisions of r. 26 of Ord. XXXI. (*i. e.* where discovery by interrogatories is sought and security is required accordingly) an entry in the following form:—C. paid in to “Security for Costs Account.”

(d) Where the money is paid in under an order* or certificate an entry in the following form:—D. paid in under order (or certificate) dated the day of , 18 . *Ibid.* No. 2.

166. As to the lodgment of money in actions of debt or damages, see S. C. F. R. 1884, No. 30.

167. Where money is paid into court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this order in the same manner

as in the action tried. Ord. XXII. r. 8, No. 262.

168. As to the deposit to be paid into court by the party seeking discovery by interrogatories, before applying for such discovery, see tit. EVIDENCE, p. 425.

169. As to the lodgment of funds in court in the other divisions, see S. C. F. R. 1884, Nos. 29—43; and Archbold's Practice (14th ed. by Chitty), vol. 4, pp. 342 *et seq.*

170. A cause of damage was instituted in the name of a party not the registered owner. Claim of the defendants to be dismissed, after damage pronounced for and the accounts referred, was not admitted, but the court stated that if after the amount of damage had been ascertained any doubt arose as to who was entitled to receive the money, it would direct the amount to be paid into the registry, and throw on the claimant the onus of establishing his ownership by competent proof. *The Ilos*, Swabey, 100. See also *The Minna*, L. R. 2 A. & E. 97.

2. By Defendant.

171. Where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or at any later time by leave of the court or a judge, pay into court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability (except in certain actions in the common law divisions), pay into court money, which shall be subject to the provisions of Rule 6. See Ord. XXII. r. 1, No. 255.

172. Payment into court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein. *Ibid.* r. 2, No. 256.

173. If the defendant pays money into court before delivering his defence, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money and also the claim or cause of action in respect of which such payment has been made. Such notice shall be in the Form No. 3, Appendix B., with such variations as circumstances may require. *Ibid.* r. 4, No. 258.

* (76) It is generally by this mode that money is paid into court in the Admiralty Division.

174. As to payment into court by a defendant desiring to appropriate the whole or part thereof to the whole or part of the plaintiff's claim, see R. S. C. 1883, App. M. No. 3.

175. Owners setting up an agreement in bar of a salvage claim are bound to pay into court the amount stipulated for under the agreement. *The Catherine*, 6 Notes of Cases, Supp. 1.

3. By Plaintiff.

176. A plaintiff may, in answer to a counter-claim, pay money into court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into court by a defendant. Ord. XXII. r. 9, No. 263.

4. Tender before Action.

177. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into court. *Ibid.* r. 3, No. 257.

178. As to costs after tender, see tit. Costs, c. 16, pp. 354—358.

See also as to tenders, Pt. II. c. 32, p. 1586.

5. Freight.

179. Cargo arrested for the freight only, may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the registry, or by satisfying the judge that it has already been paid. Ord. XXIX. r. 4, No. 325; and see *The Victor*, 1 Lushington, 72; *The Flora*, 35 L. J. Adm. 15.

180. When a *prima facie* title to freight is shown, a ship arrested for freight will be released upon bail being given in the action. When cargo is arrested it is otherwise, and the court will order the owners of cargo to bring in the freight. *The Ringdove*, Swabey, 312.

181. The mortgagee having a *prima facie* right to the freight is not required to bring it into court, as in the case of an ordinary holder of freight. *Ibid.*

182. In a bottomry action the court must be satisfied that freight has actually been received from the owners of cargo before it will enforce its being brought in by the owner of the ship. *The Aline*, 1 W. Rob. 123.

183. The R. was arrested in a cause of collision. At the time of the collision the R. had a cargo on board. At the time of the arrest, a portion only of such

cargo remained on board. The cargo and vessel belonged to the same owner. *Held*, on motion for release of the cargo remaining on board, that the value of freight on the whole cargo must first be paid into court. *The Roecliff*, L. R. 2 A. & E. 363; 38 L. J. Adm. 56; 3 Asp. 243.

184. *Seem*, a dock company is bound to bring into the Court of Admiralty a deposit to cover freight paid to them under 3 & 4 Will. 4, c. 57, s. 47 (repealed by 8 & 9 Vict. c. 84; but see 9 & 10 Vict. c. cccxcix, and tit. GOODS, CARRIAGE OF—, p. 620), in pursuance of a monition from that court, at the suit of a bottomry bondholder seeking to make it available, as in the nature of freight, in discharge of his bond. *The Lord Auckland*, 2 W. Rob. 301; 8 Jur. 478.

185. In a cause of damage instituted after the ship proceeded against had changed owners, the court refused to enforce the bringing in of the freight by the subsequent owners. *The Mellona*, 3 W. Rob. 25.

186. The owner of cargo on board a ship sued for collision is only compellable to pay into court the freight due from him to the shipowner. *The Leo*, 1 Lushington, 444; 31 L. J. Adm. 78; 6 L. T. N.S. 58. See also, as to the liability of freight and deductions therefrom in actions of bottomry, tit. GOODS, CARRIAGE OF—, pp. 593, 594; in actions of collision, *ibid.* p. 594; in actions of salvage, *ibid.* p. 595; and in actions of wages, *ibid.*

187. As to the deduction from freight of the costs of paying it in, see tit. Costs, p. 348.

6. To satisfy Lien.

188. Where an action is brought to recover, or a defendant in his defence seeks by way of counterclaim to recover, specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such court or judge, order that the party claiming to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such

further sum (if any) for interest and costs as such court or judge may direct, and that, upon such payment into court being made, the property claimed be given up to the party claiming it. Ord. L. r. 8, No. 664.

7. Costs.

188a. As to costs of payment of money into court, see tit. COSTS, p. 347.

10. Payment out of Court.

1. Generally.*

189. When money in court is by an order directed to be paid to any persons described in the order, or in a certificate of a chief clerk, or of a taxing officer, or of a master in lunacy, as co-partners, such money may be paid to any one or

* (77) In the Admiralty Division, to obtain payment of money out of court, an order for that purpose must be made by the judge on summons by consent or otherwise.

(78) All orders for payment of money out of court are made by the judge, not the registrar.

(79) A written authority signed by the client, on whose behalf the money was paid in, or who is otherwise entitled to receive the amount, for payment of the money to his solicitor—the practitioner—must then be obtained, and this authority must be annexed to the summons. If the solicitor has paid in the money as for a particular client, it may be paid out to him as solicitor of that client without such authority.

(80) In cases of small amount, say £200 or £300, and when the order is made by consent, the authorities will sometimes waive the authority of the client for payment to the practitioner.

(81) On taking out the summons the practitioner procures a blank form of order from the registry, endorses it with the name of the cause, and with his name and address, for the purpose of identification, and places thereon an adhesive stamp of five shillings in addition to the stamp of three shillings on the summons. This order is handed in to the registry on obtaining the summons.

(82) When the order has been made by the judge it is drawn up in the registry on the stamped form previously left there, and it is handed to the practitioner or his clerk on his application for it. A copy of this order is served on the adverse solicitor.

(83) Stamps, either adhesive or impressed, for the proper poundage payable, are then placed by the practitioner on a form, No. 4, in the App. to S. C. F. R. 1884, and the form left in the registry, where it is duly filled up in accordance with the order signed by the registrar or assistant registrar, and retained in the registry, a duplicate being delivered to the practitioner, who takes it to the office of the Paymaster-General, Royal Courts, Room No. 65, when an appointment is made for payment.

(84) The practitioner himself, or if a firm, one member of the firm, must attend the appointment, when a cheque on the Bank of England for the amount is handed to him, and he signs a receipt for the amount.

(85) This duplicate, in Form No. 4, left

at the pay office, which document is in effect a copy in columnar form of the order made by the judge, is considered in the registry and at the pay office as the "duly authenticated copy order" referred to in rule No. 46 of S. C. F. R. 1884, for which see No. 198, *infra*.

(86) The Court of Admiralty could not, prior to the Judicature Acts, enter into the contracts of general creditors, yet it might have been bound to take a judgment on record as a debt. *The Flora*, 1 Hagg. 303.

(87) Prior to the Judicature Acts creditors had no lien on the proceeds deposited in the registry of the Court of Admiralty of a ship sold under the authority of that court. *The Neptune*, 3 Hagg. 149; *The Douthorpe*, 2 W. Rob. 87; 3 Notes of Cases, 623; *The John*, 3 C. Rob. 290; *The Exmouth*, 2 Hagg. 88, n.

(88) So in a case prior to 3 & 4 Vict. c. 65, s. 3, of a vessel sold under decree of the court in a suit for wages, applications for the balance of the proceeds to be paid on the one hand to a mortgagee who had not obtained possession, and on the other to the executor of the sole owner, were respectively refused, and the proceeds directed to abide such order as might come to the court with regard to them. *The Portsea*, 2 Hagg. 84.

(89) Costs pronounced by a decree of the court to be due to a successful party, were, prior to the Judicature Acts, paid to a third party under a garnishee order. Such payment held to be a satisfaction of the decree, even as against that party's solicitor claiming his lien. A garnishee order could not be reviewed by the Admiralty Court. *The Olive*, 5 Jur. N.S. 445; Swabey, 423.

(90) A fund in the registry of the court could not, even before the Judicature Acts, be attached by process of foreign attachment out of the Court of the Lord Mayor of London. *The Albert Crosby*, 1 Lushington, 101; but see *The John*, 3 C. Rob. 290.

(91) As to the claims allowed in American Admiralty Courts against surplus proceeds in the custody of the court, see 1 Conkling's Adm. Prac. (2nd ed.) 149; 2 Parsons on Maritime Law, 548; Dunlap's Adm. Prac. (2nd ed.) 46, and cases there cited; *Furniss v. Brig Magoun*, *Ibid.* 55; *The Panama*, Olcott, Adm. 343; *Remnants in Court*, *Ibid.* 382; *Harper v. The New Brig*, Gilpin, 536; see *Davis v. A New Brig*, Gilpin, 473; *Andrews v. Wall*, 3 How. 568. [AMERICAN.]

more of such co-partners, or to the survivor of them. See S. C. F. R. 1884, No. 63.

190. A duly-authenticated copy of every order in the Admiralty Division, which directs funds to be dealt with, shall be left at the pay office, and shall be the paymaster's authority for the issue of directions giving effect to such orders; such copy shall be left by or on behalf of the person entitled to payment or interested in any other dealings with such funds directed or authorized by the order. *Ibid.* No. 46.

191. Every authority for the payment of money out of court must be attested by a witness, whose residence and description must be added to his attestation. See R. S. C. 1883, App. M., No. 9.

192. Where money is to be paid out under an order or authority, on bespeaking the payment out the order or authority must be lodged at the bank, and after having been examined by the bank must be filed in the Filing Department of the Central Office; and a certificate of its having been so filed must be lodged at the bank on receiving the cheque. *Ibid.* No. 8.

193. All payments out shall be authorized by cheques upon the bank, filled in by the bank, and drawn in favour of the party claiming to receive the money. One clear day shall be allowed for the preparation of the cheque, and it shall be signed by one of the masters, and made payable to order, crossed specially or generally, and marked "not negotiable." *Ibid.* No. 11.

194. Whenever the cheque is required to be drawn in favour of any person, not a solicitor of the Supreme Court, the bank may require him to be identified by a solicitor. *Ibid.* No. 12.

195. If such person shall be represented in the cause or matter by a solicitor, the identifying solicitor must be such solicitor, and in case a solicitor on requiring the cheque to be made payable to himself, or on identifying any person receiving such cheque, shall not be known at the bank, the bank may, at their discretion, require, on delivery of the cheque, the production by such solicitor of his annual certificate. *Ibid.*

196. As to the payment of money out of court to the party mentioned in the certificate as entitled thereto, or to his solicitor on the written authority of the former under Rule 26 of Ord. XXXI. (*i. e.*, where discovery by interrogatories is sought, and security is required accordingly), after the conclusion of the cause on a certificate of the taxing officer, *Ibid.* No. 6.

197. As to the payment of money out of court to the plaintiff, or to his solicitor on the written authority of the former, where paid in under Rule 6 of Ord. XXII. (*i. e.*, with defence denying liability), *Ibid.* No. 5.

198. In the Admiralty Division an order for the payment of money by the paymaster must be in the Form No. 4 in the Appendix. See S. C. F. R. 1884, No. 28.

199. In the following cases of payment into court under this order, *viz.* :— (a) When payment into court is made before delivery of defence; (b) when the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into court is made, is not denied in the defence; (c) when payment into court is made with a defence setting up a tender of the sum paid; the money paid into court shall be paid out to the plaintiff on his request, or to his solicitor on the plaintiff's written authority, unless the court or a judge shall otherwise order. Ord. XXII. r. 5, No. 259.*

200. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into court has been made, is denied in the defence, the following rules shall apply :—(a) The plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings, in respect of such claim or cause of action, except as to costs shall be stayed; or the plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in court subject to the pro-

* (92) In actions of salvage in the Admiralty Division the plaintiff cannot, as in actions in the other divisions, take out the sum tendered and proceed for what he con-

siders he is further entitled to. See Nos. 203-205, *infra*, No. 216, p. 1486, and Pt. II. c. 32, p. 1586.

visions hereinafter mentioned; (b) if the plaintiff accepts the money so paid in, he shall, after service of such notice in the Form No. 4 in Appendix B. as is in Rule 7 mentioned, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor on his, the plaintiff's, written authority, unless the court or a judge shall otherwise order; (c) if the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in court and be subject to the order of the court or a judge, and shall not be paid out of court except in pursuance of an order. If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid to him. *Ibid.* r. 6, No. 260.

201. The plaintiff, when payment into court is made before delivery of defence, may within four days after the receipt of notice of such payment, or when such payment is first signified in a defence before reply, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the Form No. 4 in Appendix B., and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of four days from the service of such notice, unless the court or a judge shall otherwise order, and in case of nonpayment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed. *Ibid.* r. 7, No. 261.

202. As to payment out of money paid into court in the Queen's Bench and Chancery Divisions, *Ibid.* rr. 15, 16, Nos. 269, 270.

203. Money paid into court in an Admiralty action shall not be paid out of court except in pursuance of an order of the court or a judge. *Ibid.* r. 20, No. 274.

See also No. 167, *supra*.

204. In the Court of Admiralty, when money has been paid into court, the practice is not to pay it out to the party entitled until the conclusion of the cause. *The Annie Childs*, 1 Lushington, 509; and see No. 218, *infra*.

205. Until a decree has been actually made the court is bound to consider every claim against any funds in court, howsoever these funds may have been brought there. *The Constanca*, 10 Jur. 849.

206. In a cause of collision instituted by the bailees of a barge against a steamship, *held*, that the plaintiffs were entitled to sue *in rem* in the Admiralty Court; but the court directed that the money awarded as compensation for the damage should not be paid until it should be satisfactorily established that such payment would release the defendants from all claims by the owners of the barge. *The Minna*, L. R. 2 A. & E. 97. See also *The Ilos*, Swabey, 100.

207. An action *in rem* having been commenced for necessities in the Court of Admiralty before the Judicature Acts, the defendants, the official liquidators of the owners of the vessel, obtained an injunction from the Court of Chancery (England) restraining the plaintiffs from prosecuting the action "until further order." *Held*, that as the injunction was "until further order," the court would not order payment to the defendants of the money lodged in lieu of bail. *The Lion*, 1 Asp. N.S. 321. [IRISH.]

208. If a defendant brings money into court under a plea of tender, and the plaintiff does not take it out till the defendant establishes a cross demand for the costs of judgment in the action, the court will direct the money to be paid to him in liquidation of that demand. *Dore v. —*, 1 Jur. Exch. 271. [IRISH.]

209. Proceeds of a ship and cargo sold abroad and transmitted from a Vice-Admiralty Court to the registry of the High Court of Admiralty, decreed on motion to be paid out to the respective consignees of the cargo, on the consent of the purchaser of the cargo. *The Lady Banks*, 1 Hagg. 306.

210. As to caveats against payment of money out of court, see Nos. 147, 148, p. 1478.

211. As to the payment out of court of a deposit paid into court by the party seeking discovery by interrogatories, see Pt. II. c. 35, s. 11, p. 1616.

See also No. 791, p. 1544.

2. In Actions of Bottomry.

212. *Semble*, under ordinary circumstances freight paid into court in a bottomry action would be paid out to the bondholder as a matter of course, and the court would only be induced to hold its hand under circumstances of a strong and special character, as, for instance, that the party suing on the bond was resident abroad, and there was no possibility of compelling him to pay the costs of the suit should he be condemned in them. *The Lord Cochrane*, 1 W. Rob. 312; 1 Notes of Cases, 283.

213. A small balance of freight (£81) remained in the registry of the Court of Admiralty after satisfying all other demands upon it. This balance was claimed by the ship's broker under a deed of agreement with the master and part owner, which, it was contended, conveyed the freight to him, the broker. The application was opposed by the assignees of the part owner. *Held*, that neither as the ship's broker nor under the deed was the broker entitled to receive the freight in opposition to the part owner, and the balance decreed to be paid out to the assignees accordingly. *The Dowthorpe*, 2 W. Rob. 87; 3 Notes of Cases, 623.

3. In Actions of Collision.

214. In a cause of damage, in which the amount of damages claimed was £10,000, and the net proceeds only amounted to about £800, motion to pay out the balance of proceeds to the plaintiffs, granted, without a previous reference of the claim and accounts to the registrar and merchants. *The Viscountess Canning*, 15 March, 1860.

215. In a cause of damage, in which the proceedings were by default, the plaintiff's claim amounted to £600. The proceeds of sale amounted to £300. The court on motion for plaintiff decreed the balance of proceeds to be paid out to him without a reference of the accounts to the registrar and merchants. *The Zaide Celine*, No. 1909, 26 January, 1864.

4. In Actions of Salvage.

216. In a salvage action the owners paid into the registry and tendered £50. The tender was pronounced for, and the salvors were condemned in the sum of £50 *nomine expensarum*. The salvors being

resident out of the jurisdiction, application by the owners for payment out to them on account of costs of the £50 tendered, granted. *The Clifton*, 3 Hagg. 124; *The Johannes*, 6 Notes of Cases, 290.

217. The amount of salvage had been paid into the registry, and application made for apportionment. *Held*, that the court had no power to decree from the fund in court payment of advances made to certain of the salvors by their agent. *The Louisa*, 3 W. Rob. 99. See, also, as to assignment of salvage, tit. SALVAGE, and as to assignment of wages, tit. WAGES.

5. In Actions of Wages.

218. In a cause of wages brought by foreign mariners, money was paid into court by the defendant as the amount admitted due by him. The plaintiffs claimed a larger sum. Motion to have the money paid out of court to them pending the suit, refused. *The Annie Childs*, Lushington, 509.

219. A cause of wages was brought *in rem* by the master, and proceedings were taken by default against the owners, but an appearance was given by mortgagees of a moiety of the vessel, and the court pronounced for the wages with costs of the master. Motion by the mortgagees, admitting the priority of the master's claim over theirs, that his wages and costs might be paid out of the unmortgaged moiety of the proceeds, leaving the other moiety available for the claim of the mortgagees, rejected, and the wages and costs decreed to be paid out of the proceeds generally, with liberty to the mortgagees and other parties to apply subsequently for payment of the balance of proceeds to them. *The Calypso*, No. 1627, 3 November, 1863.

6. Costs.

219a. As to costs of payment of money out of court, see tit. Costs, p. 347.

Part II.—IN THE HIGH COURT.

1. Generally.*

(a) *Since the Judicature Act, 1873.*

220. For provisions as to the making, altering and annulling of rules of court,

* (93) As to the practice of the Court of Admiralty, see 2 Browne's Civil and Admiralty Law, 2nd ed. cap. ix, p. 396; Clerke's

Praxis Curiae Admiralitatis, and Coote's Admiralty Practice.

(94) As to the practice of the court prior

and regulating the pleadings, practice and procedure of the High Court, see the Judicature Act, 1875 (c. 77), ss. 16, 17, as amended by the Supreme Court of Judicature (Officers) Act, 1879 (c. 78), s. 22, and the Supreme Court of Judicature Act, 1881 (c. 68), s. 19.

221. For provisions that all rules and orders of court in force at the commencement of this act in the Admiralty Court, except so far as varied by this act or by rules of court made by Order in Council before this act, shall remain in force in the High Court of Justice, until altered or annulled by rules of court, see the Judicature Act, 1875 (c. 77), s. 18.

222. For provisions that, save as otherwise provided, all forms and methods of procedure in force at the commencement of this act in any of the courts whose jurisdiction is transferred to the High Court, by virtue of any law, customs general order, or rules whatsoever, and which are not inconsistent with the principal act, this act or rules of court, may continue to be used in the High Court of Justice, in such and the like cases and purposes as in the courts so transferred, *Ibid.* s. 21.

223. Where any provisions in respect to the practice or procedure of any court the jurisdiction of which is transferred to the High Court of Justice, are contained in any act of parliament, rules of court may be made to modify such provisions. *Ibid.* s. 24.

224. For provisions extending the powers conferred by the Judicature Acts as to the making of rules of court, see the Statute Law Revision and Civil Procedure Act, 1881 (c. 59), s. 6.

225. All acts of parliament relating to any court or judge whose jurisdiction is transferred to the High Court shall be construed as if the High Court and any judge thereof had been named therein instead of such court or judge. See the Supreme Court of Judicature Act, 1873 (c. 66), s. 76.

226. As to the practice in the Central Office, see the Central Office Practice Rules in Wilson's Judicature Acts and

Rules, 4th ed. p. 844, though many of these are affected by the R. S. C. 1883. *Ibid.* Preface, p. vi.

227. For provisions for Orders in Council and Rules of Court being required to be laid before Parliament, and for annulling the same if need be, see the Supreme Court of Judicature Act, 1875 (c. 77), s. 25.

228. All proceedings in and applications to the High Court, other than the commencement by action, may, subject to these rules, be taken and made in the same manner as they would have been taken and made in any court in which any proceeding or application of the like kind could have been taken or made if the acts had not been passed. See Ord. I. r. 2, No. 2.

229. As to the construction of the term "Rules of Court," as including forms; the term "matter," as including every proceeding in the court not in a cause; and as to the construction of various other terms in the act, see the Supreme Court of Judicature Act, 1873 (c. 66), s. 100.

230. As to the interpretation of terms in the Rules of 1883, see Ord. LXXI. rr. 1, 2, Nos. 1041, 1042.

231. Where no other provision is made by the acts or these rules, the present procedure and practice remain in force. Ord. LXXII. r. 2, No. 1044.

232. No order or rule annulled by any former order shall be revived by any of these rules, unless expressly so declared. *Ibid.* r. 1, No. 1043.

233. The rules, orders and regulations of the High Court of Admiralty of England of 1859 and 1871 are annulled. See R. S. C. 1883, App. O. No. 22.

234. The full title of the fifth division of the High Court is "The Probate, Divorce and Admiralty Division;" but the subject-matter before the court must be indicated by the addition of the word "Probate," "Divorce," or "Admiralty," as the case may be. Documents will not, however, be rejected or invalid on account of not having the full title, the expressions "Probate Division," "Divorce Division," or "Admiralty Division," being sanctioned both by the new acts and the

to its becoming a division of the High Court of Justice, see Fritchards' Admiralty Digest, 2nd ed. tit. PRACTICE.

(95) As to the practice of the American Admiralty Courts, see Conkling's Admiralty Practice, 2nd ed.; Dunlap's do. do.; Marvin on Wreck and Salvage, cc. iv.—xiii.; 2 Parsons on Maritime Law, book iv. pp. 658—748. [AMERICAN.]

(95a) The judge of the Court of Admiralty may, as well in civil as criminal cases, have the assistance of a jury. 2 Chitty's Gen. Prac. 535; and see notes to *The Ruckers*, 4 C. Rob. 74; but see *The Temple Bar*, 10 Nov. 1885, and Ct. of A., 12 Nov. 1885.

(96) As to the practice generally of the Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty).

new rules. *Anon.*, 1 Charley's Cases (Court), 41.

235. A local act required one month's notice to be given before bringing an action in any of his Majesty's courts against the City of Dublin Steam Packet Company. *Held*, that such requirement applied to actions *in personam* only, and not to actions *in rem*, against the vessels of the company. *The Mullingar*, 1 Asp. N.S. 252. [IRISH.]

2. Time.*

236. Where by these rules, or by any judgment or order given or made after the commencement of the principal act, time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these rules, such time shall be computed by calendar months, unless otherwise expressed. Ord. LXIV. r. 1, No. 961.

237. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time. *Ibid.* r. 2, No. 962.

238. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open. *Ibid.* r. 3, No. 963.

239. The court or a judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. *Ibid.* r. 7, No. 967.

240. In any case in which any particular number of days, not expressed to be clear days, is prescribed by these rules,

the same shall be reckoned exclusively of the first day and inclusively of the last day. *Ibid.* r. 12, No. 972.

241. As to time in reference to appearance, see R. S. C. 1883, App. A. Nos. 1—12.

242. As to time in reference to bail, see this Part, c. 19, s. 4, p. 1547.

243. As to time in reference to pleadings, *ibid.* c. 34, p. 1457.

244. As to time in reference to service of documents, *ibid.* c. 12, p. 1524.

245. As to time of sittings of the court generally, and in the long vacation, see Pt. I. c. 1, p. 1465.

246. As to time in reference to security for costs, see tit. Costs, Nos. 219, 220, p. 364.

247. As to orders for times of trial in Admiralty actions, see this Part, c. 38, ss. 3, 4, p. 1459.

248. As to proceedings after the lapse of a year, *ibid.* c. 31, p. 1583.

249. As to time of application to set aside award, *ibid.* c. 42, p. 1460.

250. As to the duration of caveats, see Pt. I. c. 6, p. 1476.

3. Effect of Non-compliance with Rules.

251. Non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court or judge shall think fit. Ord. LXX. r. 1, No. 1037.

252. No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity. *Ibid.* r. 2, No. 1038.

253. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion. *Ibid.* r. 3, No. 1039.

254. When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special

* (97) As to computation of time in proceedings in the High Court of Justice, see Archbold's Practice (14th ed. by Chitty).

vol. 2, pp. 1432 *et seq.*, and Wilson's Jud. Acts and Rules, 4th ed. pp. 521—525.

direction as to costs, it is to be understood as dismissed with costs. *Ibid.* r. 4, No. 1040.

4. Actions.

1. Generally.

255. Besides the institution of the cause by the proceeding called an action, all other proceedings in and applications to the High Court may, subject to these rules, be taken and made in the same manner as they would have been taken and made in any court in which any proceeding or application of the like kind could have been taken or made if the act had not been passed. See Ord. I. r. 2, No. 2.

256. As to the construction of the terms "cause," "suit," "action," and "matter" in this act, see the Supreme Court of Judicature Act, 1873 (c. 66), s. 100.

257. Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice, which would have been within the non-exclusive cognizance of the High Court of Admiralty if the principal act had not passed, shall assign such cause or matter to any one of the divisions of the said High Court, including the Probate, Divorce and Admiralty Division, as he may think fit, by marking the document by which the same is commenced with the name of the division, and giving notice thereof to the proper officer of the court. Ord. V. r. 5, No. 27.

258. As to the present jurisdiction of

the Admiralty Division, and of the jurisdiction of the High Court of Admiralty before the Judicature Acts, see tit. JURISDICTION, Pt. I. cc. 5, 6, pp. 638, 639.

259. As to notice of action, see c. 27, s. 3, p. 1578.

2. Precedence.

See c. 5, p. 1497.

3. In Personam.

(a) Generally.*

260. As to the commencement of personal actions in the Admiralty Division by writ of summons, see c. 8, p. 1508.

260a. The jurisdiction conferred on the Court of Admiralty by this act may be exercised by proceedings *in personam* or *in rem*. See the Admiralty County Court Act, 1861 (c. 10), s. 35.

(b) Collision Actions.†

260b. Cases of actions for collision *in personam* against the master of the other vessel: *Strong v. Teesdale*, anno 1694, Marsden's Rep. p. 269; *Cowton v. Cocke*, and *Pigg v. Goldsburg*, anno 1712, *ibid.* pp. 298, 299; *Taylor v. Thompson*, anno 1714, *ibid.* p. 302; *Ewcr v. Thirkettel*, anno 1729, *ibid.* p. 310; *Pillans v. Sherburne*, anno 1754, *ibid.* p. 319; *De Kromment v. Chevalier*, anno 1758, *ibid.* p. 321.

260c. Collision action brought by master against pilot. Defendant dismissed, but ground of dismissal not stated. *Russell v. Hays*, anno 1724, *ibid.* p. 307. See also tit. PILOTS, Nos. 9 and 13, p. 1431.

See also No. 274, *infra*.

* (98) In the Admiralty Court there were two modes of proceeding: by arrest of the person or arrest of the ship. *The Clara*, 2 Jur. N.S. 46; *The Victor*, 1 Lushington, 76; Clerk's Prax Adm. tit. 1, p. 11; 1 Rol. Ab. 531; Raym. 78; 2 Ld. Raym. 1216; Order of Court of 28th January, 1801; 2 Chitty's Gen. Prac. p. 513; 1 Siderfin, 161; 2 Browne's Civil and Adm. Law, 2nd ed. 396; the Admiralty Court Act, 1854 (c. 78), s. 13; and the Admiralty Court Act, 1861 (c. 10), s. 35.

(98a) As to such practice in America, see 2 Conkling's Adm. Prac. 2nd ed. 128. [AMERICAN.]

(99) The proceeding by arrest of the person has long become obsolete in England. *The Clara*, 2 Jur. N.S. 46; *The Victor*, 1 Lushington, 76.

(99a) The old modes of procedure in the Admiralty Court by monition and by citation *in personam* are superseded by the procedure by writ under the Judicature Acts and Rules. See Ord. II. r. 1, No. 3.

(100) As to such old procedure, see *The Hope*, 3 C. Rob. 215, and notes; *The Governor Raffles*, 2 Dodson, 17; *The Meg Merrities*, 3 Hagg. 346; *The Rapid*, *ibid.* 419; *The Stephen Wright*, 12 Jur. 732; *The Athol*, 1 W. Rob. 381; *The Clara*, 2 Jur. N.S. 46; *The Mellona*, 6 Notes of Cases, 73; *The Evangeline*, 5 Jur. N.S. 108 (Irish); 2 L. T. 139 (Irish); *The Victor*, 1 Lushington, 76.

(101) For the cases prior to the Judicature Acts, of proceedings *in rem* in the Admiralty after actions at Common Law and *vice versa*, see tit. JURISDICTION, p. 660, n.

(101a) For a case of an action in the Admiralty for damage by the owner against the master, see *Taylor v. Thompson*, Marsden's Rep. 302.

† (102) Proceedings *in personam* may be taken against the owners of the wrong-doing ship, or any of them, if within the jurisdiction of the court, as tortfeasors are jointly and severally liable, and where their ship has been sunk. this is the only mode of proceeding by which to make them liable.

(e) *Damage to Cargo Actions.*

261. Action at common law by consignees of cargo damaged against the master, as representing either the owner or charterer. *Held*, that the action was rightly brought against the master. *Denysen v. Macfie*, 3 L. T. N.S. 25.

(d) *Personal Injury Actions.*

262. A passenger may sue the master of a vessel in the Admiralty for personal damage. *The Ruckers*, 4 C. Rob. 73.

See also Pt. III. c. 4, and tit. SEAMEN.

(e) *Salvage Actions.**

See Nos. 276, 277, *infra*.

(f) *Wages Actions.*

263. The master may be sued in the Admiralty by his mariners for their wages. *Bayly v. Grant*, 1 Salk. 33; 12 Mod. 444; 1 Ld. Raym. 632; Holt, 48; *Anon.* 2 Show. 86.

264. The master, the ship, and the owner, are severally liable to a mariner for his wages, and the mariner is entitled to his option as to which he will proceed against. *The Jack Park*, 4 C. Rob. 311.

265. A suit for wages against the master personally, entertained. *Ibid.*; *Davis v. Rotch*, Marsden's Rep. 20; *Long v. Belson*, *ibid.* 132; *Swinney v. Tinker*, *ibid.* 139.

266. The mate may sue the master in the Admiralty Court for his wages. *Bayly v. Grant* (1699), 1 Salk. 33; 12 Mod. 444; 1 Ld. Raym. 632; Holt, 48; *Hook v. Moreton* (1697), 1 Ld. Raym. 397; *Ball v. Bright*, Marsden's Rep. 303.

267. Part owners may be sued in the Admiralty by the mariners of their vessels for their wages. *Alleson v. March* (1689), 2 Vent. 181; *Wheeler v. Thompson* (1738), 1 Stra. 707; *Ragg v. King* (1729), 2 Stra. 858.

268. A seaman allowed to sue the owner for his wages. *The Stephen Wright*, 12 Jur. 732.

268a. Wages action by mate against master. *Ball v. Bright*, anno 1713, Marsden's Rep. p. 303.

268b. A part owner sued in the Admiralty for wages, and a decree made against him for a proportionate part of the wages sued for. *Rawlinson v. Pagan*, anno 1693, *ibid.* p. 269.

4. *In Rem.*(a) *Generally.†*

269. Actions *in rem* are commenced by writ of summons. See Ord. I. r. 1, No. 1, *supra*. As to the arrest of the ship, or *res*, see c. 11, p. 1515.

270. In a cause of collision, prior to the Admiralty Court Act, 1861 (c. 10), where the damaging vessel had been arrested and an appearance given for the master, who was also a part owner, and the damage was pronounced for, application to condemn the master, as such part owner, in the excess of damage beyond the proceeds of the ship, under the 53 Geo. 3, c. 159, rejected, the court holding that it was not competent to it to engraft a personal action against the master as part owner upon a proceeding *in rem*. *The Hope*, 1 W. Rob. 154. See also *The Volant*, 1 W. Rob. 385, 390. But see No. 316, p. 1496.

271. *Semble*, prior to the Judicature Acts, the Admiralty jurisdiction *in rem* did not extend to vessels not being sea-going vessels, except when such jurisdiction was given by statute. *The Malvina*, 6 L. T. N.S. 369; *Raft of Timber*, 2 W. Rob. 251; *The Castor*, 6 L. T. N.S. 106; *The Bilbao*, 3 *ibid.* 338.

272. Distinction between proceedings *in rem* in the Admiralty Court in England and foreign attachment in the city of London. *Harmer v. Bell* (*The Bold Buccleugh*), 7 Moore, P. C. C. 373.

* (103) Proceedings *in personam* may be taken in salvage as in other actions against the owners of property salvaged, and under the M. S. Act, 1854 (c. 104), s. 468, the proceedings may be by the owners against the salvors, but the more usual mode of proceeding is *in rem*, as affording a more substantial security to the salvor for the payment of the salvage awarded.

† (104) Where the claim is a small one, the vessel to be arrested valuable, and other claims are not likely to be preferred against it, it will be sufficient to institute the cause against the vessel only; but under other

circumstances, and where freight has been earned, and the plaintiff is entitled to proceed against it, and in most cases of salvage, it will be prudent to institute the cause against the freight as well as against the vessel. See also c. 11, p. 1519.

(104a) Proceedings against cargo can only be instituted in particular actions, and under particular circumstances, *i.e.* in bottomry and respondentia actions, where the cargo forms part of the property hypothecated, and in salvage suits, where it forms part of the property salvaged. See p. 1519.

(b) *Bottomry Actions.*

273. The hypothecation of the ship by the master does not render the owners personally liable. *Johnson v. Shippen*, 1 Salk. 35; 14 Viner's Abr. 300.

(c) *Collision Actions.*

274. Owners of vessels damaged have their choice of three modes of proceeding in the Court of Admiralty, viz., against the owners or the master personally, or against the ship itself. *The Volant*, 1 W. Rob. 387.

(d) *Damage to Cargo Actions.*

275. For provisions enabling any owner, consignee or assignee of any bill of lading, of goods carried into any port in England or Wales, in any ship, to make claim in the Admiralty Court for damage done to the goods, or any part thereof, by the negligence, misconduct, or breach of duty or contract of the owner, master or crew of the ship, unless at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales, subject to being deprived of costs if the plaintiff does not recover £20, unless the judge certifies the cause was a fit one to be tried in the court, see the Admiralty Court Act, 1861 (c. 10), s. 6, and cases thereon in tit. GOODS, CARRIAGE or—, Pt. I. p. 471.

See also No. 303, p. 1494.

(e) *Salvage Actions.*

276. Proceedings for salvage may be either *in rem* or *in personam*. *The Hope*, 3 C. Rob. 215 and notes; *The Meg Merrilies*, 3 Hagg. 346; *The Rapid*, 3 Hagg. 419.

277. *Held*, prior to the Judicature Acts, that the real foundation of the jurisdiction of the Court of Admiralty in salvage cases was by proceedings *in rem*, though there might be some cases of special circumstances where salvors had been allowed to proceed *in personam*, but that generally the ship and freight were alone liable; and where they could be proceeded against the court was not disposed to regard salvors as having a right to follow cargo as prize goods might be followed, to abide the final adjudication. *The Rapid*, 3 Hagg. 422. (But *semble*, now overruled, see *The Peace*, Swabey, 115; and note 103, *supra*.)

(f) *Wages Actions.*

See Nos. 263—268, *supra*.

5. *In Personam and in Rem.**

277a. See Nos. 260a and 270, *supra*, and Nos. 283, 287, 287a, 310—315, *infra*, and 346a, p. 1499.

6. *Commencement.*

278. All actions which, previously to the commencement of the principal act,

* (105) There is no abstract incompatibility between proceedings *in rem* and proceedings *in personam*, which forbids them to be joined in one action, where such joinder is calculated to advance the ends of substantial justice. *The Zenobia*, 1 Abb. Adm. 48. [AMERICAN.]

(106) Under rule 15 of Admiralty practice adopted by the Supreme Court for the Admiralty courts of the Union, the joinder of proceedings *in personam* and *in rem* in a libel for a collision is not admissible. *The Atlantic v. The Ogdensburgh*, 1 Nwb. Adm. 139. [AMERICAN.]

(107) The rules of the Supreme Court expressly authorize the joinder in the American Admiralty Courts of a suit *in rem* and a suit *in personam*, in suits for mariners' wages, for pilotage, and for damage by collision; but they discountenance it in suits by material men, suits for assault and beating, suits founded on a simple hypothecation by the master, or on bottomry bonds, and in suits for salvage. 2 Conkling's Adm. Prac. (2nd ed.) 41. [AMERICAN.]

(108) Prior to those rules the question of such joinder of suits was raised, but not de-

termined by Mr. Justice Story, in the cases of *The Ann*, 1 Mason's Rep. 508 and 512; *Arthur et al. v. The Cassius*, 2 Story's R. 81, 99; and decided *contra* in *The Nantucket Citizens Bank v. The Nantucket Steamboat Co.* *ibid.* 16. [AMERICAN.]

(109) As to the different process in suits in the American Admiralty Courts *in personam*, see 2 Conkling's Adm. Prac. (2nd ed.), 130; *in rem*, see *ibid.* 150; and both *in personam* and *in rem*, *ibid.* 169. [AMERICAN.]

(110) For cases of proceedings *in rem* and *in personam* against the ship and the master, see *Feavour v. White*, and *Evbanke v. Milbourne*, anno 1692, Marsden's Reports, pp. 266, 267.

(110a) *Quære*, however, were not those proceedings *in rem* only in the first instance, and, after appearance by the master as one of "persons in general" cited in the warrant, were not the proceedings then described in the Assignment Book as mentioned in the report? This would be in accordance with the practice in proceedings *in rem* when Dr. Lushington became judge.

were commenced by a cause *in rem* or *in personam* in the High Court of Admiralty, shall be instituted in the High Court of Justice by a proceeding to be called an action. See Ord. I. r. 1, No. 1.

279. Subject to rules of court a person commencing any cause or matter shall not assign the same to the Probate, Divorce and Admiralty Division, unless he would have been entitled to commence the same in one or other of the branches of that division if that act had not passed. See the Supreme Court of Judicature Act, 1875 (c. 77), s. 11, sub-a. 3.

280. Every document by which any cause or matter may be commenced in the High Court shall be marked with the name of the division, or with the name of the judge, to which or to whom the same is assigned. See *ibid.* 1873 (c. 66), s. 33.

281. The court or a judge may, at any stage of the proceedings, allow either party to alter or amend his endorsement. See Ord. XXVIII. r. 1, No. 309.

7. Amount.*

282. The practice by which the amount in which an action is instituted is laid to cover the probable claims for damages and costs is merely a matter of convenience; the court always discourages the institution of an action for an excessive amount. *The Freedom*, 1 Asp. N.S. 136.

282a. In a cause of damage by collision, the defendants' vessel having been released on bail, the defendants admitted their liability, and consented to a reference. Subsequently leave given to plaintiffs to amend the præcipe to institute by increasing the amount in which the suit was instituted. *The Johannes*, L. R. 3 A. & E. 127; 39 L. J. Adm. 41; 3 Asp. 462. *Seemle*, overruling *The Kalamazoo*, 18 L. T. 66; 15 Jur. 885.

283. If the amount in which bail had been given was not equal to the damages, the plaintiff might, after judgment, obtain an order against the defendant personally to satisfy the deficiency. *The Zephyr*, 11 L. T. N.S. 351; 12 W. R. 890.

283a. Or further bail before judgment on payment of costs. *The Hero*, 4 May, 1865.

284. In an action of salvage, Lord Stowell gave a larger sum than the amount, and directed a fresh action to be instituted. *Silver Bullion*, 2 Spinks' Ecl. & Adm. Rep. 74.

285. The court is not limited to the amount for which the salvor has entered their action in the first instance. *The Jonge Bastiaam*, 5 C. Rob. 322.

286. If the plaintiff has limited his own demand, it requires peculiar circumstances to induce the court to make the owner of the vessel proceeded against liable beyond that amount and the bail taken. *The Temiscouata*, 2 Spinks' Ecl. & Adm. Rep. 211; 1 Jur. N.S. 479.

287. The plaintiff entered his action for collision in £250. The damages alone were less, but with the costs more than that sum. The defendant tendered £250. *Held*, on motion, that the defendant was personally liable for the remainder. *Ibid.*

287a. The defendants having caused great delay and extra expense, so that the amount of the action was insufficient, order made that the ship should not be released until payment of the plaintiff's claim and costs. *The Helen*, 14 W. R. 502.

288. An action of damage having been entered in £2,500, it was subsequently discovered that that amount would not pay the expenses of repairing the plaintiff's vessel. No bail had been given in the cause, and the defendant's vessel had not been arrested. Motion, before the hearing of the cause, to increase the amount for which the action was entered, granted. *The Maender*, 1 Asp. 221; 6 L. T. N.S. 400. See also *The Celt*, 3 Hagg. 328, n.

289. The court disapproves of actions being entered in an amount disproportionate to any reasonable estimate of the service rendered. *The Graces*, 8 Jur. 501; *The Eleonore*, 1 Lushington, 19; 32 L. J. Adm. N.S. 19; *The Charlotte*, 12 Jur. 567.

See also c. 19, s. 13, p. 1550.

8. Counter-claim or Set-off.†

290. The said courts respectively, and every judge thereof, shall also have power

* (111) The court would probably in an action *in rem* or *in personam*, give leave to the plaintiff to amend the writ, increasing the amount of action where the defendant has appeared; and where no appearance has been given, such an application may be made *ex parte*.

† (112) As to counter-claim or set-off, see Wilson's Jud. Acts and Rules, 4th ed. pp. 249—252; and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 304.

(113) As to particulars of set-off, see *ibid.* p. 381.

(114) As to what claims could and could

to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said courts respectively, or any judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief, relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter, or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of court, or any order of the court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant. The Judicature Act, 1873 (c. 66), s. 24, sub-s. 3.

291. A defendant in an action may set off, or set up by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the court or a judge may, on the application of the plaintiff before trial, if in the opinion of the court or judge such set-off or counter-claim cannot be conveniently

disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. Ord. XIX. r. 3, No. 199. See also as to objections to counter-claim as a proper subject for an independent action, Ord. XXI. r. 15, No. 248.

291a. A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the cause. See Ord. LXV. r. 14, No. 989.

292. If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with. Ord. XXI. r. 16, No. 249.

292a. The defendant's counter-claim exceeded the amount of the plaintiff's claim, and the plaintiff, finding his claim was statute barred, discontinued his action. The defendant thereupon moved for judgment on his counter-claim. *Held*, on appeal, reversing the judgment of the divisional court, and overruling *Vavasour v. Krupp* (15 Ch. D. 474), that the counter-claim was to be treated as a cross-action, and was not affected by the plaintiff's notice of discontinuance. *McGowan v. Middleton*, 11 Q. B. D. 464.

293. Per Fry, J.: A counter-claim is an independent action, and not part of the original action, though for convenience the two are tried together. (*Vavasour v. Krupp*, *supra*, questioned and disagreed with.) *Beddall v. Maitland*, 17 Ch. D. 174. See also *Stooke v. Taylor*, 5 Q. B. D. 569.

294. Claim for money due under an agreement to purchase certain shares in a ship, *held* pleadable as a counter-claim to a claim for wages and disbursements. *The Philippine*, L. R. 1 A. & E. 309; 2 Asp. 476.

295. Where a plaintiff's claim for freight is admitted, but the defendants

not by the old practice in the Admiralty Court be allowed by way of set-off, see *The Don Francisco*, 1 Lushington, 472; *The Salacia*, *ibid.* 578; 8 L. T. N.S. 91; 32 L. J. Adm. 43; 1 N. R. 194; 11 W. R. 719; *The Araminta*, 1 Spinks' Eccl. and Adm. Rep. 228; 18 Jur. 793; *The Norway*, 10 L. T. N.S. 40; 12 W. R. 719; 13 *ibid.* 296; 5 N. R. 140, 147; 2 Asp. 17, 168, 254; *The Lady Campbell*, 2 Hagg. 14, n.; *The New Phoenix*, 2 Hagg. 420; *The Sophia*, Stuart's Vice-Adm. Rep. 98 (Lower Canada). See also *Latham v. West*, 5 Martin's Louis. Rep. 573; *Toullier*,

liv. 3, tit. 3, ch. 5, s. 4, No. 359, tom. 7, p. 435; *Argument tiré des Lois*, 3, s. 5, l. 5, ff. Nautæ. Institution au Droit Maritime par Boucher, s. 574, p. 151; *Marshall v. Wilson*, cited in Abb. Sh. 12th ed. p. 107. And in the American Admiralty Courts: *The Hudson*, Olcott, Adm. 396; *Bearse v. Ropes*, Sprague, 331; *Dunlap's Adm. Prac.* 2nd ed. pp. 80, 109; 2 *Parsons on Maritime Law*, 717; *Snow v. Carruth*, Massachusetts District Court, May Term, 1856; 19 *Law Rep.* 198. [AMERICAN.]

set up a counter-claim for damages for breach of a contract of carriage for a larger amount, the plaintiff is not entitled to judgment upon the claim under Ord. XL. r. 11, as upon an admission in the pleadings. *Mersey Steamship Co. v. Shuttleworth & Co.*, 5 Asp. 48.

296. *Semble*, if the counter-claim were clearly frivolous, the plaintiff would be entitled to judgment, and to have the sum claimed brought into court to await the result of the counter-claim. *Ibid.*

297. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon. Ord. XVI. r. 3, No. 125.

297a. The set-off claimed must be connected with the subject-matter of the action. *Padwick v. Scott*, 2 Ch. D. 736; 45 L. J. Ch. 350.

298. As to the mode of pleading a counter-claim or set-off against the plaintiff or third parties, see c. 34, p. 1457.

299. Claim for towage services under contract held forfeited by misconduct. *Quære*, whether the plaintiffs, prior to the Judicature Acts, could, notwithstanding, have recovered towage under the contract, leaving the defendant to a cross action for the damage? This point not having been properly raised in the court below, the Court of Appeal refused to entertain it. *The Christina*, 6 Moore, P. C. C. 371.

300. As to set-off in actions of marine insurance, see tit. MARINE INSURANCE, p. 1107.

300a. As to set-off in actions by masters, for wages and accounts, see Pt. III. c. 18, p. 1463.

9. Amendment.

(a) Generally.

301. As to the powers of a court or

judge as to amendment, see Ord. XXVIII. rr. 11, 12, Nos. 319, 320.

302. The institution of an action as a cause of necessities does not estop the plaintiff from afterwards pleading and proving that his claim is in respect of repairs, but the title of the cause must be amended. Leave to amend given. *The Shipwith*, 10 Jur. N.S. Adm. 445; 10 L. T. N.S. 43.

303. On the institution of a cause *in rem* the cause of action was improperly stated to be "a cause of damage to cargo," but in the affidavit to lead the warrant it was properly stated to be a breach of duty and breach of contract on the part of the master and crew of the vessel proceeded against. The vessel was arrested, and an appearance entered on behalf of the owners. On motion leave given to amend on payment of costs. *The Princess Royal*, L. R. 3 A. & E. 27; 39 L. J. Adm. 29.

304. As to amendment of the amount of action, see s. 7, *supra*.

305. As to amendment on joinder of parties, see Nos. 327—329, *infra*.

306. As to amendment in subsequent stages, see No. 989, p. 1569.

(b) Plaintiffs.

307. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court or a judge may, if satisfied that it has been so commenced through a *bond fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just. Ord. XVI. r. 2, No. 124.

10. Cross Action.*

308. *Semble*, cross actions are still in

* (115) By the old practice as to cross causes, when one vessel had been proceeded against in a cause of collision, and the owners of the other thought they had a chance of obtaining a decree in their favour, they usually entered a cross cause, and it was agreed between the practitioners that the decision in the one case should govern the decision in the other. *The Calypso*, Swabey,

29; 26 L. T. 206; 4 W. R. 203.

(116) But if the defendant in the first cause refrained from instituting a cross cause until after the first cause had been tried, that circumstance would not estop his right of action in the cross cause. *Ibid.*

(116a) The court, however, would discourage such proceedings, and withhold costs in such cases. *Ibid.*

force in the Admiralty Division. See *The Leon*, 6 P. D. 151.

309. See also Nos. 292, 293, p. 1491, and as to bail therein, notes 279—283, p. 1548.

11. *Second Action.*

310. Where there is a remedy both *in personam* and *in rem* a person who has resorted to one may, if he does not get thereby full satisfaction, resort to the other. *Yeo v. Tatem*; *The Orient*, L. R. 3 P. C. 696; 40 L. J. Adm. 29; 8 Moore, P. C. C. N.S. 74.*

311. Plaintiff brought an action at common law and obtained judgment, but could not by reason of the defendant's bankruptcy recover the amount sued for.

Held, entitled to proceed *in rem*. *The John and Mary*, Swabey, 471; 5 Jur. N.S. 1085; *The Bengal*, *ibid.*; *The Mary Caroline*, 3 W. Rob. 106; *The Griefswald*, Swabey, 437.

312. Declaration for a collision at sea. Plea of judgment recovered *in rem* in the Admiralty Court, and execution levied by defendants' vessel being sold. Demurrer and replication that the damages exceeded the amount recovered in the Court of Admiralty by sale of the vessel there. *Held*, that the plea was bad, and that the plaintiff was entitled to proceed for the surplus. *Nelson and Others v. Couch and Others*, 2 N. R. 395.†

313. Where, in an action *in rem* the *res* is insufficient to satisfy the plaintiff's claim, the plaintiff may institute another

(117) Sometimes the defendant in the cross action, if a foreigner, abstained from appearance in that action, and in that case the court considered it had no power to stay proceedings in the principal action in which the foreigner was plaintiff, until he had entered an appearance in the cross action. *The Seringapatam*, 3 W. Rob. 41, n.; 6 Notes of Cases, 164; 12 Jur. 281; *The Heart of Oak*, 29 L. J. Adm. 78; *The Carlyle*, 30 L. T. 278; 6 W. R. 197; *The North American and The Tecla Carmen*, 1 Lushington, 79; 5 Jur. N.S. 659; *The Emily*, 33 L. T. 80. [IRISH.] See also *The North American*, Swabey, 466.

(118) But in a case of that kind, after judgment, and when both vessels had been held to blame, the court directed the amount of damages due to the plaintiff to be paid into court, and not to be paid out till the foreigner consented to a deduction in respect of the damage done to the British ship. *The Seringapatam*, *supra*.

(119) To remedy these defects it was enacted that, if in the principal cause the ship of the defendant had been arrested or security given by him to answer judgment, and in the cross cause the ship of the plaintiff could not be arrested and security had not been given, the court might suspend the proceedings in the principal cause until security had been given to answer judgment in the cross cause. See the Admiralty Court Act, 1861 (c. 10), s. 34; and the Rules and Orders of Nov. 1859, No. 171, now annulled, allowed of service of process in the cross cause on the solicitor of the plaintiff in the principal action.

(120) The act above referred to further provided (see sect. 34) that the court might direct that the principal cause and the cross cause be heard at the same time and upon the same evidence.

(121) The effect of sub-sect. 3 of sect. 24 of the Judicature Act, 1873 (c. 66), and Ord. XIX. r. 3, No. 199, allowing counter-claims,

and of the decision in *McGowan v. Middleton*, No. 292a, *supra*, is to render cross causes unnecessary.

(122) Since the Judicature Acts, but before the Rules and Orders of 1859 were annulled by R. S. C. of 1883, in a case in which two ships, the M. and P., came into collision, in consequence of which the P. sank, an action *in rem* was brought by the owners of the P. against the M., and bail given. A cross action by the owners of the M. against the owners of the P. was then commenced, and writ of summons therein served upon the solicitor of the owners of the P. in the action *in rem*. *Seamble*, this procedure would have been allowed had not the cross cause been instituted after notice of withdrawal of the action *in rem*. *The Pomerania*, 4 P. D. 195; 48 L. J. P. D. 55.

* (123) But it was formerly held that when bail had once been given in an action for damages, and the ship released, the party proceeding must be content to abide by the sum which such bail would cover, and that he could not enter a fresh action for any further sum. *The Kalamazoo*, 18 L. T. 66; 15 Jur. 885.

(124) An arrestment of a ship on the dependence of an action of reduction of a vendition, was loosed on caution for £300, and subsequently the same party raised another reduction of the vendition as trustee for the creditors of the grantor, and again arrested the ship, and the actions were conjoined. The court refused to pass a bill for loosing the second arrestment, unless caution should be found in addition to that found in the first loosing. *Ballintin v. Cannon*, Nov. 14, 1848; 11 D. 26; 20 Jur. 583. [SCOTCH.]

† (125) The vessel was much damaged by the collision, and her value in her damaged state only could be recovered in the Admiralty, whereas by the statute the parties were entitled to her value immediately before the collision.

action in the Admiralty Court *in personam*. *The Pet*, 3 Asp. 244.

314. *Quare*, whether a separate action is necessary? *Ibid*.*

315. To render a master, also part owner, responsible for damage by collision committed with his privity, he must be sued as master in the first instance, and such a proceeding cannot be grafted on an action for collision *in rem*. *The Volant*, 1 W. Rob. 385; *The Hope*, *Ibid*. 154; *Wilson v. Dickson*, 2 B. & A. 2, overruling *The Triune*, 3 Hagg. 115.

316. See also as to privity of master and owners as affecting their right to limit their liability, tit. OWNERS, Pt. VI. p. 1346.

317. A damage cause was instituted in the Court of Admiralty against a vessel and bail was given, and the ship released. The claim of the plaintiff, after investigation and judgment, proved to be beyond the amount of bail, and the defendants were foreigners. The same vessel was arrested in another cause in the same court, and therein the ship was sold, and the proceeds paid into court. A large surplus remained in court after satisfying the claim of the plaintiff in the second cause. On application by the plaintiffs in the first cause, opposed by the foreign owners, to be paid the balance due to them beyond the amount of bail out of the surplus proceeds, *held*, that such proceeds were as free from the lien of the plaintiffs in the first cause as the vessel itself was after bail and release, and that

the court had no authority under the 15th section of the Admiralty Court Act, 1861 (c. 10), to direct such proceeds to be paid to the plaintiff in the first cause as a judgment creditor. *The Wild Ranger*, 2 N. R. 402.

318. In a collision action a deposit of £200 to answer costs was made by the party subsequently found in fault. The proceeds of the sale of the ship were also brought into the registry, and these proved to be more than sufficient to pay the damages to the shipowner, with costs. *Held*, that the £200 must be returned to the wrong-doer, and could not be claimed by the owner of the cargo on board the damaged vessel. *The Baldur*, Nov. 4, 1853.

319. In an action for damage brought by the master and sole owner of a foreign vessel, motion for security for costs to be given by him granted, notwithstanding that his vessel had been arrested under a decree of the court in an action for necessities, the court holding that its power over the vessel in the second action would not enable it to apply its process to enforce payment of the costs of the first action if necessary. *The Sophie*, 1 W. Rob. 327.

12. Joinder of Causes of Action.†

320. Subject as therein mentioned, the plaintiff may unite in the same action several causes of action. See Ord. XVIII. rr. 1—5, 7, 9, Nos. 188—192, 194, 196.‡

* (126) It would seem that proceedings in the Admiralty might be at the same time both *in rem* and *in personam*. In Marriott's Formulary, 328, the precedent of a warrant of arrest in a cause of wages against the ship contains a further command to arrest the master also.

† (127) As to the effect of Ord. XVIII. and the joinder of causes of action, see Wilson's Judicature Acts and Rules, 4th ed. p. 243.

(128) In American Admiralty suits *in personam* all causes of action of Admiralty cognizance existing between the same parties, whether founded on contract or tort, may be joined in the libel, and stated in distinct articles, as in several counts in a declaration at common law. Dunlap's Adm. Prac. 2nd ed. p. 98. [AMERICAN.] And see notes 105—108, p. 1491.

(129) As to the joinder of several causes of action in one suit, and as to the joinder of actions generally, and particularly in suits for seamen's wages, see 2 Conkling's Adm.

Prac. 2nd ed. pp. 25, 59; Act of Congress, 1790, c. 56, s. 6. [AMERICAN.]

(130) Demand for watch, &c., taken by the master from the seaman's chest, may be joined to the demand for wages. *The Sarah*, Stuart's Vice-Adm. Rep. 87. [LOWER CANADA.]

‡ (131) Although all the suitors for salvage ought to join in the suit against the property saved, yet the non-joinder of the crew of the salvor vessel in a suit by the master and owner is no objection to the maintenance of the suit in a case where the crew were exposed to no extraordinary hardships or personal danger. *The A. D. Patchin*, 1 Blatch. Ct. Ct. 414. [AMERICAN.]

(132) A part owner may sustain a petitory suit against a merely fraudulent possessor, without joining the other part owners; and if they do not appear or object, and the libellant establishes his title, the court will decree the possession to him. *The Friendship*, 2 Curtis C. C. 426. [AMERICAN.]

321. For provisions that no causes of action shall, unless by leave of the court or a judge, be joined with an action for the recovery of land, except as therein mentioned, see Ord. XVIII. r. 2, No. 189.

322. Claims by a trustee in bankruptcy as such shall not, unless by leave of the court or a judge, be joined with any claim by him in any other capacity. *Ibid.* r. 3, No. 190.

323. As to claims by or against husband and wife, *ibid.* r. 4, No. 191.

324. As to joinder of claims by or against an executor or administrator, *ibid.* r. 5, No. 192.

325. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. *Ibid.* r. 6, No. 193.

326. The last three preceding rules shall be subject to Rules 1, 8 and 9 of this order. *Ibid.* r. 7, No. 194.

327. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of together. *Ibid.* r. 8, No. 195.

328. If, on the hearing of such application as in the last preceding rule mentioned, it shall appear to the court or a judge that the causes of action are such as cannot all be conveniently disposed of together, the court or judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just. *Ibid.* r. 9, No. 196.

329. The court or a judge may require any person to be made a party to any action or proceeding. Ord. XVI. r. 39, No. 161.

329a. As to joinder of parties, see c. 6, s. 5, p. 1499.

13. Conduct of Action.

330. The court or a judge may give the conduct of the action or proceeding to such person as he may think fit, includ-

ing a person made a party to the action. See Ord. XVI. r. 39, No. 161.

330a. Where an action is transferred from an inferior court to the High Court, and consolidated with an action in the High Court, the court will give the conduct of the consolidated action to the plaintiff who first commenced and prosecuted proceedings, in whichever court. *The Never Despair*, 9 P. D. 35; 5 Asp. 211; 53 L. J. P. D. 30; 50 L. T. 369; 32 W. R. 599.

330b. So, also, in the case of an action and cross action, and of a first and second action, the same rule will be held to determine which shall be the leading action. *The Cosmopolitan and The Bjorn*, cited in *Ibid.*

14. Transfer.

See c. 15, p. 1536.

15. Consolidation.

See c. 17, p. 1543.

16. Discontinuance.

See c. 28, p. 1578.

17. Dismissal.

See c. 29, p. 1579.

18. Abatement and Revival.

See c. 30, p. 1580.

19. Estoppel.

See c. 31, p. 1581.

5. Precedence of Actions.*

331. Where a writ is issued by each party the action in which the practitioner is first in issuing the writ and first in telegraphing notice thereof to the defendant is generally held entitled to precedence, even though the second writ is that which is first actually served. *The Mary and The Violet*, 26 March, 1881, and *The Fairy and The Fervent*, 23 Nov. 1881.

See also No. 330b, *supra*.

* (133) The central office, when requested to do so, will mark on the writ the hour and minute at which it is issued.

(133a) Two writs were issued almost at the same time, the numbers being consecutive. There being nothing but the consecutive

numbers to distinguish the priority, the registrar gave the precedence to the action in which the writ issued had the earlier number. *The Newburn and The Glendale*, Oct. 1885.

6. Parties.

1. Generally.*

332. As to the construction of the terms "plaintiff," "petitioner," "defendant," and "party," see the Supreme Court of Judicature Act, 1873 (c. 66), s. 100; and as to the construction of the term "person" in the Rules of 1883, see Ord. LXXI. r. 1, No. 1041.

2. Prior Petens.

333. When a bottomry bondholder has obtained in proceedings by default a decree of sale of a ship and cargo, the bond must be taken to be *prima facie* valid, and the bondholder is entitled to put any subsequent claimant on proof of his interest before he, the bondholder, can be called on to defend his own claim. *The India*, 1 Lushington, 185; 11 W. R. 536; 32 L. J. N.S. Adm. 185; 9 Jur. N.S. 417; 1 Asp. 390; 9 L. T. N.S. 234†; but see *The Markland*, L. R. 3 A. & E. 340; 24 L. T. 596.

See also tit. LIENS, c. 3, p. 812.

334. As to precedence of actions, see c. 5, *supra*.

3. Plaintiffs.

335. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the court or a judge in disposing of the costs shall otherwise direct. Ord. XVI. r. 1, No. 123.

336. Any application to add or strike out or substitute a plaintiff or defendant may be made to the court or a judge at

any time before trial by motion or summons, or at the trial of the action in a summary manner. *Ibid.* r. 12, No. 134.

337. In a cause of collision instituted by the bailees of a barge against a steamer, *held*, that the plaintiffs were entitled to sue *in rem* in the Admiralty Court; but the court directed that the money awarded as compensation for the damage should not be paid until it should be satisfactorily established that such payment would release the defendants from all claims by the owners of the barge.. *The Minna*, L. R. 2 A. & E. 97.

338. A cause of damage was instituted in the name of a party not the registered owner. Motion by the defendants to be dismissed, after damage pronounced for and the accounts referred, rejected. *The Ilos*, Swabey, 100.

339. But the court stated that if after the amount of the damage had been ascertained any doubt arose as to who was entitled to receive the money, it would direct the amount to be paid into the registry, and throw on the claimant the burthen of establishing his ownership by competent proof. *Ibid.*

340. As to plaintiffs when underwriters suing in owners' names, see s. 15, p. 1504.

340a. As to amendment of action as to plaintiff, see c. 4, s. 9 (b), p. 1494.

4. Defendants.†

341. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment. Ord. XVI. r. 4, No. 126.

342. In a cause of possession, where an account was also claimed against the managing owner, who failed to appear, the court directed that he should be joined as a defendant under Ord. XVI. r. 3 (now

* (134) A consignee may sue in the Admiralty either in his own name as agent, or in the name of his principals, as he thinks best. *M'Kinlay v. Morrish*, 21 How. U. S. 343. [AMERICAN.]

† (134a) Under the practice at that time existing, the obtaining of a decree of sale was almost equivalent to a judgment.

† (135) With regard to actions for damage at common law, the several part owners of a ship make in law but one owner, and in case of any injury to their ship they ought regu-

larly to join in one action for the recovery of damages; but this rule is made for the benefit of the wrongdoer, who must avail himself of it at the very beginning of the cause. In case of the death of any part owner after such injury received, the right of action survives to the surviving part owners, who must afterwards pay to the representatives of the deceased part owner the value of his share. *Abb. Sh.* (12th ed.) p. 69, and cases there cited; *Maclachlan on Merchant Shipping* (3rd ed.), p. 124.

r. 4, No. 126), so that his accounts might be inquired into. *The Native Pearl*, 3 Asp. N.S. 514.

343. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the court or a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest. Ord. XVI. r. 5, No. 127.

344. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes. *Ibid.* r. 6, No. 128.

345. When the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties. *Ibid.* r. 7, No. 129.

346. Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the court or a judge, file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served. *Ibid.* r. 13, No. 135.

346a. Plaintiffs commenced an action *in rem*, under Lord Campbell's Act, on 4th Jan. 1884, in respect of loss of life by collision at sea, occurring on 10th Jan. 1883. After 10th Jan. 1884 (it having been decided in the interim by the Court of Appeal that the Admiralty Court had no jurisdiction in such actions), the plaintiffs applied to add as defendants the owners of the wrong-doing ship. Application refused, because, under Ord. XVI. r. 11, No. 133, proceedings against the parties proposed to be added would be deemed to have commenced from the date of service upon them of the writ of summons, and hence the action would not have been commenced against them within the time provided by Lord Campbell's Act, and because the court had no power to add parties as defendants *in personam* in an action *in rem*, and because the order ought not to be made merely on the

ground that the objection as to time was an objection which ought strictly to be taken at a later period. *The Bowesfield*, 5 Asp. 265.

5. Joinder of—

347. No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court or a judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings, as against such party, shall be deemed to have begun only on the service of such writ or notice. Ord. XVI. r. 11, No. 133.

348. The consent which Ord. XVI. r. 13, of 1875 (now r. 11, No. 133), required from a person proposed to be added as plaintiff need not be in writing; it is sufficient if the solicitor for the existing plaintiff consents on behalf of the new plaintiff, the solicitor taking the usual responsibility of using a plaintiff's name. *Cox v. James*, 19 Ch. D. 55.

349. As to joinder of plaintiffs, see sect. 3, *supra*. As to joinder of defendants, see sect. 4, *supra*. As to joinder of third parties, see sect. 6 (a), *infra*. As to joinder of parties on marriage, death, bankruptcy, &c., see sect. 6 (c), *infra*.

350. As to joinder of causes of action, see c. 4, s. 12, p. 1496; and as to joinder of parties in an action *in rem*, see No. 346a, *supra*.

350a. As to costs in connection with

joinder of parties, see tit. Cosrs, c. 10, p. 349.

6. Third Parties.*

(a) Generally.

351. Where a defendant claims to be entitled to contribution, or indemnity over against any person not a party to the action, he may, by leave of the court or a judge, issue a notice (hereinafter called the third-party notice) to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court or a judge, be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of the Form No. 1 in Appendix B., with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action. Ord. XVI. r. 48, No. 170.

352. To be entitled to indemnity within the meaning of this rule there must be a contract to indemnify. *Speller v. Bristol Steam Navigation Co.*, 13 Q. B. D. (C.A.) 96.

353. An application by the defendant in an action for leave to serve a third-party notice under Ord. XVI. r. 18 (now r. 48, No. 170), ought to be made on notice to the plaintiff, and not *ex parte*. *Wye Valley Rail. Co. v. Hawes*, 16 Ch. D. 489.

354. Where the defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person not a party to the action, this person shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are therein contained with respect to the service of a writ of summons, and every

defence so served shall be indorsed in the Form No. 2 in Appendix B., or to the like effect. See Ord. XXI. r. 12, No. 245.

355. As to the appearance of such third party, see c. 13, p. 1534.

356. The court or a judge may require any person to be made a party to any action or proceeding. See Ord. XVI. r. 39, No. 161.

357. The position of the defendant in the original action is the same whether a third party is cited or not. (C. A.) *The Cartsburn*, 4 Asp. 202.

358. In an action for damages by collision, brought by the owners of a vessel at anchor against a vessel in tow of a tug, the owners of the tug were made third parties under Ord. XVI. r. 18 (now r. 48, No. 170), as the defendants claimed to be indemnified by the owners of the tug against the plaintiffs' claim, on the ground that the improper navigation, if any, was that of the tug. *The Bianca*, 8 P. D. 91; 5 Asp. 60; *The Cartsburn*, 5 P. D. 35; 49 L. J. P. D. 14; 28 W. R. 378.

359. As to the joinder of parties, see s. 5, *supra*.

360. As to the joinder of plaintiffs, see s. 3, *supra*.

361. As to the joinder of defendants, see s. 4, *supra*.

362. As to the appearance of third parties, and the effect of their non-appearance, see c. 13, s. 7, p. 1534.

363. As to further proceedings by and against third parties, see c. 21, p. 1560.

(b) Interveners before the Judicature Acts and Rules.†

364. An interest to establish a *persona standi in judicio* is not an absolute right to a given sum of money; but if a person may be injured by a decree in a suit, he has a right to be heard as against the decree; although it may eventually turn out that he can derive no pecuniary benefit from the result of the suit itself. *The Dowthorpe*, 2 W. Rob. 77.

365. The practice of the court has been liberal in allowing parties to intervene

* (136) As to third parties to actions, see Wilson's Judicature Acts and Rules (4th ed.), pp. 233 *et seq.*; and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 416.

† (137) Any person claiming an interest in a vessel libelled for a forfeiture may intervene, and make himself a party to the cause, and contest the forfeiture so far as the decree

will be conclusive on his rights. *The Mary Anne*, Ware, 104. [AMERICAN.]

(138) As a general principle in American Admiralty cases *in rem*, any person having an interest in the thing may intervene *pro interesse suo*, and defend his own interest. 1 Conkling's Adm. Prac. 2nd ed. p. 68. [AMERICAN.]

who can show any interest whatever in the result of a suit. *The Two Ellens*, L. R. 3 A. & E. 345; 40 L. J. Adm. 11; 1 Asp. N.S. 40; *The Repulse*, 5 Notes of Cases, 351.

366. Question of compulsory pilotage in a cause of damage arising out of a collision on the river Ouse within the pilotage jurisdiction of the Trinity House of Kingston-upon-Hull. Application on behalf of the corporation of the Hull Trinity House for leave to intervene in the cause refused, the court observing that there was no precedent for it, and that it would not make one except under pressing necessity, being very reluctant to multiply parties to a suit on account of the additional expense, and that it was probable that the interests of the corporation being similar to those of the defendant, they would be duly cared for by him. *The Killarney*, 1 Lushington, 435.

367. In a case of seizure for alleged traffic in slaves, the shippers of the cargo and a party claiming the cargo not cited admitted by the appellate court to intervene in the appeal promoted by the owners of the vessel against the sentence of condemnation. *The Newport*, 11 Moore, P. C. C. 516.

368. Bond on ship, freight, and cargo, ship and freight insufficient to pay it. Action by seamen against ship and freight for wages. The owners of the cargo were allowed to appear and defend, because they had an interest in the administration of the fund. *The Union*, 3 L. T. N.S. 280; 30 L. J. Adm. 17; 1 Lushington, 128.

369. *Semble*, in a cause of mortgage the assignee in bankruptcy of the registered owners of the vessel may intervene without first obtaining leave. *The Heart of Oak*, 39 L. J. Adm. 15; 3 Asp. 317.

370. An unregistered transferee of a mortgage of a ship might intervene in a suit against the ship for necessaries. *The Two Ellens*, 40 L. J. Adm. 11; L. R. 3 A. & E. 345.

371. Cause of necessaries brought by A. against a ship which, after the supply of necessaries, was sold by her then owner D. to Y. Application by D. to be allowed to appear in the suit instead of Y., who had appeared, Y. consenting, but A. objecting, refused, but D. allowed to appear and give bail, Y. remaining a party to the suit. *The Princess Charlotte*, No. 969, December 17, 1861.

372. Where a vessel had been found to blame in a cause of collision, her

owners were allowed to intervene in a salvage suit instituted against the injured vessel, and the court gave them the conduct of the defence on their furnishing bail in lieu of that furnished by the vessel proceeded against. *The Diana*, 2 Asp. N.S. 366.

(c) *On Marriage, Death, Bankruptcy, &c.*

373. In case of the marriage, death or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the court or a judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the court or judge shall think just, and shall make such order for the disposal of the cause or matter as may be just. Ord. XVII. r. 2, No. 179.

374. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the court or a judge, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence. *Ibid.* r. 4, No. 181.

374a. As to service of such order, see c. 12, p. 1529.

(d) *In Salvage Actions.*

See s. 24, p. 1507.

7. *British and Foreign Government Ships.*

375. *Held*, that a foreign sovereign was entitled to sue for ships purchased with money taken from him during a revolution, and remaining in the port of L.; and that the persons making the remittance were not necessary parties to the

suit. *King of the Two Sicilies v. Willcox*, 1 Sim. N.S. 333.

See also tit. JURISDICTION, Pt. I. p. 668.

As to costs of, and against the Crown, see tit. COSTS, c. 21, p. 373.

8. Corporations and Companies.*

9. Co-partners.†

376. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a judge for a statement of the names of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the judge may direct. Provided that, in the case of a co-partnership which has been dissolved, to the knowledge of the plaintiff, before the commencement of the action, the writ of summons shall be served upon every person sought to be made liable. Ord. XVI. r. 14, No. 136.

377. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm. *Ibid.* r. 15, No. 137.

378. The objection that a partner cannot sue his co-partners is a technical objection, and in a case in which the proceedings are *in rem*, the rule does not apply that the rest of the partners cannot recover as against the ship, partly owned by one of them. *The West Friesland*, Swabey, 454; 5 Jur. N.S. 659.

379. A partner may arrest the ship (the property of himself and co-partner) in a suit for necessities. *Ibid.* Swabey, 495; 5 Jur. N.S. 658.

10. Several with one Interest.

380. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the court or a judge to de-

fend in such cause or matter, on behalf or for the benefit of all persons so interested. Ord. XVI. r. 9, No. 131.

11. Trustees, Executors and Administrators.‡

381. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the court or a judge may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously-existing parties. *Ibid.* r. 8, No. 130.

12. Assignees.

382. For provisions that an assignment in writing by the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom it is payable, shall be effectual in law (subject to all equities in priority) to transfer the legal right and remedies from the date of the notice, with power to the party to pay, to call on the assignor or any one claiming under him, to interplead, and with power to pay the amount into the High Court of Justice, under the provisions of the acts for the relief of trustees. See the Supreme Court of Judicature Act, 1873 (c. 66), s. 25, sub-s. 6.

383. *Semble*, in a cause of mortgage the assignee in bankruptcy of the registered owner of the vessel may intervene without first obtaining leave. *The Heart of Oak*, 39 L. J. Adm. 15; 3 Asp. 317.

384. Assignees of a bankrupt shipowner have a *persona standi* to appear for the benefit of the general estate, and contest the appropriation of the proceeds of the ship, against the assignees of the freight seeking to make the ship alone liable in the first instance, and this notwithstanding the shipowner had, prior to his bankruptcy, assigned his interest in the ship to other parties not before the

* (139) As to proceedings in the Queen's Bench Division by and against corporations and companies, see Archbold's Practice (14th ed. by Chitty), vol. 2, p. 1050.

† (140) As to power of partners to sue and be sued, see Wilson's Judicature Acts and

Rules, 4th ed. p. 225.

‡ (141) As to proceedings in the Queen's Bench Division by and against executors or administrators, see Archbold's Practice (14th ed. by Chitty), vol. 2, p. 1112, and Wilson's Judicature Acts and Rules, 4th ed. p. 222.

court, as a security for money advanced. *The Donothorpe*, 2 W. Rob. 73.

385. Question as to the appropriation of the proceeds of ship and freight in satisfaction of outstanding judgments against them for bottomry, wages, pilotage, &c., where a part owner had become a bankrupt, but had previously assigned to one party his interest in the ship, and to another party his interest in the freight, of whom the assignees under his bankruptcy and the assignees of the freight were before the court, and the other part owner, who was alleged also to have become a bankrupt, was not before the court. The court entered into an investigation of the relative claims of the parties, and apportioned the proceeds among them accordingly, in lieu of compelling them to have recourse to a court of equity to define the relative proportions due to them. *Ibid.* 2 W. Rob. 73, 86.

386. Assignees are not bound to act with the same degree of liberality as the owner himself. As trustees for creditors, they are not at liberty to submit to demands which may appear at all questionable, but must take the best means in their power to render the estate of the bankrupt as beneficial as possible to the persons with the care of whose interests they are intrusted. *The Alexander*, 1 Dodson, 278.

387. Assignees are in no better situation in opposing a bottomry bond than owners where there is no bankruptcy. *The St. Catherine*, 3 Hagg. 253.

388. *Semble*, a power of attorney to sell a ship is not so revoked by a decree of the grantor's insolvency in a colonial possession as to invalidate a *bonâ fide* exercise of the power before notice of insolvency. *The Margaret Mitchell*, Swabey, 382; 4 Jur. N.S. 1194.

389. In the Prize Court restitution had passed *in solidum* of three-fourths of the property claimed to an American house of trade. Afterwards it appeared that one of the parties was an English merchant and a bankrupt. His assignees prayed a severance of his particular share to be paid to them as his representatives for the benefit of his creditors. Application refused. *The Jefferson*, 1 C. Rob. 325.

390. In a suit instituted under the 4th section of the Admiralty Court Act, 1861, for building and equipping a vessel, the defendants pleaded that the alleged causes of action became vested in a trustee for the plaintiffs' creditors under a composi-

tion deed. The plaintiffs in reply alleged that they assigned the causes of action prior to the execution of the deed, and that they were suing as trustees for their assignees. *Held*, that they might sue as trustees, although they had, but subsequently to the assignment, executed the composition deed. *Held*, also, that though the assignment of the causes of action was prior to the arrest of the vessel and the institution of the suit, it carried with it the inchoate right to proceed against the vessel. *The Wasp*, L. R. 1 A. & E. 367; 2 Asp. 552.

13. Charterers.

391. See No. 432, p. 1507.

14. Mortgagees.

392. An unregistered transferee of a registered mortgage has sufficient interest to intervene in a suit instituted against the vessel mortgaged. *The Tico Ellens*, L. R. 3 A. & E. 345; 40 L. J. Adm. 11; 1 Asp. N.S. 40.

392a. Mortgagees in possession of a ship are in no better position than the owners with regard to the claims of the master. *The Caledonia*, Swabey, 17; 20 Jur. 48; 26 L. T. 177; 4 W. R. 183.

393. The court will investigate the master's account where a mortgagee is defendant, in the same manner as if the owner were defendant. *The Julindur*, 1 Spinks' Eccl. and Adm. Rep. 75.

394. A master who was also co-mortgagee, brought an action for his wages in the Admiralty Court, under 7 & 8 Vict. c. 112, the original owner being a bankrupt. The other mortgagee, who was in possession of the vessel, was allowed to appear in that action, and besides the wages the whole accounts between the mortgagees were investigated and settled. *The Repulse*, 4 Notes of Cases, 172; 5 *Ibid.* 348; 2 W. Rob. 40.

395. A party who repaired at a remote port, with the sanction of the owners, a vessel disabled at sea, arrested it for the price, and brought it to a judicial sale. *Held*, that mortgagees who had sustained no actual loss had no legal title or interest to challenge the proceedings. *Elias v. Black*, 18 Court of Session Cases, 1225. [SCOTCH.]

396. A foreign agent specially authorized, collected the gross freight, and thereout remitted a sum larger than the

amount of the net freight. Expenses in respect of the outward voyage, *e.g.* discharging expenses and compensation to consignees for short delivery of cargo, then became payable. The agent advanced sums for these and other debts against the ship, and for repayment took a bottomry bond on ship and freight. *Held*, that the mortgagees, not in possession of the ship when the bond was given, had no right to object to such items in the bond. *The Edmond*, 1 Lushington, 63; 2 L. T. N.S. 129; 29 L. J. Adm. 76.

397. *Quære*, whether the ship having been sold, the proceeds being insufficient to pay the mortgages thereon, and the owner being a bankrupt, a principal mortgagee has a sufficient interest to oppose a mariner's claim for wages? *The Prince George*, 3 Hagg. 377, 380.

398. The title of mortgagees is, in questions of bottomry and similar cases, equivalent to that of the owners. *The Mary Ann*, 10 Jur. 255.

399. In an action against ship and freight for master's wages, the mortgagee in possession is entitled to a release of the ship upon giving bail, notwithstanding the master has become liable in respect of bills of exchange, drawn upon the charterers for the ship's use. *The Ringdove*, Swabey, 310; but see tit. MASTERS, p. 1126, Nos. 105—112.

400. A master is not debarred from suing for his wages under the 7 & 8 Vict. c. 112, upon the ground that he was a co-mortgagee of the vessel at the time. *The Repulse*, 2 W. Rob. 240.

401. *Semble*, that prior to 3 & 4 Vict. c. 65, a mortgagee, though he could not have initiated a suit in the Court of Admiralty, might yet have intervened for the protection of his interest. *The Douthorpe*, 2 W. Rob. 83.

401a. As to the rights of mortgagees generally, see tit. MORTGAGE, p. 1129; and

in reference to carriage of goods, see tit. GOODS, CARRIAGE OF—, pp. 597—601.

15. Underwriters.

402. An underwriter must, in a cause of damage, sue in the name of the owner. *The John Bellamy*, L. R. 3 A. & E. 129; 3 Asp. 360.*

403. A collision having occurred between the vessels B. and E., whereby the E.'s cargo was lost, a suit was instituted against the B. by the plaintiffs, who described themselves as the owners of the cargo ex E. The B. having been held to blame, a reference to the registrar was directed. At the reference it appeared that the plaintiffs were underwriters, who had paid the shippers as on a total loss. The plaintiffs produced the bills of lading and invoices of the cargo. *Held*, that the defendants were entitled to evidence of a discharge from the owners of the cargo before the registrar proceeded to make his report. *Ibid*.

404. *Quære*, is a shipper of goods acting within the ordinary scope of his authority as agent for the owner in insuring such goods? *Ibid*.

405. Underwriters can assert any right which the owner of the ship insured might have asserted against a wrongdoer for damages for the act which has caused the loss. But this right of action for damages they must assert, not in their own name, but in the name of the person insured; and if the person insured be the person who has caused the damage, the underwriters are unable to recover. *Simpson v. Thomson*, 3 App. Cas. H. L. 279; 3 Asp. N.S. 567. [SCOTCH.]

406. A steamer ran into and sank another vessel belonging to the same owner. The owner admitted his liability, and petitioned for limitation of liability. Claims having been lodged by

* (142) Where, however, the owner has abandoned to the underwriter and he has accepted the abandonment by payment of total loss or otherwise, it would seem that the underwriter is entitled to proceed in his own name. See tit. MARINE INSURANCE, p. 1086.

(143) In an action by a plaintiff for injury done to his vessel by collision, it is no answer that the plaintiff has received from the underwriter the amount of his loss, as he is trustee for the underwriter for what he recovers from the defendant. 1 Park on Ins. 331.

(144) Insurers held liable under the colli-

sion clause for claims in respect of loss of life and injury by collision. *The Excelsior Company v. Smith*, 2 L. T. N.S. 90. [SCOTCH.]

(145) Underwriters cannot claim for salvage property in the Admiralty unless the property has been abandoned to them and accepted by them. *The Henry Ewbank*, 1 Sumner, 400. [AMERICAN.]

(146) As to the rights of underwriters to intervene in causes of salvage in the American Admiralty Courts, see *Marvin on Wreck and Salvage*, 63. *The Ship Packet*, 3 Mason, 255; *The Boston*, 1 Sum. 332; *The Brig Ann C. Pratt*, 1 Curteis, 340. [AMERICAN.]

the underwriters who had insured the lost vessel, and by the owners of cargo therein, against the fund to be distributed, *held*, by the House of Lords, reversing the judgment of the Court of Session, that inasmuch as the underwriters could have had no claim against the shipowner, they had no claim upon the fund to be distributed. *Ibid.*; 38 L. T. 1; *sub nom. Burrell v. Simpson*, Cases in the Court of Session, 4th Series, vol. 4, p. 177. [SCOTCH.]

407. In an action of damage by collision, it was proved that the underwriters on the vessel damaged had paid to the pursuers a sum in respect of the damage, but had also executed a deed of assignation to the pursuers of all their (the underwriters) rights against the defenders. The defenders being found in default, *held*, that they were liable to pay the pursuers the full amount of the damage. *Morison v. Bartolomeo*, Cases in the Court of Session, 3rd Series, vol. 5, p. 848. [SCOTCH.]

408. As to the rights of underwriters on abandonment to them, see tit. MARINE INSURANCE, p. 1086; and as to their rights and liabilities in reference to collision, *ibid.* p. 1030, Nos. 1636—1642.

409. The result of abandonment is that all incidents to the thing abandoned pass with it. Thus, claims on account of collision pass to the underwriters, who may commence an action in the name of the assured. *Yates v. Whyte*, 4 Bing. N. C. 272; 5 Scott, 640.

410. As to the title of underwriters generally, see *The Kennerley Castle*, 3 Hagg. 6.

411. A ship was arrested in a cause of damage to cargo. The underwriters on the ship were willing to accept an abandonment, but the owners had not abandoned. The underwriters caused an appearance

in the cause to be entered on behalf of the owners of the ship, who subsequently appeared by another proctor, and repudiated the underwriters' proceedings. The court refused to permit the underwriters to proceed further in the cause on behalf of the owners. *The Bahia*, No. 1661, 5th May, 1863.

412. A's ship damaged B's. B., after he had received a sum of money under a policy which he had effected on his ship, brought an action against A., and recovered damages for the injury done to his ship. *Held*, that the underwriter had a lien on the amount recovered for the sum paid on the policy. *White v. Dobinson*, 14 Sim. 273; and see *Randal v. Cochran*, 7 Ves. sen. 98.

413. There is no independent right in underwriters to maintain in their own name, and without reference to the person insured, an action for damage to the thing insured. *Simpson v. Thomson*, 3 App. Cas. 279.*

414. As to the priority of underwriters and other's liens, see tit. LIENS, p. 831.

16. Minors, Lunatics, and Married Women.†

415. Infants may sue as plaintiffs by their next friends, in the manner heretofore practised in the Chancery Division, and may, in like manner, defend by their guardians appointed for that purpose. Married women may sue and be sued as provided by the Married Women's Property Act, 1882 (c. 75), and Ord. XVI. r. 16, No. 138.

416. See further as to appearance of infants only by their guardians *ad litem*, and as to the appointment of such guardians, *ibid.* rr. 18, 19, Nos. 140, 141.

417. Before the name of any person shall be used in any action as next friend

* (147) In a suit *in rem* on a bottomry bond, underwriters to whom an abandonment is made which has not been accepted are not admissible as claimants. *The Ship Packet*, 3 Mason, 255. [AMERICAN.]

(148) A chose in action being now assignable under the Judicature Act, 1873 (c. 66), s. 25, sub-s. 6, underwriters who have paid for a loss or damages by collision under the running-down clauses of a policy of marine insurance, and have had the property assigned to them in accordance with the act, may now sue in their own names the wrong-doing vessel or her owners.

(149) For the American law as to abandon-

ment and its effects, see 2 Parsons on Maritime Law, §16.

† (150) As to proceedings in the Queen's Bench Division by and against lunatics and persons of unsound mind, see Archbold's Practice (14th ed. by Chitty), vol. 2, p. 1141, and Wilson's Judicature Acts and Rules (4th ed.) pp. 226 *et seq.*

(150a) As to ditto by and against infants, see Archbold, *Ibid.* p. 1133, and Wilson, *Ibid.* pp. 226 *et seq.*

(151) As to suits by minors in the American Admiralty Courts, see Dunlap's Adm. Prac. 2nd ed. pp. 76, 97. [AMERICAN.]

of any infant, or other party, or as re-
lator, such person shall sign a written
authority to the solicitor for that purpose,
and the authority shall be filed in the
Central Office, or in the district registry
if the cause or matter is proceeding there-
in. Ord. XVI. r. 20, No. 142.

418. Where lunatics and persons of
unsound mind not so found by inquisition
might respectively before the passing of
the principal act have sued as plaintiffs,
or would have been liable to be sued as
defendants in any action or suit, they
may respectively sue as plaintiffs in any
action by their committee or next friend
according to the practice of the Chancery
Division, and may in like manner defend
any action by their committees or guar-
dians appointed for that purpose. *Ibid.*
r. 17, No. 139.

419. As to the effect in all causes or
matters to which any infant or person of
unsound mind, or under other disability,
is a party, of consents as to the mode of
taking evidence or other procedure given
by the next friend, guardian, committee,
or person acting for the person under
disability, *Ibid.* r. 21, No. 143.

420. A minor sues in the Admiralty
Court by his guardian. *The Albert Crosby*,
1 Lushington, 44; also a child *en ventre*
sa mère. *The George and Richard*, L. R.
3 A. & E. 466; 24 L. T. N.S. 717.

17. Sureties.

421. Sureties cannot interfere with the
conduct of the cause at any time except
when the principal is guilty of fraud, or
there is collusion between him and the
adverse party, when the sureties are
entitled to apply to the court, alleging
such fraud or collusion. *The Harriett*,
1 W. Rob. 199, 203; 6 Jur. 197; 1 Notes
of Cases, 327; and see c. 19, s. 17, p.
1550.

18. Paupers.

See next chapter.

19. Foreigners.*

422. *Semble*, where the parties suing are
foreigners the court will be more indul-
gent in overlooking mere technical defects

in the conduct of the proceedings than in
the case of a British suitor. *The Anne*
and Jane, 2 W. Rob. 98.

423. Proceedings on an application by
foreign ambassador on behalf of the sub-
jects of his country, who afterwards make
a similar application for themselves, are
by such intervention substantiated; and
any formal objections to the proceedings,
on the ground of the authority of the
ambassador, removed. *The Hercules*, 2
Dodson, 369.

424. As to actions of possession by
foreigners, see tit. OWNERS, Pt. I. p. 1182.

425. In actions of wages by foreigners,
see tit. WAGES.

20. Deceased without Representative.

426. For provisions that if in any cause
or matter it appears to the court that any
deceased person who was interested in
the matter has no legal personal repre-
sentative, the court may proceed in the
absence of any person representing his
estate, or may appoint some person to
represent his estate for the purposes of
the cause or matter, on such notice as
the court shall think fit, and that any
order so made shall bind the estate, see
Ord. XVI. r. 46, No. 168.

21. In Bottomry Actions.

427. See Pt. III. c. 1, Nos. 2119 *et seq.*

22. In Collision Actions.

428. Where cargo is shipped on the
shipowner's account, and money is ad-
vanced to them by persons who take as
security an assignment of a policy of
insurance on the freight and a bill of
lading signed by the master and indorsed
by him, with a receipt for a sum of money
on account of freight named in the bill
of lading, and the ship is run down and
sunk by the negligence of another vessel,
the persons advancing money as holders
of the bill of lading have sufficient inter-
est in the goods and freight to entitle
them to recover from the owners of the
wrong-doing vessel the sum of money
advanced on account of freight. *The*
Thyatira, 5 Asp. 147.

* (152) Under sect. 19 of the Common
Law Procedure Act, 1852, a foreign cor-
poration could not have been sued unless
it had a place of business in this country;
but when an order for service out of the

jurisdiction has been obtained, it may now
be sued, although it has no place of business
here. See Charley's Practice and Pleading
under the Judicature Acts, 3rd ed. p. 417,
and the cases therein cited.

429. In an action for damage by collision the jury found for the pursuers, and assessed the damages at £566. They also specially found that the pursuers had received from the underwriters the sum of £350 in respect of the damage sustained. On the pursuers producing a deed of assignation to them by the underwriters of all their rights against the defenders, held, that as the assignation enabled the defenders to get a good discharge from all claims against them they were liable to pay the whole £566 to the pursuers. *Morison v. Bartolomco*, Cases in the Court of Session, 3rd Series, vol. 5, p. 848. [SCOTCH.]

430. A part owner of a ship is entitled to sue for recovery of his share of the damage occasioned by her having been destroyed. *Lawson v. Leith and Newcastle Packet Co.*, Nov. 26, 1850; 13 D. 175; 23 Jur. 51. [SCOTCH.]

23. *In Marine Insurance Actions.*

See tit. MARINE INSURANCE, p. 1100.

24. *In Salvage Actions.*

431. Every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salvaged, or of their respective agents. M. S. Act, 1854 (c. 104), s. 460.

431a. If a part owner of a salvaging vessel has an interest in the vessel salvaged, his co-owners, master and crew of the salvaging vessel may sue for salvage, the sum to which they are entitled being computed by deducting from the value of the entire service the share which would have been due to such part owner if he could have joined. *The Caroline*, 5 L. T. N.S. 89; 1 Lushington, 334.

432. The owner of a salvaging vessel is not an unfit person to originate a suit for salvage. *The Haidee*, 1 Notes of Cases, 598.

432a. A charterer of a vessel upon such

terms as to constitute him *pro hac vice* owner, is entitled to be plaintiff of the vessel in a salvage action and to the owner's share of the salvage award, to the exclusion of the general owner of the vessel. *The Scout*, L. R. 3 A. & E. 512; 41 L. J. Adm. 42.

433. In a suit for salvage, which had been instituted in the name of the owners and others of the asserted salvaging vessel, and in which suit the asserted salvors had been condemned in costs, a monition for payment of costs having been served on such owner, an application for an attachment against him for disobedience thereto, opposed by the owner, alleging that the suit had been instituted without his authority, acquiescence, or privity, rejected, and the owner dismissed. *The Wilhelmine*, 2 Notes of Cases, 19.

434. Whenever any articles belonging to or forming part of any foreign ship which has been wrecked on or near the coasts of the United Kingdom, or belonging to or forming part of the cargo thereof, are found on or near such coasts, or are brought into any port in the United Kingdom, the consul-general of the country to which such ship, or, in the case of cargo, to which the owners of such cargo may have belonged, or any consular officer of such country authorized in that behalf by any treaty or agreement with such country, shall in the absence of the owner of such ship or articles, and of the master or other agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of such articles. The M. S. Act Amendment Act, 1855 (c. 91), s. 19.

25. *In Wages Actions.**

435. See Nos. 263—268, p. 1490, and Nos. 392—400, p. 1503.

7. *Paupers.†*

436. Any person may be admitted in the manner heretofore accustomed to sue

* (153) Though seamen may join in Admiralty in a suit for wages, a decree against one does not affect the claims of the rest. *Oliver v. Alexander*, 6 Pet. 143. [AMERICAN.]

(154) Seamen may sue jointly or severally in the Admiralty for their wages. *Hook v. Moreton* (1697), Ld. Raym. 398.

† (155) For provisions applicable to proceedings by persons suing *in forma pauperis* in action in the Queen's Bench Divisions see 11 Hen. 7, c. 127; 23 Hen. 8, c. 15; 3 Steph.

Comm. 8th ed. p. 590, and cases there cited.

(156) As to actions in the Common Law and Chancery Divisions by paupers, see Archbold's Practice (14th ed. by Chitty), vol. 2, p. 1182.

(157) As to the old practice in the ecclesiastical courts in regard to paupers, see *Lovekin v. Edwards*, 1 Phill. 183; *Lait v. Bailey*, 2 Robertson, 153; 7 Notes of Cases, 390; *Walker v. Walker*, 1 Curteis, 562; *Filewood v. Cousens*, 1 Add. 286; *Rind v. Davies*, 4

or defend as a pauper on proof that he is not worth £25, his wearing apparel and the subject-matter of the cause or matter only excepted. Ord. XVI. r. 22, No. 144.

437. A person desirous of suing as a pauper shall lay a case before counsel for his opinion whether or not he has reasonable grounds for proceeding. *Ibid.* r. 23, No. 145.

438. No person shall be permitted to sue as a pauper unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party, or his solicitor, that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, shall be produced before the court or judge or proper officer to whom the application is made, and no fee shall be payable by a pauper to his counsel or solicitor. *Ibid.* r. 24, No. 146.

439. A person admitted to sue or defend as a pauper shall not be liable to any court fee. *Ibid.* r. 25, No. 147.

440. Where a person is admitted to sue or defend as a pauper the court or a judge may, if necessary, assign a counsel or solicitor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the court or judge that he has some good reason for refusing. *Ibid.* r. 26, No. 148.

441. Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him any fee, profit, or reward, for the conduct of his business in the court, and any person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward shall be guilty of a contempt of court. *Ibid.* r. 27, No. 149.

442. If any person admitted to sue or defend as a pauper gives, or agrees to give, any such fee, profit, or reward, he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper. *Ibid.* r. 28, No. 150.

443. No notice of motion shall be served or summons issued, and no petition shall be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his solicitor, unless it is signed by his solicitor. *Ibid.* r. 29, No. 151.

444. It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or summons issued, or petition presented, without good cause. *Ibid.* r. 30, No. 152.

445. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the court or a judge shall otherwise direct, be taxed as in other cases. *Ibid.* r. 31, No. 153.

446. See, as to costs of paupers, the observations of the Master of the Rolls in *Carson v. Pickersgill*, 14 Q. B. D. 859.

446a. A successful plaintiff suing in *formâ pauperis*, in an action tried before a judge and jury, is entitled, on taxation against the defendant, to costs out of pocket only, and cannot be allowed anything for remuneration to his solicitor, nor for fees to his counsel. *Ibid.*

447. The party proceeding in a cause of possession afterwards applied for and obtained leave to continue the suit in *formâ pauperis*, which was subsequently dismissed, and the party condemned in costs, for which he was afterwards taken on an attachment for nonpayment. An application to supersede the attachment, on the ground of its enforcing the costs whilst the party was suing in *formâ pauperis*, rejected. *The Plym*, 2 W. Rob. 345; 8 Jur. 990.

8. Writs of Summons.

1. Generally.*

448. Every action in the High Court shall be commenced by writ of summons. See Ord. II. r. 1, No. 3.

Hagg. (Eccl.) 394; and see *Le Mann v. Bonsel*, 1 Add. 399; *Wagner v. Mears*, 2 Hagg. (Eccl.) 531; *Graham v. Fitzpatrick*, Milward's Ir. Eccl. Rep. 576; *Lait v. Bailey*, 2 Robertson, 150; 14 Jur. 378; 7 Notes of Cases, 388; *In the goods of Ann Jones, deceased*, 1 Hagg. (Eccl.) 81; *Hamer v. Bereham*, 1 Swabey & Tristram, 26.

* (158) All writs are obtained from the central office only. There is no præcipe required for a writ. The practitioner or his

clerk fills up the writ in duplicate, signs the duplicate, procures a 10s. stamp to be impressed on it, hands in both at the Central Office, and receives the original writ duly sealed, with the proper reference letter and number inserted therein by the official, who retains the duplicate.

(159) The writ is then taken by the practitioner, or his clerk, to the registry of the Admiralty division, where he leaves a copy of the writ, and in lieu thereof obtains the

449. Every writ of summons not issued out of a district registry shall be issued out of the Central Office. Ord. V. r. 2, No. 24.

450. The writ of summons shall specify the division of the High Court to which it is intended that the action should be assigned. See Ord. II. r. 1, No. 3.

451. For forms of writs of summons, see R. S. C. 1883, App. A. Pt. I. Nos. 1, 2, 5 and 6.

452. As to costs occasioned by the use of any forms of writs, other or more prolix than the forms prescribed, see tit. Costs, c. 9, p. 349.

453. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as by these rules directed in the case of proceedings directed to be printed. Ord. V. r. 10, No. 32.

454. Every writ of summons shall bear date on the day on which it is issued, and shall be tested in the name of the lord chancellor, or if that office is vacant in the name of the lord chief justice of England. Ord. II. r. 8, No. 10.

455. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid (*i. e.*, that mentioned in Ord. LXVI. r. 3, No. 1005), of such writ and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person. Ord. V. r. 12, No. 34.

456. Notice to the proper officer of the assignment of an action to any division of the court shall be sufficiently given by leaving with him the copy of the writ of summons. *Ibid.* r. 14, No. 36.

457. Copies of writs of summons should be signed with the name of the solicitor or solicitors' clerks suing them out as under:—

C. D. and Co.
or A. B.
for C. D. and Co.

The stamp is to be on the copy writ filed. See C. O. P. R. 1880—82, in Wilson's Judicature Acts and Rules, 4th ed. p. 846.

458. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the cause book, which is to be kept in the manner in which cause books are now kept, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such cause books. Ord. V. r. 13, No. 35.

459. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued. *Ibid.* r. 11, No. 33.

460. No original writ of summons shall be in force for more than twelve months from the day of the date thereof including such day. See Ord. VIII. r. 1, No. 45.

461. A shipowner, residing and carrying on business in Scotland, was described in the writ of summons for service within the jurisdiction as "of the City of London." He applied before service of the writ, and after a cross action of damage in respect of the same collision had been instituted on his behalf, that the writ should be set aside as irregular. The court refused the motion. *The Helenslea The Catalonia*, 7 P. D. 57; 4 Asp. 594.

462. *Semble, non constat*, but that the writ may have been taken out for service on the defendant when he should come within the jurisdiction. See Ord. VIII. r. 1, No. 45.

2. In Personam.*

463. The writ of summons for the com-

proper folio number of the cause. This he marks on the writ, which is then complete and ready for service.

(160) As to the issue of writs of summons and the proceedings thereon, whether in London or in the district registries, see Wilson's Judicature Acts and Rules, 4th ed. pp. 173—188; Archbold's Practice of the Queen's Bench Division (14th ed. by Chitty), vol. 1, pp. 214 *et seq.*

(161) The procedure by citation *in personam* in commencing an action (for which see the Admiralty Court Act, 1861 (c. 10), s. 22, since repealed, and the Rules and Orders of 1859, now annulled), and the procedure by

monition (for which see the Admiralty Court Act, 1854 (c. 78), s. 13), are abolished by the procedure by writ of summons under the Judicature Acts and Rules. See Ord. I. r. 1, No. 1. The procedure by monition is also now obsolete.

(162) The Court of Admiralty, before the Judicature Acts, on being applied to to issue a warrant to arrest a vessel in a cause in which the jurisdiction was uncertain, directed in lieu thereof a monition to issue against the agents and consignees, the owners being foreigners. *The Governor Raffles*, 2 Dodson, 17.

* (163) Writs of summons are ordinarily

mencement of an action is required to be, except as therein mentioned in one of the Forms Nos. 1, 2, 3 and 4 in Appendix A., Part I. See Ord. II. r. 3, No. 5.

3. *In Rem*.*

464. The writ of summons in every Admiralty action *in rem* shall be in one of the Forms Nos. 11 and 12 in Appendix A., Part I., with such variations as circumstances may require. *Ibid.* r. 7, No. 9.

4. *Indorsement*.

(a) *Generally*.

465. The writ of summons shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action. *Ibid.* r. 1, No. 3.

466. The indorsement of claim shall be made on every writ of summons before it is issued. Ord. III. r. 1, No. 11.

467. In the indorsement it is not essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. *Ibid.* r. 2, No. 12.

468. The indorsement of claim shall be to the effect of such of the Forms in Appendix A., Part III. s. 6, as shall be applicable to the case, or, if none be found applicable, then such other similarly concise form as the nature of the case may require. *Ibid.* r. 3, No. 13.

469. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show, in manner appearing by such of the Forms in Appendix A., Part III. s. 7, as shall be applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued. *Ibid.* r. 4, No. 14.

470. As to costs occasioned by the use of any forms of indorsements on writs, other or more prolix than the forms prescribed, see tit. Costs, c. 9, p. 349.

471. In all cases in which the plaintiff,

in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken. Ord. III. r. 8, No. 18.

(b) *Special*†

(c) *Debt or Liquidated Demand*.

472. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement shall be in the form in Appendix A., Part III. s. 3. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation. See Ord. III. r. 7, No. 17; and see Wilson's Jud. Acts and Rules, 4th ed. p. 179.

(d) *Name and Address of Plaintiff and his Solicitor*.

473. In all cases where a writ of summons is issued out of the Central Office, the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ and notice in lieu of service of a writ the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, another proper place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other docu-

in personam. For those *in rem*, see next section.

(164) For Admiralty writs *in personam*, Form No. 1, in App. A. to R. S. C. 1883, is generally used with a few slight alterations.

* (165) As to warrants for the arrest of the *res*, or ship to obtain bail, or the security of the ship pending the action, see cap. 11, p. 1515.

(166) It is not necessary to the proceedings that a warrant should be issued, as well

as a writ; and this is so even in proceedings by default; but of course, before it becomes necessary to enforce process against the ship, it must be arrested if not already under arrest.

† (167) As to proceedings where the writ is specially indorsed, see Ord. III. r. 6, No. 16; Wilson's Judicature Acts and Rules, 4th ed. p. 178; and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 221.

ments, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Ord. IV. r. 1, No. 19.

474. For similar appropriate indorsement, where the plaintiff in person obtains the writ, *Ibid.* r. 2, No. 20.

5. Out of Jurisdiction.*

(a) Generally.

475. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in one of the Forms Nos. 5, 6, 7 and 8 in Appendix A., Part I., with such variations as circumstances may require. Such notice shall be in one of the Forms Nos. 9 and 10 in the same Part, with such variations as circumstances may require. Ord. II. r. 5, No. 7.

476. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of the court or a judge. *Ibid.* r. 4, No. 6.

477. The words "within the jurisdiction" in Ord. XI. of R. S. C. 1875, now Ord. XI. of R. S. C. 1883, mean "territorial jurisdiction." Therefore the Court of Admiralty will not issue a writ for service abroad in respect of a wrong done on the high seas. *Re Smith*, 1 P. D. 300; 3 Asp. N.S. 259; 45 L. J. P. D. 92; 35 L. T. 380; 24 W. R. 903; *The Vivar*, 2 P. D. 29; 35 L. T. 782; 25 W. R. 453.

478. A collision occurred on the high seas between an English vessel and a vessel belonging to a foreign company. An application for leave to issue a writ of summons, of which notice should be given to the company out of the jurisdiction, refused, as the collision had not occurred within the jurisdiction within the meaning of the before-mentioned order. *Re Smith*, *ubi supra*.

478a. A collision took place at sea, about ten miles from the South Stack Lighthouse, between an American and a

Spanish vessel. Both vessels sank in consequence of the collision, and the owners of the American vessel applied in the registry for leave to issue a writ for service out of the jurisdiction in an action to recover compensation for the loss of their vessel against a British subject resident in Spain, who was alleged to be one of the owners of the Spanish vessel. The registrar having granted the necessary leave, the writ was issued and service was effected on the defendant in Spain. Thereupon an appearance under protest was entered on his behalf. Afterwards, on these facts being brought before the judge of the Admiralty Court, on motion, the court ordered the action to be dismissed. *Held*, on appeal, that the order was right. *The Vivar*, *ubi supra*.

479. The court will not issue a writ for service abroad in respect of a wrong done below low-water mark but within three miles of the shore. *Harris v. Owners of the Franconia*, L. R. 2 C. P. 173; 46 L. J. C. P. 363; and see *Reg. v. Kehn*, 2 Exch. D. 68.

480. For form of order for service out of jurisdiction, see R. S. C. 1883, Appendix K. No. 20.

481. As to concurrent writs out of the jurisdiction, see No. 495, *infra*.

482. As to the service of a writ of summons out of the jurisdiction, see c. 12, s. 5, p. 1525.

(b) Third Parties.†

6. From District Registry.

(a) Generally.

483. In any action (other than a Probate action), the plaintiff wherever resident may issue a writ of summons out of any district registry. Ord. V. r. 1, No. 23.

484. When an action is commenced in a district registry, the writ, besides being distinguished by the date of the year, a letter and a number, is to be further distinguished by the name of the district registry from which it is issued. *Ibid.* r. 13, No. 35.

* (168) As to the issue and service of writs of summons, when the defendant is out of the jurisdiction, see Wilson's Jud. Acts and Rules, 4th ed. p. 198; and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 244.

† (169) In an action by a first mortgagee of a ship against a second mortgagee for an account, persons resident abroad and retain-

ing the freight as against a debt due to them from the second mortgagee, may be added as defendants and served with notice of the writ out of the jurisdiction under Ord. XI. r. 1, provided the contract under which the freight is due is an English contract.—*V.-C. B. McStephens & Co. v. Carnegie*, 4 Asp. 215.

485. In all cases where the defendant resides or carries on business within the district, there shall be a statement on the face of the writ that the defendant do cause an appearance to be entered at the district registry. Ord. V. r. 4, No. 26.

486. In all cases where a defendant neither resides nor carries on business within the district, there shall be a statement on the face of the writ that the defendant may cause an appearance to be entered at his option either at the district registry or at the Central Office. *Ibid.* r. 3, No. 25.

(b) *Indorsement of Name and Address of Plaintiff and his Solicitor.*

487. In all cases where a writ of summons is issued out of a district registry the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ, and notice in lieu of service of a writ, the address of the plaintiff, and his own name or firm and place of business, which shall, if his place of business be within the district of the registry, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice; and where the solicitor issuing the writ is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Ord. IV. r. 3, No. 21.

488. For similar endorsement where the plaintiff in person obtains the writ from the district registry, *Ibid.*

488a. As to the amendment of endorsement, see next section.

7. *Amendment.**

489. If a writ of summons has been lost, the filed copy may, for the purpose of amendment or otherwise, be used as a duplicate, but only by leave of a practice master, and on the party giving an un-

derwriting to produce the original at the Central Office when found. See C. O. Prac. Rules, 1880-82, in Wilson's Jud. Acts and Rules, 4th ed. p. 847.

490. As to amendment within fourteen days, when no time is mentioned in the order to amend, *Ibid.*

491. As to amendment of amount of claim in writ, see c. 4, Nos. 282—289, p. 1492.

492. As to service of amended writ, see c. 12, p. 1527.

493. In all the divisions an amendment of a writ of summons may be made by leave of a master (on payment of fee) before service. A plaintiff can be struck out only by special leave given in the order to amend; a defendant, by special leave, or on the written statement (to be filed) of the plaintiff's solicitors that a notice of discontinuance under Ord. XXIII. (now Ord. XXVI.) has been duly given. See C. O. Prac. Rules, 1880-82, in Wilson's Jud. Acts and Rules, 4th ed. p. 846.

8. *Concurrent.*

(a) *Generally.*

494. The plaintiff in any action may, at the time of, or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear *teste* of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force. Ord. VI. r. 1, No. 40.

(b) *Within and without the Jurisdiction.*

495. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the juris-

* (170) The misdescription of the residence of a defendant, whereby he is alleged to be resident within the jurisdiction, whilst he is in fact resident out of the jurisdiction, is not a sufficient ground for setting aside a

writ *in personam* intended for service as soon as the defendant shall come within the jurisdiction. *The Helenslea, The Catalonia*, 7 P. D. 57; 4 Asp. 594.

diction may be issued and marked as a concurrent writ with one for service within the jurisdiction. *Ibid.* r. 2, No. 41.

9. *Renewed*—.

496. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to the court or a judge for leave to renew the writ, and the court or judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 18 in Appendix A., Part I., with such variations as circumstances may require; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons. Ord. VIII. r. 1, No. 45.

497. The production of a writ of summons purporting to be marked with the seal of the court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes. *Ibid.* r. 2, No. 46.

498. For form of order for renewal of writ, see R. S. C. 1883, Appendix K., No. 22.

10. *Lost*—.

499. Where a writ, of which the production is necessary, has been lost, the court or a judge, upon being satisfied of the loss, and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ. Ord. VIII. r. 3, No. 47.

500. As to amendment when required of lost writ, see No. 489, *supra*.

11. *Service*.

See c. 12, ss. 5, 6, pp. 1524—1527.

12. *Motion to set aside Service*.

(a) *Generally*.

501. A defendant, before appearing, shall be at liberty, without obtaining an order to enter, or entering, a conditional appearance, to serve notice of motion to set aside the service upon him of the writ or of notice of the writ, or to discharge the order authorizing such service. Ord. XII. r. 30, No. 100.*

(b) *Previous Practice*.

502. The practice in the Admiralty Court of entering an appearance under protest was not abolished by the Judicature Acts or Rules prior to those of 1883. *The Vivar*, 2 P. D. 29; 35 L. T. 782; 25 W. R. 453; 3 Asp. N.S. 308; *The Caterina Chiazzare*, 1 P. D. 368; 45 L. J. P. D. & A. 105; *The Pieve Superiore*, L. R. 5 P. C. 482; 43 L. J. Adm. 20.

503. Where a defendant objected to the jurisdiction of the court in a cause in *rem* by a petition or protest, the old practice of the court as to proceedings under protest was required to be followed. *The Evangelistria*, 3 Asp. N.S. 264.

504. Where a party objected to the jurisdiction of the court, the proper course was to appear under protest. Where the jurisdiction was not denied, but only its application to the case in question, the proper course was a plea in bar. *The Sarah Jane*, 7 Jur. 659; *The Alexander*, 1 W. Rob. 293.

505. *Held*, that an appearance under protest, which was in the nature of a plea

* (171) This rule was probably made to provide a mode of procedure in lieu of appearance under protest. Mr. Wilson appears to think that appearance under protest in Admiralty actions is probably not abolished, and cites *The Vivar* (2 P. D. 29; 3 Asp. N.S. 308), where it was so held under R. S. C. 1875, but he refers to the above rule as an
P.

alternative proceeding. See Wilson's *Jud. Acts and Rules*, 4th ed. pp. 203, 208.

(172) For the old practice as to appearances under protest, see 2 Browne's *Civil and Admiralty Law*, 2nd ed. 407. For form of petition and answer, see Roscoe's *Adm. Prac.* App. p. 510.

in bar, was the proper form of raising an objection to the jurisdiction of the court. *The Alexander*, 1 W. Rob. 293.

505a. But that such an appearance was only to be given where there was a real question as to the jurisdiction. *The Protector*, *ibid.* 62.

506. *Held*, that a question of jurisdiction should be raised by an appearance under protest. It was doubtful whether a party omitting to take the objection in the first instance could be permitted to raise it afterwards. *The Helgoland*, Swabey, 496; *The Cargo ex Sultan*, *ibid.* 509.

507. A question of jurisdiction ought always to be raised in the first instance, and if not, it was not properly raised before the court. *The David* (1840), 9 Monthly Law Mag. (Notes of Cases), 209.

508. An objection to the jurisdiction might be raised at any time pending the cause. *The Mary Ann*, 34 L. J. Adm. 73; 12 L. T. N.S. 238; *The Empire Queen*, L. R. 3 Eq. 71; 3 Asp. 221; *The Lady Clermont*, 3 Asp. 508. [IRISH.]

509. An objection to the jurisdiction should be taken in the first instance. An absolute appearance once given could not be recalled. A vessel was arrested in a suit for wages, and a practitioner appeared for the owner, undertook to give bail, and at his petition a supersedeas was decreed. *Held*, that this was an absolute appearance, and that it was too late for the owner afterwards to appear under protest. *The Blakeney*, 5 Jur. N.S. 418; Swabey, 428.

510. An objection to the jurisdiction of the court might be taken at any time; but it was more usual and convenient to do so at the commencement of proceedings. *The Ida*, 1 Lushington, 8.

511. When the court had no jurisdiction it would hold its hand at any stage of the proceedings whenever want of jurisdiction was shown. *The Eleonore*, 33 L. J. Adm. 19.

512. Objection to the jurisdiction of the court on the ground that the property salvaged is under £1,000, should be taken by appearance under protest. An ab-

solute appearance was given, and the objection was taken in answer to the petition. The court sustained the objection but refused costs. *The Louisa*, 9 Jur. N.S. 676.

513. Mere formal objections to jurisdiction were not allowed to be taken after an absolute appearance given. *The Bilbao*, 1 Lushington, 149; 3 L. T. N.S. 338.

514. A foreign master sued in the Admiralty Court a foreign owner for wages. The owners appeared under protest, on the ground that the consul's consent had not been obtained to the institution of the suit. *Semble*, appearance under protest in such a case improper, as the court possessed jurisdiction if it thought proper to exercise it. *The Franz and Elize*, 5 L. T. N.S. 290.

515. In a cause of collision claim of exemption from responsibility for damage on the ground of a licensed pilot being on board is matter of defence, and not of protest to the jurisdiction. *The Eliza Jane*, 3 Hagg. 337; *The Girolamo*, *ibid.* 173; *The Gladiator*, *ibid.* 340; *The Protector*, 1 W. Rob. 62; *The Evangelistria*, 3 Asp. N.S. 264. See also *The Lady Clermont*, 3 Asp. 508; *The Empire Queen*, T. R. 3 Eq. 71; 3 Asp. 221. [IRISH.]

13. Costs of improper Forms.

516. See tit. Costs, p. 347.

9. Proceedings other than by Writ.

1. Generally.

517. The rules in Ord. IV. (as to the names and address of the plaintiff or his solicitor being required to appear on the writ) apply to all cases where proceedings are commenced otherwise than by writ of summons. See Ord. IV. r. 4, No. 22.*

518. In the R. S. C. of 1883, the term "originating summons" means a summons by which proceedings are commenced

* (173) This order appears to apply to Chancery proceedings. (See Wilson's Jud. Acts and Rules, 4th ed. p. 181.) But it might be a convenient mode of procedure in the Admiralty Division in cases under sects. 50 and 65 of the M. S. Act, 1854 (c. 104), and sect. 12 of the Admiralty Court Act, 1861

(c. 10), as to delivery up of a ship's certificate of registry, see tit. OWNERS, Pt. I. Nos. 305, 306, p. 1213, and Nos. 311—319, p. 1213; and as to orders prohibiting transfers of ships or shares thereof, and orders of sale on unqualified owner becoming entitled, *Ibid.* Nos. 228—238, p. 1204.

without writ. See Ord. LXXI. r. 1, No. 1041.

519. As to proceedings on originating summons in the Chancery Division, see Ord. LV. Nos. 782—786.

2. *Against Third Parties.*

See c. 6, s. 6, p. 1500, and c. 21, p. 1560.

10. Disclosure by Solicitors and Plaintiffs.*

520. Every solicitor whose name is indorsed on any writ of summons shall, on demand in writing by or on behalf of any defendant served therewith, or who has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or privity; and if it has not been so issued, all proceedings upon the writ shall be stayed, and no further proceedings taken without leave of the court or a judge. See Ord. VII. r. 1, No. 42.

521. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on similar demand in writing of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And in the event of failure to do so all proceedings in the action may be stayed upon such terms as the court or a judge may direct. When the names of the partners are so declared, the action shall proceed as if they had been named as plaintiffs in the writ. But all proceedings shall continue in the name of the firm. *Ibid.* r. 2, No. 43.

522. For form of order for such par-

ticulars, see R. S. C. 1883, Appendix K. No. 11.

523. An objection to an action on the ground of non-production or insufficient proof of a proxy is a preliminary objection to be taken on motion, and the proper course for a court of vice-admiralty in such circumstances is to stay the proceedings until sufficient evidence is produced, and not to allow the cause to proceed to a hearing, and then dismiss the action on the ground of no sufficient proof of the proxy. *The Euxine*, 8 Moore, P. C. C. N.S. 190.

524. A practitioner of the Court of Admiralty, who appeared in a salvage action for the master, owners, and crew of a steamer, the asserted salvors, who were condemned in costs, having been ordered to set forth his client's names, brought in the register of the steamer, from which it appeared that Mr. R. was sole owner, against whom an order was thereupon made and served, on which he appeared and alleged that the original action had been instituted without his sanction or knowledge, and he was thereupon dismissed. On motion subsequently the practitioner condemned in the costs of the original action, of the order against the owner, and of the motion. *The Wilhelmine*, 1 W. Rob. 335; 2 Notes of Cases, 213.

See also No. 376, p. 1502.

11. Warrants of Arrest.

1. *Generally.*†

525. In Admiralty actions *in rem* a warrant for the arrest of property (in the Form No. 17 in Appendix A., Part I., with such variations as circumstances

* (174) By the practice of the Ecclesiastical Courts, proxies were and still are exhibited by the proctors.

(175) A proxy is a document in a specific form, signed by the party, and attested by two witnesses, authorizing the proctor to appear and prosecute, or defend the suit, as the case may be.

(176) Anciently the law appears to have been the same in the Admiralty Court. See Clerk's Prax. Adm. 13, 15; *The Wilhelmine*, 1 W. Rob. 337, 340; 2 Notes of Cases, 216; *The Haidee*, 1 Notes of Cases, 597; *The Dumfriesshire*, Stuart's Vice-Adm. Rep. 245. [LOWER CANADA.]

(177) But the practice fell into disuse, and it came to be held that a proctor in the Admiralty Court, if called upon for a proxy,

satisfied the law by stating the name of the party for whom he was authorized to appear. *Harvey v. The Owners of the Euxine*, 41 L. J. Adm. 17; L. R. 4 P. C. 8; 8 Moore, P. C. C. N.S. 190; 1 Asp. N.S. 155.

(178) In a cause of possession instituted by a majority of the owners to dispossess the master, the court refused at the hearing to listen to a suggestion that certain of the owners had not authorized the proceedings taken on their behalf, the defendant's remedy being to call for a proxy in an early stage of the cause. *The New Draper*, 4 C. Rob. 290.

† (179) The citation of the parties interested, which was formerly embodied in the warrant, is now contained in the writ of summons.

(180) The practice created by the Rules

may require) may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but not until the affidavit hereafter referred to has been filed. Ord. V. r. 16, No. 38.

526. The mode of initiating an action by the arrest of a ship, "her tackle, apparel, and furniture," is the ancient formula of the court, and such words, notwithstanding the narrowness of their terms, affect all the property of every kind belonging to the owners, as far as the general law limited by statute extends. *The Dundee*, 1 Hagg. 124.

526*q*. The warrant of the court will extend to sails and rigging taken on shore for the purpose of safe custody as well as to the ship itself. *The Alexander*, 1 Dodson, 282.

527. The arrest of a ship in a cause of wages, after the company to which the ship belonged was ordered to be wound up, *held*, a sequestration within the meaning of the 163rd section of the Companies Act, 1862 (c. 89), and consequently void. *In re The Australian Direct Steam Navigation Co., Ex parte Baker*, 44 L. J. Ch. 676; L. R. 20 Eq. 525. See also Nos. 1122 *et seq.*, *infra*.

527*a*. *Semble*, in such a case the claim-

ant should take out a summons in the Chancery Division, asking that the property, subject to the lien, may be realized, or security given for the amount alleged to be due; or, if there are other parties interested over whom the Court of Chancery in the winding-up action has no jurisdiction, that the claimant may have leave to proceed in the Admiralty Division against the ship. *In re The Rio Grande Do Sul Steamship Co.*, 5 C. D. 282; 46 L. J. Ch. 277.

528. T., the master of a ship belonging to a company, drew a bill on the company for necessaries supplied to the ship. The bill was duly accepted, but afterwards dishonoured. T. paid the bill, and claimed repayment from the mortgagees, who had taken possession of the ship. On the following day an order was made for winding-up the company. T. then applied in the winding-up for leave to take proceedings in the Admiralty Court, and obtained an order accordingly. The liquidator applied to discharge this order, and an order was made requiring him to pay into court £150 to meet T.'s claim, and, without prejudice to any application by T., to increase the amount, T. undertaking not to proceed further in the Admiralty Court. The money was paid in,

and Orders of 1859, of detainers in lieu of warrants in certain cases, is now abolished.

(181) If, however, the property has already been arrested in one action, a writ *in rem* in a second action will suffice, even in proceedings by default; but the solicitor for the plaintiff in the second action should, however, take care at the time of taking out the writ *in rem* to cause a caveat against the release of the property to be entered in the registry, otherwise the property may, on being released in the first action, escape from the jurisdiction of the court.

(182) The old warrant of arrest from the Court of Admiralty, in force before the rules and orders under the Judicature Acts, was notice to all the world of the subsequent proceedings. *Attorney-General v. Norstedt* (1816), 3 Price, 109; *The Dowthorpe*, 2 W. Rob. 80.

(183) It called upon all persons who had an interest to appear and show cause, and a party in possession not having appeared, and the vessel having been sold by the court, the party was *held* to have acquiesced in being so dispossessed. *The Neptune*, 3 Hagg. 132.

(184) It seemed doubtful at one time whether, when cargo ceased to be waterborne, it was any longer amenable by arrest in the first instance to the jurisdiction of the Admiralty Court. See *The Two Friends*,

1 C. Rob. 282; 2 Browne's Civil and Adm. Law, 2nd ed. 48; Godb. 260; Sir L. Jen. vol. i. 82.

(185) But the practice to arrest on land is now well established.

(186) As to cargo stored in the London and Liverpool docks, however, provision has been made by acts of parliament, that property stored in them shall be considered to be under the same liabilities as if on board ship. For such provisions, see, as to the Thames, 9 & 10 Vict. c. cccxcix, made perpetual by 10 & 11 Vict. c. 200; as to the Mersey, the Mersey Dock Acts Consolidation Act, 1858 (c. 92), s. 193; and the Merchant Shipping Act Amendment Act, 1862 (c. 63), s. 78.

(187) For an order of the judge of the Admiralty of 11 Dec. 1714, for warrants to be sealed with the seal of the Lord^s of the Admiralty, see Marsden's Rep. p. 303.

(188) As to the arrest of the defendant *ne exeat regno*, under sect. 6 of the Debtors Act, 1869 (c. 62), see R. S. C. Ord. LXIX. Nos. 1030—1036, and Wilson's Jud. Acts and Rules, 4th ed. pp. 563—565.

(189) As to warrants of arrest in the American Admiralty Courts, see Dunlap's Adm. Prac. 2nd ed. 134. [AMERICAN.]

(189*a*) As to arrest of vessels in the French courts, see tit. JURISDICTION in Ad-denda, Pt. IV. c. 8.

and T. then applied to increase the amount, to cover his costs of defending an action brought against him by the holder of the bill, and his costs by the application in the winding-up. Order made for payment of the amount of the bill to T. out of the £150, and for payment of the residue to the liquidator. On appeal, *held*, that though, if there had been no mortgagee in possession, the proper mode of enforcing T.'s lien would have been by application in the winding-up (as in *In re Australian Direct Steam Navigation Co.*, *supra*), the order giving leave to proceed in the Admiralty Court was a proper order, the mortgagees not being parties to the winding-up, and that T. was entitled to all his costs in the winding-up, as costs properly incurred by a mortgagee in enforcing his security; and that the case was not within the rule that an appeal will not lie as to costs. *Ibid.*

529. A ship, prior to the Rules and Orders of November, 1859, was under arrest at the suit of A.; a warrant of arrest was applied for at the suit of B. *Held*, that B. was also entitled to a warrant. *The Europa*, 13 Jur. 856.

529a. For form of præcipe for warrant, see R. S. C. 1883, App. A., Pt. I., No. 15.

2. Affidavit to lead—.

(a) Generally.

530. The affidavit to lead the warrant is to be made by the party or his agent, and shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim, the name and nature of the property to be arrested, and that the claim or counter-claim has not been satisfied. See Ord. V. r. 16, No. 38.*

530a. The court or a judge may allow the warrant to issue, although the affidavit may not contain all the required particulars. *Ibid.* r. 17, No. 39.

(b) In Actions of Bottomry.

531. In an action of bottomry, the bottomry bond, and, if in a foreign language, also a notarial translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit; but the judge may waive the production of the bond. *Ibid.* r. 16 (c), No. 38, and r. 17, No. 39.

(c) In Actions of Possession.

532. In an action of possession, the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the commencement of the action has been given to the consul of the state to which the vessel belongs, if there be one resident in London, and a copy of the notice shall be annexed to the affidavit. *Ibid.* r. 16 (b), No. 38.

533. For form of affidavit to lead warrant in a cause of possession, see R. S. C. 1883, App. A., Pt. I., No. 14.

(d) In Actions of Restraint.

534. See for form of affidavit to lead warrant in a cause of restraint, *ibid.* No. 13.

534a. As to such actions, see tit. OWNERS, Pt. VIII., p. 1418.

(e) In Actions for Distribution of Salvage.

535. In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address and description of the party holding the same. See Ord. V. r. 16, No. 38.†

(f) In Actions of Wages.

536. In an action of wages the affidavit shall state the national character of the

* (190) The affidavit may be made by the plaintiff, or by his solicitor, or by a clerk of the practitioner, such latter parties speaking from information and belief. It is desirable that the facts should be stated very briefly therein, so as not to disclose prematurely the particulars of the plaintiff's case.

† (190a) It would seem doubtful, notwithstanding this rule, whether a warrant can be obtained in such an action. It would certainly not be issued by the registrar as of

course. By the old practice, a monition issued against the person in possession of the amount of salvage awarded to bring in the amount and against the other parties interested to see it distributed, and probably the proper course at the present time would be to issue a writ against the other parties interested, and to apply on affidavit for an order against the person holding the funds to bring the amount into court,

vessel proceeded against, and if against a foreign vessel that notice of the commencement of the action has been given to the consul of the state to which the vessel belongs, if there be one resident in London, and a copy of the notice shall be annexed to the affidavit. See Ord. V. r. 16, No. 38.

537. But the judge may waive the service of the notice. *Ibid.* No. 39.

3. After Caveat Warrant.

538. As to caveats against issue of warrants, see Pt. I. p. 1477.

539. A solicitor, commencing an action against any property in respect of which a caveat has been entered in the "Caveat Warrant Book," shall forthwith serve a copy of the writ upon the party on whose behalf the caveat has been entered, or upon his solicitor. Ord. XXIX. r. 14, No. 335.

540. Within three days from the service of the writ or copy thereof, the party on whose behalf the caveat has been entered shall, if the sum in respect of which the action is commenced does not exceed the amount for which he has undertaken, give bail in such sum, or pay the same into the registry. *Ibid.* r. 15, No. 336.

541. After the expiration of twelve days from the filing of the notice in Rule 12 mentioned, if the party on whose behalf the caveat has been entered shall not have given bail in such sum, or paid the same into the registry, the plaintiff's solicitor may proceed with the action by default, and on filing his proofs in the registry may have the action placed on the list for hearing. *Ibid.* r. 16, No. 337.

541a. If, when the action comes before the judge, he is satisfied that the claim is well founded, he may pronounce for the amount which appears to him to be due, and may enforce the payment thereof by attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property, if it should then be or should thereafter come within the jurisdiction of the court. *Ibid.* r. 17, No. 338.

542. Nothing in this order shall prevent a solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the "Caveat Warrant Book;" but the party, at whose instance any property in respect of which a caveat is entered shall be arrested, shall be liable to have the warrant discharged and to be condemned in costs and damages, unless he shall show, to the satisfaction of the judge, good and sufficient reason for having so done. *Ibid.* r. 18, No. 339.

4. Mode of obtaining—.*

5. Property liable.†

(a) Generally.

543. The warrant against the ship extends to its sails and rigging, though detached from it and ashore. *The Alexander*, 1 Dodson, 282.

(b) Personal Baggage.‡

544. The wearing apparel and other personal articles of passengers are privileged from arrest in a salvage suit. *The Willem III.*, L. R. 3 A. & E. 487; 25 L. T. N.S. 386.

* (191) Bespeak warrant by filing notice and blank form of warrant, with impressed stamps to the amount of 15s. on the notice. See R. S. C. Fees, 1884, No. 13. Forms of warrant and notice may be obtained at the Royal Courts, Room No. 420.

(192) The warrant is prepared and sealed in the registry immediately on the notice being filed.

(193) It is usual to insert, when practicable, in the notice and warrant, the name of the port to which the vessel proceeded against belongs, as, when the ship's name is a common one, the addition of the port serves to prevent any mistake in the identity of the vessel.

† (194) Parties may have in the Court of Admiralty the same remedies against the proceeds of property subject to its jurisdiction

that they are entitled to against the property itself, in whose hands soever the proceeds may be found. *Mutual Safety Insurance Co. v. Cargo of the Brig George*, Olcott, Adm. 89, 157. [AMERICAN.]

‡ (195) It seems that personal baggage is not liable to arrest. If arrested, therefore, with cargo, the plaintiff's solicitor, on being applied to by the owner, and satisfied that the property is personal baggage and not merchandize, may direct the marshal by notice in writing to release it, which is done by him accordingly without any formal release being applied for or obtained through the registry. *The Vulture*, Oct. 1860.

(196) The wearing apparel of the master and seamen is excepted from the allowance of salvage. 1 Park on Ins. 327; *Beaves'* Lex Merc. 147.

(c) *Cargo.**

545. In no case has the court arrested cargo for the purpose of making good the damage done by the ship in which it was conveyed. It makes no difference that the vessel doing the damage happens to be foreign. *The Victor*, 29 L. J. Adm. 110; 2 L. T. N.S. 331; 1 Lush. 72.

546. But see *contra*, *Tomlinson v. Voguel*, *The Eleanor*, and *The Wilhelmina* (anno 1733), Marsden's Rep. 313.

547. Release to the arrest of the cargo decreed, with costs and damages incurred by the detention. *Ibid.*†

548. When warrants of cargo have been passed by delivery prior to arrest of cargo, dock authorities or others holding cargo cannot after arrest thereof transfer it to the parties claiming it under warrants so purchased by them. Such purchasers take the cargo subject to all legal liens thereon. *The Abeona*, 17 June, 1859.

(d) *Freight.*

(aa) *Generally.‡*

549. The Court of Chancery appointed certain persons receivers of a freight, which, before they had obtained possession, was arrested in a suit in the Court of Admiralty. On motion in the latter court, on behalf of the receivers, release decreed, but without costs. *The Bloomer*, 2 Asp. 147.

(bb) *In Collision Actions.*

550. The freight due to the owners of a ship doing damage by collision is, together with the ship itself, liable to arrest in respect of the damage. *The Leo*, 6 L. T. N.S. 58; 31 L. J. Adm. 78; *The Orpheus*, L. R. 3 A. & E. 348; 40 L. J. Adm. 24; *The Roecliff*, L. R. 2 A. & E. 363; 3 Asp. 243; 38 L. J. Adm. 56. But only freight due or to grow due, not freight earned on a previous voyage.

The Brodrene, 26 February, 1885; see also *The Mellona*, 3 W. Rob. 25.

551. A plaintiff in a cause of damage by collision may arrest the cargo in order to obtain payment of the freight due, but if no freight is actually due the cargo must be released. *The Flora*, L. R. 1 A. & E. 45; 35 L. J. Adm. 15; 2 Asp. 325. §

552. A vessel under charter-party as to both her outward and homeward cargo, whilst on the outward voyage came into collision with another vessel. *Held*, that the freight for the homeward voyage was liable to arrest for the damage. *The Orpheus*, 40 L. J. Adm. 24; L. R. 3 A. & E. 308.

See also Nos. 179—187, p. 1482.

(cc) *In Wages Actions.*

553. By the Admiralty law the mariners may arrest the ship, and *semble* the freight, for their wages. *Neclanham v. Foljamb and another* (12 Ann.), 6 Vin. Abr. 439.

554. Seamen may arrest the freight as well as the ship for their wages, and if the latter only is in the first instance arrested by them, and it appears that there are bottomry claims thereon, they may afterwards apply to have the freight arrested, and the court would be bound, *ex debito justitiæ*, to grant such a motion. *The Mary Ann*, 9 Jur. 94.

555. A mariner has no lien for wages on the cargo as cargo; his lien is upon the ship to the last plank, and upon the freight as appurtenant thereto; and so far as the cargo is subject to freight, he may attach it as security for the freight that may be due. *Quære*, whether on the loss of a ship if any cargo were saved, it could be *held* to represent the freight? *The Lady Durham*, 3 Hagg. 200, 201.

556. Against the cargo, *quæd* cargo, the seaman can have no claim for his wages, but *quære*, as to his claim against cargo where freight has been earned, though

* (197) Proceedings against cargo, *quæd* cargo, can only be instituted in particular actions, and under particular circumstances, *i.e.* in bottomry and respondentia actions, where the cargo forms part of the property hypothecated, and in salvage actions, where it forms part of the property salvaged.

† (198) After judgment cargo belonging to the shipowner would, of course, be liable in execution like any other part of his property.

‡ (199) The practice of arresting freight in actions of damage by collision grew out of the limitation in the earlier statutes of the

liability of owners to the value of ship and freight, and the practice still continues.

§ (200) It seems to be considered that the plaintiff in a collision action has a maritime lien on it, and in cases where the ship is insufficient to realize £8 per ton, and still more so in such a case where the ship is foreign-owned, greater security is by the practice given to the plaintiff towards recovering as near £8 per ton as possible, but these reasons would not apply in cases of large steamers of a value greater than £8 per ton.

not paid, and where the owner of the ship is the owner of the cargo, and the ship is lost but the cargo saved. *The Riby Grove*, 2 Rob. 59.

6. *As against Sheriff.**

557. Where a ship was seized by Admiralty process and decreed to be sold, but between the seizure and the decree a writ of execution issued against the owner at the suit of another creditor, *held*, that the sheriff could not take the vessel, nor maintain trover against the officer of the Admiralty. *Ladbroke v. Crickett*, 2 T. R. 649; and see *Buggin v. Bennett*, 4 Burr. 2035; *S. P. Blacquiere v. Hawkins*, 1 Dougl. 378. But *aliter*, where the sheriff was first in possession. *Clarke v. The Fairfield*, Marsden, Rep. 252.

558. A rule *nisi* for the marshal of the Admiralty or his deputy to pay over to the sheriff certain proceeds of sale of a ship sold under a decree of the High Court of Admiralty, whilst in possession of the sheriff under a *fi. fa.* for satisfaction of a judgment debt, discharged (*semble*, as improperly applied for against the officer instead of against the court). *The Flora*, 1 Hag. 300.

559. Upon the sale of a ship in a suit for wages by Admiralty process issuing after the seizure of the same vessel by the sheriff under a writ of *feri facias*, *held*, that the claim of the sheriff to the surplus proceeds in discharge of his execution was good as against the late owner of the ship. *Ibid.*

7. *Service.*

See c. 12, p. 1527.

8. *Filing after Service.*

560. The solicitor issuing the warrant shall, within six days from the service thereof, file the same in the Admiralty registry. See Ord. IX. r. 11, No. 58.

9. *Priority over other Liens.*

561. As to the priority of arrest and

other liens, see tit. LIENS, c. 3, s. 5, p. 814.

10. *Removal of arrested Property.*

562. The court, on good cause being shown for it, will allow property arrested to be removed to a place of greater security, on a policy of insurance to the amount of the action to cover all loss or damage in the removal being deposited in the registry. *The St. Nicholas*, 18th Nov. 1859; and see *The Lady Kennaway*, January, 1848, and *The Earl Grey*, May, 1848; *The Cargo ex Galem*, No. 680, 30th May, 1861.†

563. When all parties interested concur in the application, the order will be made almost as of course. *The St. Nicholas*, 18th Nov. 1859.

564. When the application is opposed, or the proceedings are by default, the court will grant the application for sufficient cause. *Ibid.*

565. Ship arrested in Portland roads in a cause of salvage in the sum of £7,000. The owners appeared without giving bail. Motion on their behalf for a commission of removal of the ship from Portland roads to Southampton supported by affidavits that the ship was 797 tons register, was in a damaged state, that Portland roads were not a safe anchorage for a vessel of her size and in her condition, that it would be necessary to unload her cargo for the repairs, that there were no docks in the neighbourhood, and that she could be docked and unloaded with facility at Southampton. The motion was opposed by the salvors, but was granted by the court on a policy of insurance to the amount of the action, and to cover total and partial damage and loss being deposited in the registry. *Ibid.*

566. A commission of removal of prize having been decreed at the prayer of the actual captor without opposition, a subsequent motion to the court on behalf of an asserted joint-captor not to permit the commission to issue, rejected, as made on insufficient grounds, and as not having

* (201) It seems that the priority of title would depend upon the priority of arrest.

(202) As to an action for wages against a ship in custody of the sheriff under a *feri facias*, and the liability of the ship under the same, subject to the claim of the execution creditor, see 2 Chitty's Gen. Prac. 521, and *Taylor v. Carryl*, 20 How. U. S. 583; *Keating v. Spink*, 3 Ohio N.S. 105. [AMERICAN.]

† (203) The insurance is effected in the

name of the marshal (who now executes all such commissions). The marshal may appoint a master to act for him. See Coot's Admiralty Practice, 16.

(204) If it is necessary to unlade and warehouse a cargo arrested on board a vessel, the court, on good cause being shown, will decree a commission of unlivery for that purpose, directed to the marshal. *Ibid.* 17.

been made at the time of the decree, the port where the prize was lying not being a convenient one, and that to which it was proposed to remove her being a convenient one. But *semble*, that had the proposed port of removal been unsuitable, or had the actual captor acquiesced distinctly in the bringing in of the prize to the then port, the court would not have refused such an application. *The Sacra Familia*, 5 C. Rob. 360.

567. As to commission of removal of arrested property, see Commission of Apprehension, c. 44, s. 7, *infra*.

568. As to the duties and responsibilities of parties executing a commission of removal, see *The Rendsburg*, 6 C. Rob. 154.

569. A breach of arrestment is not necessarily a contempt of court. A master having removed a vessel with the consent, as he merely supposed, of the arrester to another place within the jurisdiction, a petition to punish him as for contempt of court dismissed. *Inglis v. Smith*, Cases in the Court of Session, 3rd Series, vol. 4, 320. [SCOTCH.]

See also No. 574, *infra*.

11. *Rescue.**

570. If a ship is arrested by process out of the Court of Admiralty, for a matter arising within its jurisdiction, though rescued at land, the consuance of the rescue belongs to the Admiralty. *Rigden v. Hedges* (1697), 1 Ld. Raym. 446; 1 Vent. 1; Sti. 171; 6 Viner's Abr. 536.

571. And the Court of Admiralty might re seize her on land and out of its jurisdiction. *Ibid.*, and 12 Mod. 246.

572. If the officer of the court is forcibly ejected from possession of a vessel, the court will issue an attachment against the person ejecting him and all others assisting. *The Bure*, 14 Jur. 1123; *The King in his Office of Admiralty v. Lane*, Marsden's Rep. (anno 1766), pp. 14, 85.

573. It is the duty of all parties who are in possession of a ship under the authority of the Court of Admiralty to give the earliest intimation to the court

of any attempt at an infringement of its authority. The court will always hear a motion where its authority is attempted to be evaded. *The Westmoreland*, 4 Notes of Cases, 173.

574. Where the marshal sends by telegram to his substitute at an outport notice of the issue of a warrant, and such substitute communicates it to the master of the ship against which it is issued, it is a contempt of court to move the ship. *The Seraglio*, 10 P. D. 120; 54 L. J. Adm. 76; 52 L. T. 865.

574a. A vessel was under arrest in the Court of Admiralty in a cause of bottomry, and a distress was levied by magistrates at the suit of the seamen for wages, under 7 & 8 Vict. c. 112, s. 15, by authority of which, notwithstanding notice from the officer in possession, the tackle, apparel, and furniture were sold. The court made an order against the auctioneer, to show cause why an attachment should not issue against him for removing the same, and he thereupon restored them. *Ibid.*

575. Motion for attachment against a harbour-master, for seizing and carrying off, for non-payment of harbour dues, portions of the rigging and stores of a ship under arrest, in the custody of the officer of the court, granted, and attachment decreed accordingly. *The Harmonie*, 1 W. Rob. 179; 6 L. T. N.S. 915.

576. Order made to show cause why an attachment should not issue for a contempt in taking the cargo of a derelict from a warehouse in which it had been deposited by the agents of the Admiralty. *Motion on a Ship unknown*, 1 C. Rob. 331.

577. A vessel was arrested at suit of a part owner, and an appearance given for the master and owner of the other moiety. Shortly afterwards, the master, with the assistance of the mate and six others, took forcible possession of the ship, and carried her to Jersey, where she was arrested for a debt due from the master, and sold to A. B. The court, on motion, decreed an attachment against the master and mate, and made order against A. B., who had

* (205) Order made against the master of vessel, to show cause why an attachment should not issue against him for contempt in taking his vessel, which had been arrested by the court, out of its jurisdiction. *The Friends*, Stuart's Vice-Adm. Rep. (Lower Canada), 72; *The Delta*, *ibid.* 207.

(206) When the infringement of the court's

authority is by official persons, acting under some semblance of law, the court will first make an order against them to show cause why an attachment should not issue, but when the infringement is of a more flagrant character an attachment will be directed to issue in the first instance.

assisted in such illegal seizure, and five others, to show cause why they should not be attached for joining in such seizure. A new warrant of arrest against the vessel was at the same time moved for, but no order was made by the court thereon. A. B., and C. D., his son, one of the parties, moved the court to dismiss them from the effect of the order, but the application being opposed, and an attachment moved for, the court decreed an attachment against A. B. as having possession of the vessel, but dismissed C. D., on the ground that the application should have been sooner followed up, and that he was not one of the principal offenders. The mate, after two months' imprisonment, petitioned the court to be released, on the ground that he acted in ignorance, under the master's orders, and had a sick wife and aged mother dependent on him, and acknowledging his misconduct. His petition was not opposed, and the court decreed his discharge. *The Petrel*, 3 Hagg. 299.

578. A warrant was served upon an American vessel (against which there was a claim for necessities) whilst she was within the jurisdiction of the court. The master, however, refused to surrender and sailed away. The court gave leave to the plaintiffs to file their proofs, and to set the cause down for hearing, and upon proof of the facts condemned the vessel in the claim and costs. *The Lady Blessington*, 34 L. J. Adm. 73.

12. Amendment.*

579. In the præcipe to institute a cause *in rem* the cause of action was improperly stated to be "a cause of damage to cargo," but in the affidavit to lead the warrant was properly stated to be a breach of duty and breach of contract on the part of the master and crew of the vessel proceeded against. The vessel was arrested and an appearance entered on behalf of the owners. On motion leave given to amend the præcipe accordingly upon payment of costs. *The Princess Royal*, L. R. 3 A. & E. 27; 39 L. J. Adm. 29.†

13. Re-arrest.

580. When a ship has been released on bail she may be re-arrested in other actions by different parties for damage arising out of the same collision. *The Clara*, Swabey, 7; 2 Jur. N.S. 46; 26 L. T. 165; *The Tuscarora*, 6 Feb. 1858; *The William Hutt*, 1 Lushington, 26; *The Wild Ranger*, 7 L. T. N.S. 725.

581. The court has jurisdiction to issue a second arrest in respect of the same cause of action, but it is a power which should be cautiously exercised, and generally only after an application to the court itself. *The Flora*, L. R. 1 A. & E. 45; 35 L. J. Adm. 14; 2 Asp. 324.

582. After property arrested had been released on bail the plaintiff re-arrested, the defendant having consented to the amount of the action being increased, the court made an order, allowing the re-arrest to stand, but cancelling the bail-bond, and directing that the value of the ship (which had been repaired since the release) should be estimated as from the time of the first arrest. *Ibid.* L. R. 1 A. & E. 45.

583. The judge of a county court having dismissed a suit *in rem* the vessel was released. The plaintiffs having appealed, *held*, that they were entitled to a warrant to re-arrest the vessel, but that before doing so they must give notice. *The Miriam*, 43 L. J. Adm. 35; 2 Asp. N.S. 259.

584. In cross causes of damage the judge of the county court found that one ship was not to blame, and ordered it to be released. An appeal was instituted, and on motion by the appellants it was ordered that the ship be re-arrested, and (being a foreign vessel) without notice to the owners. *The Preir*, *The Albert*, 44 L. J. Adm. 49; 2 Asp. N.S. 589.

585. In a cause of damage to cargo against a foreign vessel bail was given to the amount of £500, and the vessel was released. At the hearing the defendants were condemned in damages and costs, but it was found that the sum of £500 was insufficient to cover the plaintiffs' costs after payment of the damages. On

* (207) Amendment in a warrant will not be allowed for an error not apparent in the acts and proceedings in the suit. The error to be amended must, in order that it may be allowed, appear manifestly to be an error by the proceedings themselves, and other things done in the cause. *The Aid*, Stuart's Vice-Adm. Rep. 210 (Lower Canada); Oughton's

Ordo. Jud. tit. 59, a. 5.

† (207a) This was before the institution of writs in Admiralty proceedings.

(208) Warrant to arrest the ship *Aid* granted, and the ship *Eight* arrested under it. Motion to amend the warrant by substituting the name *Eight* for *Aid*, refused. *Ibid.*

motion by the plaintiffs the court, under the provisions contained in the 15th and 22nd sections of the Admiralty Court Act, 1861, directed the re-arrest of the vessel for the balance of costs still due. *The Freedom*, L. R. 3 A. & E. 495; 41 L. J. Adm. 1; 1 Asp. N.S. 136; 25 L. T. N.S. 392.

586. For the form of warrant issued, see *ibid.* p. 136, n.

587. *Semble*, where a vessel is already under the arrest of the High Court of Admiralty it is not necessary to arrest her in suits instituted in an Admiralty county court. *The Turliani*, 2 Asp. N.S. 603.

588. It is a matter for the discretion of the court to order the re-arrest of a ship after bail has been given. *The Southern Empire*, 8 March, 1867.

589. An action of damage by collision was instituted in £20,000. The S. E. was not arrested, but bail was given by arrangement in £7,200. The S. E. then went a long voyage, during which her owners, and one of the sureties, suspended payment, and the court on the plaintiffs' application issued a warrant, and on her return the vessel was arrested. On motion by the defendants for release of the vessel, and for a condemnation of the plaintiffs in costs and damages, supported by affidavit that since the issue of the warrant the ship had changed owners, and that one of the bail was solvent and had large means, the court ordered a release of the vessel, and condemned the plaintiffs in the costs of the arrest. *Ibid.*

See also c. 4, p. 1494.

14. In Bottomry Actions.

590. The arrest of a ship by the holder of a bottomry bond before the bond was due, held to have been justifiable, on the ground that the ship was going to leave the kingdom. *Aliter*, had there been an unfounded apprehension only thereof. *The Jane*, 1 Dodson, 461, 464.

591. See also Pt. III. c. 1, s. 4, Nos. 2133 *et seq.*

15. In Collision Actions.*

592. Whenever any injury has in any part of the world been caused to any property belonging to her Majesty or to any of her subjects by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom, or within three miles of the coast thereof, the judge of the High Court of Admiralty, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, may issue an order directed to any officer of customs or other officer named by such judge, requiring him to detain such ship until the owner, master, or consignee thereof has made satisfaction in respect of such injury, or has given security to be approved by the judge to abide the event of any action or other legal proceeding in respect of such injury, and to pay all costs and damages that may be awarded thereon, and any officer of customs, or other officer to whom such order is directed, shall detain such ship accordingly. See the M. S. Act, 1854 (c. 104), s. 527.

593. In any case where it appears that before any application can be made under the foregoing section such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of her Majesty, or any British officer of customs, or any British consular officer, to detain such ship until such time as will allow such application to be made and the result thereof to be communicated to him; and no such officer shall be liable for any costs or damages in respect of such detention unless the same is proved to have been made without reasonable grounds. *Ibid.* s. 528.†

594. In any action, suit, or other legal proceeding in relation to such injury, the person so giving security shall be made defendant, and shall be stated to be the owner of the ship that has occasioned

* (209) The remedy under this and the immediately succeeding sections of the Merchant Shipping Act, 1854 (c. 104), is seldom resorted to in the Admiralty, that court having inherent jurisdiction, independently of the statute, over foreign vessels in cases of damage by collision. See tit. COLLISION, p. 193.

(209a) The powers given by sect. 528 may,

however, be found useful in a case in which there is reason to fear the vessel may leave the country before formal process against her can be obtained.

† (209b) It is convenient so to instruct the collector of customs, when instructions arrive too late to obtain a warrant on the same day.

such damage, and the production of the order of the judge made in relation to such security shall be conclusive evidence of the liability of such defendant to such action or proceeding. See the M. S. Act, 1854 (c. 104), s. 529.

595. For provisions authorizing any commissioned officer on full pay in the military or naval service of her Majesty, any British officer of customs, or any British consular officer, to detain, until application can be made to a competent court for its arrest, any such foreign ship, *ibid.* s. 528.

596. *Quare*, whether in suing a foreign ship under this section the arrest and action may be according to the ordinary process of the court. *The Bilbao*, 1 Lushington, 149; 3 L. T. N.S. 338; 1 Asp. 5.

597. Damage done by a foreign vessel to a barge in the river Thames; arrest according to ordinary process; absolute appearance and release of vessel thereon; petition filed; plea, that the barge was not a seagoing vessel within the meaning of 3 & 4 Vict. c. 65, s. 6, and that the court had no jurisdiction. *Held*, that the court had jurisdiction by sect. 527 of the M. S. Act, 1854 (c. 104), and that after absolute appearance the defendants could not object that the arrest had not strictly followed the course prescribed in that section. *Ibid.*

16. In Salvage Actions.

598. Salvors have a right to arrest the ship for salvage, at once, to refuse to negotiate, and to have the judgment of the Court of Admiralty as to the extent of remuneration they ought to receive. *The Teutonia*, 5 Notes of Cases, Supplement viii.

599. For provisions, in cases of salvage, authorizing receivers of wreck to detain the property salvaged until payment is made or process for its detention has been issued by some competent court, or security given to the receiver's satisfaction, see M. S. Act, 1854 (c. 104), s. 468.

17. Costs and Damages for improper Arrest.

600. See tit. Costs, p. 369.

12. Service.

1. Generally.

601. An action does not become a *lis pendens* until after service of the writ. *The Helenslea* and *The Catalonia*, 7 P. D.

60; *Ray v. Sherwood*, 1 Curteis Eccl. Rep. 173, 193; 1 Moore, P. C. C. 353.

2. On what Days.

602. In Admiralty actions no instrument except a warrant shall be served on a Sunday, Good Friday, or Christmas Day. Ord. LXVII. r. 12, No. 1023.

3. Time of Day.

603. Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Ord. LXIV. r. 11, No. 971.

604. Service effected after six in the afternoon on any week-day except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday. *Ibid.*

4. Within what Period.

605. In Admiralty actions every instrument shall be served within twelve months from the day on which it bears date, otherwise the service thereof shall not be valid. Ord. LXVII. r. 11, No. 1022.

5. Writ of Summons.

(a) Generally.

606. *Held*, that service of a writ of summons *in rem* by a solicitor or his clerk, and not by the marshal or his substitute, was a valid service. *The Solis*, 10 P. D. 62; 54 L. J. Adm. 52; 5 Asp. 368.

607. When service is required, the writ shall, wherever it is practicable, be served in the manner in which personal service is now made. Ord. IX. r. 2, No. 49.

608. No original writ of summons shall be in force for more than twelve months from the day of its date, including that day. See Ord. VIII. r. 1, No. 45. As to the renewal thereof, see *ibid.* and c. 8, s. 9, p. 1513.

608a. In a second action *in rem*, where the ship has been sold and the proceeds paid into court, the writ *in rem* should be

served on the registrar. *The Cassiopeia*, 4 P. D. 188; 48 L. J. Adm. 39.*

See also No. 770, p. 1542.

(b) *On Partners.*

609. Where persons are sued as partners in the name of their firm, the writ shall be served either upon any one or more of the partners, or at the principal place within the jurisdiction of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and, subject to these rules, such service shall be deemed good service upon the firm. Ord. IX. r. 6, No. 53.

610. Where one person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the firm's name, the writ may be served at the principal place, within the jurisdiction, of the business so carried on, upon any person having at the time of service the control or management of the business there; and such service, if sufficient in other respects, shall be deemed good service on the person so sued. *Ibid.* r. 7, No. 54.

(c) *On Corporations or Societies.*†

611. As to service of writs of summonses against corporations, societies, or fellowships, corporate or unincorporate, *Ibid.* r. 8, No. 55.

(d) *On Husband, Wife, Infants, and Lunatics.*

612. As to service on husband and wife, when both are defendants, *Ibid.* r. 3, No. 50.

613. As to service on infants, *Ibid.* r. 4, No. 51.

614. As to service on lunatics or persons of unsound mind, *Ibid.* r. 5, No. 52.

(e) *On Third Parties.*

615. As to the service of third-party notices like writs of summonses, see Ord. XVI. r. 48, No. 170.

(f) *Solicitors undertaking to accept—.*

616. No service of writ shall be required when the defendant, by his solicitor, undertakes in writing to accept service and enters an appearance. Ord. IX. r. 1, Nos. 48 and 57.

(g) *Substituted Service.*‡

617. If it be made to appear to the court or a judge that the plaintiff is, from any cause, unable to effect prompt personal service of the writ of summonses, the court or judge may make such order for substituted or other service, or for the substitution for service of notice, by advertisement or otherwise, as may be just. *Ibid.* r. 2, No. 49.

617a. Every application to the court or a judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made. Ord. X. r. 1, No. 63.

618. Unless the order shall otherwise direct, a copy of the order and of the writ shall be deemed to have been served on the day following the day on which a prepaid letter containing such copy shall have been posted. See C. O. Practice Rules, 1880—1882, in Wilson's Jud. Acts and Rules, 4th ed. p. 847.

619. In an action for the specific performance of an agreement to sell a ship, held, that, the defendant being a foreigner out of the jurisdiction, but the ship being within the jurisdiction, substituted service on the master was sufficient. *Hart v. Herwig*, L. R. 8 Eq. 860; 42 L. J. Ch. App. 457; 1 Asp. N.S. 572; 2 *Ibid.* Ch. App. 63.

620. For form of order for substituted service, see R. S. C. 1883, Appendix K. No. 21.

(h) *Out of Jurisdiction.*§

621. For provisions that service out of the jurisdiction of a writ of summonses or

* (210) But where the ship is under arrest, the second writ should be served on the ship like the first writ was.

† (210a) As to service of writs on corporations, see Wilson's Jud. Acts and Rules, 4th ed. p. 196, and Archbold's Practice (14th ed. by Chitty), p. 235.

‡ (211) As to what the affidavit in support of an application for substituted service

should show, see 2 Archbold's Practice (14th ed. by Chitty), p. 236.

(212) See further as to substituted service of writ of summonses at common law, *Ibid.* p. 236 *et seq.*

§ (213) The distinction created by the Common Law Procedure Act, 1852 (c. 76), ss. 18, 19, now repealed, between service on a British subject resident within the jurisdiction,

notice of a writ of summons may be allowed by the court or a judge where any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or where the action is founded on any breach, or alleged breach, within the jurisdiction of any contract wherever made, which, according to the terms thereof, ought to be performed within the jurisdiction, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland; or where any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction. See Ord. XI. r. 1, No. 64.

622. Or on other grounds not connected with Admiralty proceedings. *Ibid.*

623. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence, stating that, in the belief of the deponent, the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made. *Ibid.* r. 4, No. 67.*

624. No such leave shall be granted unless it shall be made sufficiently to appear to the court or judge that the case is a proper one for service out of the jurisdiction under this order. *Ibid.*

625. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given. *Ibid.* r. 5, No. 68.

626. Where the defendant is neither a British subject nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him. *Ibid.* r. 6, No. 69.

627. Notice in lieu of service shall be given in the manner in which writs of summons are served. *Ibid.* r. 7, No. 70.

628. For form of notice of writ in lieu of service to be given out of the jurisdiction, see R. S. C. 1883, Appendix A. Part 1, Nos. 9 and 10.

628a. As to when a writ will be allowed to be served out of the jurisdiction, see c. 8, s. 5, p. 1511.

(i) *In Scotland or Ireland.*

629. For provisions guiding the court where leave is asked to serve a writ, under Rule, No. 64 (for which, see Nos. 621, 622, *supra*) in Scotland or in Ireland, see Ord. XI. r. 2, No. 65.

(j) *Indorsement of Service.*

630. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default, and every affidavit of service of such writ shall mention the day on which such indorsement was made. This rule shall apply to substituted as well as other service. Ord. IX. r. 15, No. 62.

630a. It applies also to amended writs. *The Cassiopeia*, 4 P. D. 188; 48 L. J. Adm. 39.

(k) *Affidavit of Service.*

631. The service of any instrument by a solicitor, his clerk or agent, shall be verified by an affidavit. Ord. LXVII. r. 14, No. 1025.

632. Every affidavit of service of such writ shall mention the day on which the indorsement of service was made on the writ, and this applies to substituted as well as other service. See Ord. IX. r. 15, No. 62.

633. Affidavits of service shall state when, where, and how and by whom, such service was effected. Ord. LXVII. r. 9, No. 1020.

633a. A certificate made before a foreign notary, of service of notice of writ on a defendant out of the jurisdiction,

and service on a foreigner resident out of the jurisdiction, is still in force (see Ord. XI. r. 6, No. 69); but probably, having regard to the terms of this rule, service of the writ would be required in the case of a *British* subject out of the jurisdiction.

(213a) As to service out of the jurisdic-

tion, see Wilson's *Judicature Acts and Rules* (4th ed.) pp. 199—202, and Archbold's *Practice* (14th ed. by Chitty), p. 236.

* (214) The affidavit should be intitled in the contemplated action, and also in the *Judicature Acts*. *Young v. Brassey*, 1 Ch. D. 277.

and in Germany, but without any affidavit of service, refused to be received. *Ford v. Meiske*, 16 Nov. 1885.

6. Writs of Summons in rem.

(a) Generally.

634. In Admiralty actions *in rem*, service of a writ of summons against ship, freight, or cargo on board, is to be effected by nailing or affixing the original writ for a short time on the mainmast, or on the single mast of the vessel, and on taking off the process leaving a true copy of it nailed or fixed in its place. See Ord. IX. r. 12, No. 59.

635. The directions for serving a writ of summons in Ord. IX. r. 10 (now Ord. IX. r. 12, No. 59) must be strictly followed. It is not sufficient if served on the master even though on board the ship. *The Marie Constance*, 3 Asp. N.S. 505.

635a. As to service of writ after entry of caveat warrant, see Nos. 539—542, p. 1518.

See also No. 606, *supra*.

(b) Affidavit of Service.

636. A plaintiff in a bottomry action proceeding on default of appearance must annex the original writ to the affidavit of service. *The Eppos*, 5 Asp. 180; 49 L. T. N.S. 604; 32 W. R. 154.

(c) On Ship, Cargo and Freight.

637. If the cargo has been landed or transhipped, service of the writ of summons against the cargo and freight shall be effected by placing the writ or warrant for a short time on the cargo, and, on taking off the process, by leaving a

true copy upon it. See Ord. IX. r. 13, No. 60.

(d) Against Proceeds in Registry.

638. After a vessel has been sold under an order of the judge of the Admiralty division, and the proceeds are in the registry, no owner having appeared, the writ in an action against those proceeds, whether original or amended subsequent to the sale, must be personally served on the registrar. *The Cassiopeia*, 4 P. D. (C. A.) 188; 48 L. J. P. D. (C. A.) 39; 4 Asp. 148.

(e) Amended Writs.

639. In Admiralty actions *in rem* an amended writ should be served in the same way as the original writ; but it will be sufficient if the solicitor of the defendants accepts service; and if the defendants have not appeared, and the vessel has been sold and the proceeds paid into court, the amended writ must be delivered to the registrar with an intimation that service is intended, and must be indorsed with the date of service. *Ibid*.

(f) Solicitors undertaking to accept Service and give Bail.

640. In Admiralty actions *in rem* no service of writ or warrant shall be required where the solicitor of the defendant agrees to accept service and to put in bail, or to pay money into court in lieu of bail. Ord. IX. r. 10, No. 57.

7. Warrants.*

(a) Generally.

641. In Admiralty actions *in rem* the

* (215) On obtaining the warrant make the required copy or copies of the warrant for service. If the ship only is arrested one copy for service will ordinarily suffice. If the ship is in dock the marshal gives notice of the arrest to the dock authorities, but they are not served with the warrant.

(216) If the cargo is to be arrested for itself or for freight, and is on board the vessel, one copy only of the warrant will be required for its arrest; but if the cargo has been partially discharged further copies will be required for service on the cargo where discharged, and on the person in whose custody the discharged cargo is.

(217) No stamp is required on any copy of the warrant.

(218) Take the warrant and copies to the marshal's office, in the Royal Courts of Jus-

tices, Room No. 739, with a document called Instructions for Arrest, forms of which may be obtained, as required, at the marshal's office. This document bears no stamp. In this document it should be stated in what port or dock the ship is lying, or in what port she may be expected, and when.

(219) If the property is at an outport, and an immediate arrest is required, fill up a form annexed to the Instructions for Arrest, requesting the marshal to forward instructions by telegraph to his substitute to effect immediate arrest, and undertaking to pay all charges and expenses that may be incurred in consequence.

(220) Pay the stamps for the fee on arrest, viz., £2. These stamps, which are obtainable at the Stamp Office of the Royal Courts of Justice, Room No. 420, should be im-

warrant of arrest shall be served by the marshal or his substitutes, whether the property to be arrested be situate within the port of London or elsewhere within the jurisdiction of the court. Ord. IX. r. 11, No. 58.

641a. A warrant of arrest in an action *in rem* was issued from the City of London Court directed to the high bailiff, and others the bailiffs thereof, but was, without authority from the court, served by a clerk in the high bailiff's office. *Held*, affirming the decision of the judge of the City of London Court, that this was not a proper service of a warrant. Per Sir J. Hannen: The words "any officer" (31 & 32 Vict. c. 71, s. 23) mean any officer duly authorized by the court. Per Butt, J.: Those words mean any officer whose ordinary duty it is to serve process, or one duly authorized so to do. *The Palomares*, 10 P. D. 36; 54 L.J. Adm. 54; 5 Asp. 343.

642. Service of a warrant against ship, freight, or cargo on board, is to be effected by nailing or affixing the original writ or warrant for a short time on the mainmast, or on the single mast of the vessel, and on taking off the process leaving a true copy of it nailed or fixed in its place. See Ord. IX. r. 12, No. 59.

642a. If the cargo has been landed or transhipped, service of the warrant to arrest the cargo and freight shall be effected by placing the warrant for a short time on the cargo, and on taking off the process by leaving a true copy upon it. *Ibid.* r. 13, No. 60.

643. If the cargo be in the custody of a person who will not permit access to it, service of the warrant may be made upon the custodian. *Ibid.* r. 14, No. 61.

644. In Admiralty actions every warrant or other instrument required to be served by the marshal shall be left by the solicitor taking out the same with a notice in the Admiralty registry. Ord. LXVII. r. 13, No. 1024.

645. The service of any instrument by the marshal shall be verified by his certificate. *Ibid.* r. 14, No. 1025.

646. For form of præcipe for service by the marshal of any instrument *in rem* other than a warrant, see R. S. C. 1883, App. A., Part I.; No. 16.

646a. No service of warrant shall be required where the solicitor of the defendant agrees to accept service and to put in bail, or to pay money into court in lieu of bail. See Ord. IX. r. 10, No. 57.

647. Where the marshal sends by telegram to his substitute at an outport notice of the issue of a warrant, and such substitute communicates it to the master of the ship against which it is issued, it is a contempt of court to move the ship from the place where it is lying. *The Seraglio*, 10 P. D. 120.

647a. In a case of salvage on recapture, in which the ship and cargo had been restored to the proprietor on bail, to answer salvage, but were destroyed by fire before the appraisement of the cargo had been completed, *held*, as to the ship, that the appraisement having been executed, possession was restored to the owner, and that salvage was due thereon according to the appraised value; but as to the cargo, that the appraisement not having been completed that was in the custody of the court, and that, therefore, the loss must fall on both parties according to their several interests. *The Three*

pressed on the form of the warrant before it is handed into the registry for sealing.

(221) The impressed stamp of £2 suffices for the arrest, whether the warrant be against ship, cargo, and freight, or against one or more of such properties. See R. S. C. Fees, 1884, No. 92.

(222) The warrant is executed, as against the ship, by affixing it temporarily to the mainmast, and leaving thereon affixed a true copy thereof; and, as against the freight, by affixing the warrant temporarily to one of the principal bales, &c. of cargo, and leaving thereon affixed a true copy thereof.

(223) The cargo is arrested in a similar manner to freight.

(224) The marshal's substitutes are usually the collectors of customs at the different out-ports.

(225) In the execution of Admiralty process, *in rem*, the officer should take and hold actual and manifest possession. *The Hibernia*, Sprague, 78. [AMERICAN.]

(226) If he do not, he is not entitled to charge custody fees, although he may have rendered himself liable for the safe keeping of the vessel. *Ibid.*

(227) As to the process of arrest by authority of American Admiralty Courts, see 2 Parsons on American Maritime Law, p. 684.

(228) The circumstance of having a warrant to arrest a vessel will not justify the handing her over to grossly ignorant and negligent persons, and if damage result therefrom the persons who so hand the vessel over will be liable. *Petersen v. M'Lean*, Cases in the Court of Session, 3rd Series, vol. 6, p. 218. [SCOTCH.]

Friends, 4 C. Rob. 268; but see *The Hoop*, Nos. 86—88, p. 1472.

648. In a case of salvage on recapture, in which the ship and cargo had been, by agreement between the re-captors and the proprietor, brought into the Thames under a joint speculation of advantage as to the most beneficial manner of disposing of it, and the cargo was there destroyed by fire: *held*, that the removal having taken place by agreement and for the benefit of both parties, the loss was to be borne *pro ratâ*. *The Creighton*, cited in *The Three Friends*, 4 C. Rob. 272.

649. The diligence of arrestment is inapplicable to a ship sailing on her voyage; and force must not be used to bring the vessel back to port. An arrestment *ad fundandam jurisdictionem* was used on a vessel lying in Glasgow Harbour. A second warrant of arrestment on dependence of the action was then given to the messenger-at-arms to execute; but he, finding that the vessel had sailed on her voyage, pursued her on board a steam-tug with thirty men, and overtaking her some way down the Clyde, within the jurisdiction of the Scotch courts, as she was approaching the high seas, seized her and brought her back to port, and dismantled her. *Held*, affirming the decision of the court below, that the execution of the arrestment was illegal, and therefore should be recalled. *Borjesson v. Carlberg* (First Appeal), 3 App. Cas. 1316.

650. A ship on her voyage having been arrested by a warrant on dependence of an action, and brought back by force into harbour, the arrestment was recalled as illegally executed. Other arrestments were then used against the vessels by parties acting in concert with the original arresters. *Held*, affirming the decision of the court below, that the second arrestments must also be recalled. *Ibid.* (Second Appeal), 1322.

See also No. 603, *supra*.

(b) Releases.

651. It is not necessary that a release should be served upon the agent of the salvors; it may be served on board the ship. *The Cumberland*, 9 Jur. 191.

651a. As to caveats against release, and the responsibility for so preventing release, see Pt. I. p. 1477.

8. Originating Summons.

652. An originating summons, where service is necessary, shall be served seven clear days before the return thereof. Ord. LIV. r. 4, No. 737.

9. Orders and Judgments.

653. An order obtained as in rule 4 mentioned (*i. e.*, for continuing proceedings and adding new parties on change or transmission of interest), shall, unless the court or judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to rules 6 and 7 (as to persons free from, or under, disability other than coverture applying as therein mentioned to discharge the order), be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons. Ord. XVII. r. 5, No. 182.

654. Except in the case of an order for attachment, it shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited. Ord. LXVII. r. 1, No. 1012.

655. Where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand. Ord. XLII. r. 1, No. 579.

655a. See Nos. 660—663, *infra*, and No. 770, p. 1542.

10. Attachments.*

See No. 654, *supra*; and as to attachments generally, and of debts, see c. 43, ss. 24, 25.

* (229) As to service of attachment and notice of attachment, see Wilson's Judicature Acts and Rules, 4th ed. p. 406.

11. *Subpœnas.*(a) *Generally.**

656. The service of a subpœna shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ. Ord. XXXVII. r. 32, No. 514.

656a. As to subpœnas generally, see c. 35, s. 32.

(b) *In Scotland or Ireland.*

657. The service in any part of Great Britain or Ireland of any writ of *subpœna ad testificandum* or *subpœna duces tecum*, issued under seal of the High Court of Admiralty, shall be as effectual as if the same had been served in England or Wales. The Admiralty Court Act, 1861 (c. 10), s. 21.

(c) *Within what Time.*

658. The service of any subpœna shall be of no validity if not made within twelve weeks after the *teste* of the writ. Ord. XXXVII. r. 34, No. 516.

(d) *Affidavit of Service.*

659. Affidavits filed for the purpose of proving the service of a subpœna upon any defendant must state when, where, and how, and by whom, such service was effected. *Ibid.* r. 33, No. 515.

12. *Of other Documents requiring Personal Service.*(a) *Generally.†*

660. Where personal service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication is required by these rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons. Ord. LXVII. r. 5, No. 1016.

(b) *Substituted Service.*

661. Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding,

or written communication is required by these rules or otherwise, and it is made to appear to the court or a judge that prompt personal service cannot be effected, the court or judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just. *Ibid.* r. 6, No. 1017.

13. *Of Documents not requiring Personal Service.*(a) *Generally.*

662. All writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and communications in respect of which personal service is not requisite, shall be sufficiently served if left within the prescribed hours at the address for service of the person to be served, as defined by Ords. IV. and XII., with any person resident at or belonging to such place. Ord. LXVII. r. 2, No. 1013.

662a. Where no appearance has been entered for a party, or where a party's solicitor, as the case may be, has omitted to give an address for service as required by Ords. IV. and XII., all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them with the proper officer. *Ibid.* r. 4, No. 1015.

663. As to service of notice of a judgment or order on an infant or person of unsound mind not so found by inquisition in the same manner as a writ of summons, see Ord. XVI. r. 44, No. 166.

(b) *Third Parties.*

664. Where a person who is not a party appears in any proceeding either before the court or in chambers, service upon the solicitor in London by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters requiring personal service. Ord. LXVII. r. 8, No. 1019.

* (229a) If the witness is served out of London, his reasonable expenses to and from London, and in London, must be tendered him at the same time. See as to such expenses, tit. COSTS, p. 417.

† (230) An originating summons, where

service is necessary, shall be served seven clear days before the return thereof. Every other summons shall be served two clear days before the return thereof, unless in any case it shall be otherwise ordered. Ord. LIV. r. 4, No. 737.

(c) *Appearance by Solicitor after Personal Appearance.*

665. Where a party, after having sued or appeared in person, has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorized to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor. *Ibid.* r. 7, No. 1018.

14. *Petitions.*

666. The plaintiff shall, without any special leave, be at liberty to serve any petition, summons, notice of motion, or other notice, upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose. Ord. LII. r. 8, No. 703.

666a. Unless the court or a judge gives leave to the contrary, there must be at least two clear days between the service and the day appointed for hearing a petition. *Ibid.* r. 17, No. 712.

See also c. 8, p. 1513, and No. 1222, p. 1591.

15. *Summonses.*

(a) *Generally.**

667. Every summons, other than an originating summons, shall be served two clear days before the return thereof, unless in any case it shall be otherwise ordered. Ord. LIV. r. 4, No. 737.

667a. As to the service of summonses, notices, or other documents in Courts of Survey, see tit. OWNERS, Pt. III. p. 1270. *See also* Nos. 664, 665, *supra*.

(b) *Affidavit of Service.*

668. For form of affidavit of service of summons, see R. S. C. 1883, App. B. No. 23.

16. *Pleadings.*

669. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or

to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer. Ord. XIX. r. 10, No. 206.

669a. As to the delivery of statements of claim, statements of defence and counter-claim, reply, and subsequent pleadings, and as to the time within which they are to be delivered, see c. 34, ss. 4, 6, 7, pp. 1592, 1593, 1595.

669b. As to the filing of them when no appearance has been entered, see Ord. XIX. r. 10, No. 206.

669c. The time for delivering, amending, or filing any pleading may be enlarged by consent in writing, without application to the court or a judge. Ord. LXIV. r. 8, No. 968.

669d. No pleading shall be amended or delivered in the long vacation unless directed by the court or judge, and the time of the long vacation shall not be reckoned in the computation of the time for filing, amending, or delivering any pleading, unless otherwise directed. *Ibid.* r. 4, No. 964, and *ibid.* r. 5, No. 965.

669e. Every pleading shall be delivered between parties, and shall be marked on the face of it with the date of the day on which it is delivered. Ord. XIX. r. 11, No. 207.

669f. As to the power of the court in Admiralty actions to appoint a day for the trial, and for that purpose to abridge the time for delivery of pleadings, and for other purposes, see Ord. LXIV. r. 9, No. 969.

17. *Notices.*

(a) *Generally.†*

670. As to service of notice of application for appointment of guardian of the defendant when a minor, or of unsound mind, see Ord. XIII. r. 1, No. 101.

670a. As to filing affidavit of service, or of notice in lieu of service, as the case may be, on non-appearance to writ and applications to proceed by default, *ibid.* r. 2, No. 102.

671. As to service of notice on foreign consul in actions of possession, see Pt. III. c. 11, s. 2; and in actions of wages, *ibid.* c. 18, s. 2.

671a. As to the filing, with the proper officer, of notice served by a de-

* (230a) See note (230), *ante*, p. 1530.

† (231) As to service of notices gene-

rally, see Archbold's Practice (14th ed. by Chitty), vol. 1, p. 212.

defendant claiming to be entitled to contribution, indemnity, or other remedy or relief against any person not a party to the action, see Ord. XVI. r. 48, No. 170.

671*b*. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served. Ord. XXXII. r. 8, No. 378.

See also Nos. 662*b*, 664, 665, 666, *supra*, and No. 770, p. 1542.

(b) *Of Bail.*

671*c*. As to the service, by the solicitor of the defendant giving bail, of a notice of bail on the adverse solicitor, see c. 19, p. 1547.

(c) *Of Trial.*

See c. 38, s. 4, Nos. 1699 *et seq.*

(d) *From the Supreme Court.*

671*d*. Notices sent from any office of the Supreme Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service. Ord. LXVII. r. 3, No. 1014.

(e) *Under the M. S. Acts, 1854 and 1876.*

See tit. OWNERS, Pt. II. p. 1253.

18. *Amended Documents.*

672. Whenever any indorsement or pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same. Ord. XXVIII. r. 10, No. 318.

19. *Affidavits.*

673. Within fourteen days after a consent for taking evidence by affidavit as

between the parties has been given, or within such time as the parties may agree upon, or the court or a judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof. Ord. XXXVIII. r. 25, No. 545.

673*a*. The defendant, within fourteen days after delivery of such list, or within such time as the parties may agree upon, or the court or a judge may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof. *Ibid.* r. 26, No. 546.

673*b*. Within seven days after the expiration of the last-mentioned fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof. *Ibid.* r. 27, No. 547.

13. *Appearance.*

1. *Generally.**

674. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal. Ord. XII. r. 8, No. 78.

675. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm. *Ibid.* r. 15, No. 85.

* (231*a*) As to appearances to writs of summons, see Wilson's Jud. Acts and Rules, 4th ed. pp. 203—208, and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 251.

(232) It is a common practice in actions *in rem*, and very convenient where it is desired to give bail and release the ship promptly, to appear for the owners of the ship proceeded against without specifying the names and addresses of the owners, which can be ob-

tained on summons by the adverse solicitor if he desires them. See, as to procuring same, c. 10, p. 1515.

(233) In an action *in rem* the parties interested in the ship or property proceeded against may appear to the action by their solicitor, and allow the ship to remain under arrest, or they may give bail to answer the action and obtain a release of the ship.

675a. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm. *Ibid.* r. 16, No. 86.

676. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum. *Ibid.* r. 17, No. 87.

676a. Where in a suit for limitation of liability an appearance was entered on behalf of a child of a man drowned in a collision *en ventre sa mère*, the court reserved leave to the child, if born within due time, to prefer its claim for damages sustained by the death of its father. *The George and Richard*, L. R. 3 A. & E. 466.

677. As to appearance as regulating whether the proceedings shall be in the district registry, see Nos. 976—978, *infra*.

677a. For forms of entry and notice of entry of appearance, and notice of limiting defence, see R. S. C. 1883, App. A., Pt. II., Nos. 1—8.

677b. As to what parties may appear, see c. 6, p. 1498.

2. In Central Office.

678. Except in the cases otherwise provided for by these rules a defendant shall enter his appearance in London. Ord. XII. r. 1, No. 71.

679. Appearances entered in London shall be entered in the Central Office. *Ibid.* r. 2, No. 72.

680. In Admiralty actions notice of appearances entered shall forthwith be given by the Central Office to the Admiralty registry. *Ibid.* r. 3, No. 73; and see C. O. Prac. Rules, 1880—1882, in Wilson's Jud. Acts and Rules, 4th ed. p. 847.

681. If any defendant resides or carries on business in the district, he must appear in the district registry, but if he does not reside or carry on business in any such registry he may appear either in the district registry or at the Central Office. See Ord. XII. rr. 4 and 5, Nos. 74 and 75.

682. Where a writ has been issued from a district registry, and the defendant enters an appearance in London, the memorandum of appearance should set forth that the action was begun in that

registry, its title in that registry, and that the defendant is out of the jurisdiction of that registry. *The General Birch*, 33 L. T. N.S. 792.

683. A solicitor appearing for a defendant shall state in his memorandum of appearance his place of business, and, if the appearance is entered in the Central Office, a place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice. Ord. XII. r. 10, No. 80.

684. A defendant appearing in person shall do the same, except that he shall give his address in lieu of the place of business required to be given by the solicitor. *Ibid.* r. 11, No. 81.

685. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the court or a judge, on the application of the plaintiff. *Ibid.* r. 12, No. 82.

686. Where a defendant gives an address for service at which he is not to be found, and there is no person authorized to take in or forward documents, such address is illusory, and the appearance will be set aside. *A. v. B.*, 17th Nov. 1883.

687. A defendant in person may change his address for service (without order to change address) by leave of the master, but must forthwith give notice to the other side. See C. O. Prac. Rules, 1880—1882, in Wilson's Jud. Acts and Rules, 4th ed. p. 847.

688. Where any solicitor appearing for a defendant is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Ord. XII. r. 10, No. 80.

689. The memorandum of appearance shall be in the Form No. 1 in Appendix A., Part II., with such variations as circumstances may require. *Ibid.* r. 13, No. 83.

690. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book. *Ibid.* r. 14, No. 84.

691. In entering appearances a note should be made in the cause books "Statement of claim required" or "Statement of claim not required." See C. O. Prac. Rules, 1880—1882, in Wilson's Jud. Acts and Rules, 4th ed. p. 846.

692. If the defendant appears, or any

of the defendants appear, in London the action shall proceed in London; provided that if the court or a judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such court or judge may order that the action may proceed in the district registry, notwithstanding such appearance in London. Ord. XII. r. 7, No. 77.

3. In District Registry.

693. If any defendant to a writ issued in a district registry resides or carries on business within the district, he shall appear in the district registry. Ord. XII. r. 4, No. 74.

694. If any defendant neither resides nor carries on business in the district, he may appear either in the district registry or at the Central Office. *Ibid.* r. 5, No. 75.

695. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. *Ibid.* r. 8, No. 78.

696. He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal. *Ibid.*

697. A solicitor appearing for a defendant shall state in his memorandum of appearance his place of business, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district. *Ibid.* r. 10, No. 80.

698. A defendant appearing in person shall do the same, except that he shall give his address in lieu of the place of business required to be given by a solicitor. *Ibid.* r. 11, No. 81.

699. As to the course to be adopted when no address is given, or it is illusory or fictitious, *Ibid.* r. 12, No. 82, and see Nos. 685, 686, *supra*.

700. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of

business the name or firm and place of business of the principal solicitor. *Ibid.* r. 10, No. 80.

4. Notice of—

701. A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance (Form No. 2 in Appendix A., Part II.) to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service (which, in the case of a writ issued out of a district registry, must be the address for service within the district), or by prepaid letter directed to that address, and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum. *Ibid.* r. 9, No. 79.

5. Under Protest.

See c. 8, s. 12, p. 1513.

6. Out of Time.

702. A defendant may appear at any time before judgment. If he appear at any time after the time limited by the writ for appearance, he shall not, unless the court or a judge shall otherwise order, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ. Ord. XII. r. 22, No. 92.

7. Third Parties or Interveners.

703. In an Admiralty action *in rem* any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the *res* under arrest, or in the fund in the registry. *Ibid.* r. 24, No. 94.

704. Where a person (not a party to the action, but served with a notice at the instance of a defendant claiming to be entitled to contribution or indemnity against such third party) desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, this third party must enter an appearance in the action within eight days from the service of the notice. See Ord. XVI. r. 49, No. 171.

705. Any person not a defendant to the action, who is served with a defence

and counter-claim set up by a defendant on raising questions between himself, the plaintiff, and such third person, must appear thereto as if he had been served with a writ of summons to appear in an action. See Ord. XXI. r. 13, No. 246.

705a. As to third parties and interveners generally, see c. 6, s. 6, p. 1500.

8. *Effect of Non-appearance.*

(a) *Generally.**

706. As to the effect of non-appearance in due time, see No. 702, *supra*.

(b) *After Undertaking.*

707. A solicitor not entering an appearance or putting in bail, or paying money into court in lieu of bail in an Admiralty action *in rem*, in pursuance of his written undertaking so to do, shall be liable to an attachment. Ord. XII. r. 18, No. 88.

(c) *After Entry of Caveat Warrant.*

708. As to the practice where a caveat warrant has been entered and no appearance has been given by the person who entered the caveat after he has been required to appear, see Nos. 540—542, p. 1518.

(d) *Third Parties.*

709. Where a person (not a party to the action, but served with a notice at the instance of a defendant claiming to be entitled to contribution or indemnity against such third party) makes default in appearing within the prescribed eight days, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third-party notice. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the court or a judge for leave to appear, and such leave may be given upon such terms, if any, as the court or judge shall think fit. Ord. XVI. r. 49, No. 171.

710. Where a third party makes default in entering an appearance in the action, in case the defendant giving the notice suffers judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the court or a judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third-party notice: provided that it shall be lawful for the court or a judge to set aside or vary such judgment upon such terms as may seem just. *Ibid.* r. 50, No. 172.

711. Where a third party makes default in entering an appearance in the action, in case the action is tried and results in favour of the plaintiff, the judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party: provided that execution thereof be not issued without leave of the judge until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the court or a judge may, on application by motion or summons, as the case may be, order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him. *Ibid.* r. 51, No. 173.

(e) *In Actions of Account.*

712. For provisions that where a writ of summons has been indorsed for an account under Ord. III. r. 8, or where the indorsement thereon involves taking an account, if the defendant fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the court or a judge that there is some preliminary question to be tried, an order for the proper accounts, with all necessary inquiries and directions now usual in the Chancery Division in similar cases, shall be forthwith made. See Ord. XV. r. 1, No. 121.

* (234) By the old practice the defendant neglecting to appear in due time was only admitted to appear and defend the cause on his paying the costs incurred in the proceedings by default in consequence of his non-appearance. These costs were technically termed contumacy costs, or contumacy fees.

See 2 Browne's Civil and Admiralty Law, 405; Clerke's Praxis Cur. Adm. tit. 37, 39; and the reference to such fees in bonds to answer latent demands, in *The Saracen*, 6 Moore, P. C. C. 66, n. See also as to the old practice, note 343, p. 1565.

713. The application for such order is to be by summons, and supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired. Ord. XV. r. 2, No. 122.

14. Prior Petens.*

714. A bottomry bondholder who has obtained in proceedings by default a decree for sale of the ship acquires thereby a *prima facie* title to be paid out of the proceeds, and in order to dispute the bond an adverse claimant must first prove his own claim. *The India*, 1 Lush. 185; 11 W. R. 42; 32 L. J. Adm. 185.

714a. This rule, however, applies only as between claimants *in pari condicione*. *The Markland*, L. R. 3 A. & E. 340; 24 L. T. 596.

See also No. 800, p. 1546, and note 338, p. 1564, and tit. LIENS, c. 3, p. 812.

As to precedence of actions, see c. 5, p. 1497.

15. Transfer of Actions.

1. Generally.†

715. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority, and in such manner as rules of court may direct, from one division or judge of the High Court of Justice to any other division or judge thereof, or may by the like authority be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought, in the first instance, to have been assigned. The Supreme Court of Judicature Act, 1873 (c. 66), s. 36.

716. Subject to rules of court, the Judicature Acts, 1873 and 1875, and the power of transfer, every person commencing a cause in the High Court of Justice shall assign it to one of the divisions. If, however, it is assigned to a wrong division, it may at any stage be

transferred to the proper division, or retained in the division, and all proceedings and orders therein before such transfer shall be valid. *Ibid.* 1875 (c. 77), s. 11.

717. Causes or matters may be transferred from one division to another of the High Court, or from one judge to another of the Chancery Division, by an order of the lord chancellor: provided that no transfer shall be made from or to any division without the consent of the president of the division. Ord. XLIX. r. 1, No. 649.

718. Any cause or matter may, at any stage, be transferred from one division to another by an order made by the court or any judge of the division to which the cause or matter is assigned: provided that no such transfer shall be made without the consent of the president of the division to which the cause or matter is proposed to be transferred. *Ibid.* r. 3, No. 651.

719. When an order has been made by any judge of the Chancery Division for the winding up of any company, or for the administration of the assets of any testator or intestate, the judge in whose court such winding up or administration shall be pending shall have power, without any further consent, to order the transfer to such judge of any cause or matter pending in any other court or division brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be. *Ibid.* r. 5, No. 653.

720. Any cause or matter transferred from any other division to the Chancery Division shall, by the order directing the transfer, be assigned to one of the judges of that division to be named in the order. *Ibid.* r. 7, No. 655.

721. A particular application in any cause or matter may, by the direction of the lord chancellor, be heard and disposed of by any judge of the High Court who shall consent so to do, to whatever division or judge such cause or matter may have been assigned. *Ibid.* r. 4, No. 652.

722. The Court of Queen's Bench having refused to transfer an action, the defendant's appeal therefrom dismissed. *Story v. Waddle*, 4 Q. B. D. 289.

* (235) Under the practice then existing, the obtaining of a decree of sale was almost equivalent to a judgment.

† (235a) As to the transfer of actions, see Archbold's Practice (14th ed. by Chitty), vol. 1, pp. 411 *et seq.*

723. Per James, L. J.: "We should be repealing a great part of the Judicature Act if we were to accede to this application. At any rate we should be acting contrary to the principle that each division of the court is to determine everything which arises in a matter which comes before it. I think we have no jurisdiction to make this order, or if we have, we ought not to interfere with the exercise of the discretion of the Queen's Bench Division." Lords Justices Bramwell and Brett concurring. *Ibid.*

724. The power to transfer an action is discretionary, to be exercised on all the facts to be ascertained by affidavits, and with a view to convenience and expediency. *Coode v. Harrison*, 2 Charley's Cases (Court), 101.

724a. In the following cases a transfer was granted, apparently on considerations of expediency:—*Holloway v. York*, 2 Exch. D. 333; *Humphreys v. Edwards*, 45 L. J. Ch. 112; W. N. 161; *Doering v. Labouchere*, 2 Charley's Cases (Court) 93; *Hannen v. Hannen*, *ibid.* 96; *Bankart v. Haddon*, *ibid.* 106; *Holmes v. Harvey*, 25 W. R. 80; 35 L. J. 600; *Young v. King*, 1 Charley's Cases (Chambers), 20; *Padwick v. Scott*, 2 *ibid.* 10; *Johnson v. Moffat*, *ibid.*

725. In the following cases a transfer of the action was refused:—*Coode v. Harrison*, 2 Charley's Cases (Court), 101; *Warne v. Dell*, 1 *ibid.* (Chambers), 19. See also 2 *ibid.* 10; and *Re Hutley, Deards v. Putt*, 1 Ch. D. 11; 45 L. J. Ch. 79; 33 L. J. 237; 1 Charley's Cases (Court), 151; *In re Boyd's Trusts*, 1 Ch. D. 12; 1 Charley's Cases (Court), 153; *Cannat v. Morgan*, 1 Ch. D. 1; 45 L. J. Ch. 50; 33 L. J. 402; 24 W. R. 90; 1 Charley's Cases (Court), 154.

726. *Held*, by the Master of the Rolls, that motions for the transfer of causes from one division to another should be made on notice. *Humphreys v. Edwards*, 45 L. J. Ch. 112; 1 Charley's Cases (Court), 81.

2. From London to District Registry.

727. If the defendant appears, or any of the defendants appear, in London the action shall proceed in London; provided that if the court or a judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such court or judge may order that the action may proceed in the district registry notwith-

standing such appearance in London. Ord. XII. r. 7, No. 77.

728. Any party to a cause or matter proceeding in London may apply to the court or a judge for an order to remove the cause or matter from London to any district registry, and the court or judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall be just. Ord. XXXV. r. 17, No. 417.

3. From District Registry to London.

729. In an Admiralty action *in rem*, any person who may have duly intervened and appeared may remove an action from a district registry as of right. *Ibid.* r. 13, No. 413.

730. For provisions as to other actions being removed from the district registry as of right in the cases and within the timetherein mentioned: *i.e.* (1) where the writ is specially indorsed under Ord. III. r. 6, No. 16, and the plaintiff does not within four days after appearance give notice of an application for an order against him under Ord. XIV.; (2) where the writ is specially indorsed, and the plaintiff has made such application, and the defendant has obtained leave to defend; and (3) where the writ is not specially indorsed under Ord. III. r. 6, No. 16, *Ibid.*

731. Any person desirous to remove an action as of right under the last preceding rule may do so by serving upon the other parties to the action, and delivering to the district registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly: provided that if the court or a judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, or that there is other good cause for proceeding in the district registry, such court or judge may order that the action may proceed in the district registry notwithstanding such notice. Ord. XXXV. r. 14, No. 414.

732. Except in Admiralty actions *in rem* the notice for removal shall be accompanied by a certificate signed by the defendant or his solicitor that his defence has not been delivered, and that the time for delivering the same has not expired. *Ibid.* r. 15, No. 415.

733. In any case not provided for by Rules 13 and 14, any party to a cause or matter proceeding in a district registry

may apply to the court or a judge, or to the district registrar, for an order to remove the cause or matter from the district registry to London, and an order may be made accordingly, for sufficient reason and on just terms. See Ord. XXXV. r. 16, No. 416.

734. Where, under the preceding rules, a cause or matter is removed from a district registry, the defendant shall, on such removal, give notice to the plaintiff of an address for service in London, as if the appearance had been originally entered in London. *Ibid.* r. 18, No. 418.

735. Whenever a defendant appears in London to a writ issued out of a district registry or any proceedings are removed from the district registry to London under Rule 14 of this Order, or by order of the court or a judge, the district registrar shall transmit to the Central Office all original documents, if any, filed in the district registry, and a copy of all entries of the proceedings in the books of that registry. *Ibid.* r. 20, No. 420.

736. On the removal by appearance to London of an action commenced in a district registry a fresh London distinctive mark is to be given. See C. O. Prac. Rules, 1880—82, in Wilson's Jud. Acts and Rules, 4th ed. p. 848.

4. From another Division to Admiralty Division.

737. An application by the defendants for the transfer from a Common Law Division to the Admiralty Division of an action of negligence arising out of a collision in the Thames, refused; *scus*, if a question of seamanship had been involved. *The General Steam Navigation Co., re The London and Edinburgh Shipping Co.*, 2 Charley's Cases (Chambers), 67.

737*a*. The owners of the A. brought an action in the Queen's Bench Division against the owners of the A.'s cargo for their share of general average, including their proportion of £3,000 paid for salvage of ship and cargo. Verdict for plaintiffs; but a new trial, ordered by the House of Lords, application of the defendants to transfer the action to the Admiralty Division as more conversant with salvage actions granted, and decision affirmed on appeal. *The Ocean Steamship Co. v. Anderson & Co.*, 33 W. R. 536; see also *Hawkins v. Morgan*, 49 L. J. Q. B. 618.

738. The Master of the Rolls ordered the transfer of an action of salvage from the Chancery Division to the Admiralty Division. *Humphreys v. Edwards*, 45 L. J. Ch. 112; 1 Charley's Cases (Court), 81.

739. An order for the transfer of a cause is not effectual until the sanction of the president of the division to which it is proposed to transfer it has been obtained. *Humphreys v. Edwards*, 25 L. J. Ch. 112.

See also No. 762, *infra*.

5. From Admiralty Division to another Division.

740. An action *in rem* for damage to cargo brought in the Admiralty Division, the owners of the ship being British and domiciled in England, ordered on motion of the defendants to be transferred to the Queen's Bench Division, as improperly commenced in the Admiralty Division. *The Seaham*, 4 Asp. 58; 48 L. J. Adm. 28.

6. From High Court to County Court.*

741. For provisions in any action of

* (236) For provisions in any action of contract brought in any of the superior courts of common law, and not exceeding £50, or reduced by payment to that sum, enabling a defendant, contesting all or part of the demand, to apply to a judge at chambers for a summons to show cause why the action should not be tried in a county court, and authorizing the judge, unless good cause is shown to the contrary, to order accordingly; and as to the proceedings to be thereupon taken; see the County Courts Act, 1867 (c. 142), s. 7; and for provisions applying this section to all actions in the High Court of Justice in which any relief is sought, which can be given in the county court, see the

Supreme Court of Judicature Act, 1873 (c. 66), s. 67.

(237) But this section is limited to actions on contract in a common law court in which the claim endorsed is not more than £50. The words "reduced by payment" mean reduced by payment before action brought, and the application can only be made by the defendant within eight days after the service of the writ. When an order is made the cause becomes for all purposes a county court cause, and the superior court has no further control over it. See Wilson's Judicature Acts and Rules (4th ed.), p. 71.

(237*a*) The power given by this section is distinct from that given by the 19 & 20

contract brought in a superior court when the claim indorsed on the writ does not exceed £50, or is reduced by payment, or otherwise, to £50, enabling the judge, on the application of either party, after issue joined, to order, on such terms as he shall see fit, that the cause be tried in a county court, and for the registrar, after such trial, to certify the result to the master's office of the superior court, and for judgment being given therein in accordance with such certificate, see 19 & 20 Vict. c. 108, s. 26.*

742. The words county court in this act include the City of London Court. See The County Courts Act, 1867 (c. 142), s. 35.

743. Any person against whom an action of tort is brought in a superior court, may make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, and thereupon a judge of the court in which the action is brought may order that, unless the plaintiff within a time to be therein mentioned, gives security for the defendant's costs to the satisfaction of a master of the court, or satisfies the judge that he has a cause of action fit to be prosecuted in the superior court, all proceedings in the action shall be stayed, or the cause remitted for trial before the county court named in the order, and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such county court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys, and the county court so named shall have all the same powers and jurisdiction with respect to the cause as if the cause had been commenced there, and both parties had agreed by a memorandum signed by them that the county court should try the action, and the costs subsequent to the order shall

be allowed according to the county court scale of costs, and those in the superior court according to the scale in use there. See the County Courts Act, 1867 (c. 142), s. 10.

743a. For provisions applying this section to all actions in the High Court of Justice, in which any relief is sought which can be given in the county court, see the Supreme Court of Judicature Act, 1873 (c. 66), s. 67.†

744. Where any action is remitted by order of the High Court of Justice to a county court, the plaintiff shall lodge with the registrar thereof the order and the writ, and also a statement of the names and addresses of the several parties to the action, and their solicitors, if any, and a concise statement of the particulars such as would be required upon entering a plaint, signed by the plaintiff or his solicitor, and the registrar shall thereupon enter the action for trial, and give notice to the parties of the day appointed for such trial, by post or otherwise, ten clear days before such day, and shall annex to the notice to the defendant a copy of the particulars. County Court Rules of 1875, Ord. XX. r. 1.

745. Upon being served with a notice of trial under the last preceding rule, a defendant may proceed in all things in the same way as if the action had been brought in the county court, and the notice so served upon him was an ordinary summons. *Ibid.* r. 2.

746. The registrar shall forthwith endorse on the order the date on which the same was lodged, and file the same, and the action shall proceed in all things as if it were an ordinary action in the county court. *Ibid.* r. 3.

747. For form of order to try action in county court, and for security, see R. S. C. 1883, Appendix K., Nos. 44, 45.

748. As to costs in such actions, see tit. Costs, c. 15, p. 350.

See also Pt. IV. c. 6.

Vict. c. 108, s. 26, on the application of either party after issue joined, to order a trial of an action on contract to take place in the county court, the action still remaining one in the superior court. *Ibid.* and the cases there cited.

* (238) For the cases and practice in the common law divisions, under this section, see Archbold's Practice (14th ed. by Chitty), vol. 2, p. 1550, and Wilson's Judicature Acts and Rules (4th ed.) pp. 68—72.

† (239) This section is limited to actions of tort. The application may be made at any time, but only by the defendant. The effect of the order is to transform the action into a county court cause. See Wilson's Judicature Acts and Rules (4th ed.) p. 72.

(240) For the cases and practice in the common law divisions under this section, see Archbold's Practice (14th ed. by Chitty), vol. 2, p. 1553.

7. From Admiralty County Courts to the Admiralty Division.*

749. The High Court of Admiralty of England, on motion by any party to an Admiralty cause pending in a county court, may, if it shall think fit, with previous notice to the other party, transfer the cause to the High Court of Admiralty, and may order security for costs, or impose such other terms as to the court may seem fit. The County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 6.

750. A cause over which a county court has jurisdiction by virtue of the County Courts Admiralty Jurisdiction Amendment Act, 1869, may be transferred to the Court of Admiralty under the 6th section of the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), although the cause be one over which the Court of Admiralty has no original jurisdiction. *The Swan*, L. R. 3 A. & E. 314; 40 L. J. Adm. 8.

751. A cause instituted for the recovery of a claim in respect of demurrage so transferred. *Ibid.*

752. The Court of Admiralty has no jurisdiction over a cause transferred from a county court, if the cause be one over which the county court had no jurisdiction, such as a cause of bottomry. *The Elpis*, L. R. 4 A. & E. 1; 42 L. J. Adm. 43; 1 Asp. N.S. 472.

753. Claimants for necessaries procured judgment in the City of London Court, and the ship was ordered to be sold. Material men who had done repairs to the ship intervened, and entered an appearance in the City Court, and commenced an action in the Admiralty Division. An application by the plaintiffs (in the Admiralty Division) for the transfer of the action for necessaries to that division was allowed without prejudice to the rights of priority (if any) possessed by the plaintiffs in the action transferred. *The Immacolata Convezione*, 8 P. D. 34; 4 Asp. 593.

754. If during the progress of an Admiralty cause in a county court it appears to the court that the subject-matter exceeds the limit in respect of amount of the Admiralty jurisdiction of the court, the validity of any order or decree theretofore made by the court shall not be thereby affected, but (unless the parties agree, by a memorandum signed by them or by their attorneys or agents, that the court shall retain jurisdiction) the court shall

by order transfer the cause to the High Court of Admiralty; but that court may, nevertheless, if the judge of that court in any case thinks fit, order that the cause shall be prosecuted in the county court in which it was commenced, and it shall be prosecuted accordingly. The County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 7.

755. If during the progress of an Admiralty cause in a county court it shall appear to the court that the cause could be more conveniently prosecuted in some other county court, or in the High Court of Admiralty of England, the court may by order transfer it to such other county court, or to the High Court of Admiralty of England, as the case may be, and the cause shall thenceforward be so prosecuted accordingly. *Ibid.* s. 8.

756. Where an Admiralty action is transferred to the High Court of Justice by order thereof, the registrar of the court, upon the service of the order of transfer, shall send by post the proceedings to the proper officer of such court. The County Court Rules, 1875, Ord. XXXIII. r. 19.

757. Where the vessel has been arrested or has been seized under a warrant of execution, and the sale of the vessel has been ordered to be transferred to the High Court of Justice, the vessel shall be retained by the high bailiff until the marshal shall, by order of the High Court of Justice, take possession thereof. *Ibid.* r. 29.

8. From Admiralty County Courts to other County Courts.

See No. 755, *supra*.

9. From Admiralty County Courts to the Cinque Ports Court of Admiralty.

758. In all cases which shall arise within the jurisdiction of the Cinque Ports, as defined by 1 & 2 Geo. 4, c. 76, s. 18, causes may be transferred by the county court . . . to the Court of Admiralty of the Cinque Ports in lieu of the High Court of Admiralty. The County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 33.

758a. As to the Court of Admiralty of the Cinque Ports, see Pt. IV. c. 1, Nos. 2434 *et seq.*

* (241) As to removal of causes from inferior courts, see Archbold's Practice (14th ed. by Chitty), vol. 2, pp. 1555—1574.

10. *From County Court to the High Court.*

759. Where in any proceeding before any inferior court having jurisdiction in equity or at law, and in equity and in Admiralty respectively, any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the court, such defence or counter-claim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter-claim. But in such case the High Court, or any division or judge thereof, may, on the application of any party to the proceeding, order the whole proceeding to be transferred to the High Court, or any division thereof; and the record in such proceeding shall then be transmitted by the registrar, or proper officer, of the inferior court to the High Court, and the proceeding shall thenceforth be continued in the High Court as if originally commenced there. See Judicature Act, 1873 (c. 66), s. 90; the County Courts Act, 1865 (c. 99), s. 3.

760. Where any order is made by the High Court, or any division or judge thereof, for the transfer of any proceedings from the county court to the High Court under the 90th section of the Supreme Court of Judicature Act, 1873, or under sect. 3 of the County Courts Act, 1865, then, subject to such order, the record in such proceeding shall be transmitted by the registrar in the following manner: The registrar shall make and certify under his hand office copies of all entries of record in the books of the court, and shall forthwith transmit by post or otherwise such copies, together with all such documents as shall have been filed in the action, to the proper officer of the High Court. Such copies and the cost of transmission shall be paid for by the party on whose application the transfer has been made, and the registrar may require a deposit of the costs of making such copies and transmission before making or transmitting the same. The County Court Rules, 1875, Ord. XX. r. 7.

761. Where a court orders the transfer of an action to the High Court of Justice or to another court, the registrar shall send by post the order, together with the proceedings, to the registrar of

the High Court of Justice or to the court to which it is transferred. *Ibid.* Ord. XXXIII. r. 20.

See also Pt. IV. c. 6, Nos. 2500 *et seq.*

11. *Re-transfer.*

762. An action in the Exchequer Division, ostensibly founded on contract, but likely to prove an action of salvage, having been transferred to the Admiralty Division by a judge at chambers, the court refused to re-transfer it to the Exchequer Division. *Nelson v. The Singapore Steamship Co.*, 2 Charley's Cases (Court), 88.

12. *Precedence.*

763. Where a county court action is transferred to the High Court, and consolidated with a cross-action in the High Court brought after the commencement of the county court action, the plaintiff in the transferred action will be given the conduct of the consolidated actions although the transfer has been made on his application. *The Never Despair*, 9 P. D. 34; 5 Asp. 211. *See also The Cosmopolitan and The Bjorn*, 9 P. D. 35, n. 1; 5 Asp. 212, n. (a).

See also c. 5, p. 1497.

16. *Restrictions on Actions in Superior Courts.*

1. *Generally.*

764. For the statutory provisions and cases thereon restricting the right of action in a superior court where the case was proper to be tried in the inferior court, see tit. Costs, c. 15, pp. 350—354.

764a. The power given to a defendant under the County Courts Act, 1867, to apply to have a case tried in a county court where the claim indorsed on the writ exceeds £50, but such claim has been reduced by payment to a sum not exceeding £50, does not apply where the payment is made after action. *Osborne v. Homburg*, 1 Ex. D. 48.

2. *Costs and Damages.*

See tit. Costs, p. 371.

3. *Leave to proceed in the Admiralty Division.*

(a) *Generally.*

765. Two causes of salvage having

been consolidated at the request of all parties, the defendants moved that the suits might be dismissed by reason of the value of the property salvaged being under £1,000. *Held*, that the consolidation of the causes amounted to an agreement within the meaning of the 9th section of the County Courts Admiralty Jurisdiction Act, 1868, that the causes should be tried in the Admiralty Court. *The Herman Wedel*, 39 L. J. Adm. 30.

765a. *Semble*, under the 9th section of the County Courts Admiralty Jurisdiction Act, the Court of Admiralty may, in its discretion, take cognizance of salvage actions when the value of the property salvaged is under £1,000. *Ibid*.

766. As to the repeal of sect. 9 of the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), by Ord. LXV. r. 1, No. 976, see *Tenant v. Ellis*, 6 Q. B. D. 46; 50 L. J. Q. B. 143.

766a. The A. ran into the I., and damaged her to the amount of £175. The owners of the I. applied to the registrar of the City of London Court for leave to institute a suit *in rem* against the I. under sect. 3 of the County Courts Admiralty Jurisdiction Amendment Act, 1869. The registrar decided that the limitation imposed on the arrest or detention of a vessel by sect. 22 of the County Courts Admiralty Jurisdiction Act, 1868, applied to proceedings under sect. 3 of the Act of 1869, and on the ground that there was no evidence that the A. was about to be removed out of the jurisdiction of the court, refused leave to institute a suit *in rem* in the City of London Court. Upon application to the Admiralty Court upon an affidavit which stated the foregoing facts, the court gave leave to institute a suit in the Court of Admiralty in pursuance of the provisions of sect. 9 of the Act of 1868. *The Archimedes*, 22 January, 1870.

767. Under the 9th section of the County Courts Admiralty Jurisdiction Act, 1868, application may be made to the Court of Admiralty for an order to institute in that court proceedings which might have been taken in a county court, and the Court of Admiralty will, if it sees fit, make such order. *The Bengal*, L. R. 3 A. & E. 14; 3 Asp. 316.

767a. Such an application, made on the ground that a question of law might arise whether a towage contract had been superseded by a right of salvage, granted. *Ibid*.

768. The Z. was under arrest of the Admiralty Court in a cause of collision. Upon the application of salvors whose services had been rendered after the collision, the court granted leave to institute a cause of salvage in the High Court of Admiralty, although it was admitted that the court might possibly award a less sum than £300. *The Zingara*, 5 March, 1870.

769. When an action has been already commenced in the High Court of Admiralty for an amount within the county court jurisdiction, the plaintiff cannot obtain an order for leave to proceed, so as to relieve him from liability for costs. *The Loretta*, 40 L. J. N.S. Adm. 50; 1 Asp. N.S. 19; 20 L. T. N.S. 447.

770. Leave given to proceed in the Admiralty Division in an action for damage to cargo, where there was a necessity for a commission abroad, though the amount claimed was within the limits of the county court jurisdiction, and the owners were domiciled in England. *Ellis v. General Steam Navigation Co.*, 3 Asp. N.S. 581.*

770a. Notice of the order should be given on service of the writ. *Ibid*.

* (242) The learned Editor has questioned this decision, as proceeding upon the assumption that the county court has jurisdiction in all claims for damage to cargo, and suggested that the county court has jurisdiction in Admiralty only in cases in which the High Court of Admiralty before the Judicature Act had jurisdiction. Citing *Simpson v. Blues*, 1 Asp. N.S. 326; *Gunstead v. Price*, *Fullmore v. Wait*, 2 Asp. 543. He admits that the Privy Council in *The Cargo ex Argos* (1 Asp. N.S. 519), decided otherwise, but suggests that the other decisions are decisions of courts which now form part of the High Court of Justice, and would undoubt-

edly be followed in any case of prohibition to a county court. He observes that the General Steam Navigation Company, the defendants in this action, are a company carrying on business in London, and therefore domiciled in England within the meaning of the 6th section of the Admiralty Court Act, 1861. Hence the High Court of Admiralty would have had no jurisdiction to try any action against them, or any of their ships, for damage to cargo, and that consequently an Admiralty county court would have no such jurisdiction. See 3 Asp. N.S. 581. But as the Court of Appeal has since decided, following the decision in *The Cargo ex*

(b) *Costs.*

771. The court may, notwithstanding an order under the 9th section of the County Courts Admiralty Jurisdiction Act, 1868, to take proceedings in the High Court of Admiralty, condemn the plaintiff in costs at the hearing. *The John Evans*, 43 L. J. Adm. 9; 2 Asp. N.S. 234.

4. *Rescinding of Leave.*

771a. An order, under the 9th section of the County Courts Admiralty Jurisdiction Act, 1868, to take proceedings in the High Court of Admiralty may be made *ex parte*, though it is competent to the other parties to the cause to move afterwards that it be rescinded. *Ibid.*

5. *Certificate for Costs.*

(a) *Of Actions in Admiralty Division.*

See tit. Costs, c. 15, pp. 350—352, and *Ibid.* in Addenda.

(b) *Of Actions under Admiralty Court Act, 1861 (c. 10).*

See tit. Costs, p. 354.

(c) *Of Salvage Actions under the M. S. Acts.*

See tit. Costs, pp. 352, 353.

17. Consolidation of Actions.

1. *Generally.**

772. Causes or matters pending in the same division may be consolidated by order of the court or a judge in the

manner in use before the commencement of the principal act in the superior courts of common law. Ord. XLIX. r. 8, No. 656.

773. The court has not power to consolidate actions after one of them has been heard and decided. *The Demetrius*, L. R. 3 A. & E. 523; 41 L. J. Adm. 69; 1 Asp. N.S. 250; 26 L. T. 324; 20 W. R. 761.

774. Two actions can only be consolidated after each has become a *lis pendens*, and an action in *personam* does not become a *lis pendens* until after service of the writ. *The Helenslea* and *The Catalonia*, 7 P. D. 60; *Ray v. Sherwood*, 1 Curteis, Ecl. Rep. 173, 193; 1 Moore, P. C. C. 353.

775. As to proceedings in consolidated actions, see c. 18, *infra*.

776. As to costs in consolidated actions, see tit. Costs, c. 11, p. 349.

777. As to severance of consolidation of actions, see c. 18, s. 3, *infra*.

2. *In Bottomry Actions.*

778. Three bottomry bonds of the same tenor having been put in suit by three separate actions, motion (not opposed) to consolidate the same, granted. *The Albion*, 1 Hagg. 333.

778a. Two separate bottomry bonds of different dates consolidated, *semble* erroneously. *Mackenzie & Co. v. The St. Andrew*, Marsden's Rep. 129.

3. *In Collision Actions.*

779. For a case of consolidation of several actions of damage by collision, where all the actions arose out of the same transaction, see *The Vildosala and other Ships*, 4 Asp. 228. [IRISH.]

Argos, that a county court has jurisdiction in Admiralty in such cases (see *The Alina*, 5 Exch. D. 227), the reasoning now fails.

* (243) An order for consolidation will be made by the registrar on summons, or if of a special nature it may be adjourned into court.

(244) As to the consolidation of actions in other divisions, see Wilson's Judicature Acts and Rules (4th ed.) p. 424; and Archbold's Practice (14th ed. by Chitty), vol. 1, pp. 407 *et seq.*

(245) For the practice of the civil law and Court of Admiralty as to cumulating actions, particularly in causes of wages, see 4 Browne's Civil and Adm. Law (2nd ed.) 145.

(246) The American Admiralty Courts are expressly empowered to direct the consolidation of causes of the like nature, or relative to the same question. See Act of Congress, 22nd July, 1813, c. 14, s. 3; 3 Stat. at Large, p. 19. [AMERICAN.]

(247) *Held*, prior to the Judicature Acts and Rules, that unless parties agreed to consolidate their causes, the court was bound to allow them to proceed separately, but it would order all the pleadings and evidence taken in the first action to be admitted in the cross action. *The North American and The Tecla Carmen*, 1 Lushington, 79; 5 Jur. N.S. 659.

4. *In Marine Insurance Actions.*

779a. As to consolidation of actions of marine insurance, see tit. MARINE INSURANCE, p. 1106.

5. *In Salvage Actions.*(a) *Generally.*

780. It has been the universal practice of the Court of Admiralty to consolidate the actions where the decision of each action depends on precisely the same facts, and in salvage actions the court has gone further, consolidating actions where there are several sets of salvors not rendering precisely the same services. *The William Hutt*, 1 Lushington, 27; 1 L. T. N.S. 448.

781. Separate actions for salvage of life and property were entered and afterwards consolidated. The court approved of the course pursued. *The Coromandel*, Swabey, 208.

782. The court is displeased when two actions are brought by two sets of salvors where it can be avoided, but there may be cases in which this course is justifiable, and this was one, the salvors having opposite interests, the first set, smacksmen, being the first salvors, and the second, a steamer, claiming to have rescued the vessel. *The Charles Adolphe*, *ibid.* 156.

783. Separate actions had been brought by two sets of salvors, and the interest of the one set was denied by the other. The court intimated that the actions ought to have been consolidated, and accordingly deducted £25 from the costs of one set of salvors. *The Bartley*, *ibid.* 198.

784. In a case of salvage of a derelict, separate actions having been entered by the actual salvors, and by the owners, master, and remainder of the crew of the salvaging vessel, the court awarded half costs only, expressing its regret that separate appearances had been given. *The Nicolina*, 2 W. Rob. 175.

785. Two actions for salvage by separate salvors, actions consolidated. *The London Merchant*, 3 Hagg. 395.

786. Two actions for salvage by two portions of salvors in respect of the same service, actions consolidated. *The Hope*, *ibid.* 423.

(b) *One Party dissenting.*

787. The practice of the court has been not to force consolidation where

the parties object to it. But where the plaintiffs in two actions of salvage against the same vessel, in respect of services rendered on the same occasion, objected to consolidate, the court, while refusing to make a consolidation order, allowed the defendants to make one tender in respect of the claims in both actions. *The Jacob Landstrom*, 4 P. D. 191; 4 Asp. 58.

788. *Semble*, the court has the power of consolidating actions against the consent of the plaintiffs. *The William Hutt*, 1 Lushington, 27; 1 L. T. N.S. 448.

789. The consolidation of two salvage causes ordered against the consent of the defendants. *The Melpomene*, L. R. 4 A. & E. 129; 42 L. J. Adm. 45; 1 Asp. N.S. 515.

6. *In Wages Actions.*

790. Motion for consolidation of several actions for wages granted. *The Adventure*, 3 Hagg. 153.

7. *Costs.*

See tit. COSTS, p. 349.

18. *Proceedings in Consolidated Actions.*1. *Generally.*

791. Where money is paid into court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this order in the same manner as in the action tried. See Ord. XXII. r. 8, No. 262.

792. As to consolidation of actions, see c. 17, p. 1543.

2. *Order of Reference.*

793. Where it is convenient to do so, the court will refer to the registrar separately one of several consolidated causes. *The Helen R. Cooper*, L. R. 3 A. & E. 339; 40 L. J. Adm. 46.

3. *Severance of Consolidation.*

794. Where several actions are brought against a ship in respect of one collision by different plaintiffs, and several bail bonds are given, and the actions consolidated by order of the court, and the damage is pronounced for in the usual course, the court has the power to open the order of consolidation and dis sever

the actions. *The William Hutt*, 1 Lushington, 27; 1 L. T. N.S. 448.*

19. Bail.

1. Generally.†

795. Bail bonds are not mere personal securities given to individual captors, but are given in the Court of Admiralty to abide adjudication of all events at the time impending before it. Bail bonds are subject to more enlarged considerations in this court than at common law, where they are considered as mere personal securities for the benefit of parties to whom they are given. They are here regarded as pledges for the thing itself in all points fairly in adjudication before the court. *The Nied Elwyn*, 1 Dodson, 53.

796. An obligation taken in the Admiralty to appear and sue there, is suable in that court, for it is a stipulation in the nature of bail at common law. *The King v. Perry* (1688), 3 Salk. 23; *S. P. Wick v. Strutt* (1694), Comb. 320; *Par v.*

Evans (1663), T. Raym. 78; and see 2 Ld. Raym. 1286; Cro. El. 685.

797. The jurisdiction of the Court of Admiralty over bonds was confined to bonds of bottomry, and bonds taken by the court itself. *The Bagnall*, 3 W. Rob. 112; 12 Jur. 1008; 6 Notes of Cases, 542.

798. So that if the bond were a voluntary transaction between the parties without any intervention of a receiver of wreck, it could not be enforced in that court. *Ibid.* 3 W. Rob. 112.

798a. In cross actions the plaintiff in the cross cause is entitled, under the Admiralty Court Act, 1861 (c. 10), s. 34, to a stay of proceedings in the first cause until bail has been given to answer his claim in the cross cause, though the cross cause is an action *in personam*. *The Charkieh*, 42 L. J. Adm. 70; 29 L. T. N.S. 404.

799. By the 14th section of 16 Geo. 3, c. 5 (made to prohibit all trade and intercourse with the then American colonies, and since repealed), it was provided that where ships, &c. had been

* (248) But when, according to the old practice, a cause was remitted from the Court of Appeal, with injunction "to proceed according to the tenor of former acts had and done," the court had no authority to relax an order made previously to the appeal. *The William Hutt*, No. 794, *supra*.

(248a) An application to dis sever consolidated actions, unless by consent, should be made on motion.

† (249) In any cause in the High Court of Admiralty bail may be taken to answer the judgment as well of that court as of the Court of Appeal, and the Court of Admiralty may withhold the release of any property under its arrest until such bail has been given; and in any appeal from any decree or order of the Court of Admiralty the Court of Appeal may make and enforce its order against the surety or sureties who may have signed any such bail bond in the same manner as if the bail had been given in the Court of Appeal. See the Admiralty Court Act, 1861 (c. 10), s. 33.

(250) This enactment was only applicable when the terms of the bail bond included both courts; but now that an appeal is not a separate action, but only a rehearing of the original action, the enactment seems unnecessary.

(251) For provisions that a surety or co-debtor discharging his liability shall be entitled to an assignment of all the securities held by the creditor, and to all his rights and remedies against the debtor or co-surety, co-contractor, or co-debtor, see the Mercantile Law Amendment Act, 1856 (c. 97), s. 5.

(252) After the execution of process the defendant shall give caution or security. Godb. 260. And the caution may bind the heirs, for by the civil law that comprehends his executors or administrators. *Ibid.* 261.

(253) The securities taken in the Court of Admiralty in the nature of bail were stipulations and *fidejussory* cautions, and so called. 1 Browne's Civil and Admiralty Law, p. 361.

(254) These stipulations had no priority over specialty debts, nor did they affect lands. *Ibid.*

(255) As to bail at common law, see 2 Chitty's Archbold's Practice of the Court of Queen's Bench (14th ed. by Chitty), p. 1496.

(256) As to bail in the American Admiralty Courts, see 2 Conkling's Adm. Prac. (2nd ed.) c. 4, p. 80; Dunlap's Adm. Prac. (2nd ed.) pp. 141—178; *The Infanta*, 1 Abb. Adm. 327; *Cure v. Bullus*, *ibid.* 555; *Hunt v. United States*, 1 Gallis. 32; *Naylor v. Moody*, 3 Black, 93; *Hunt v. Bridgman*, 2 Pick. 581; *People v. Jansen*, 7 Johns. 332; *Huffman v. Hurlburt*, 13 Wend. 375; *Reynolds v. Ward*, 5 *ibid.* 501; *Bank v. Woodward*, 5 N. Hamp. 99; *United States v. Hillegas*, 3 Wash. C. C. 70; *Bank of Steubenville v. Hoge*, 6 Ham. 17; *Clippinger v. Creps*, 2 Watts, 45; *Kennebec Bank v. Tuckerman*, 5 Green, 130; *Deming v. Norton*, Kirby, 397; *Miller v. Stewart*, 9 Wheat. 680; *United States v. Tillotson*, Paine, 305; *Commissioners of Berks v. Ross*, 3 Binn. 520; *Ship Nathaniel Hooper*, 3 Sumner, 543; *Thompson v. Steamboat J. D. Morton*, 8 Ohio, U. S. 222; *Lane v. Townsend*, Ware, 286. [AMERICAN.]

taken from the Americans, condemned as lawful prize, and the sentence appealed from, the execution of the sentence should not be suspended by reason of the appeal, if sufficient security was given to restore the ship, or the full value thereof, in case the sentence appealed from was reversed. *Held*, that such security was not a strict recognizance, but operated as a stipulation to abide the decision of the Court of Appeals; which court was not bound to interpret the words "full value" by any definite measure, but had a discretionary power of declaring what was the full value, and of enforcing payment thereof accordingly. *Brymer v. Atkins*, 1 H. Black. 164; 2 Tidd's Prac. 983.

799a. In an action by a bottomry bondholder, the interests of a mortgage and of a part owner being distinct, the court was of opinion that in such a case separate bail should be given. *The Royal Arch*, Swabey, 274.

800. In an action of collision against the F., a foreign vessel, she was released on bail for £300. After judgment against her, and ascertainment of damages and costs at £350, the plaintiffs obtained leave to re-arrest her for the balance. The F.'s solicitors, to avoid the re-arrest, gave an undertaking for supplementary bail. Subsequently actions for wages and necessities were instituted against the F., and judgments obtained, and she was sold, and the proceeds paid into court. *Held*, that the plaintiffs in the collision action were not entitled to be paid out of the proceeds in court, to the prejudice of the other claimants. *The Falk*, 4 Asp. 592.

801. The effect of taking bail in an action is to release the ship altogether in that action. The bail represents the ship. *The Kalamazoo*, 15 Jur. 386.

802. A bail bond containing the names and descriptions of the sureties was merely signed by them without the addition of their descriptions and addresses. *Held*, sufficient. *The Tamarac*, 1 Lushington, 28.

803. *Semble*, the lien of a suitor *in rem* is not extinguished by the substitution of bail and the release of the vessel in another action. *Harmer v. Bell (The Bold Buccleugh)*, 7 Moore, P. C. C. 274, 275, 279, 282; 14 Jur. 134; 19 L. T. 235; *The Clara*, Swabey, 7; 2 Jur. N.S. 46; *The Wild Ranger*, 7 L. T. N.S. 725.

804. In the Prize Court, when property is delivered on bail to the claimant, he is

bound, on the one hand, by the appraised value, and cannot be called upon, on the other hand, to bring in more than the appraised value. *The Jonge Bastiaan*, 5 C. Rob. 322; *The Betsey*, *Ibid.* 295. So, too, he cannot be allowed expenses attending the property after it is delivered to him on bail. *Ibid.*

804a. As to whether a guarantee was, under certain circumstances, equivalent to bail, see *The Christiansborg*, 10 P. D. 141, C. A.; 54 L. J. Adm. 84.

805. In an action *in rem* for necessities, the defendants obtained an injunction from Chancery, restraining the plaintiffs from prosecuting the action "until further order." *Held*, that under such injunction the court would not order payment to the defendants of money lodged in lieu of bail. *The Lion*, 1 Asp. N.S. 321. [TRIST.]

806. A third mortgagee instituted a suit against a ship of which the defendant was first mortgagee in possession, and caused her to be arrested. The defendant, to obtain the release of the ship, paid into court £500 in lieu of bail, and then sold the ship for a sum less than his mortgage. The plaintiff, when the cause was ripe for hearing, abandoned the suit, and the £500 was paid out to the defendant. *Held*, that the defendant was entitled to interest at £4 per cent. per annum on the £500, for the time it remained in court. *The Western Ocean*, L. R. 3 A. & E. 38.

807. The proper address of a proposed surety is his business address, not his private address. *The Ocean*, 3 February, 1885.

807a. A ship having been arrested in the Court of Admiralty, the plaintiff, at the request of P., the owner of 62-64th, entered into a bond for her release. This took place in the absence of the defendant, who was owner of the remaining two 64ths. Judgment was given against P., who became insolvent, and the plaintiff therefore had to pay the amount for which he was bound. *Held*, that he was entitled to recover the sum he had so paid from the defendant. *Barker v. Highley*, 2 N. R. 489; 10 Jur. N.S. 391.

808. For form of bail bond, see R. S. C. 1883, App. A., Pt. 2, No. 13.

2. Justification.

(a) Generally.*

809. In every case of bail taken in

* (257) There must be a separate affidavit of justification for each surety.

Admiralty actions *in rem* the sureties shall justify. See Ord. XII. r. 19, No. 89.

810. For form of affidavit of justification, see R. S. C. 1883, App. A., Pt. 2, No. 14.

(b) *Cross-examination.*

811. A plaintiff has a right to require the attendance for cross-examination of sureties, who have justified as bail for a ship in a suit *in rem*; but he does so at his peril as to costs and damages occasioned by the delay of the ship under arrest pending such cross-examination. *The Don Ricardo*, 4 Asp. 225.

See also as to objections to bail, Nos. 824—831, *infra*.

3. *By more than Two Sureties.**

4. *Before whom taken.*

812. In Admiralty actions *in rem*, bail may be taken before the Admiralty registrar, or before any district registrar or commissioner to administer oaths in the Supreme Court, and in every case the sureties shall justify. Ord. XII. r. 19, No. 89.

813. No commissioner shall take bail

on behalf of any person for whom he or any person in partnership with him is acting as solicitor or agent. *Ibid.* r. 21, No. 91.

5. *Before a Commissioner to administer Oaths.†*

(a) *Notice of Bail and Affidavit of Service.*

814. The solicitor for the defendant giving bail is to serve on the adverse solicitor a notice containing the names and addresses of the sureties and of the commissioner before whom the bail was taken. See Ord. XII. r. 20, No. 90.

814a. A copy of this notice verified by affidavit is to be filed with the bail bond. *Ibid.*

(b) *Filing of Bail Bond, Notice and Affidavit.‡*

815. A bail bond shall not, unless by consent, be filed until after the expiration of twenty-four hours from the time when such a notice so verified shall have been served upon the adverse solicitor and filed with the bail bond. *Ibid.*

816. The delays required by these rules with respect to the taking of bail in

* (258) When an action in a large amount has been entered the court has, on application, allowed bail to be given by as many as four or five sureties, they being separately bound in amounts equalling together the amount of the action.

† (259) There were formerly three modes of proceeding in giving bail in Admiralty actions. 1. Before a standing commissioner. 2. By commission. 3. In the Admiralty registry. All these are now practically obsolete, and the practice now is to take bail before a commissioner to administer oaths in the Supreme Court in much the same way that bail was formerly taken before a standing commissioner. See as to bail by commission, sect. 8, *infra*, and as to bail in the Admiralty registry, sect. 9, *infra*.

(260) Bail is taken before a commissioner to administer oaths in the Supreme Court in the mode following:—Prepare bail bond and affidavits according to the forms prescribed in App. A. Pt. II. Nos. 13, 14. Procure the bond to be duly executed, and the affidavits of justification duly sworn to by the sureties before a commissioner, and file the same twenty-four hours (or less by consent) after notice of bail so taken.

‡ (261) No form of notice of bail is given by the R. S. C. of 1883. The notice, however, should be entitled in the cause, and intimate that the solicitors for the parties

giving bail tender the persons whose names, addresses, and occupations in life are therein mentioned as bail on behalf of the parties giving bail in the sum in which the bail is taken to answer judgment in the action, and that the bail has been taken before the commissioner to administer oaths in the Supreme Court therein mentioned. It is dated and signed by such solicitor, and addressed to the opposite solicitor.

(261a) File in the registry bail bond, duly executed, affidavits of justification, and affidavit of service of notice. File them with a minute, which must bear a 5s. adhesive stamp for each of the documents filed. In salvage actions affidavits of the value of the salvaged property must also be filed.

(262) Bail in this form was heretofore taken before a standing commissioner, of whom only a few were appointed, and these are now generally commissioners to administer oaths in the Supreme Court, and have as such as much authority to take bail as they had formerly as standing commissioners.

(263) The practitioner is then entitled to the release.

(263a) The delay of twenty-four hours may be waived by the consent of the adverse solicitor, and it usually is so in cases in which a release is urgently required. This consent where given is indorsed on the bail bond.

Admiralty actions, may be dispensed with by consent of the solicitors in the action. Ord. LXIV. r. 10, No. 970.

6. By Commission.*

* (264) When bail was taken by commission, a commission issued in each case from the Admiralty registry addressed earlier to commissioners to administer oaths in Admiralty, or to other persons duly qualified to administer oaths, and later, "to all and singular commissioners to administer oaths in the Supreme Court of Judicature in England." Before one of these the bail bond was, in virtue of the commission, executed by the sureties, who were also at the same time sworn to their affidavits of justification.

(264a) The commission was prepared in the registry from a *præcipe* for commission filed by the practitioner, and handed in with forms of commission, bail bond and affidavits of justification; and shortly afterwards the commission, under seal, with bail bond and affidavits of justification annexed to it, was handed to him.

(265) The commission was executed before any one of the parties to whom it was addressed.

(265a) On returning the commission and papers executed, and the affidavits of justification sworn to twenty-four hours after notice of bail so taken, and with affidavit of such service the practitioner was entitled to a release.

(266) This mode, involving the useless expense of a commission in every case, is now considered by the officials in the registry to be abolished, and they would not issue a commission for such purpose except by special order of the judge. It might possibly be obtained under special circumstances, as where no commissioner to administer oaths in the Supreme Court is resident within many miles of the place where the bail reside; but Ord. XII. r. 19, No. 89, defines the parties who may take bail, and inferentially therefore excludes bail being taken by commission.

† (267) When bail was given in the registry the solicitor for the defendant giving bail filed in the marshal's office a *præcipe* for notice of bail, and thereupon received a notice of bail, a copy of which he served on the adverse solicitor.

(268) The names and address of a referee as to the sufficiency of each of the parties proposed as bail, was required to be inserted in the *præcipe* for notice of bail filed in the marshal's office; references to bankers, though not indispensable, were preferred, and secured an earlier report.

(269) Upon receiving the *præcipe* for notice of bail, the marshal made inquiries of the parties given as referees and others, and if satisfied therefrom he, on the morning after receiving the notice, made his report as to the sufficiency of the bail.

7. In the Registry of the Admiralty Division.†

8. To Counter-claims or in Cross Actions.†

817. In Admiralty actions *in rem* a

(270) After the expiration of twenty-four hours from the time when the notice of bail had been so served, if the marshal had reported on the sufficiency of the sureties, the solicitor was entitled to take up the marshal's report.

(271) The marshal's fee for the report was 10s., which was paid in stamps at the time of obtaining the report. See S. C. Fees of 1884, No. 99.

(272) Upon receiving the marshal's report the solicitor deposited the same in the registry, with a *præcipe* for bail bond and the notice of bail. The solicitor was then informed at what hour the sureties might attend. The stamps required were on the *præcipe*, 5s.; on the bail bond, 7s. 6d.

(273) If the report was deposited in the registry before eleven o'clock in the morning, the bail bond was ready for execution the same day. If the report was not deposited until after eleven o'clock, the bail bond would ordinarily not be ready until the next day.

(274) At the hour named the solicitor attended in the registry with the sureties, who then signed the bond before the registrar, or by his directions, before one of the clerks in the registry.

(275) When the bail bond had been executed by the sureties it was filed with a minute. No notice of filing the bail bond was required to be given to the plaintiff's solicitor, and no notice was ordinarily given, the notice of bail previously served on him being presumed to be sufficient. The solicitor was then entitled to the release.

(276) The attendance of the sureties in the registry was productive of so much inconvenience, that this mode of taking bail has fallen into desuetude, and is never now adopted.

(277) The marshal's report was formerly accepted in lieu of justification of sureties, but it would seem to follow, from the terms of R. S. C. of 1883, No. 89 (No. 809, *supra*), that in these cases also the sureties would be required to justify, so that nothing would be gained by the marshal's report.

(278) There is also no provision in the R. S. C. of 1883, for this mode of procedure, except that forms are given in App. A., Pt. II., Nos. 10—13 thereto, for notice of bail by the marshal, for the marshal's report, for the *præcipe* for bail bond, and for the bail bond when executed in the registry, and in S. C. Fees of 1884, the fee before mentioned for the marshal's report (see note 271) is stated.

‡ (279) If in the principal cause security has been given by the defendant to answer judgment, and in the cross cause security has not been given to answer judgment

warrant of arrest may be issued at the instance either of the plaintiff or the defendant. See Ord. V. r. 16, No. 38.

818. But prior to this rule the Admiralty Court could not in an action of damage, where the defendant had counter-claimed, order the plaintiff to find bail. It could only stay the plaintiff's proceedings until he gave bail. *The Alexander*, 5 Asp. 89.

819. And if in an action of collision the defendant's vessel was not arrested, and he was not required to give security, he could not, by voluntarily giving security, compel the plaintiff to give security to answer his, the defendant's, counter-claim under the Admiralty Court Act, 1861, s. 34. *The Alne Holme*, 4 Asp. 591.

820. But *semble*, the defendant counter-claiming could now require bail even though the plaintiff abandoned his action. See *McGowan v. Middleton*, 11 Q. B. D. 464.

9. Freight.*

821. When a *prima facie* title to freight is shown, a ship arrested for freight will

be released upon bail being given in the action. When cargo is arrested for freight it is otherwise, and the court will order the owners of cargo to pay the freight into court. *The Ringdove*, Swabey, 312.

See also c. 20, p. 1557.

10. Security for Costs.†

822. See on this head, tit. Costs, c. 19, p. 363; as to security for costs by the counter-claimant, *ibid.* p. 365; as to security for costs in various actions, *ibid.* pp. 365, 366: and see same title and chapters in Addenda.

11. Sufficiency.‡

823. Sureties to a bail bond must not be partners. *The Corner*, 3 N. R. 94; 12 L. T. N.S. 62; 33 L. J. Adm. 16.

12. Objections to—§

824. Objection to bail should be by affidavit, not by petition. *The Corner*, 10 and 11 November, 1863, No. 1927.

therein, the court may, if it think fit, suspend the proceedings in the principal cause until security has been given to answer judgment in the cross cause. The Admiralty Court Act, 1861 (c. 10), s. 34. And under this act the court will order a plaintiff to give bail to a defendant counter-claiming when the plaintiff is a foreign sovereign whose ship cannot be arrested. *The Newbattle*, 10 P. D. 33; 54 L. J. Adm. 16; 52 L. T. 15; 33 W. R. 318; 5 Asp. 356.

(280) By the 34th section of the Admiralty Court Act, 1861, when bail to answer judgment has been given by the defendant in the principal cause, the same party, when plaintiff in a cross cause, may obtain a similar security, notwithstanding that his opponent may be resident within the jurisdiction of the court. *The Cameo*, 1 Lushington, 409; 5 L. T. N.S. 773.

(281) This power to stay proceedings in the principal cause until bail has been given by the defendants in the cross cause may be exercised, even though the ship of the defendants in the cross cause has been lost, and the defendants themselves are foreigners. *The Charkieh*, L. R. 4 A. & E. 120; 42 L. J. Adm. 70; 2 Asp. N.S. 121; 22 W. R. 63.

(282) See as to cross actions, p. 1495.

(283) The procedure by counter-claim has superseded cross actions.

(284) The owners of the ship may give bail for freight as well as for the ship, as both belong to them, but owners of cargo cannot do so, as the freight does not belong to them.

(285) But in cases of freight *pro rata*

itineris, they are allowed to give bail. See Coote's Adm. Prac. p. 25.

† (286) Security for costs is given in the same manner and on the same form as bail, the words "so far as regards costs" being substituted for the words "with costs" in the bail bond.

‡ (287) Residence out of the jurisdiction is a good ground of objection to bail.

(288) Two persons trading in partnership will only be accepted as one bail.

(289) On bail being filed or tendered, the adverse solicitor may enter a caveat against the release of the property, in order to admit of his communicating with his client as to the bail. (See Pt. I. c. 6, p. 1477.) If instructed to object to them, he should give notice thereof to the opposite solicitor and prosecute his objections with all dispatch. *Ibid.* p. 1478.

(290) The proctor of the plaintiff may object to the bail, but if he neglects to do so his party is excluded from demanding more substantial security at a future period. Clerke's Prax. Adm. 29. On the death or insolvency, however, of either of the bail, further security may be demanded. *Ibid.* 31, n. And also, if being sufficient at the time of their being tendered as bail, they afterwards become *lapsi facultatibus*. *Ibid.* 33.

§ (291) The party objecting may at any time waive his objections, but if so will of course, on the application of the adverse party, be condemned in the costs attendant on such objections up to the time of his waiving them, and it may be in damages as well as costs,

825. *Semble*, objections to the sufficiency of bail may be made by motion on affidavits. *The Corner*, 3 N. R. 94; 33 L. J. N.S. Adm. 16.

826. On such a motion the court referred the matter to the registrar to inquire summarily into the sufficiency of the bail, after hearing evidence thereon. *Ibid*.

827. Bail by two partners was taken before standing commissioners at Liverpool, and filed on Saturday in London. On Monday communications took place between the solicitors in Liverpool, admitting the insufficiency of the bail; a release was obtained in London on the same day. Instructions to object to the bail were sent up on Tuesday, motion for re-arrest on the ground of insufficiency of bail granted, reasonable diligence having been used in taking the objection. *Ibid*.

828. *Semble*, had the only ground for the motion been the fact of the bail having been given by two partners, the court would have held the parties estopped from taking that objection by the fact of a release having been issued. *Ibid*.

829. On objection to the sufficiency of sureties, it appearing that the sureties were good and sufficient, the court released the vessel, with costs and damages against the detainers from the day following the notice of bail. *Ibid*.

829a. As to the cross-examination of the bail as to their sufficiency, see No. 811, p. 1547.

13. Excessive.

830. See tit. Costs, c. 38, s. 10, p. 409, *Ibid*. in Addenda, and No. 289, p. 1492; also *The Earl Grey*, 1 Spinks' Eccl. and Adm. Rep. 180.

830a. Plaintiff having obtained excessive bail, afterwards condemned in the costs of giving bail. *The George Gordon*, 9 P. D. 46; 53 L. J. Adm. 28; 50 L. T. 371; 32 W. R. 596; 5 Asp. 216.*

831. If the bail demanded is too large a sum, the defendants should move to reduce it. *The Melissa*, 6 Jur. 104. [IRISH.]

14. Reduction.

832. An action upon various claims was entered, and bail given in the sum of

in consequence of the detention of the vessel. (See tit. Costs, c. 20, s. 3, p. 370.) So, also, the adverse party may withdraw the bail objected to, and give other bail, or leave the ship under arrest, and will be similarly condemned in the costs incurred by his opponent by reason of such insufficient bail. Pending

£1,500. The court having, upon motion, decided that it had no jurisdiction over some of the claims, the amount for which bail was necessary was reduced to £460, *i. e.*, £260 to answer the remaining claims, and £200 for costs. *The Chieftain*, 8 L. T. N.S. 120; 32 L. J. Adm. 106; 9 Jur. N.S. 388.

832a. In two actions of salvage of a derelict steamship and cargo of large value, and in each of which the action was entered in the sum of £50,000, the court on motion for the defendants reduced the amount of bail to be given in each action to £25,000. *The Amerique*, 22 April, 1874.

833. If it subsequently appears that the amount of bail given is beyond the proved value of the property the court will, on motion, order the amount to be reduced. See *The Duchesse de Brabant*, Swabey, 264; *The Chieftain*, 32 L. J. Adm. 106; 8 L. T. N.S. 120; *The Staffordshire*, L. R. 4 P. C. 194; 41 L. J. Adm. 49.

See also No. 831, *supra*, and No. 835, *infra*.

15. Amendment.

834. In a cause of damage bail had been given on behalf of *The Perseverance*, of Swansea, John Tetherby, master. The vessel and bail were subsequently condemned in damages and costs. Application to amend the bail bond by altering the word "Swansea" to "Appledora," and "John" to "George" granted. *The Perseverance*, 2 Browne's Civ. and Adm. Law App. 543, 553.

16. Ameliorations.

835. A vessel arrested in a cause of collision had repairs effected on her, rendering her of greater value than at the time of her arrest. *Held*, on motion for release, that she ought to be released on bail being given for her value at the time she was arrested. *The St. Olaf*, L. R. 2 A. & E. 360; 38 L. J. Adm. 41; 3 Asp. 241.

See also as to ameliorations generally, tit. OWNERS, Pt. I., c. 8, p. 1226.

17. Rights and Liabilities.†

836. Sureties are no parties in the suit,

the question of the sufficiency of bail the ship will remain under arrest.

* (292) Where the bail required is excessive, the court now usually condemns the party requiring the excessive bail in the costs of bail.

† (293) *The fidejussor* had the advantages

nor can they interfere with the conduct of the cause at any time, except where the principal is guilty of fraud, or there is collusion between him and the adverse suitor, when the sureties are entitled to apply to the court, alleging such fraud or collusion. *The Harriett*, 1 W. Rob. 199, 203; 6 Jur. 197; 1 N. of C. 327.

837. For provisions entitling a surety who discharges his principal's liability to an assignment of all securities held by the creditor, and to stand in the place of the creditor and use his name in any action to obtain from the principal debtor or any co-surety indemnification for the advances made, see the Mercantile Law Amendment Act, 1856 (c. 97), s. 5.

838. In determining the liability of bail the court will be governed by general principles, not by accidental circumstances accompanying the case. *The Harriett*, 1 W. Rob. 197; 6 Jur. 197; 1 N. of C. 327.

839. In investigating the liability of bail the principle of law which the Court of Admiralty would take for its guidance was the same as that which applies in cases of principal and surety; and in applying this principle the court would be governed by the same rules which prevail in the courts of law and equity, and if a court of equity would relieve, though a court of law could not, this court would consider it to be its duty to afford relief, as exercising a jurisdiction equitable as well as legal. *Ibid.*

840. Sureties are only bound to the extent of the obligation expressed in their bond, and not beyond its plain and obvious meaning. *Ibid.* 1 W. Rob. 192.

841. When bail has been given, the decree of the court cannot be extended as to the bail beyond what they, who are strangers to the cause, have voluntarily

made themselves responsible for. *The Volant*, 1 W. Rob. 388.

842. The liability of the bail is founded on the personal responsibility of the owner, and restricted thereto. *The John Dunn*, 1 W. Rob. 161.

843. Claimants in subsequent actions can have no title to recover against bail in the first action, or to participate in any funds which such bail might bring into the registry in discharge of their liabilities as bail. *The Saracen*, 2 W. Rob. 457; 10 Jur. 398. See also *The Wild Ranger*, 2 N. R. 402; *The Baldur*, 4th Nov. 1853.

844. In a cause of damage the bail, having by the usual bond bound themselves to pay what should be adjudged by the court with the expenses, cannot (on the damage being pronounced for, with an order of reference to the registrar and merchants) be called upon to pay a sum fixed by private settlement and agreement between the parties, though in acts of court, as the amount of the damage in lieu of the reference to the registrar and merchants; nor can they either be called upon for the payment of the costs in such cause, separate and distinct from an adjudication for damages. Motion for attachment against the bail in both respects rejected. *The Harriett*, 1 W. Rob. 182; 6 Jur. 197; 1 N. of C. 327.

845. In a cause of damage the bail is only liable to the extent of the value of the ship and freight (then the extent of owner's liability), and not for the full amount of the damage done, even though, as in the present case, bail may have been given for a sum beyond the value of the ship and freight. *The Duchesse de Brabant*, Swabey, 264; 30 L. T. 22; 6 W. R. 329; *The Richmond*, 3 Hagg. 431; *The Mary Caroline*, 3 W. Rob. 105; 12

called *beneficium ordinis*, by which he could force the creditor first to sue the principal, and *beneficium cedendarum actionum*, that of obliging the creditor to assign to him on being paid, to enable him to sue a fellow-surety. Minors could not be sureties, nor soldiers, nor women. The surety might pay before action brought. If the surety were in peril, he might sue before term of payment to be indemnified or discharged; if no personal security could be had the creditor might have a juratory caution from his debtor. 1 Browns's Civil and Adm. Law, p. 362.

(294) In case of default the bail and principal might be imprisoned. 1 Rol. Abr. 531;

Godb. 193, 260; 2 Chitty's Gen. Prac. 536.

(295) As to proceedings at law or in equity by surety against his principal for indemnification or exoneration, see Smith's Mercantile Law (9th ed.), p. 472; Smith's Leading Cases (8th ed.), vol. 1. p. 164.

(296) The practices of Courts of Admiralty does not admit of a surrender of the principal in exoneration of bail. *Care v. Bullus*, 1 Abb. Adm. 555. [AMERICAN.]

(297) The obligation of a surety in a stipulation given on release from attachment in Admiralty is limited to the sum named in the stipulation, and as surety he cannot be compelled to pay more than that amount. *Brown v. Burrows*, 2 Blatch. Ct. Ct. 340.

Jur. 945; 6 N. of C. 539; *The Mellona*, 3 W. Rob. 16; 12 Jur. 271; 6 N. of C. 62.

846. The owners of a vessel doing damage are responsible to the full extent of their statutory liability, whether it be more or less than the amount of bail taken. *The Mellona*, 3 W. Rob. 22; 6 Notes of Cases, 72.

847. By the expressions in *The Mellona*, "supposing bail was given to an insufficient amount, the court would raise it to the proper amount," the court did not mean that it was possible to compel the individuals giving bail to exceed the amount for which they had made themselves voluntarily responsible, but that the court would have a right to require further security from those who owned the vessel. *The Temiscouata*, 2 Spinks' Eccl. and Adm. Rep. 211.

848. *Quare*, is it not necessary to proceed against the principal in the first instance, before proceedings can be instituted against the bail? No such necessity, however, can arise where the principal is a bankrupt. *The Harriett*, 1 W. Rob. 193.

849. In a cause of bottomry bail was given generally for the ship and freight. The bond having been declared valid as to the ship, but invalid as to the freight, *held*, by the Privy Council, on appeal from the Admiralty Court, Ireland, that the bail was only liable to the extent of the value of the ship. *The Staffordshire*, L. R. 4 P. C. 194; 41 L. J. Adm. 49; 1 Asp. N.S. 101, 365.

18. Discharge.*

850. If a man become surety for another for a sum of money to be paid at a stipulated period, and the person to whom the money is due extends the time of payment without the knowledge or consent of the surety, that is, in the legal sense, a giving time, and the consequence

would be that the surety would be absolved from responsibility. Such a principle, however, cannot be applied to bonds given in the Court of Admiralty where no time is specified. Mere passive neglect or delay to move onward would not be such a giving time, for mere forbearance does not exonerate the bail, at least in the Court of Admiralty. Settling the amount of damage out of court is not a giving time in the strict legal acceptance of the term. *The Harriett*, 1 W. Rob. 195; 6 Jur. 197; 1 Notes of Cases, 327.

851. Acts of the adverse party, which might by possibility have prejudiced the bail, entitle the bail to be discharged. It is not necessary to inquire whether any prejudice has actually occurred. *Quare*, if any alteration whatever is made in the contract, or the mode of executing it, is not the responsibility of the bail discharged? *Ibid.* 1 W. Rob. 198; 6 Jur. 197; 1 Notes of Cases, 327.

852. In a cause of damage, in which a decree was obtained in favour of the party suing, and a reference to the registrar and merchants directed, the proctor of that party having agreed the amount of damage in acts of court with the adverse proctor without such reference, such acts *held* to estop both parties from further carrying out the decree of the court as regards the reference to the registrar and merchants, and the obligation of the bail being to pay what shall be adjudged by the court, and such agreement not being an adjudication by the court; *held*, further, that such acts enured to a release of the responsibility of the bail, and that such responsibility could not be again revived. Motion for attachment against bail rejected, and bail dismissed. *Ibid.*

853. A surety is not released from his bond by mere lapse of time, unless where payment was to have been made within

* (298) As after bail taken the *res* is released from the lien, the sureties cannot acquit themselves of their liability by surrendering the *res ipsa*. Coote's Eccl. and Adm. Prac. 90.

(299) As to the liability of sureties, and as to their discharge by giving time, or other circumstances, see Archbold's Practice (14th ed. by Chitty), vol. 2, pp. 1506 *et seq.*

(300) It has not been the modern practice of the court to permit the bail bond to be cancelled or delivered out of the registry. The decree of the court dismissing the bail is deemed

sufficient completely to discharge their liability.

(301) In order to be discharged from a bail bond or stipulation given in Admiralty, the party must establish fraud, deceit, duress, illegality of consideration, or other matter such as at law, or in equity, would avoid a common money bond, or would entitle a party to be relieved from it. *Cure v. Bullus*, 1 Abb. Adm. 555. [AMERICAN.]

(302) See also as to discharge of bail, *Murphy v. Roberts*, 30 Ala. 232. [AMERICAN.]

a limited time, and the time has been extended without his consent or knowledge. *The Vreede*, 1 Dodson, 7.

854. The mere passive inactivity of the person to whom a guarantee is given, his neglect to call the principal debtor to account in a reasonable time, and to enforce payment against him, does not discharge the surety; and the rule at law and in equity is the same, that there must be some positive act done by him to the prejudice of the surety, or such degree of negligence as to imply connivance and amount to fraud. *Black v. Ottoman Bank*, 8 Jur. N.S. 801; 10 W. R. 871; 6 L. T. N.S. 763.

855. To discharge a surety for the due performance of duties, there must be on the part of the obligee an act of connivance or gross negligence amounting to wilful shutting of the eyes to the fraud, or something approximating to it. *Dawson v. Laves*, 23 L. J. Chanc. 434.

856. A surety is bound only to the letter of his engagement; if that engagement is altered in a single line, no matter whether it be altered for the benefit of the surety, or whether the alteration be innocently made, the surety has a right to say the contract is no longer that for which he engaged to be the surety, and he is entitled to be relieved from the engagement. *Blest v. Brown*, 8 Jur. N.S. 602; 10 W. R. 569; 6 L. T. N.S. 620.

857. Liabilities of sureties once cancelled cannot be revived. *The Harriett*, 1 W. Rob. 204; 6 Jur. 197; 1 Notes of Cases, 327.

858. *Held*, in 1734, that bankruptcy did not discharge a surety in the Admiralty. *Russen & Co. v. Colby*, cited in *The Vreede*, 1 Dodson, 2.

859. The payment into court of the amount awarded and costs would enure to a discharge of the bail. *The North American*, May 10, 1860.

860. Bail given to answer adjudication as to portion of cargo being Danish property cannot, on the cargo being afterwards condemned to the Crown in consequence of war with Denmark, be compelled to make payment at the suit of the Crown under that condemnation; such condemnation having no connection with the question to answer which the bail was given. Bail dismissed. *The Nied Elwin*, 1 Dodson, 50.

861. Bail given to the actual captor to answer adjudication of property which was, from the locality of the capture, subsequently condemned to the King in his

office of Admiralty; *held*, to be answerable to the Admiralty. *Ibid.* 53.

862. Bail given to answer adjudication as to cargo captured and which had been afterwards condemned, decreed to be enforced, on application to that effect nine years after condemnation. An attachment decreed against one of the sureties (the owner and the other surety having become bankrupt) at the suit of the captor, he having shown the *laches* not to have arisen with himself, but with the agent, who, under the circumstances, could not be rendered liable. *The Vreede*, *Ibid.* 8.

863. By the civil law, sureties are not discharged from their liability to satisfy the creditor, though the benefit of a hypothec of the debtor is lost by the *laches* of the creditor to enforce his demands. *Macdonald v. Bell*, 1 Moore, P. C. C. 15.

864. Motion to dismiss bail and cancel the bail bonds, in pursuance of an agreement between the litigant parties, granted. *The Partridge*, 1 Hagg. 82.

865. Defendants and their bail dismissed. Subsequent motion by plaintiffs for costs. *Held*, that the court had no power to grant the motion after such dismissal, though the case was one in which costs would have been decreed if asked for in due time. *The Countess of Levin and Melville*, 5 L. T. N.S. 290.

866. Bail given to answer judgment in a cause where the appearance is under protest will not be discharged on account of a change in the indorsement on the writ of summons, which renders the protest of no avail. *The City of Mecca* (C. A.), 4 Asp. 412; 44 L. T. 750.

867. Where two or more sureties contract severally, the creditor does not break the contract with one of them by releasing the other. The contract remaining entire, the surety, in order to escape liability, must show an existing right to contribution from his co-surety which has been taken away or injuriously affected by his release. *Ward v. The National Bank of New Zealand*, L. R. 8 App. Cas. 755.

868. As to the discharge of sureties in Equity, see Tudor's Leading Cases in Equity, 5th ed. vol. ii. pp. 992 *et seq.*

19. Commission paid to Sureties.

869. Commission paid for bail in a salvage action will not be allowed as part of the damages recoverable by the salvaged vessel in an action of damage. *The*

British Commerce, 9 P. D. 128; 53 L. J. P. D. 72. Though, in certain circumstances, they may be recovered as damages in other actions. *The Numida*, *The Colingrove*, 10 P. D. 158; 54 L. J. Adm. 78; 34 W. R. 156; 5 Asp. 335.

20. By Mortgagee.

870. A mortgagee, though entitled to intervene in an action by material men, is not entitled to the release of the vessel on merely giving bail for payment of the claim if held to take priority of the mortgage. *The Acacia*, 4 Asp. 226. [IRISH.]

See also No. 806, p. 1546.

21. In Actions of Bottomry.*

871. Bottomry action against ship, cargo, and freight. The owners of cargo gave bail in £350. The proceedings were *in pœnam*. The bond was pronounced for, the ship sold, and the proceeds of sale, and the freight, were brought into the registry. The deficiency on the ship's account for the bond and proctor's costs amounted to £409: 9s. 2d., which the owners of the cargo were called upon to pay. They tendered £350, the amount of bail. Motion against them to pay the balance rejected. *Held*, that though the master may become *ex necessitate* agent of the owners of the cargo, he can render them liable only to the value of the cargo; and any liability beyond can arise only from the owners' conduct in contesting the bond; that the amount of their bail is the limit of their liability, as regards the bond; that the bail might have been taken to the full value of the cargo; and that its not having been so taken was the act of the bondholder himself, who must

abide by the consequence. *Nostra Senora Del Carmine*, 1 Spinks' Eccl. and Adm. Rep. 303; 18 Jur. 730.

22. In Actions of Collision.†

See Nos. 818—820, 835, 844—846, 862, *supra*.

23. In Actions of Possession.

872. In consequence of the representations which have been made in numerous instances of the damages sustained by ships arrested in causes of possession lying for a length of time in harbour, the court has recently been induced to release them on bail. *The Peggy*, anno 1809, 4 C. Rob. 306.

872*a*. In actions of possession ship ordered to be released on bail in double the value of the property. *The St. John Baptist*, alias *The Dove*, anno 1698, Marsden's Rep. p. 279; *Oulton v. The Richard and William*, anno 1713; *Alstrom v. Maartens*, 1727; *Dinwiddie v. Bravo*, 1730; *The Peggy*, 1802; *Ibid.* 280; *Alstrom v. Houthuyn*; *The Success*, 1727; *Ibid.* 310; *The Eaglebright*, alias *The Benjamin*, 1730; *The Dolphin*, 1740; *Ibid.*; so also in action of possession of cargo. *Ibid.* p. 307.

873. Ship released on ordinary bail in an action of possession. *The Evangelistria*, 46 L. J. Adm. 1; 25 W. R. 255.†

874. In a cause of possession, bail is taken as a substitute for the substance of the ship, but does not include a stipulation for any earnings that may be made. Application for bail to cover intermediate earnings refused. *The Peggy*, 4 C. Rob. 304.

875. In a cause of possession promoted

giving bail in a larger sum. *The Duchesse de Brabant*, Swabey, 264; *The Amalia*, Br. & Lush. 157; 8 L. T. N.S. 805.

† (305) Prior to this case it was doubted whether by the modern practice bail could be substituted for the *res* in causes of possession, though this often occasioned a great loss on the successful party, arising from the deterioration of his ship from lying up so many months, as well as the expense of possession fees.

(306) In the American courts it is the practice, though not of very ancient date, to release the ship on bail in causes of possession. Dunlap's Adm. Prac. (2nd ed.), 165; *The Alligator*, 1 Gall. 145. [AMERICAN.]

(307) Bail in such cases is given for the value of the ship, and her intermediate earnings. *Ibid.*

* (303) In causes of bottomry when the action is brought against ship, freight, and cargo, and bail to the full amount of the action is given on behalf of ship and freight, and the ship and freight are ample to meet the amount of the bond and costs, and no prior liens on the ship appear, the cargo may be entitled to be released without bail; as, according to the law as to bottomry, cargo cannot be called to contribute until after ship and freight are exhausted, and as in such a case the ship and freight would be sufficient to meet the demand, and bail had been given for the full amount, there could be no claim on the cargo.

† (304) In actions of damage by collision bail may be given for the amount of the statutory liability of the defendant, and a sum to carry interest and costs, but the defendants do not increase their liability by

by the original owner against a purchaser under a sale by the master abroad, possession decreed (*semble*, by consent) to the original owner, on giving bail to answer the other party's interest, and to cover freight, &c., while in his possession. Application of the purchaser to release the ship to him on bail, refused. *The Partridge*, 1 Hagg. 81.

876. A mortgagee was in possession of a vessel which he had offered for sale. The vessel was arrested by the owner. The court ordered a release of the vessel to the mortgagee with leave to sell on his giving bail to bring in the proceeds of sale. *The Plym*, cited in Coote's Adm. Prac. 24.

877. In a cause of possession brought by the owner of 43 sixty-fourth shares against the master, owning the remaining shares, *held*, that the latter was not entitled to retain possession of the vessel upon an offer of security to the amount of his co-owner's interest. *The Kent*, 1 Lushington, 495.

24. *In Actions of Restraint.**

878. The bail bond should be in the amount of the value of the shares of the dissentient owners, either as agreed between the parties or appraised by the court, for the safe return of the ship to a particular port. *The Robert Dickinson*, 10 P. D. 15.

878a. Additions proposed by the plaintiffs to a bond in this form rejected. *Ibid.*

878b. It has never been the practice to give bond in double the value. *Ibid.* †

879. *Quare*, whether prior to *The Robert Dickinson*, *supra*, such bonds should not be framed as for the vessel's return to any, not a particular, port of this country. *The Margaret*, 2 Hagg. 278; and see *The Regalia*, 5 Asp. 338; 51 L. T. 904, and No. 2249, *infra*.

879a. Prior to the practice as laid down in *The Robert Dickinson*, *supra*, if the vessel was lost, the court, before enforcing payment of the bond, would direct a reference to the registrar and merchants to inquire into, and report upon, the value of the plaintiff's share in the vessel. *The Pactolus*, 8th Dec. 1863.

880. As to actions of restraint, *i. e.*, by minor part owners against major part owners to obtain security for the safe

return of the vessel from a voyage of which the minor part owners disapprove, see tit. OWNERS, Pt. VIII. c. 3, p. 1418.

880a. As to the effect of the taking of such bail on the right of the minority owners to share in the profits of the voyage, *Ibid.* p. 1419.

25. *In Actions of Salvage.*

(a) *Generally.*

881. Where a vessel had been found to blame in a cause of collision, her owners were allowed to intervene in a salvage suit instituted against the injured vessel, and the court gave them the conduct of the defence on their furnishing bail in lieu of that furnished by the vessel proceeded against. *The Diana*, 2 Asp. N.S. 366; 31 L. T. N.S. 203.

(b) *Before Receivers of Wreck.*

882. For provisions authorizing receivers of wreck detaining property for salvage to take security for salvage due, and in cases in England in which the salvage claim exceeds £200, for the High Court of Admiralty of England to determine any question that may arise as to the amount of the security to be given or the sufficiency of the sureties, and to enforce payment of the bond or security in the same manner as if bail had been given in that court, see the M. S. Act, 1854 (c. 104), s. 468.

882a. Prior to the M. S. Act, 1854 (c. 104), a receiver of Admiralty droits, on notice from the agent of salvors, detained a ship, which he afterwards released, taking as security a bond from two persons as sureties for the master and owners of the ship and cargo, submitting themselves to the jurisdiction of the Court of Admiralty to answer such salvage as should be decreed by that court; and unless they should do so, consenting that execution should issue against them, their heirs, executors, and administrators, goods and chattels, whosoever the same should be found. *Held*, that the Court of Admiralty had no jurisdiction to enforce the bond. *The Bagnall*, 3 W. Rob. 118; 12 Jur. 1008; 6 Notes of Cases, 542.

26. *By Plaintiff in Actions of Wages. †*

883. A master instituted a suit in a

* (308) In the affidavit to lead the warrant it is usual to set forth the value of the plaintiff's share in the vessel.

† (308a) *Semble*, except in actions of possession. See No. 872a, *supra*.

† (309) By the old practice the court, in

cause of wages and became insolvent. Application to allow his assignee to proceed in the suit without giving the usual security, he being permanently resident within the jurisdiction of the court, granted. *The John Cork*, 17 Jur. 306.

27. Under Provisions of the Foreign Enlistment Act.

884. Where a vessel is arrested under the provisions of the Foreign Enlistment Act, 1870, the court has power to admit her to bail with, and *semble* without the consent of the Crown. *The Gauntlet*, L. R. 3 A. & E. 319; 1 Asp. N.S. 45.

885. The Crown is not entitled to bail for a vessel arrested under the provisions of the Foreign Enlistment Act, 1870, to include costs. *Ibid.* 1 Asp. N.S. 45.

885a. Bail for a vessel arrested under

the provisions of the Foreign Enlistment Act, 1870, extends to the value of the ship and her equipment. *Ibid.**

28. To answer latent Demands.†

886. Monition granted against the obligors in a bond for latent demands at the suit of a seaman claiming the balance, after receiving a dividend on account of his wages out of the estate of the owner of the ship. *The Tecumseh*, 13 Jur. 68.

20. Release.

1. Generally.‡

887. Property arrested by warrant shall only be released under the authority of an instrument issued from the

causes of wages, required the plaintiff to find bail in one surety to the amount of £30.

(310) If, as usually happened, the seaman plaintiff was unable to comply with this regulation, he might, on filing an affidavit that he was unable to provide security, or to deposit £30 in the registry, be admitted to his juratory caution, *i. e.*, to become bail himself for the amount. *The Franz and Elize*, 5 L. T. N.S. 290; and see Cooke's Adm. Prac. p. 27; and *The Edwin*, 3 Hagg. 360.

(311) The usual bond by the master suing for wages having become inoperative by his death, the court directed that another bond be given by the administrator of the deceased master continuing the action. *The Sylphide*, 10th May, 1860.

(312) On a claim for a balance of wages amounting to £11:15s., the court intimated that the sum in dispute was so small that it was very desirable it should be settled out of court by the counsel on either side, and directed that if the action should proceed, the seaman should give not merely his juratory caution, but bail to answer costs. *The Edwin*, 3 Hagg. 366.

(313) As to the admission of parties to their juratory caution in the American Admiralty Courts, see Dunlap's Adm. Prac. (2nd ed.), 152, 160. [AMERICAN.]

(314) Now that the Court of Admiralty is a division of the Supreme Court, it is apprehended that, unless in exceptional cases, it will allow plaintiffs in wages actions to bring their actions like other plaintiffs without any such requisition, though subject, as in other cases, to security for costs when the plaintiff is out of the jurisdiction.

* (315) The bail bond in this case was conditioned that the defendants should restore the vessel, and her equipments, or the value thereof, as if ordered by the court to do so,

† (316) By the statutes of 13 Rich. 2, c. 5; 15 Rich. 2, c. 3; and 2 Hen. 4, c. 11, all now repealed, certain responsibilities attached to the judge and registrar personally in respect of Admiralty proceedings.

(317) Therefore, and as, according to the old practice, in proceedings by default a party might come in within a year and a day from the decree, and establish a better claim to the property, it seems to have been required of a plaintiff who had obtained a decree in default proceedings, to enable him to obtain the funds in court before the expiration of a year and a day, to give bond to the Queen, to restore the money pronounced to be due to him by the court and paid out to him in case any other person should come in for his interest therein, and establish a superior claim, and to save harmless the judge, registrar, marshal, and all officers of the court.

(318) This form of bond was commonly known as a bond to answer latent demands.

(319) By the Rules and Orders of 1859, now annulled, bail for latent demands was not to be required on payment of money out of the registry, unless the judge otherwise ordered, and now that the Admiralty Division is a branch of the Supreme Court, and possessed therefore of larger powers, the practice has been superseded altogether.

(320) See also as to such bonds, *The Saracen*, 10 Jur. 397; 2 W. Rob. 453; 4 Notes of Cases, 503; 11 Jur. 255; 6 Moore, P. C. C. 75; *The Tecumseh*, 6 Notes of Cases, 668; 13 Jur. 68; Clerke's Prax. tit. 35; Abb. Sh. (10th ed.), 542.

‡ (321) By the old practice the instrument of release was called a supersedeas when the warrant was executed by the plaintiff's proctor or agent, and a release when the warrant was executed by the marshal.

registry, to be called a release. Ord. XXIX. r. 1, No. 322.

888. A solicitor, at whose instance any property has been arrested, may, before an appearance has been entered, obtain the release thereof by filing a notice that he withdraws the warrant. *Ibid.* r. 2, No. 323.

889. A solicitor may obtain the release of any property by paying into the registry the sum in respect of which the action has been commenced. *Ibid.* r. 3, No. 324.

890. A solicitor, who shall have filed a bail bond in the sum in respect of which the action has been commenced, or paid such sum into the registry, and, if the action be one of salvage, shall have also filed an affidavit as to the value of the property arrested, shall be entitled to a release for the same, unless there be a caveat against the release thereof outstanding in the "Caveat Release Book." *Ibid.* r. 6, No. 327.

891. The Court of Chancery appointed certain persons receivers of a freight, which was subsequently, but before they had obtained possession, arrested in a suit in the Court of Admiralty. Upon motion, in the latter court, on behalf of the receivers, release decreed, but without costs. *The Bloomer*, 11 L. T. N.S. 46.

892. Two arrestments having been laid on a foreign vessel, one to found jurisdiction against the owner, the other proceeding on a summons raised against him, *held*, that a charter-party entered into by the master on the same day when the arrestment to found jurisdiction was used, did not entitle the charterer to obtain a recall of the arrestment to enable the vessel to proceed on her voyage. *Thorburn v. De Wolf*, Dec. 18, 1847; 10 D. 310; 20 Jur. 105. [SCOTCH.]

893. Ship arrested in a cause of damage and bail given to an amount equaling the value of ship and freight (before the limitation of liability was altered to a percentage on the tonnage). Subsequent actions and ship arrested therein. Motion for release without giving bail in those actions rejected. *The William Hutt*, 1 Lushington, 26; *The Tuscarora*, 6th Feb. 1858; and see *The Clara*, Swabey,

7; 2 Jur. N.S. 46; 26 L. T. 165; *The Wild Ranger*, 7 L. T. N.S. 725.

894. The ship G. having come into collision with the ship W., the owner of the ship W. caused the ship G. to be arrested, but, in consideration of the insurers agreeing to pay to the owners the amount of damage which the ship W. had received by the collision, her owners released the ship G. from arrest. *Held*, that the word damage included not only the damage to the ship itself, but consequential damage, such as loss of freight and costs in the Admiralty Court. *Heard v. Holman*, 11 Jur. N.S. 544; 34 L. J. C. P. 239.

2. Freight and Cargo.*

895. Cargo, arrested for freight only, may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the registry, or by satisfying the judge that it has already been paid. Ord. XXIX. r. 4, No. 325. And see *The Victor*, 1 Lushington, 72.

896. When a *prima facie* title to freight is shown by the defendant, a ship arrested for freight is entitled to be released on bail. When cargo is arrested for freight the owners of the cargo as debtors of freight can only obtain a release of the cargo by paying the freight into court. *The Ringdove*, Swabey, 311.

897. A vessel was arrested in a cause of collision. At the time of the collision she had a cargo on board; at the time of the arrest a portion only of such cargo remained on board. The vessel and cargo belonged to the same owner. *Held*, on motion for release of the cargo remaining on board, that the freight due upon the whole cargo must be paid into court before the portion on board at the time of arrest could be released. *The Roecliff*, L. R. 2 A. & E. 363.

See also Pt. I. c. 9, s. 5, p. 1482.

3. Mode of obtaining—†

898. For form of release, see R. S. C. 1883, App. A., Pt. 2, No. 16.

* (322) Cargo cannot be arrested *quâ* cargo in actions for damage by collision, see c. 11, s. 5, p. 1519. When cargo is arrested in actions for salvage, it can only be released on bail being given to answer the action in such proportion of the amount of action as the value of the cargo bears to the values of

ship and freight.

† (323) On filing in the Admiralty registry (after twenty-four hours' notice of bail), the bail papers, and also in salvage actions, the affidavit or affidavits of value of the salvaged property, file notice for release with a fifteen shillings stamp impressed on the notice, and

899. The release, when obtained, shall be left with a notice in the registry by the solicitor taking out the same, who shall also at the same time pay all costs, charges and expenses attending the care and custody of the property whilst under arrest; and the property shall thereupon be released. Ord. XXIX. r. 7, No. 328.

4. Possession Fees.

900. Where property has been seized by a commissioned ship-of-war, either public or private, it is *de facto* under the joint locks of the King and the captor, although in the legal possession of the marshal, according to the tenor of his writ. In the case of a *droit*, where the King in his office of Admiralty is the captor, it is under his locks alone. If an order come for the release of that property, either on bail or for restitution, it is to be released to the party claiming, at the expense of the party who releases. The King's ship, the private ship-of-war, and the Admiralty, are equally bound to execute such an order, which is performed in the two former cases by the agent of the captors, and in the case of the Admiralty by their officer, the marshal. The expense of the release is no charge on the cargo, unless the captor's expenses are decreed as a charge on the cargo. *The Rendsborg*, 6 C. Rob. 174.

901. Before the present practice was established of the marshal arresting the property in all cases, it was *held* that when the marshal arrested he had the security of the ship for his costs of arrest, including possession or detention fees, but that when the warrant was executed by the plaintiff's agent the plaintiff was respon-

sible for possession fees. *The North American*, Swabey, 467.

902. Claim of asserted salvors pronounced against but without costs. Motion to condemn them in the expenses of possession of the vessel which had remained in the custody of the marshal during the cause, the parties not being able to agree the values, rejected. The court intimated that had the owners given in their affidavit of value, and applied for a release, and the vessel had then been detained by the asserted salvors, it would have granted the motion. *The India*, 1 W. Rob. 410.

902a. The court, having pronounced that it had no jurisdiction in a cause of damage to cargo, ordered, on motion, the marshal's fees of possession to be paid by the plaintiff. *The Ironsides*, 1 Lushington, 467. See also *The Kate*, 10 Jur. N.S. 444; *The Louisa*, 9 Jur. N.S. 676. See further as to possession fees.

See also tit. Costs, c. 50, p. 417.

5. Obedience to—

903. The court will issue an attachment against salvors seeking to retain possession of a vessel after the production to them of the release. When a release issues, instantaneous obedience must be paid to it. *The Towan*, 8 Jur. 222.

6. Caveat Release.

904. As to the entry of caveat release in lieu of issuing warrant in subsequent actions, or to give time for enquiries as to bail, and the consequences of unnecessarily delaying releases thereby, see Pt. I. p. 1477.

hand in at the same time a form of release, forms of which, as required, are obtainable at Room No. 420. Deliver the release (which is prepared while the clerk waits) at the marshal's office, and instruct him to release the property by filling up and leaving at his office a *præcipe* for such purpose. This *præcipe* is on a printed form which may be obtained at Room No. 420. The *præcipe* bears no stamp, but the release must have an impressed stamp of £1 thereon as the marshal's fee for executing the release. See R. S. C. Fees, 1884, No. 94.

(323a) The possession fees due to the marshal for the custody of the property must be paid at the same time by stamps impressed on the release, whether the plaintiff or defendant files the release.

(324) The marshal's charge, payable in

stamps, for keeping possession of a ship, with or without cargo, or of cargo without ship, are 5s. a day, including the cost of a ship-keeper if required. See S. C. Fees, 1884, No. 98.

(324a) If a release be obtained by consent of the opposing party the consent must be filed.

(325) To obtain a release upon payment of money into the registry the bank receipt for the money must be filed.

(326) For form of notice or *præcipe* for release, see R. S. C. 1883, App. A., Part 2, No. 15. The notice should be duly headed in the cause, and intimate that the solicitor filing it applies for release. It must be dated and signed by the practitioner or his clerk for him.

7. Mortgagee's Right to—.

905. A mortgagee, although entitled to intervene in a cause *in rem* of equipment and repairs, is not entitled to claim a release of the vessel upon giving bail conditioned to pay the claim of the material men, in the event of its being held to have priority over the mortgage. *The Aecia*, 4 Asp. 226; 41 L. T. 564. (Adm. Ir.)

906. In an action against ship and freight for master's wages, the mortgagee in possession is entitled to a release of the ship upon giving bail, notwithstanding the master had become liable in respect of bills of exchange, drawn upon the charterers for the ship's use. *The Ringdove*, Swabey, 311. But see tit. MASTERS, Nos. 105—108a, p. 1126.

906a. So also in an action between part owners for an account and a sale of the ship, a mortgagee holding a mortgage which a sale of the ship would not satisfy, is entitled, on intervening, to a release of the ship and costs. *The Eastern Belle*, 33 L. T. 214.

8. In Actions of Possession.

See Nos. 872—877, p. 1554.

9. In Actions of Salvage.

907. In an action of salvage the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released, unless the court or a judge shall otherwise order. Ord. XXIX. r. 5, No. 326.*

907a. The owners filed an affidavit in the Admiralty Court as to the values of the ship and cargo salvaged, and the salvors did not impeach those values in that court. The Judicial Committee refused to allow affidavits impeaching the values to be brought in by the salvors on the hearing of the appeal. *The Endeavour*, 6 Moore, P. C. C. 338; 6 Notes of Cases, 56.

908. In a suit for salvage of derelict cargo the court, on motion, allowed a portion of the cargo to be released on a

moiety of the value, and a sum to answer costs being paid in. *R. M. Mills*, No. 243, July 19, 1860.

908a. Salvors are entitled to have the value of ship, freight, and cargo stated. Where the freight is included in the cargo they have it *de facto*. *The Charlotte*, 5 Notes of Cases, 6.

909. The values are generally conclusive, even though the ship was afterwards sold by decree of the court for a larger sum, *The Betsey*, 5 C. Rob. 296; or for a smaller sum, *The Hanna*, 37 L. T. N.S. 364; 3 Asp. N.S. 503.

909a. The values as shown by the affidavit were erroneously stated, owing to a *bond fide* mistake, and were on application allowed to be altered after decree made, and the salvage reduced accordingly. *The James Armstrong*, L. R. 4 A. & E. 380; 33 L. T. N.S. 390.

910. Part of the cargo of a ship having been salvaged, the salvors delivered it into the custody of the receiver of wreck. The owners thereupon, in compliance with the provisions of the M. S. Act, 1854 (c. 104), s. 468, gave bond to the receiver, who released the property, but upon the owners attempting to take possession of it the salvors forcibly prevented them, and brought a salvage action in the Court of Admiralty, in which the property was arrested. Release decreed, with costs against the salvors. *The Lady Katherine Barham*, 5 L. T. N.S. 693.

911. A vessel and cargo having been arrested in a suit for salvage and bail given, application of the owners to have the ship and cargo released, supported by affidavits that they were daily deteriorating in value, and opposed by the salvors, who prayed a commission of appraisal, granted by the court under the circumstances of there being an action for damage to the ship by collision also pending at the suit of the owners, and on the condition of the owners making statements of the value in acts of court, and

* (327) If the plaintiffs are dissatisfied with the values, as disclosed in the affidavit filed by the defendants, they may apply for an appraisal of the property by the marshal, but they will be condemned in the costs of the appraisal, unless the appraised value largely exceeds that stated in the affidavit. See as to such costs tit. COSTS, c. 38, s. 13, p. 411.

(328) As to appraisal by marshal or receiver of wreck, see c. 44, s. 7, Nos. 2079 *et seq.*

(329) The valuation of a re-captured ship, in order to ascertain the rate of salvage, may be determined by the policy of insurance, if there be no reason to suspect she has been undervalued, and the same rule may be observed as to goods where there are policies upon them; if that, however, should not be the case, the salvors have a right to insist upon proof of the real value, which may be given by the production of the merchant's invoices. 1 Park on Ins. 327; *Beawes' Lex Merc.* 147.

undertaking to afford every facility to the salvors in another valuation, should the value be further impeached. *The Glasgow Packet*, 8 Jur. 67.

912. The security to be found under the M. S. Act, 1854 (c. 104), s. 468, to satisfy the claim of the owner, master, and crew of a vessel for services rendered, along with another vessel, to a ship in distress, should be one-third of the sixth part of the value of the ship and cargo alleged to be saved. *Otis v. Kidston*, 24 Sess. Cas. 419. [SCOTCH.]

21. Proceedings by and against Third Parties.

913. The court or a judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question. See Ord. XVI. r. 39, No. 161.

914. If a third party appears pursuant to the third-party notice, the defendant giving the notice may apply to the court or a judge for directions, and the court or judge, upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action, as the court or judge may direct; and, if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party. *Ibid.* r. 52, No. 174.

915. The court or a judge upon the hearing of the application mentioned in Rule 52, No. 914, *supra*, may, if it shall appear desirable to do so, give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the court or judge shall appear proper for having the question most conveniently determined, and as to

the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action. *Ibid.* r. 53, No. 175.

916. The court or a judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such directions as to costs as the justice of the case may require. *Ibid.* r. 54, No. 176.

917. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action. *Ibid.* r. 55, No. 177.

918. In an action of collision brought by a vessel at anchor against a vessel being towed the defendants served a third party notice on the owners of the tug claiming indemnity. On an application for directions under Ord. XVI. r. 21 (now r. 52, No. 174), the plaintiffs objected to the introduction of the third parties, and on its appearing probable that questions would arise between the defendants and the tug different from those between the plaintiffs and the defendants, and that the plaintiffs might be embarrassed, the court dismissed the third parties. *The Bianca*, 8 P. D. 91; 52 L. J. P. D. 56; 5 Asp. 60.

919. A collision took place between the vessels S. and C., the C. being at the time in tow of the steam-tug D. The owners of the S. commenced an action of damage against the C., alleging that the collision was caused by the negligence of the C. and her tug, or one of them. The owners of the C. obtained leave to issue a notice to D. claiming indemnity against her, and order made that the owners of the tug be at liberty to appear and defend and abide the decision of the court. At the hearing the owners of the D. appeared, but the owners of the C. did not. The court held, that the C. was alone to blame for the collision, and that her owners were not entitled to indemnity over against the owners of the D. *The Cartsburn*, 5 P. D. 35; 49 L. J. P. D. & A. 14; 28 W. R. 378. On appeal, held, that so much of the judgment of the court below as adjudged

that the owners of the C. were not entitled to indemnity over against the owners of the D. must be reversed. *Ibid.* 5 P. D. 59.

919a. Where a defendant claims to be entitled to indemnity over against a person not a party to the action, leave will not be given under Ord. XVI. r. 48, to serve a third party notice unless the claim is on a contract of indemnity. *Speller v. The Bristol Steam Navigation Co.*, 5 Asp. 228.

920. For form of order to discharge or vary an application by third party, see R. S. C. 1883, Appendix K., No. 14.

921. For provisions that, in case of the marriage, death, bankruptcy, or devolution of estate by operation of law of any party to a cause or matter, the court or a judge may order the husband, personal representative, trustee, or other successor in interest of such party to be made a party, see Ord. XVII. r. 2, No. 179.

922. And that after any similar or other event occurring after the commencement of any cause or matter and causing a change or transmission of interest or liability, an order may be obtained for making a new party, or making a present party a party in another capacity, and for continuing the proceedings against such other parties also, *Ibid.* r. 4, No. 181; and as to the service of such an order, *Ibid.* r. 5, No. 182.

923. For provisions that where any person under no disability, or none but coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter, is served with such order, he may apply to the court or a judge to discharge or vary it at any time within twelve days from the service thereof, *Ibid.* r. 6, No. 183.

924. And that where any such person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any such order, he may apply to the court or a judge to discharge or vary the order at any time within twelve days from the appointment of a guardian *ad litem* for such party, and that until such period of

twelve days has expired, the order has no force against him, *Ibid.* r. 7, No. 184.

See also c. 6, s. 6, p. 1500.

22. Proceedings by Default.

1. Generally.*

925. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following rules of this order, or under Ord. XV. r. 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be. Ord. XIII. r. 2, No. 102.

926. For provisions, where the writ of summons is indorsed for a liquidated demand, and the defendant fails, or all the defendants, if more than one, fail to appear, that the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, with interest at the rate specified (if any), or (if no rate be specified) at the rate of five per cent. per annum, to the date of the judgment, and costs, *Ibid.* r. 3, No. 103.

927. For provisions that where the writ of summons is indorsed for a liquidated demand, and there are several defendants, some of whom do and others do not appear to the writ, the plaintiff may enter final judgment against such as have not appeared, and issue execution against them without prejudice to his right to proceed against such as have appeared, *Ibid.* r. 4, No. 104.

928. So, also, where the writ is indorsed with a claim for detention of goods and pecuniary damages, or either of them, and as to a writ of inquiry to assess value or damages or the dispensing therewith, *Ibid.* rr. 5 and 6, Nos. 105—107.

929. Where judgment is entered pursuant to any of the preceding rules of this order, it shall be lawful for the court or a judge to set aside or vary such judgment upon such terms as may be just. *Ibid.* r. 10, No. 110.

930. Where a defendant fails to appear

* (330) As to proceedings in default of pleading in the Common Law Divisions, see Archbold's Practice (14th ed. by Chitty), vol. 1, p. 326.

(331) As to pleadings and documents filed in default, see Central Office Practice Rules, 1880—1882, in Wilson's Jud. Acts and Rules,

4th ed. p. 849; but such documents in default actions in Admiralty are filed in the registry of the Admiralty branch.

(331a) As to costs in the Queen's Bench in cases of judgment by default, see Order of the Masters of 31st January, 1884.

to a writ of summons issued out of a district registry, and the defendant had the option of entering an appearance either in the district registry or in the Central Office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to the defendant on the following morning, ought, in due course of post, to have reached him. Ord. XIII. r. 11, No. 111.

931. In all actions not by the rules of this order otherwise specially provided for, in case the party served with the writ, or in Admiralty actions *in rem* the defendant, does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and, if the writ is not specially indorsed under Ord. III. r. 6, of a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Ord. XV. *Ibid.* r. 12, No. 112.

932. When the proceedings are by default the court will view a doubtful point of jurisdiction less scrutinizingly than when the point is raised by a defendant. *The Afina Van Linge*, Swabey, 515.

2. Old Practice.*

3. Against Infants or Persons of Unsound Mind.

933. For provisions where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, for the plaintiff to apply for an order that a guardian be assigned to appear and defend the action, the application to be made after summons served, and six clear days' notice after the expi-

ration of the time allowed for appearance, see Ord. XIII. r. 1, No. 101.

4. For want of Statement of Claim or Defence.†

934. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the court or a judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the court or judge may, if no statement of claim shall have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as the court or judge shall think just. Ord. XXVII. r. 1, No. 294.

935. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs. *Ibid.* r. 2, No. 295.

936. And where there are several defendants, and one so makes default, the plaintiff may enter final judgment, and issue execution against him without prejudice to his right to proceed with his action against the other defendants. *Ibid.* r. 3, No. 296.

937. For provisions, where the plaintiff's claim is for detention of goods and pecuniary damages, or either, and the defendant or defendants make default as mentioned in Rule 2, that the plaintiff may enter an interlocutory judgment against him or them, and that a writ of inquiry shall issue to assess the value or damages, or both, as the case may be, or for otherwise ascertaining such value or damages, *Ibid.* r. 4, No. 297.

* (332) The old practice was to arrest the person and take bail for his appearing and answering in the suit, and pay what might be adjudged and the expenses. When this practice fell into disuse proceedings *in rem* were so generally adopted that the reports scarcely contain any mention of proceedings *in personam* by default.

(333) It seems, however, that when a monition issued against a party to appear, and he did not do so, he might be attached for contempt of court, or that proceedings might be prosecuted in his absence. See *The North American*, Swabey, 468; *The Heart of Oak*, 29 L. J. Adm. 78. Either course of procedure might be adopted in the Ecclesias-

tical Courts, whose practice, like that of the Admiralty, was based on the civil law.

(334) By the American practice, if the defendant makes default in appearance on the court-day on which the process against him is returnable, or on any other day assigned by the court, the pleadings are adjudged to be taken *pro confesso* against him, and the cause is proceeded with *ex parte*. See 2 Conkling's Adm. Prac. (2nd ed.), 178. [AMERICAN.]

(335) As to the old practice *in rem*, see notes 340—360, *infra*.

† (336) As to the proceedings under this order, see Wilson's Jud. Acts and Rules, 4th ed. pp. 287—292.

938. For provisions that where in any such action as in Rule 4 mentioned there are several defendants, if one or more so make default, the plaintiff may enter an interlocutory judgment against those so making default, and proceed with his action against the others; and for the value and amount of damages against the defendant making default being assessed at the same time with the trial of the action or issues therein against the other defendants, unless the court or a judge otherwise directs, *Ibid.* r. 5, No. 298.

939. For provisions that, where the plaintiff's claim is for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or such damages only, and any defendant makes default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and damages, or the damages only, and proceed as mentioned in Rules 4 and 5, *Ibid.* r. 6, No. 299.

940. For provisions that where the plaintiff's claim is for a debt or liquidated demand, the detention of goods and pecuniary damages, or for any of them, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's cause of action, the plaintiff may by leave enter judgment, final or interlocutory, as the case may be, for the part unanswered; if the unanswered part consists of a separate cause of action, or is severable from the rest: but where there is a counterclaim, execution on such judgment shall not issue without leave, *Ibid.* r. 9, No. 302.

941. In all other actions than those in the preceding rules of this order mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the court or a judge shall consider the plaintiff to be entitled to. *Ibid.* r. 11, No. 304.

942. For provisions that where in any such action as mentioned in Rule 11, *supra*, there are several defendants, and one so makes default, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or set it down against him when it is entered for trial, or set it down on motion for judgment against

the other defendants, *Ibid.* r. 12, No. 305.

5. For want of Reply or subsequent Pleading.

943. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue. *Ibid.* r. 13, No. 306.

6. For want of Delivery of Pleading in Issues.

944. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the court or a judge for such judgment, if any, as upon the pleadings he may appear to be entitled to; and the court or judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties. *Ibid.* r. 14, No. 307.

7. Setting aside of Judgment.

945. Any judgment by default, whether under this order or under any other of these rules, may be set aside by the court or a judge upon such terms as to costs or otherwise as such court may think fit. *Ibid.* r. 15, No. 308.

946. See as to this rule *Attwood v. Chichester*, 3 Q. B. D. 722, and *Watt v. Barnett*, 3 Q. B. D. 363.

8. In rem.

(a) Generally.

947. In all actions not by the rules of this order otherwise specially provided for, in case the party served with the writ, or in Admiralty actions *in rem* the defendant, does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and, if the writ is not specially indorsed under Ord. III. r. 6, of a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Ord. XV. Ord. XIII. r. 12, No. 112.

948. A plaintiff in an undefended bottomry action *in rem* must, before he can obtain judgment by default, file an affidavit of service in the registry as provided by Ord. XIII. r. 2, No. 102, and annex thereto the original writ. *The Eppos*, 5 Asp. 180.

948a. If a defendant in an action *in rem* does not appear the proper course is to verify the allegations in the statement of claim by affidavit, and set the action down on motion for judgment. *The Spero Expecto*, 5 Asp. 197; 49 L. T. 749; 32 W. R. 524.

949. The time runs from the service of the writ of summons, and not of the warrant of arrest. *The Marca*, 4 Asp. 57.

949a. In an action *in rem* a plaintiff before moving for judgment upon default of appearance must wait the ten days allowed for delivery of defence. See Ord. XIII. r. 12, No. 112; and Ord. XXI. r. 6, No. 239. *The Avenir*, 9 P. D. 84; 53 L. J. P. D. 63; 5 Asp. 218; 32 W. R. 755.

(b) *After Caveat Warrant and Non-appearance.*

See Pt. I. p. 1477.

(c) *Pleadings and Proofs.**

950. In default actions *in rem* evidence

may be given by affidavit. Ord. XXXVII. r. 2, No. 484.

(d) *Notice of Trial.*

951. The rule as to notice of trial, and the printing of evidence when taken by affidavit, does not apply to actions *in rem* by default in the Admiralty Division, unless otherwise ordered. Ord. XXXVIII. r. 30, No. 550.

951a. In default actions *in rem*, before the plaintiff can obtain judgment under Ord. XIII. r. 12, No. 112, notice of trial must have been filed in the registry. *The Avenir, supra.*

(e) *Printing.*

See No. 951, *supra.*

(f) *Hearing.†*

952. In Admiralty actions *in rem*, by default, if the judge is satisfied the plaintiff's claim is well founded, he may pronounce for it with or without a reference, and order the property to be appraised and sold, with or without previous notice, and the proceeds paid into court, or otherwise as he thinks just. See Ord. XIII. r. 13, No. 113.

See also No. 949, *supra.*

(g) *Old Practice.‡*

* (337) In proceedings *in rem* by default the plaintiff's solicitor files a statement of claim in manuscript, and affidavits also in manuscript, in verification of his case, and moves the court by counsel for judgment, and, if need be, for an order of appraisal and sale of the property.

† (338) By the modern practice, in actions by default the registrar takes down the judgment as made without prejudice to other actions in which other plaintiffs may be entitled to precedence, by reason of the nature of their claims, so that it is no longer necessary for plaintiffs in other actions to appear and apply that such rights may be reserved, as the plaintiff gains no advantage in this respect as *prior petens*.

(338a) In proceedings *in rem* by default the order for a commission of appraisal and sale is made at the same time that judgment is given in favour of the claim. By the old practice the decree of sale was made before the judgment, but this rather incongruous course is now transposed.

‡ (339) By the old practice when the proceedings were *in rem*, and after service and return of the warrant, under which all persons in general, interested in the property proceeded against, were cited to appear and

show cause, if no person appeared, the further proceedings taken to enforce the claim were styled as by default, or *in pœnam contumacie*, *i. e.* in pain of the contumacy of the parties interested in the property arrested, and cited by the service of warrant on the property, and making default in doing so.

(340) On the court day on which the warrant was made specially returnable, or on the first regular court day after the period allowed for the service had expired, the plaintiff's proctor returned it into court. The parties cited were then three times publicly called in court, and if no appearance were given by or for them, an order was obtained recording a default against them.

(340a) No step could be taken in proceedings *in pœnam* except upon one of the regularly-appointed sittings of the court for the despatch of general business.

(341) Four defaults in all upon four separate court days were obtained.

(341a) These four defaults were required in order to give parties interested in the *res*, and who might be resident at a distance, time to appear.

(342) On the same day that the fourth default was obtained, it was competent to the plaintiff to move the court, upon the proofs

(h) *Sale.*See c. 44, Nos. 2053 *et seq.*(i) *In District Registries.*

See c. 23, p. 1568.

filed by him, to sign a *primum decretum*, or first decree. The effect of the first decree was to put the plaintiff in legal possession of the *res*, as security for the discharge of his claim, subject to other lawful demands not brought forward, but which might be entitled to take precedence of it, and also subject to the owner's right to redeem it by appearing within a year, and paying the claim and costs.

(343) The owner of the *res* might appear at any time in the course of the proceedings by default, but before doing so his proctor was required to pay or undertake for the payment of the costs of the proceedings by default incurred through his previous non-appearance, and styled contumacy fees. See 2 Browne's Civil & Adm. Law, 405; Clerke's Prax. Cur. Adm. tit. 37, 38, and the reference to such fees in bonds to answer latent demands. *The Saracen*, 6 Moore, P. C. C. 66, n.

(344) The first decree was prepared by the plaintiff's proctor, settled by the registrar, engrossed on parchment, signed by one counsel and by the judge, and filed in the registry.

(345) Failing the owner's appearance, after the expiration of a year and a day, it would seem that the nude possession conferred by the first decree operated, in the Admiralty, to give the claimant a full possessory right and enjoyment over the *res* without any second decree, though, by the civil law, a second decree was necessary for that purpose. (See 2 Browne's Civil and Adm. Law, pp. 352, 403.) An application, however, could, after the year and a day, be made to the court for a sale, upon which the *res* would be sold, the amount due paid, and the balance retained in the registry until claimed.

(346) In default of any claim for such balance it would become a *droit* of Admiralty, and be payable accordingly.

(347) As, however, it was generally inconvenient to the claimant to wait the expiration of the year and a day; and as the *res* was during such time lying idle and unused, and therefore deteriorating in condition, and as, according to the adage quoted by Lord Tenterden, "Ships were built to plough the seas, and not to lie by the wall," the following course of proceeding was usually adopted, and was of some antiquity:—The court decreed, on the application of the plaintiff, a monition, called a "perishable monition," against all persons having any interest in the property to show cause why it should not be sold, and also a commission for the appraisalment of the property.

(348) The perishable monition was required to be served by the marshal on the Royal Exchange, London, as a place where "merchants most do congregato." It was served

and leaving by posting it up on the Exchange, and there by a copy affixed there.

(349) After the service and return of this monition, and the return of the commission of appraisalment, upon proof being furnished to the court by affidavit, that the *res* was deteriorating in value by remaining unused, a commission for the sale thereof was decreed. The commission was executed by the proctor, or his agent at the outports, who acted as commissioner, and engaged an auctioneer and sold the property. The proceeds of sale, less the expenses of sale, were paid into court, and an order of the judge obtained for payment of the amount found due, which was then paid to the plaintiff out of the proceeds of sale on his giving bail to return all or such part of the sum as might be necessary to answer any lawful demands which might, before the expiration of the year before mentioned, be brought forward, and found entitled to supersede his claim. This was called "Bail to answer latent demands."

(350) For the cases illustrating the old practice, see *The Exeter*, 1 C. Rob. 173; *The Friends*, Stuart's Vice-Adm. Rep. 73. [LOWER CANADA.] *The Conception*, 2 Hagg. 175; *The Sylvan*, *ibid.* 155. Clerke's Prax. Adm. 72, 81 *et seq.*; 2 Browne's Civil and Adm. Law (2nd ed.), 399; Coote's Adm. Prac. 102—112. *The Evangeline*, 2 L. T. N.S. 138; 5 Jur. N.S. 108. [IRISH.] *Reed v. Owen*, 9 Port. 180; Dunlap's Adm. Prac. (2nd ed.) 92. [AMERICAN.]

(351) This practice was superseded by that established under the Rules and Orders of Nov. 1859, now annulled by R. S. C. 1883, App. O.

(352) Which established the following practice: After twelve days from the filing of the warrant, if an appearance had not been entered, the proctor might, on filing in the registry a *præcipe*, take out a notice of sale, to be advertised by him in two or more public journals, appointed by the judge.

(353) These journals were *The Times*, *The Shipping and Mercantile Gazette*, and a local newspaper having the largest circulation at the place where the property was situate.

(354) After six days from the advertisement of the notice of sale in the journals, if an appearance had not been entered, the proctor filed in the registry an affidavit to the effect that the notices had been duly advertised, with copies of the journals annexed, and such proofs as might be necessary to establish the claim, and a notice of motion to have the property sold.

(355) If, when the cause came before the judge, he was satisfied that the claim was well founded, he ordered the property to be appraised and sold, and the proceeds paid into the registry.

(356) If there were two or more causes by

(j) *In Actions of Bottomry.*

953. Bottomry on ship, freight, and cargo. The property was arrested before the bond was due, in order to secure cargo, an affidavit having been filed that there was reasonable ground for apprehending the cargo would shortly be discharged. In proceedings by default, motion for first decree directed to stand over, on the ground that, though the property was arrested before bond due, the time for taking proceedings should be calculated from the time the bond became due. *San Jose Primeiro* (No. 22), 15th March, 1860. But see Pt. III. Nos. 2133—2137, p. 1677.

(k) *In Actions of Mortgage.**(l) *In Actions of Co-owners.*(aa) *Order of Sale.*

954. Motion on behalf of the owner of 16 sixty-fourth shares for decree of sale of ship under sect. 8 of Admiralty Court Act, 1861, granted, notice of application having been given to the owners of the other shares, and no appearance having been given for them. *The Albion*, No. 910, March 27, 1862. But see tit. OWNERS, Pt. VIII. p. 1424.

(m) *In Actions of Possession.†*

955. In causes of possession it is to be presumed that all those shareholders who do not apply are satisfied that the

possession of the vessel should not be altered. *The Valiant*, 1 W. Rob. 67.

956. The party in possession not having appeared, and the vessel having been sold by the court, the party was held to have acquiesced in being so dispossessed. *The Neptune*, 3 Hagg. 132.

957. In proceedings by default, possession of a ship, time having been allowed for an appearance by the defendant, decreed to the plaintiffs, on affidavits. *The Lagan*, otherwise *Mimax*, 3 Hagg. 418.

958. In a cause of possession, motion to decree possession to the executor of a moiety owner, refused; but an order made against the parties having the remaining interest, to appear and show cause. *The Egyptienne*, 1 Hagg. 346, n.

9. *Costs.*

See tit. COSTS, p. 350.

23. Proceedings in District Registries.

1. *Generally.‡*

959. For provisions for the establishment in the country of district registries of the Supreme Court, the seals of district registries, and the powers of district registrars, see the Supreme Court of Judicature Act, 1873 (c. 66), ss. 60—62.

960. For the list of district registries, including Liverpool, Manchester, Preston,

default pending against the same property, it was not necessary to take out a notice of sale in more than one of the causes; but if the proctor in the first cause did not, within eighteen days from the filing of the warrant in that cause, take out and advertise the notice of sale, the proctor in the second or any subsequent cause might take out and advertise the notice of sale, if he had filed in the registry a citation *in rem* in such second or subsequent cause.

(357) Within six days from the time when the proceeds had been paid into the registry the proctor in each cause, if he had not previously done so, filed his proofs in the registry, and had the cause placed on the list for hearing.

(358) For the cases illustrating this practice, see *The Union* (No. 36), 15th March, 1860; *Pierre et Marie* (No. 57), March 15, 1860; *The Bessy*, 4 W. R. 92.

(359) Prior to R. S. C. 1883, the Rules and Orders of 1859, in regard to proceedings by default, or where the defendant failed to deliver a defence within the proper time, were

in force in Admiralty actions *in rem*. *The Polymede*, 1 P. D. 121; 3 Asp. N.S. 124; 34 L. T. 367; *The Sfactoria*, 2 P. D. 3; 3 Asp. N.S. 271; 35 L. T. 431; 25 W. R. 62; *The Maria*, L. R. W. N. 1878, p. 236; 4 Asp. 57. But the Rules and Orders of 1859 are now annulled, see R. S. C. 1883, App. O.

(360) Certain Rules of 1871 of the then judge of the Admiralty Court (Sir R. Phillimore), as to printing in default actions *in rem*, were also in force down to the R. S. C. 1883, but are also annulled by App. O. of those rules. *Ibid*.

* (361) A mortgagee or owner claiming the balance of proceeds of sale must prove his title by affidavit, with office copy annexed of the Official Record of Transactions at the Custom House subsequent to registry.

† (362) The practice in actions of possession by default under the Rules and Orders of 1859, now annulled, was as stated in notes 352—354, *supra*.

‡ (363) As to proceedings in district registries, see Archbold's Practice, 14th ed. vol. 2, p. 1421, and Chitty's Forms, 12th ed. p. 734.

and Durham, see Order in Council of 12th August, 1875, in Wilson's Judicature Acts and Rules (4th ed.), pp. 813—815.

961. As to the district for each such district registry, *Ibid.*

962. Subject to rules of court, writs of summons for the commencement of actions in the High Court of Justice shall be issued by the district registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before a district registrar, and recorded in the district registry, in such manner as may be prescribed by rules of court; and all such other proceedings in any such action as may be prescribed by rules of court shall be taken, and, if necessary, may be recorded in the same district registry. See the Judicature Act, 1873 (c. 66), s. 64.

963. The court or judge of the division to which any cause or matter is assigned, may order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any district registrar, who shall then proceed to carry all such directions into effect in the manner prescribed; and where any such accounts or inquiries have been directed to be taken or made by any district registrar, his report in writing as to the result thereof may be acted upon by the court. *Ibid.* s. 66.

964. Where a cause or matter is proceeding in a district registry, all proceedings, except where by these rules it is otherwise provided, or the court or a judge shall otherwise order, shall be taken in the district registry, down to and including the entry of final judgment; and every final judgment and every order for an account, by reason of the default of the defendant, or by consent, shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in the Central Office. Ord. XXXV. r. 1, No. 401.

965. Where a cause or matter is proceeding in a district registry, all proceedings relating to the following matters, namely—(a) leave to enter judgments under Ord. XVI. rr. 50 and 51; (b) leave to issue or renew writs of execution; (c) examination of judgment debtors for garnishee purposes, or under Ord. XLII. r. 32; (d) garnishee orders; (e) charging orders *nisi*; shall, unless the court or a judge shall otherwise order, be taken in the district registry. *Ibid.* r. 5, No. 405.

966. No affidavit or record of the court shall be taken out of a district registry (except upon removal of the proceedings to London) without the order of a judge or of the district registrar, and no subpoena for the production of any such document shall be issued. *Ibid.* r. 22, No. 422.

967. No order made on a petition shall be passed until the original petition shall have been filed in the Central Office, or where the proceedings are taken in a district registry, in the district registry, and a note thereof made on the judgment or order by the proper officer. See Ord. LXI. r. 15, No. 908.

967a. As to the district registry of the Admiralty Division established at Liverpool, see tit. JURISDICTION, Pt. I. p. 674.

2. District Registrars.

See Pt. I. p. 1471.

3. Offices.

968. The offices of each district registrar of the High Court of Justice shall be open on every day and hour in the year on which the offices of the registrar of the county court of the place in which the district registry is situate are required to be kept open. Ord. LXIII. r. 7, No. 951.

969. The office of the district registry at Manchester shall not be open in any year on the five days next following Whit Monday. *Ibid.* r. 10, No. 954.

4. Forms.

970. The forms contained in the appendices shall, as far as they are applicable, be used in or for the purposes of district registries, with such variations as circumstances may require. Ord. XXXV. r. 24, No. 424.

971. For forms of writs of summons for issue from a district registry, see

R. S. C. 1883, App. A., Pt. 1, Nos. 3, 4, 7, 8.

972. For the like in Admiralty actions *in rem*, *Ibid.* No. 12.

973. For form of notice of writ from district registry in lieu of service to be given out of the jurisdiction, *Ibid.* No. 10.

5. Warrants and Caveat Warrants.

974. Where an action is proceeding in a district registry, the district registrar (unless required to act under Rule 18 of this Order) shall, before issuing a warrant for the arrest of the property, ascertain by telegraph, or otherwise, from the principal registry, whether or not any caveat has been entered against the issue of a warrant for the arrest thereof. Ord. XXIX. r. 13, No. 334.

6. Amendment of Writs.

975. Writs of summons issued out of a district registry cannot be amended by order or fiat of a master, unless the action has been removed to London by appearance or otherwise. No writ issued out of a district registry can be amended in the Central Office, unless the duplicate filed in the district registry has been previously received in the Central Office. If it becomes necessary to send to London (for amendment or otherwise) the copy writ filed in the district registry, authority may be given to send the copy writ to the Central Office by sealing a duplicate of the *præcipe* for appearance, which shall be transmitted to the district registrar by the solicitors concerned. See C. O. Prac. Rules, 1880—1882, in Wilson's Jud. Acts and Rules, 4th ed. p. 848.

7. Appearance.

See c. 13, s. 3, p. 1534.

8. As dependent on Appearance.

976. If a sole defendant appears, or all the defendants appear in the district registry, or if all the defendants who appear appear in the district registry and the others make default in appearance, then, subject to the power of removal in Ord. XXXV. rr. 13 to 16 provided, the action shall proceed in the district registry. Ord. XII. r. 6, No. 76.

9. Removal to London.

977. Whenever a defendant appears in London to a writ issued out of a district registry, or any proceedings are removed from the district registry to London, by notice under Rule 14 of this Order, or by order of the court or a judge, the district registrar shall transmit to the Central Office all original documents (if any) filed in the district registry, and a copy of all entries of the proceedings in the books of the district registry. Ord. XXXV. r. 20, No. 420.

See also c. 15, s. 3, p. 1537.

10. Removal from London.

978. If the defendant appears, or any of the defendants appear, in London the action shall proceed in London; provided that if the court or a judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such court or judge may order that the action may proceed in the district registry, notwithstanding the appearance in London. Ord. XII. r. 7, No. 77.

See also c. 15, s. 2, p. 1537.

11. By Default.*

12. Application to District Registrar.

979. Every application to a district registrar shall be made in the same manner in which applications at chambers are directed to be made by these rules. Ord. XXXV. r. 7, No. 407.

13. Appeal or Reference from District Registrar to Judge.

980. If any matter appears to the district registrar proper for the decision of a judge, the registrar may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit. *Ibid.* r. 8, No. 408.

981. Any person affected by any order, finding, or decision of a district registrar may appeal to a judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent. Such appeal shall be by way of indorse-

* (364) Proceedings by default, whether *in rem* or *in personam*, may be taken in the

district registry like similar proceedings in London.

ment on the summons by the registrar at the request of any party, or by notice in writing to attend before the judge without a fresh summons within six days after the party complaining has notice of the order, finding, or decision complained of, or such further time as may be allowed by a judge or the registrar. *Ibid.* r. 9, No. 409.

982. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a judge or the registrar. *Ibid.* r. 10, No. 410.

14. Filing of Documents.

983. Where a cause or matter is proceeding in a district registry all pleadings and other documents required to be filed shall be filed in the district registry. *Ibid.* r. 19, No. 419.

15. Entries of Judgments.

984. Where the writ of summons issues out of a district registry, and the plaintiff is entitled to enter interlocutory judgment under any of the Rules of Ord. XIII., or where the cause or matter is proceeding in the district registry and the plaintiff is entitled to enter interlocutory judgment under any of the rules of Ord. XXVII., in either case such interlocutory judgment, and when damages shall have been assessed final judgment, shall be entered in the district registry, unless the court or a judge shall otherwise order. *Ibid.* r. 2, No. 402.

984a. Where a cause or matter is proceeding in a district registry, and the judgment or any other order therein is directed to be entered in the Central Office, the same shall be so entered, and an office copy of every such judgment or order shall be transmitted to the district registry to be filed with the proceedings in the action. *Ibid.* r. 3, No. 403.

16. References.

See c. 40, Nos. 1954 *et seq.*

17. Writs of Execution.

985. Where a cause or matter is proceeding in a district registry, all writs of execution for enforcing any judgment or order therein, and all summonses under the Debtors Act, 1869, shall issue from the district registry, unless the court or a judge shall otherwise direct. *Ibid.* r. 4, No. 404.

18. Taxation of Costs.

See tit. Costs, c. 27, s. 6, p. 382.

19. Funds in Court.

986. The Supreme Court Funds Rules, 1884, do not apply in district registries to funds in court. See R. S. C. F. R. 1884, No. 111.

20. Fees and Stamps.

987. As to the fees in the Liverpool and Manchester District Registries, including those on sales in the Admiralty Division, being taken in stamps, see Order of 24th October, 1877, in Wilson's Jud. Acts and Rules, 4th ed. p. 788.

24. Interlocutory Proceedings.

1. Generally.

988. As to caveat warrants and caveat releases, see Pt. I. c. 6, p. 1477, and as to proceedings subsequent thereto, see Pt. II. c. 11, p. 1518; as to precedence of actions, see c. 5, p. 1497; as to third parties, see c. 6, s. 6, p. 1500; as to counter-claims, see c. 4, p. 1492; as to paupers, see c. 7, p. 1507; as to disclosure by plaintiff's solicitors, see c. 10, p. 1515; as to warrants, see c. 11, p. 1515; as to service of documents, see c. 12, p. 1524; as to appearance, see c. 13, p. 1532; as to transfer of actions, see c. 15, p. 1536; as to consolidation of actions, see c. 17, p. 1543; as to proceedings in such actions, see c. 18, p. 1544; as to bail, see c. 19, p. 1545; as to release, see c. 20, p. 1556; as to proceedings by and against third parties, see c. 21, p. 1560; as to proceedings by default, see c. 22, p. 1561; as to proceedings in district registry, see c. 23, p. 1566; as to abatement and revival, see c. 30, p. 1580; as to estoppel, see c. 31, p. 1581; as to tenders, see c. 32, p. 1586; as to preliminary acts, see c. 33, p. 1589; as to pleadings, see c. 34, p. 1590; as to proofs, see c. 35, p. 1616; as to view, see tit. EVIDENCE, p. 424; as to printing, see c. 37, p. 1459; as to references, see c. 40, p. 1460; as to arbitrations, see c. 42, *ibid.*; as to interpleaders, see c. 43, s. 32, p. 1461.

2. Amendment.

989. The court or a judge may at any time, and on such terms as to costs or otherwise as the court or judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings. Ord. XXVIII. r. 12, No. 320.

990. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on motion or summons without an appeal. Ord. XXVIII. r. 11, No. 319.

990a. The costs of and occasioned by any amendment made pursuant to Rules 2 and 3 of this Order shall be borne by the party making the same, unless the court or a judge shall otherwise order. *Ibid.* r. 13, No. 321.

991. The plaintiff in a cause of damage moved for leave to increase the amount in which the action was entered. The defendant opposed the motion, and the court rejected it in that form, but intimated that if the damages should be proved to exceed the amount of the action the court would, under the powers conferred on it by the 15th section of the Admiralty Court Act, 1861 (c. 10), issue an order against the owners to pay the surplus. *The Zephyr*, 14 L. T. N.S. 351. See also c. 4, s. 7, p. 1492.

992. As to amendment of action, *Ibid.* s. 9, p. 1494.

992a. As to amendment of writ of summons, see c. 8, s. 7, p. 1512.

993. As to amendment of pleadings or indorsement, see c. 34, s. 16, p. 1603.

3. Particulars of Demand.*

994. The party at whose instance particulars have been delivered under a judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time. Ord. XIX. r. 8, No. 204.

994a. Further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may, in all cases, be ordered

upon such terms as to costs and otherwise as may be just. *Ibid.* r. 7, No. 203.

994b. The rule as to giving particulars is the same in the Admiralty Division as in the Queen's Bench Division, and therefore, in an action of damage to cargo on board the defendant's vessel by reason of alleged defects in the vessel and negligence of the crew, the Court of Appeal ordered the plaintiff to give particulars of the defects and negligence alleged. *The Rory*, 7 P. D. C. A. 117; 51 L. J. P. D. 22; *Ibid.* C. A. 73; 4 Asp. 535; overruling *The Freedom*, L. R. 2 A. & E. 346; 38 L. J. Adm. 25; 3 Asp. 219, 261.

995. In an action for damage to cargo the defendants pleaded that the damage was occasioned by accidents and perils by the bill of lading excepted, and by causes for which the defendants by the terms thereof were not responsible. *Held*, that the defendants must give particulars of the accidents, perils, and causes which occasioned the damage. *The Hakon Adelstein*, 43 L. J. Adm. 9.

995a. Plaintiffs in a cause of damage to cargo ordered to furnish particulars as to certain portions of their claim, in order that the defendant might be put in a position to admit liability and pay into court. *The Wetterhorn*, 3 Asp. N.S. 168; 34 L. T. N.S. 587; 24 W. R. 324.

996. In a cause of damage by collision, where the plaintiff's vessel was totally lost, particulars of their claim ordered to be given. *The N. P. Neilsen*, 3 Asp. N.S. 169; 34 L. T. N.S. 588; 24 W. R. 324.

996a. For forms of orders for such particulars, see R. S. C. 1883, Appendix K, Nos. 12 and 13.

4. Security for Costs.†

997. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interroga-

* (364a) As to particulars of demand in the Queen's Bench Division, see Archbold's Practice, 14th ed. vol. 1, pp. 380 *et seq.*, and Chitty's Forms, 12th ed. p. 213.

† (365) Application for security for costs should be made on summons. Such security is, notwithstanding Ord. LXV. r. 2, No. 982, given in the Admiralty Division, like ordinary bail, and the bail bond is the same, ex-

cept that the words "so far as regards costs," are substituted for the words "with costs" in the bail bond.

(365a) As to the mode of proceeding to obtain security for costs in the Queen's Bench Division, see Wilson's Jud. Acts and Rules, 4th ed. p. 531, and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 395.

tories, or take any other proceeding in the cause or matter. Ord. LXIV. r. 6, No. 966.

998. See also tit. Costrs, c. 19, pp. 363—369; and as to amount of such security, *Ibid.* p. 363.

999. As to security for costs on application to answer interrogatories, see tit. Costrs, c. 19, p. 363; and *ibid.* in Addenda.

999a. As to dismissal of causes for delay in giving security for costs, see Nos. 1091, 1092, *infra*; and tit. Costrs, p. 364.

5. *Inquiries.*

1000. The court or a judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries to be made, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. Ord. XXXIII. r. 2, No. 381.

1001. In an action for necessities, on motion for judgment, opposed on the ground that the sum sued for was in respect of matters covered by a contract, and applying that an enquiry might be directed under Ord. XXXIII., order for enquiry directed accordingly; *semble* to the registrar and merchants. *The Sully*, 48 L. J. Adm. 56.

6. *Accounts under Directions.*

(a) *Generally.**

1002. The court or a judge may, at any stage of the proceedings in a cause or matter, direct any necessary accounts to be taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. Ord. XXXIII. r. 2, No. 381.

1003. The court or a judge may, either by the judgment or order directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account, the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of

the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised. *Ibid.* r. 3, No. 382.

1004. As to each direction being numbered so that each distinct account and inquiry may be designated by a number, and as to the form of such judgment or order for account, *Ibid.* r. 7, No. 386.

1005. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose. *Ibid.* r. 8, No. 387.

1006. As to the provisions of Rules 14, 15, 19, 34, 35, 36 and 37 of this Order, applying to an inquiry under a writ of inquiry, see Ord. XXXVI. r. 56, No. 480.

1007. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of the assessment. *Ibid.* r. 58, No. 482.

(b) *The Account.*

1008. Where any account is directed to be taken, the accounting party, unless the court or a judge shall otherwise direct, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be left in the judge's chambers, or with the official or other referee, as the case may be. Ord. XXXIII. r. 4, No. 383.

1008a. But the judge may direct the vouchers to be produced at the offices of the solicitor of the accounting party, or at any other convenient place, and that only such items as may be contested or surcharged shall be brought before the judge in chambers. *Ibid.* r. 4a of 1885.

(c) *The Surcharge.*

1009. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged, and the particulars thereof in a short and succinct manner. *Ibid.* r. 5, No. 384.

(d) *Proceedings in Case of Delay.*

1010. For provisions in the event of undue delay in the prosecution of any

* (366) As to such accounts, see Wilson's Jud. Acts and Rules, 4th ed. p. 321.

(366a) Accounts cannot be taken in a dis-

trict registry, except in pursuance of an order under this section. *Ibid.*

accounts or inquiries, or in any other proceedings under any judgment or order, that the court or judge may require the party to explain the delay, and thereupon make such order with regard to expediting the proceedings or the conduct, or stay thereof, and as to costs as the circumstances of the case require, see Ord. XXXIII. r. 9, No. 388.

7. Solicitors' Agreements.*

1011. Any agreement in writing between the solicitors in Admiralty actions dated and signed by the solicitors of both parties, may, if the Admiralty registrar think it reasonable and such as the judge would under the circumstances allow, be filed, and shall thereupon become an order of court, and have the same effect as if such order had been made by the judge in person. Ord. LII. r. 23, No. 718.

1012. The value of ship and freight may be settled by agreement between the proctors (*semble* duly filed), in which case both parties are bound by their own act and consent. *The Mellona*, 3 W. Rob. 23; 6 Notes of Cases, 69.

1013. A settlement of the cause by agreement will release the bail. *The Harriet*, 1 W. Rob. 195; 6 Jur. 197; 1 Notes of Cases, 327.

1014. The Court of Admiralty would not take judicial cognizance of agreements between practitioners when such agreements did not appear in orders of courts. *The Saracen*, 10 Jur. 398; 4 Notes of Cases, 511; and see *The Manchester*, 1 W. Rob. 94; *The Mellona*, 3 Rob. 25; 12 Jur. 274; 6 Notes of Cases, 72.

1015. An interview for the settlement of a claim is best conducted by the practitioners of the parties in person. Preliminary negotiations, especially in causes of wages, are entitled to the peculiar protection of the court. There is no necessity to state at such interviews that they are without prejudice, the *res gesta* sufficiently indicate it. *The Frederick*, 1 Hagg. 220.

1016. At a meeting for amicable arrangement of claims, where the parties are personally produced for the purpose of agreement and to prevent litigation, a disclosure of all facts tending to a just conclusion should be made, and facts, without which a knowledge of the real justice is unattainable, should not be suppressed. Parties should attend such a meeting in a spirit of equitable adjustment. *Ibid.* 223.

1017. A negotiation and settlement with a party for whom a proctor had appeared, without intimation to that proctor, is irregular and improper. *The Haidee*, 1 Notes of Cases, 599; see also *The Araminta*, Swabey, 81.

1018. In a cause of salvage a negotiation and settlement with certain of the salvors, unknown to their proctor, and certain offers in the nature of a tender to the others of them, in satisfaction of their claims, *held* to be no legal settlement or tender, and overruled accordingly with costs. *The Haidee*, 1 Notes of Cases, 600.

8. Special Case.

(a) Generally.†

1019. The parties to any cause or matter may concur in stating the questions of

* (367) The form of agreement is as follows [set out number and title of cause]: We, the undersigned, the solicitors for the plaintiffs and defendants in this cause, hereby agree that [set forth matter of agreement]. Dated this day of , 1886.

(367a) This agreement is signed by the solicitors on both sides, each describing himself as solicitor for plaintiff or defendant.

(368) It is then filed by one of the solicitors, and an adhesive stamp of 5s. is affixed by him on the usual minute on filing it. There is no settled practice as to which solicitor should prepare and file the agreement.

(368a) In causes of salvage, agreements as to values of the salvaged property are usually prepared and filed by the defendant's solicitor.

† (369) The application under Ord. XXXIV. r. 2, No. 190, should be by summons, to show cause why the facts should not be stated in a special case, and the applicant should

have an affidavit showing that no facts are in dispute in the action. The order may be made any time after the defendant has appeared, and before the delivery of a statement of claim. See Roscoe's Admiralty Practice, 2nd ed. p. 216, and cases there cited.

(369a) For an order of the judge of the Admiralty (anno 1678), for the preparation of a special case in a question of construction of statutes to be laid before the common law judges, see *Re v. De la Val*, Marsden's Rep. p. 248.

(370) As to special cases in the Queen's Bench Division see Archbold's Practice (14th ed. by Chitty), vol. 2, p. 1343.

(371) On motion or summons, the original affidavits and documents connected with the application are sent to the judge by the registry officials without any notice for that purpose by the practitioners.

law arising therein in the form of a special case for the opinion of the court. Ord. XXXIV. r. 1, No. 389.

1020. If it appear to the court or a judge that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the court, either by special case or in such other manner as the court or judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed. *Ibid.* r. 2, No. 390.

1021. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the court to decide the questions raised thereby. *Ibid.* r. 1, No. 389.

1021a. This order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto. *Ibid.* r. 7, No. 395.

1022. For form of special case, see *The Two Ellens*, L. R. 3 A. & E. 345; 41 L. J. Adm. 33.

1022a. For a special case stated by the registrar on a reference, see *The John Bellamy*, L. R. 3 A. & E. 129; 39 L. J. Adm. 28.

(b) *Entry for Argument.*

1023. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No 25 in Appendix G. Ord. XXXIV. r. 5, No. 393.

1024. As to the setting down and entering for argument of a special case where a married woman, infant, or person of unsound mind is a party, *Ibid.* rr. 4 and 5, Nos. 392 and 393.

(c) *Agreement for Payment of Money and Costs.*

1025. The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that, on the judgment of the court being given in the affirmative or negative of the questions of law raised

by the special case, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal. *Ibid.* r. 6, No. 394.

(d) *Signatures and Filing.*

1026. Every special case shall be signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. *Ibid.* r. 3, No. 391.

(e) *Printing.*

1027. Every special case shall be printed by the plaintiff. *Ibid.*

(f) *Copies for Judges.*

1028. Three printed copies of the special case for the use of the judges shall be left therewith. *Ibid.* and r. 9 of 1885.

(g) *Hearing.*

1029. Upon the argument of such case the court and the parties shall be at liberty to refer to the whole contents of such documents, and the court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. Ord. XXXIV. r. 1, No. 389.

9. *Motions.*

(a) *Generally.**

1030. Where by these rules any application is authorized to be made to the court or a judge, such application, if made to a divisional court or to a judge in court, shall be made by motion. Ord. LII. r. 1, No. 696.

1031. In general no motion is to be made without previous notice to the parties affected thereby. But the court or a judge, if satisfied that the delay might entail serious mischief, may make an order *ex parte* upon terms, and the party

* (371a) As to motions in the Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty), vol. 2, pp. 1378 *et seq.*

affected may afterwards move to set it aside. Ord. LII. r. 3, No. 698.

1032. A party appearing and consenting to a motion, by which he would not be prejudiced, will not be allowed his costs of doing so. *The Achilles*, 1 Asp. N.S. 165; 25 L. T. N.S. 605; *The Albion*, 6 L. T. N.S. 166.*

1033. As to motions or applications for a rule *nisi* or order to show cause, see Ord. LII. rr. 2 and 3, Nos. 697, 698.

1033a. As to motions for transfer of actions, see c. 15, p. 1536.

See also Nos. 1058, 1060, 1061, p. 1576.

(b) *Notice of—*

1034. In Admiralty actions notice of motion together with the affidavits (if any) in support thereof, shall be filed in the registry three days at least before the hearing of the motion, unless leave shall be given to the contrary; and a copy of the notice of motion and of the affidavits (if any) shall be served on the adverse solicitor before the originals are filed. Ord. LII. r. 10, No. 705.

1035. Every notice of motion to set aside, remit, or enforce an award, or for attachment, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion. *Ibid.* r. 4, No. 699.

1036. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose. *Ibid.* r. 8, No. 703.

1037. The plaintiff may, by leave of the court or a judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant. *Ibid.* r. 9, No. 704.

See also No. 1047, *infra*.

10. *Summons for Directions.*

1038. In every cause or matter one

general summons for directions may be taken out at any time by any party with respect to the following matters and proceedings: particulars of claim, defence or reply, statement of special case, discovery (including interrogatories), commissions and examinations of witnesses, mode of trial (including proceedings in lieu of demurrer, trial on motion for judgment, and reference), place of trial, and any other matter or proceeding in the cause or matter previous to trial. Ord. XXX. r. 1, No. 340.

1039. Such summons for directions shall be a summons returnable in not less than four days, in the Form No. 3 in Appendix K., with such variations as circumstances may require, and shall be addressed to and served upon all such parties to the cause or matter as may be affected thereby. The applicant shall, so far as practicable, include in the summons all or as many of the above-mentioned matters and proceedings as, having regard to the nature of the cause or matter, can conveniently be dealt with by the order and directions of the court or judge. Upon the hearing of the summons, any party to whom the summons is addressed shall be at liberty to apply for any order or directions as to any of the above-mentioned matters or proceedings which he may desire, and thereupon, after giving notice to such parties (if any) as the court or judge may direct, any order may be made, and all necessary directions given, as to all or any of such matters and proceedings as may be just, whether applied for or not: such order shall be in the Form No. 4 in Appendix K., with such variations as circumstances may require. *Ibid.* r. 2, No. 341.

1040. If, upon any other application as to any of the above-mentioned matters or proceedings, it shall appear to the court or judge that the application is one that could and ought to have been included in or made upon the general summons for directions, such application shall be granted only at the costs of the party making the same. *Ibid.* r. 3, No. 342.

1040a. For forms of summons for directions and order thereon, see R. S. C. 1883, App. K. Nos. 3, 4.

* (372) He should communicate the fact that he consents to the opposite solicitor, and will be allowed to charge for doing so.

(372a) The stamp on the summons is 15s., being 10s. for the summons and 5s. for the

order. It is an adhesive stamp. As to such summonses in the Queen's Bench Division, see Archbold's Practice, 14th ed. vol. 1, p. 335, and Chitty's Forms, 12th ed. p. 189.

11. *Summons.*

See next chapter.

12. *Judgment under Ord. XIV.*

1041. For provisions that where the defendant appears to a writ of summons specially indorsed under Ord. III. r. 6, the plaintiff may, on affidavit verifying the cause of action and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply to a judge for liberty to enter final judgment for the amount so indorsed, with interest (if any) and costs; and that the judge may, unless he is satisfied that the defendants or defendant have a good defence to the action on the merits, or that the facts are sufficient to entitle them or him to defend the whole or part of the claim, make an order against all, some, or one of the defendants for all or part of the claim, empowering the plaintiff to enter judgment accordingly, unconditionally, or upon terms as to security, time, or mode of trial or otherwise, and for further provisions thereon, see Ord. XIV.

13. *Costs.*

See tit. Costs, c. 2, p. 347.

25. *Summons.*

1. *Generally.**

1042. Every application at chambers not made *ex parte* shall be made by summons. Ord. LIV. r. 1, No. 734.

1043. Every application for payment or transfer out of court made *ex parte*, and every other application made *ex parte* in which the judge or proper officer shall think fit so to require, shall be made by summons. *Ibid.* r. 2, No. 735.

1044. A summons shall be addressed to all the persons on whom it is to be served. *Ibid.* r. 10, No. 743.

1045. In every cause or matter where any party thereto makes any application at chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the court or judge; and upon the hearing of such application

it shall be lawful for the court or judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the judge thinks fit, be adjourned from chambers into court, or from court into chambers. *Ibid.* r. 9, No. 742.

1046. In all cases of applications originating in chambers, a summons shall be prepared by the applicant or his solicitor, and shall be sealed in Admiralty actions in the Admiralty registry, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave at the Admiralty registry a copy thereof, which shall be filed, and stamped in the manner required by law. *Ibid.* r. 11, No. 744.

1047. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion. Ord. LXX. r. 3, No. 1039.

2. *Powers of Registrar.*

1048. In the Admiralty Division a registrar may transact all such business and exercise all such authority and jurisdiction in respect of the same, as under the acts or these rules may be transacted or exercised by a judge at chambers, except in respect of the following proceedings and matters; that is to say,—(a) all matters relating to criminal proceedings, or to the liberty of the subject; (b) granting leave for service out of the jurisdiction of a writ, or notice of a writ of summons; (c) the removal of actions from one division or judge to another division or judge; (d) the settlement of issues, except by consent; (e) inspection and other orders under Ord. L. rr. 1 to 5; (f) appeals from district registrars; (g) prohibitions; (h) injunctions and other orders under sub-s. 8 of s. 25 of the principal act; (i) awarding of costs, other than the costs of or relating to any proceeding before the registrar, and other than any costs which by these rules, or by the order of the court or a judge, he is authorized to award; (k) reviewing taxation of costs; (l) orders absolute for charging stocks, funds, annuities, or share of dividends, or annual

* (373) As to summonses and orders in the Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty), vol. 2, pp.

1401 *et seq.*, and Rules 25—29 of Ord. LIV. Nos. 758—762.

proceeds thereof; (m) acknowledgments of married women. See Ord. LIV. r. 12, No. 745.

3. Forms.

1049. For form of summons and order thereon (general forms), see R. S. C. 1883, App. K. Nos. 1 and 2.

1050. For form of order for time, *Ibid.* No. 5.

1051. For form of order dismissing summons (generally), *Ibid.* No. 57.

4. Originating Summons.

1052. See c. 9, s. 1, p. 1514.

5. For Directions.

1053. As to summons for directions, see c. 24, s. 10, p. 1574.

6. Service.

1054. See c. 12, s. 15, p. 1531.

7. Alteration.

1055. Summonses shall not be altered after they are sealed except upon application at chambers. Ord. LIV. r. 3, No. 736.

8. Proofs.

1056. All affidavits which have been previously made and read in court upon any proceeding in a cause or matter may be used before the judge in chambers. Ord. XXXVIII. r. 21, No. 541.

1057. All accounts, copies, and papers left at chambers, shall be written upon foolscap paper, bookwise, unless the nature of the document renders it impracticable. Ord. LXVI. r. 2, No. 1004.

9. Hearing.

1058. If on the hearing of a motion or other application the court or a judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the court or judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the court or judge may think fit to impose. Ord. LII. r. 6, No. 701.

1059. When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood

as dismissed with costs. Ord. LXX. r. 4, No. 1040.

1060. Where any party appears upon any application or proceeding in court or at chambers in which he is not interested, or upon which, according to the practice of the court, he ought not to attend, he is not to be allowed any costs of such appearance unless the court or judge shall expressly direct such costs to be allowed. Ord. LXV. r. 27, No. 1002, sub-r. 23.

10. Adjournment of Hearing.

1061. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the court or judge shall think fit. Ord. LII. r. 7, No. 702.

1062. Where matters in respect of which summonses have been issued are not disposed of upon the return of the summonses, the parties shall attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter. Ord. LIV. r. 8, No. 741.

1063. Any application in chambers by summons or otherwise may be adjourned from chambers into court. *Ibid.* r. 9, No. 742.

11. Hearing in Default of Attendance.

1064. Where any of the parties to a summons fail to attend, whether upon the return of the summons, or at any time appointed for the consideration or further consideration of the matter, the judge may proceed *ex parte*, if, considering the nature of the case, he think it expedient so to do; no affidavit of non-attendance shall be required or allowed, but the judge may require such evidence of service as he may think just. *Ibid.* r. 5, No. 738.

1065. Where a proceeding in chambers fails by reason of the non-attendance of any party, and the judge does not think it expedient to proceed *ex parte*, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally. *Ibid.* r. 7, No. 740.

12. Rehearing of, after Order by Default.

1066. Where the judge has proceeded *ex parte*, such proceeding shall not in any manner be reconsidered in the judge's

chambers, unless the judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the judge, who may fix the same at the time, and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just. *Ibid.* r. 6, No. 739.

13. *Appeal from Judge in Chambers.*

1067. Every order by a judge of the High Court in chambers, except orders by consent of parties or as to costs by law left to his discretion, may be set aside or discharged on notice, by any divisional court, or by the judge in court, according to the practice of the division to which the cause or matter in which the order is made is assigned. See the Supreme Court of Judicature Act, 1873 (c. 66), s. 50.

14. *Costs.*

1068. As to costs of summons, see tit. *Costs*, c. 2, p. 347.

1068*a*. As to costs in connection with attendance at judges' chambers, see tit. *Costs*, c. 28, p. 385.

26. *Subpoenas.*

See c. 35, p. 1630.

27. *Notices or Præcipes.*

1. *Generally.**

1069. All notices required by these rules shall be in writing, unless expressly authorized by the court or a judge to be given orally. Ord. LXVI. r. 1, No. 1003.

1069*a*. Every instrument under the seal of the court, and prepared in the Admiralty registry, shall be issued on a notice filed by the solicitor applying for the same, and shall bear date on the day on which it was issued. Ord. LXVII. r. 10, No. 1021.

1070. As to notice to the proper officer of the assignment of an action to a particular division of the court, see Ord. V. r. 14, No. 36.

Of writ of summons out of the jurisdiction, see R. S. C. 1883, App. A. Nos. 9 and 10, and c. 8, p. 1511.

To third parties ordered to be made

parties to proceedings, the form, particulars, filing, and service thereof, see R. S. C. 1883, App. B. No. 1; and c. 6, p. 1500.

1071. As to notice or *præcipe* for warrant, see R. S. C. 1883, App. A. Pt. I. No. 15, and note 191, p. 1518.

As to *præcipe* for service by the marshal of any instrument *in rem* other than a warrant, see R. S. C. 1883, App. A. Pt. I. No. 16.

As to notice of withdrawal of warrant, see Ord. XXIX. r. 2, No. 323.

Of appearance, see No. 701, p. 1534.

Of removal of cause from district registry to London, No. 734, p. 1538.

As to *præcipe* for caveat warrant, see R. S. C. 1883, App. A. Pt. II. No. 18, and Pt. I. p. 1477.

For caveat release, *Ibid.* No. 17, and *Ibid.* p. 1477.

For caveat against payment of money out of court, see Pt. I. p. 1478.

To withdraw caveat, see R. S. C. 1883, App. A. Pt. II. No. 19, and *Ibid.* p. 1478.

As to notice of payment of money into court before delivery of defence, *Ibid.* App. B. No. 3; Ord. XXII. r. 4, No. 258; and *Ibid.* p. 1481.

Of acceptance of the money paid into court in satisfaction of the claim or cause of action, see Ord. XXII. r. 7, and for form thereof, R. S. C. 1883, App. B. No. 4.

As to notice of bail, see c. 19, p. 1547; and c. 12, p. 1531.

As to *præcipe* for release, see R. S. C. 1883, App. A. Pt. II. No. 15.

As to notice requiring statement of claim, see No. 1227, p. 1592.

As to notice limiting defence, *Ibid.* Pt. II. No. 3.

Of counterclaim, *Ibid.* App. B. No. 2.

Of motion, *Ibid.* No. 18, and c. 24, p. 1574.

Of intention to proceed after twelve-months' lapse, see No. 1128, p. 1583.

Of cross-examination of deponents to affidavits at trial, *Ibid.* No. 20; No. 1616, p. 1628; and c. 35, p. 1628.

To produce (general form), *Ibid.* No. 14; and *Ibid.* p. 1618.

To produce documents for inspection, see Ord. XXXI. rr. 14—17, Nos. 356—359; R. S. C. 1883, App. B. No. 9; and c. 35, p. 1618.

Assenting or objecting to inspection of

* (373*a*) The term notice seems to have been intended to be used instead of the term *P.*

præcipe, and is so used in the rules, but the term *præcipe* is retained in the forms.

documents, see R. S. C. 1883, App. B. No. 10.

To inspect documents, see Ord. XXXI. r. 17, No. 359, R. S. C. 1883, App. B. No. 11, and c. 35, p. 1617.

To admit facts, see R. S. C. 1883, App. B. No. 12, and c. 35, p. 1618.

Of admission of facts, *Ibid.* No. 13, and *Ibid.* p. 1618.

Of trial, see c. 38, s. 4, p. 1634.

Of trial in proceedings by default, c. 22, p. 1564.

Of hearing of reference, see c. 40, s. 10, p. 1653.

Of objection to report, *Ibid.* p. 1656.

Of motion for judgment, see c. 33, p. 1643.

As to *præcipe* for writs of execution, see c. 43, p. 1662.

As to notice for renewal of writ of execution, see R. S. C. 1883, App. B. No. 21; and *Ibid.* p. 1662.

For attachment and to return writ, see Ord. LII. r. 4, No. 699, and *Ibid.* pp. 1663, 1664.

As to *præcipe* for commission of appraisement and sale, see note 643a, p. 1668.

As to notice of appeal, see tit. APPEALS, p. 1.

2. *Service.*

See c. 12, ss. 12, 13, p. 1530; s. 17, p. 1531; and c. 39, s. 28, p. 1647.

3. *Of Action.**

1072. Where a notice of action is required the notice should not be construed with extreme strictness. As to what is or is not a proper notice of action, see *Union Steamship Co. of New Zealand v. Melbourne Harbour Commissioners*, 5 Asp. 222; 53 L. J. P. C. 59.

1072a. A letter merely stating that damage had been sustained for which the defendants would be held liable, is not a notice of action. *Ibid.*

See also No. 235, p. 1488.

28. **Discontinuance.†**

1. *Generally.*

1073. The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action

against all or any of the defendants or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by this matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the court or a judge, but the court or a judge may before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The court or a judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave. Ord. XXVI. r. 1, No. 290.

1074. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties. *Ibid.* r. 2, No. 291.

1075. Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, in case such respective costs are not paid within four days after taxation. *Ibid.* r. 3, No. 292.

1076. If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the court or a judge may, if they or he think fit, order a stay of such subsequent action, until such costs shall have been paid. *Ibid.* r. 4, No. 293.

1077. As to the effect on the counter-claim of notice of discontinuance of the principal action, see c. 4, s. 8, p. 1493.

1078. A letter from the plaintiff's solicitors to the defendant's solicitors in an action *in rem*, stating that they were instructed to proceed no further with the

* (374) As to notice of action, see Archbold's Practice (14th ed.), vol. 1, p. 206.

† (374a) As to discontinuance of action, *Ibid.* p. 337; and Chitty's Forms (12th ed.), p. 192.

action, is a sufficient notice of discontinuance, under Ord. XXIII. r. 1, which is similar to Ord. XXVI. r. 1, No. 290. *The Pommerania*, 4 P. D. 195; 48 L. J. P. D. 55.

1079. *Semble*, the owner of a ship may be sued if an action has been brought against the master and discontinued. *Priestly v. Fernie*, 11 Jur. N.S. 813; 34 L. J. Exch. 173; 13 W. R. 1089; 13 L. T. N.S. 208.

1080. The owner and master stand on the same ground as any other principal and agent in respect to this question. *Ibid.*

1081. For form of notice of discontinuance, see R. S. C. 1883, App. B. No. 19.

1082. As to the right of the defendant to prosecute his counter-claim, notwithstanding the discontinuance of the action by the plaintiff, see c. 4, p. 1493.

2. Costs.

1083. As to costs on discontinuance of action, see Ord. XXVI. rr. 1 and 4, Nos. 290—293.

1083a. For form of judgment for defendant's costs on discontinuance, see R. S. C. 1883, App. F. No. 14.

1084. If a plaintiff discontinue an action the defendant is entitled to his costs under Ord. XXIII. r. 1, now Ord. XXVI. r. 1, No. 290; and Ord. LV. r. 1, now Ord. LXV. r. 1, No. 976, does not in such a case leave the costs in the discretion of the court. *The St. Olaf*, 2 P. D. 113; 46 L. J. P. D. & A. 74; 3 Asp. N.S. 341.

1085. A second mortgagee of 32-64th shares instituted a suit under the 11th section of the Admiralty Court Act, 1861, and arrested the vessel. The mortgagee having discontinued, the court, on the application of the owner of the remaining shares (who was not mortgagor to the plaintiff), condemned the plaintiff in costs, but not in damages. *The Volant*, B. & L. 321.

1086. A salvaged vessel having been valued by the receiver of wreck under £1,000, the salvors instituted a suit in the sum of £2,500, and applied for an appraisal on the 18th December. On the 14th January following they formally declared that they proceeded no further in the suit. *Held*, that the salvors must be condemned in costs, and also in damages, from the 22nd December (by which time they might have ascertained

that the valuation of the receiver was correct) to the 14th January. *The Margaret Jane*, L. R. 2 A. & E. 345; 38 L. J. Adm. 38; 3 Asp. 296.

1087. A ship was mortgaged to the defendant to secure a sum exceeding £1,400; the mortgage was duly registered, and the defendant took possession of the ship and advertised her for sale. Before the sale the plaintiff, who held a mortgage on the ship, registered after that of the defendant, instituted an action against the ship to enforce his mortgage, and caused the ship to be arrested. The defendant, to obtain the release of the ship, paid £500 into court in lieu of bail. The ship was sold by the defendant, and the proceeds were insufficient to satisfy his mortgage. The plaintiff, when the cause was ripe for hearing, abandoned the action. Plaintiff condemned in costs, and interest on the £500 paid into court. *The Western Ocean*, L. R. 3 A. & E. 28.

1088. A salvage service took place on the high seas, and the case was heard by consent before two justices of the peace, who awarded £53. The salvors subsequently entered an action in the High Court of Admiralty, and arrested the vessel. The owners tendered the £53, which, after the vessel had been for some time under arrest, was accepted, and the action discontinued. *Held*, that the owners were entitled to costs and damages. *The Nautilus*, Swabey, 105; see also *The Gloria del Maria*, *ibid.* 106.

29. Dismissal.

1089. If the plaintiff does not give notice of trial within the time prescribed the defendant may do so, or may apply to the court or judge to dismiss the action for want of prosecution; and on the hearing of such application the court or judge may order the action to be dismissed accordingly, or make such other order, and on such terms as may seem just. See Ord. XXXVI. r. 12, No. 436.

1090. An application to dismiss for want of prosecution may be made either in chambers or to the court. *Evelyn v. Evelyn*, 13 Ch. D. 138.

1091. Plaintiffs were ordered to give security for costs. They neglected to do so for three months. On application of defendants, cause dismissed with costs. *The Peri*, No. 1387, 13th January, 1862; *The Dolphin*, No. 1104, 27th March, 1862.

1092. Cause dismissed with costs after

a similar delay of seven weeks. *The Marquis of Lorne*, No. 1958, 18th January, 1864.

1093. The dismissal of a suit for want of prosecution is analogous to a nonsuit. *The Flecha*, 1 Spinks' Eccl. and Adm. Rep. 439, n.

1094. Tender pronounced sufficient, and defendants and their bail dismissed, but no order made as to costs. *Held*, that though the case was one in which the plaintiff would have been entitled to costs, the court had no power to grant them after the defendants and their bail had been dismissed. *The Countess of Levis and Melville*, 5 L. T. N.S. 290; 1 Asp. 154.

1095. For form of order to dismiss for want of prosecution, see R. S. C. 1883, App. K. No. 15.

30. Abatement and Revival.

1. Generally.*

1096. For provisions that no cause or matter shall become abated by reason of the marriage, death or bankruptcy of any of the parties, if the cause of action survive or continue, nor become defective by the assignment, creation or devolution of any estate or title *pendente lite*; and that, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of issues of fact and the judgment, but that judgment may be entered, notwithstanding the death, see Ord. XVII. r. 1, No. 178.

1097. For provisions that in such case of marriage, death, bankruptcy, or devolution of estate by operation of law, the court or judge may, if necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice as therein prescribed, and make such order

for the disposal of the case and on such terms as may be just, *Ibid.* r. 2, No. 179.

1098. For provisions that in case of an assignment, creation, or devolution of any estate or title *pendente lite*, the case may be continued by or against the person to or upon whom such estate has come or devolved, *Ibid.* r. 3, No. 180.

1099. For provision that where, by reason of marriage, death, bankruptcy, or any other event occurring after the commencement of a case, and causing a change or transmission of interest or liability; or by reason of any person interested coming into existence, it is desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the court or judge, upon an allegation of such change, transmission of interest or liability, or new interest, *Ibid.* r. 4, No. 181.

1100. For provisions that the order so obtained shall, unless otherwise directed, be served on the party or parties, or their solicitors, and on each such new party, unless the applicant be himself the only new party, and that the order shall from such service, but subject to the next two rules, be binding on the persons so served, and that the persons not previously parties shall be bound to enter an appearance thereto in the same time and manner as if served with a writ of summons, *Ibid.* r. 5, No. 182.

1101. For provisions that where any person who is under no disability other than coverture, or under disability not being coverture, but having a guardian *ad litem* in the cause or matter, is served with such order, he may apply to the court or judge within twelve days from service thereof to discharge or vary such order, *Ibid.* r. 6, No. 183.

* (375) As to change of parties by death or otherwise, see Wilson's Judicature Acts and Rules, 4th ed. p. 238; and in actions in the Queen's Bench Division, Archbold's Practice (14th ed. by Chitty), vol. 2, pp. 1025 *et seq.*

(376) In the American Admiralty Courts the death of a party does not necessarily abate the suit. Actions for injuries to the person do not survive to or against the re-

presentatives of either party, but actions respecting property survive. See Dunlap's Adm. Practice, 2nd ed. p. 97. [AMERICAN.]

(377) If a party to an action dies pending a suit in this court, and the cause of action survives, no disadvantage accrues therefrom to either party. A suggestion of the fact, *apud acta*, removes the technical difficulty. *Newitt v. Clarke*, Olcott, Adm. 316. [AMERICAN.]

1102. For provisions that where any person under disability other than cover- ture, and not having such a guardian, is so served, he may apply within twelve days from the appointment of a guardian *ad litem* to him to have the order dis- charged or varied, and that until such period has expired the order shall have no force against him, *Ibid.* r. 7, No. 184.

1103. For provisions that where the plaintiff or defendant dies and the cause of action survives, but the person entitled to proceed fails to do so, the defendant may apply by summons to compel the plaintiff to proceed within such time as may be ordered; and in default, that judgment may be entered for the de- fendant, and if the plaintiff has died exe- cution may issue as provided by Ord. XLII. r. 23, *Ibid.* r. 8, No. 185.

1104. For provisions that in case of the cause becoming abated or of a change of interest as by this order provided for, the solicitor for the plaintiff shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the cause book, *Ibid.* r. 9, No. 186.

1105. Where any cause or matter shall have been standing for one year in the cause book marked as "abated," or stand- ing over generally, such cause or matter at the expiration of the year shall be struck out of the cause book. *Ibid.* r. 10, No. 187.

2. Pleading.

1106. No plea or defence shall be pleaded in abatement. See Ord. XXI. r. 20, No. 253.

3. In Bottomry Actions.

1107. A bottomry bond is a negotiable instrument, which may be transferred and put in issue by the person so acquiring it. But where such bond was put in suit originally on the part of a French mer- chant in 1792, suspended during a subse- quent war, not enforced on the recurrence of peace, and after an interval of twelve years attempted to be further prosecuted on the part of an English merchant, to whom it had been endorsed, the court would not allow it to be put in execution

under the original proceedings. *The Re-becca*, 5 C. Rob. 102.

4. In Wages Actions.

1108. A decree for wages, with costs to a mariner when deceased, may be renewed to his administrator. *The Prince George*, 3 Hagg. 382.

1109. Suit for wages by master, who died pending suit. The court allowed the suit to be carried on by the adminis- trator of the deceased master. *The Syl- phide*, May 10, 1860.

1110. Master instituted a cause of wages and afterwards became insolvent. The cause was allowed to be proceeded with by and in the name of the assignee. *The John Cock*, 17 Jur. 306.

5. Costs.

See tit. Cosrs, p. 350.

31. Estoppel.

1. Generally.*

1111. See, as to estoppel generally, *The Duchess of Kingston's case*, and the notes thereto in Smith's Leading Cases, 8th ed. vol. 2, p. 784.

1112. A party may be estopped by his pleading as to a matter of fact, but *quare* as to a question of law. *The Killarney*, 1 Lushington, 431.

1113. *Semble*, admission by pleading extends to matters of fact, but not of law. *The Peerless*, 1 Lushington, 103; 13 Moore, P. C. C. 488; 30 L. J. Adm. 89; 3 L. T. N.S. 126.

1114. The institution of a suit as a cause of necessities does not estop the plaintiff from afterwards pleading and proving that his claim is in respect of repairs, but the title of the cause must be amended. Leave to amend given. *The Skipwith*, 10 Jur. N.S. Adm. 445; 10 L. T. N.S. 43.

1115. An agent appropriating, in his accounts with his principal, sums re- ceived to the payment of specific items, is estopped from disputing the payment of

* (377a) The statutory bar imposed by the M. S. Act, 1854 (c. 104), s. 298, to the re- covery of damages by vessels infringing the rules as to steering and carrying lights im- posed by that statute, has been repealed by the M. S. Act Amendment Act, 1862 (c. 63), ss. 2 and 25. Section 29 of the last act con-

tained similar provisions, but was repealed by s. 33 of the M. S. Act, 1873 (c. 85). For cases under those repealed sections, see tit. COLLISION, p. 215, n.

(378) See now as to the statutory effect of breach of the Sea Collision Rules, tit. COL- LISION, *Ibid.* pp. 215 and 219.

those items. *The Twentje*, otherwise *The West Friesland*, 13 Moore, P. C. C. 186; Swabey, 454.

1116. Parties who had abandoned a former action instituted by them to compel the payment of two bottomry bonds, *held*, not to be at liberty, no strong grounds being shown, to bring a second action upon the same bonds. Such an action dismissed accordingly, with costs and demurrage. *The Fortitude*, 2 Dodson, 58.

1117. In the progress of a cause through a misapprehension of the plaintiff's proctor in not appearing on a specific occasion, the cause was dismissed without a hearing on the merits. Subsequently a second suit was instituted, and the ship again arrested in respect of the same cause of action. The defendant appeared under protest questioning the legality of the second arrest. *Held*, that it was legal, and that the dismissal of the first suit was analogous to a nonsuit. *The Flecha*, 1 Spinks' Eccl. & Adm. Rep. 439.

1118. A claim by the owners of a damaged vessel for loss sustained, estimated moderately to avoid litigation, having been rejected, and the matter afterwards referred to the registrar and merchants, the owners *held* not bound by their original estimate, nor barred of their right to prove an actual loss greater than that estimate. *The Two Sisters*, 1 *ibid.* 99.

1119. Shipowners being under a contract to replace their ship immediately, if lost, insured her for £10,000, two years after which the ship was lost. *Held*, that they were not estopped from proving in a suit instituted by them under the M. S. Act, 1854 (c. 104), part 9, that the value of the ship at the time when she was lost did not exceed £5,900. *African Steamship Co. v. Swanzy*, 2 K. & J. 660; 25 L. J. Ch. 870.

1120. For cases as to the effect, on the claimant's lien, of the taking of a bill of exchange, in causes of bottomry, see tit. BOTTOMRY, p. 140; by material men, *The N. R. Gosfabrick*, Swabey, 345; and tit. NECESSARIES, REPAIRS AND SUPPLIES, p. 1170; salvage, *The Chieftain*, 4 Notes of

Cases, 459; wages, *The William Money*, 2 Hagg. 136; *The Simlah*, 15 Jur. 865; and *Cutter v. Powell*, 2 Smith's Leading Cases, 8th ed. p. 1.

2. *Lis alibi Pendens.*

See tit. JURISDICTION, Pt. I. p. 658.

3. *Res Judicata.*

See tit. JURISDICTION, Pt. I. p. 659.

4. *Injunction and Prohibition.*

(a) *Generally.*

See tit. JURISDICTION, Pt. I. pp. 646—649.

(b) *To Inferior Courts and Officers.*

1121. The Admiralty Division granted an injunction *ex parte*, restraining the defendant in an action of co-ownership, from dealing, and the registrar from registering any dealing in the shares of a ship, the subject of the action. *The Horlock*, 36 L. T. N.S. 622; 2 P. D. 243; 47 L. J. P. D. 5; 3 Asp. N.S. 421.

5. *Stay of Proceedings.*

(a) *Generally.**

1122. For provision that no cause pending in the High Court or Court of Appeal shall be restrained by prohibition or injunction; but every matter of equity on which an injunction might before this act have been obtained may be relied on by way of defence; but that nothing in this act shall disable either court from directing a stay of proceedings; and that any person, whether a party or not, who would have been entitled before this act to apply to restrain the prosecution of proceedings or to enforce any judgment or order, as therein mentioned, shall be at liberty to apply by motion for a stay of proceedings, either generally or otherwise, see the Judicature Act, 1873 (c. 66), s. 24, sub-s. 5.

1122a. It would seem from the terms of this sub-sect. that matters which would formerly have been grounds for an in-

* (379) This rule only applies to cases where a winding-up order or administration order has actually been made. See Wilson's Jud. Acts and Rules, 4th ed. p. 423, and Nos. 527, 528, p. 1516.

(379a) It is now well settled that before that the application must be made to the division in which the action is pending. *Ibid.*

and cases there cited.

380. An action pending in one division will not be stayed by another division or judge unless the defence is on grounds unconnected with the cause of action. *Affirming, Malins, V.-C., Garbutt v. Fawcus*, 1 Ch. D. 155,

junction restraining an action, must now be raised in the action itself either by way of defence or upon an application to stay proceedings. See *Garbutt v. Fawcus*, L. R. 1 Ch. D. 155. C. A.

1123. For provision that when an order has been made by the judge of any Chancery Division for the winding-up of any company, or the administration of assets of a testator or intestate, the same judge shall have power to order the transfer to his court of any cause or matter in any other court or division by or against such company, or the executors or administrators of such testator or intestate, see Ord. XLIX. r. 5, No. 653. And see Nos. 527, 528, p. 1516.

1123a. After a collision on the high seas between the C. and the I., two foreign vessels. The C. was arrested in Holland by the owners of the I., but released, with their consent, on a guarantee to answer judgment in that action, and cross-proceedings were instituted there by the owners of the C. An action was subsequently commenced in this country by the owners of the I. against the C., and the C. arrested in respect of the same collision. The plaintiffs offered to abandon the action in Holland. *Held (dis-sentiente Brett, M. R.)*, that the proceedings in this country must be stayed and the ship released. *The Christiansborg*, 10 P. D. 141; 54 L. J. Adm. 84; 53 L. T. 612.

1124. Pending proceedings in a Vice-Admiralty Court by the owners of the P. against the G., an action subsequently brought in the Admiralty Division by the owners of the G., against the owners of the P., ordered to be stayed. *The Peshawur*, 8 P. D. 32; 52 L. J. Adm. 30; 48 L. T. 796; 5 Asp. 89; 31 W. R. 660.

(b) *For want of Disclosure by Plaintiff's Solicitors.*

1125. As to stay of proceedings in respect of non-disclosure by solicitor, after demand, whether a writ has been issued by him, or by his authority, see Ord. VII. r. 1, No. 42, and No. 520, p. 1515.

1125a. For provision that when a writ is sued out by partners in the name of their firm, and the plaintiffs or their solicitors, after demand in writing by or on behalf of any defendant, fail to declare forthwith the names and places of residence of all the persons constituting the firm, all proceedings in the action may be stayed upon such terms as may be

directed. *Ibid.* r. 2, No. 43, and No. 521, p. 1515.

6. *Delay.*

(a) *Generally.*

1126. The court has no authority to refuse to entertain a suit brought by a party alleging himself to be aggrieved, provided it be commenced within the period limited by law. If, however, there was unreasonable or improper delay, the court would, in all cases where the proof was not sufficiently clear, consider that such delay raised a presumption against the party guilty of it. *The Mellona*, 3 W. Rob. 10. See also tit. LACHES, p. 800.

1127. In the case of a sale of a ship in a foreign port by the master, the owner's delay alone may not destroy his right to institute a suit, but when unnecessary delay arises, and when injury to others may arise from that delay, it may import acquiescence in the sale, and if there be acquiescence in the sale, however unauthorized, it may have been at its commencement, the sale is then ratified by the act of the owner himself. *The Australia*, Swabey, 486; 13 Moore, P. C. C. 132.

(b) *Twelve Months' lapse.*

1128. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this rule. Ord. LXIV. r. 13, No. 973.

1128a. As to motion for judgment after twelve months' lapse, see Ord. XL. r. 9, No. 567.

7. *By want of Pleading.*

1129. In a cause of salvage the owners appeared but did not answer the petition, and a conclusion was filed by the plaintiffs. The defendant, who appeared by counsel at the hearing, and claimed to be heard in depreciation of the services, although not denying the facts in the petition, *held*, not entitled to be heard. *The Emerald* (2300), 13th December, 1864.

8. *After Discontinuance without Payment of Costs.*

See No. 1076, p. 1578.

9. *Effect of Discontinuance on Counter-claim.*

See c. 4, s. 8, p. 1493.

10. *After Submission to Arbitration.*

1130. A plaintiff who has submitted to arbitration is not thereby debarred from proceeding *in rem* in the Admiralty Court. *The Sylph*, L. R. 2 A. & E. 24; 37 L. J. Adm. 14; 3 Asp. 37.

11. *In Salvage Actions.**

1131. Where a fair salvage agreement has been made in a *bonâ fide* manner between the masters of the salving and salved vessels, the officers and seamen of the salving vessel, although not consulted as to the agreement, ought not to bring an action of salvage. In such a case the plaintiffs condemned in the costs of the action. *The Nasmyth*, 10 P. D. 41.

1132. *Quære*, whether the master of a salving vessel is agent for the owner to compromise a salvage claim if the owner is at hand, and gives no authority. *The Elise*, Swabey, 440.

1133. *Semble*, it would be no objection to a claim for salvage, for services rendered by one vessel to another, that both were, at the time of the salvage, in the service of a foreign government. *The Alfen*, Swabey, 189.

1134. A Queen's ship rendered salvage services, for which a bill was given by the master upon the owners, who had in the meantime sold the ship, which was lost on the homeward voyage, and the bill was refused payment. Motion for monition against the owners to show cause why salvage should not be paid, rejected. *The Chieftain*, 4 Notes of Cases, 459.

1135. *Quære*, if a steamer has been guilty of negligence in fulfilling a contract to tow the A., and has thereby occasioned danger to the G. and the H. from which the steamer subsequently rescued them, can the owners of the G. and the H.

set up the breach of contract to which they were strangers, as estopping the steamer's claim to salvage? *The Annapolis*, 1 Lushington, 355; 5 L. T. N.S. 39. See also *Langridge v. Levy*, 2 M. & W. 519; *Winterbottom v. Wright*, 10 M. & W. 109; *Blackmore v. The Bristol and Exeter Railway Co.*, 8 E. & B. 1035.

1136. If a ship or cargo is not saved there can be no salvage, and if this result follows from the miscarriage or the misconduct of an agent employed by those who claim as salvors, however great or meritorious their exertions may have been, they are identified with their agent for this purpose, and their claim entirely fails. *The Atlas*, 1 Lushington, 518; 8 Jur. N.S. 753; 31 L. J. Adm. 210; 10 W. R. 850.

1137. When the service rendered by one ship to another in a distant part of the world partakes of the true description of salvage service, the claim for salvage cannot be resisted on the ground that both ships were British. *The Portia*, 9 Jur. 167.

1138. A claim for salvage preferred by a King's ship, after a delay of eight months, dismissed, the salvors being held (the salvage being very slight) to be barred by lapse of time. *The Rapid*, 3 Hagg. 419; but see *The John*, 8 Jur. 276.

1139. The owners, when present, are the only proper judges of the necessity for the continuance of salvors' services. *Ibid.*; *The Glasgow Packet*, 8 Jur. 675; 2 W. Rob. 306.

1140. Salvors having obtruded their services after notice for their discontinuance, compensation refused on account of such services, but salvage awarded for the services antecedently rendered, with a sum *nomine expensarum*. *Ibid.*

1141. The defendants in a cause of salvage entered an absolute appearance, and filed an affidavit of value, stating that the property saved was of greater value than £1,000. The receiver of wreck subse-

* (381) A settlement by the master is not binding upon the owners, unless he acted *bonâ fide*, and the settlement is such as a discreet owner on the spot would probably have made. *Marvin on Wreck and Salvage*, pp. 22, 149; *Houseman v. Schooner North Carolina*, 15 Peters, 45. [AMERICAN.]

(382) Whenever the owners or consignees reside near the place where the court sits in which the salvage suit is pending, they must appear and claim the ship or goods, each for his own interest. The master, in this case, cannot as such claim for them. *Marvin on*

Wreck and Salvage, p. 177. [AMERICAN.]

(383) But where the owners or consignees of the cargo reside at a distance from the place where the court sits, the master is allowed, *ex necessitate*, to claim for them. *Ibid.*

(384) And as he very rarely or never in the case of a general cargo shipped by a large number of persons can know the amount of their respective interests, nor their names even, he is allowed to put in a general conjoint claim for the whole cargo as an entirety. *Ibid.*

quently made an affidavit stating that the property was of less value than £1,000. *Held*, that the defendants had estopped themselves from objecting to the jurisdiction. *The Dart*, 3 Asp. 327.

1142. Owners setting up an agreement in bar of a salvage claim are bound to pay into court the amount stipulated for under the agreement. *The Catherine*, 6 Notes of Cases, Supp. 2.

1143. Salvage services had been rendered to a vessel by several sets of salvors off Ramsgate. The owners of the vessel summoned a meeting of the Commissioners of Salvage for the Cinque Ports, to adjudicate on the matter. No notice of the intended meeting was given to any of the salvors, and it was proved that it was not usual to give any such notice. At the meeting of the commissioners one set of salvors was unrepresented, but it was proved that they were aware of the meeting, and were at hand. The commissioners made an award upon the whole matter. The salvors so unrepresented refused to accept their share of the money awarded, and brought their action in the Admiralty Court. *Held*, that the award was no bar to the action, the plaintiffs not having been parties to the first decision. *The Elisc*, Swabey, 436.

1144. On a claim for salvage preferred by the commander, officers and crew (130 men) of a Government steamer, the use of which for the purpose had been applied for by the owners of the vessel salvaged, and granted by the admiral, on the stipulation that the owners and underwriters would be answerable for the stores expended or damaged. *Held*, that such stipulation was no bar to their claim for reward for personal service, but only a reason for a less remuneration. *The Lustre*, 3 Hagg. 154.

1145. A foreign ship was driven by stress of weather into Bridlington, where W. B. undertook the management of the ship and her concerns, and subsequently sent in his accounts. These were disputed by the master, and an agreement was then made to refer them to arbitration. The master signed the agreement on the 17th March, 1848, W. B. on the 5th March; and the ship was arrested in a cause of salvage on behalf of W. B. on the 12th March. *Held*, that the agreement was no bar to the action. *La Purissima Concepcion*, 13 Jur. 545; 7 N. of Cas. 150.

1146. Unless all the parties negotiating are fully apprised of all the circumstances of the case, negotiation is no admission of

salvage services or a negative of a defence to the claim. *The Martha*, Swabey, 490.

See also tit. SALVAGE.

1147. The court will not entertain the salvage claim of parties who have been convicted for misconduct in the same transaction for which they claim the salvage reward. *The Wear Packet*, 2 Spinks' Eccl. and Adm. Rep. 256, *sed contra The Louisa*, No. 1507, 17th February, 1863.

1148. Claim for towage services rendered under contract. *Held*, that the towage was forfeited by misconduct of the plaintiffs, and subsequent damage caused by them. *Quære*, whether, notwithstanding such misconduct, the plaintiffs could, prior to the Judicature Acts, recover towage under the contract, and leave the defendant to a cross action for the damage. This point not having been properly raised or discussed in the Court of Admiralty, the Court of Appeal refused to entertain it. *The Christina*, 6 Moore, P. C. C. 371.

1149. As to misconduct, negligence, or want of skill of salvors as entailing forfeiture of, or deductions from, salvage, see tit. SALVAGE.

12. In Wages Actions.

1150. A master of a vessel is not debarred from suing for his wages by the fact that he is a joint mortgagee of the ship. *The Repulse*, 2 W. Rob. 339.

1151. A mariner, who having been offered his wages in money, elected to take part thereof in a bill of exchange on the owner, who afterwards became a bankrupt, in consequence of which the bill was dishonoured; *held*, not to be entitled to arrest the ship for wages to the amount of such bill, on the ground that, having made his election, he must stand by the risk. *The William Money*, 2 Hagg. 136.

1152. A defence in a cause of wages relying on a special agreement as an estoppel by reason of want of jurisdiction should be brought forward as soon as practicable in order to avoid unnecessary expense, and where a defendant omits to adopt that course the court, although decreeing in his favour, will not give costs. *The Shamrock*, 5 Jur. N.S. 178, Adm. C. [IRISH.]

1153. During the voyage a ship was wrecked, and the master gave the mariners an order upon the owners for the amount of their wages to the date of the wreck, acknowledging at the same time that he had hired them by the month.

Held, that under these circumstances no action for wages could be maintained by the mariners against the master, at least without proving that they had first made a demand upon the owners. *Forsboorn v. Krugor*, 3 Camp. 197. (Ellenborough.)
See also *tit. WAGES.*

32. Tender.

1. Generally.*

1154. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into court. Ord. XXII. r. 3, No. 257.

1155. A plea of tender without payment into court of the amount tendered is bad. *The Nasmÿth*, 10 P. D. 41; 54 L. J. P. D. 63; 5 Asp. 364.

1156. Gold coin is the only legal tender, and no tender of silver coin is legal beyond forty shillings. See 56 Geo. 3, c. 68, s. 11.

1157. Bank notes are a legal tender so long as the Bank of England continues to pay on demand their notes in legal coin. See 3 & 4 Will. 4, c. 98, s. 6.

1158. In making a tender it is not necessary, on the contrary it is an erroneous course, to offer to pay costs up to the time of tender. *The William Symington*, 10 P. D. 4; 5 Asp. 293; overruling *The Hickman*, *The John*, and *The Thracian*, *infra*; *The Comte Nesselrood*, No. 1179, *infra*; and *The Scotia*, 4 Ir. Jur. N.S. 156.

1159. In future when a tender is made it must either include an offer to pay costs up to the time of tender, or state that the tender is made in satisfaction of the cause of action only, and specify the ground upon which the costs are not tendered, and refer the question of costs to the consideration of the court. *The Hick-*

man, L. R. 3 A. & E. 15; 3 Asp. 298; *The Thracian*, 41 L. J. Adm. 71; L. R. 3 A. & E. 504.

1160. Tender "with such costs, if any, as are due by law." Tender pronounced for with costs up to time of tender, but each party to pay his own costs from that time. *The Hickman*, *supra*.

1161. In ordinary cases a tender to be good must be absolute, and must include a tender of costs up to the time of tender, and if conditional and refused, the party making the tender can take no benefit from it. *The John*, 1 Lushington, 13.

1162. As to payment into and out of court of tenders, see Pt. I. cc. 9 and 10, pp. 1482 and 1485.

1163. A receipt signed simply for the money itself is all that can be legally demanded by a party making a tender. Any attempt to require a condition of any character or kind, such as excluding all other demands, has been held frequently by the courts of common law to be illegal; and although the Admiralty Court is not bound by such decisions of common law courts, it should adhere to that principle. *The Albatross*, Jan. 25, 1853.

1164. The acceptance of a tender, which is an act of court, is a "recovery in court." *The John*, 1 Lushington, 13.

1165. A tender to prevent litigation is no admission of the justice of the demand, but merely an offer to escape the inconvenience of litigation. *The Frederick*, 1 Hagg. 218.

1166. A tender not accepted in due time, *held not* to bind either the court or the parties tendering. *The General Palmer*, 2 Hagg. 180.

1167. If when a tender is made it is not accepted, and the cause proceeds to trial owing to the plaintiffs having gone to sea without having appointed a proper person with adequate authority to accept or refuse the tender, the responsibility for such a course must rest with the plaintiffs. *The*

* (385) As to the practice in the other divisions as to tender, see Wilson's *Judicature Acts and Rules*, 4th ed. p. 272, and Archbold's *Practice of the Queen's Bench Division*, 14th ed. p. 342, and Chitty's *Forms*, 12th ed. p. 195.

(386) A tender to an authorized agent is a tender to his principal, and a tender to one of several joint creditors is a tender to all. Smith's *Mercantile Law*, 9th ed. p. 538, and cases there cited.

(387) Tenders are *stricti juris*, and nothing will be presumed in their favour. *Shotwell v. Denman*, Coxe, 174. [AMERICAN.]

(388) In order to constitute a good tender it is essential that the offer be unconditional, and that the money or other thing to be paid be actually produced, unless the creditor dispense with its production, either by express declaration, or other equivalent act. *Browne v. Gilmore*, 8 Greene, 107. [AMERICAN.]
(389) The benefit of a tender is lost by subsequent demand and refusal. *Rose v. Brown*, Kirby, 293. [AMERICAN.]

(390) As to what is a sufficient tender in the American Admiralty Courts, see Dunlap's *Adm. Prac.*, 2nd ed. 110. [AMERICAN.]

Hopewell, 2 Spinks' Eccl. and Adm. Rep. 252.

1168. The master demanded an excessive sum for freight and general average as the condition of delivering the cargo, and in such a manner that it amounted to an announcement that it would be useless to offer any smaller sum. *Held*, that this excused any tender from the plaintiff, notwithstanding that the evidence showed that he had resolved not to tender the sum rightfully due, and entitled him to damages for wrongful detention of cargo. *The Norway*, Br. & L. 409.

1168a. As to a tender in the Admiralty Division not being paid out until after the conclusion of the cause, see Nos. 203—205, p. 1485.

2. In Collision Actions.

1169. A tender of money by way of compensation in a cause of collision, where the defendant admits his default, need not include the costs of a survey incurred previously, even although the court may consider the survey was necessary, and make an order for payment of the expenses attending it. *The Scotia*, 4 Jur. N.S. 156. [IRISH.]

1170. In an action for negligence in running down a ship of the plaintiffs, alleging as special damage the having been condemned in the Admiralty Court to pay a sum of £45 for salvage and the costs of suit there, it appearing that the plaintiff had made a very insufficient tender of £20; *held*, that he could not recover the costs so incurred, the question in such cases for the jury being, whether the plaintiff had acted as a prudent man would reasonably have done, and if so, the costs might be recovered. *Tindall v. Bell*, 11 M. & W. 228; 12 L. J. Exch. 161. See *Holloway v. Turner*, 6 Q. B. 328; *Loton v. Devereux*, 3 B. & Ad. 343.

1171. The High Court of Admiralty, adopting the principle laid down in *Tindall v. Bell*, that it was the duty of the owner of a vessel damaged to do what a prudent man would do were he acting for himself, considered that in many such cases it would be prudent not to make a tender for salvage services rendered, and allowed (overruling the report of the registrar) the costs of a salvage suit

arising from a collision as a proper item in the amount to be recovered in the suit for damage, although no tender had been made in the salvage suit. *The Legatus*, Swabey, 168; 5 W. R. 154.

1172. An insurance was effected on a cargo of wheat from Odessa to Liverpool. The vessel and cargo were afterwards hypothecated by bottomry bond for repairs rendered necessary during the voyage, and ultimately the vessel was wrecked on the coast of Ireland, and towed into Cork, where the cargo was landed in a damaged state. The salvors having claimed an exorbitant sum for salvage, proceedings were instituted in the Admiralty Court, and under the order of that court the cargo was sold. *Held*, that it was the duty of the master to save the expense of the proceedings in the Admiralty Court by tendering what was due for salvage; and that if the cargo was sold in consequence of his failing to do so, or to give bail, it was not a total loss for which the underwriters were liable. *Rosetto v. Gurney*, 11 C. B. 176; 15 Jur. 1177; 20 L. J. C. P. 257.

3. In Salvage Actions.*

1173. To constitute a complete tender out of court it must be made in money or bank notes, and the salvors must, at the time of the tender, be aware of the value of the property. *The Sovereign*, 29 L. J. Adm. 114; 2 L. T. N.S. 669; 6 Jur. N.S. 832; 1 Lushington, 85.

1174. When there are separate actions instituted in respect of services rendered to a vessel and her crew by rival salvors, and the defendant is unable to estimate the respective values of the two services, he will be allowed to make a single tender in respect of the whole services rendered. *The Jacob Landstrom*, 4 Asp. 58.

1175. The Cinque Ports Commissioners having awarded a sum in a case of salvage, the owners of the vessel salvaged appealed and tendered a smaller sum. On motion by the respondents that the notice of tender might be taken off the file, *held*, that the appellants were entitled to make the tender, although no tender was made prior to the institution of the appeal. *The Annette*, L. R. 4 A. & E. 9; 42 L. J.

* (391) The general practice in salvage cases is to make tenders by formal acts of court, which are legal memoranda in the nature of

pleas. *The Charles*, 1 Newb. Adm. 329. [AMERICAN.]

Adm. 13; 1 Asp. N.S. 577; and see *The Caledonia*, L. R. 4 A. & E. 11, n.

1176. In the case of a tender in pursuance of an agreement for services, it is upon the parties who say the offer was made and the agreement accepted that the affirmative lies, and they must prove it. *The William*, 9 Jur. 631.

1177. In a salvage cause where salvage services have been rendered and certain damages incurred (by the salving vessel rendering assistance), a tender to stop the action, and to entitle the party making it to all the benefits of a tender in court, must include all the damages which may have been sustained. *The Ocean*, 1 W. Rob. 334.

1178. In a cause of salvage for services rendered in the United Kingdom, a tender under £200 "with such costs (if any) as may be due by law," for the services rendered, was accepted. *Held*, that any objection as to the insufficiency of the tender in respect of the costs was answered by the acceptance. *The John*, 1 Lushington, 11.

1179. In a cause of salvage tender of £40 "with costs up to time of tender" was refused. The court overruled the tender, and awarded £100, but refused to certify for costs. *Held*, that in consequence thereof, and notwithstanding the form of tender, the plaintiff was not entitled even to costs up to the time of tender. *The Comte Nesselrood*, 1 Lush. 454; 6 L. T. N.S. 57.

1180. The owners alleged the value of the ship to be £2,000, and made a tender. The salvors took out a commission of appraisal, under which the ship was valued at £2,800. *Held*, that it does not therefore follow that the tender must *ex necessitate* be insufficient, for the question is not what the owners deemed adequate, but what the court thinks adequate compensation. *The Batavier*, 1 Spinks' Eccl. & Adm. Rep. 171.

1181. A tender of remuneration is an admission of services performed and to be rewarded. *The Porcupine*, 1 Hagg. 378; *The Portia*, 9 Jur. 167; *The William Ward*, 8 Ir. Jur. 336.

1182. In a salvage suit the owners paid into the registry and tendered £50. The tender was pronounced for, and the salvors were condemned in the sum of £50 *nomine expensarum*. The salvors being resident out of the jurisdiction, application by the owners for payment out to them on account of costs of the £50 tendered, granted. *The Clifton*, 3 Hagg.

124; *The Johannes*, 6 Notes of Cases, 290; *Dore v. —*, 1 Ir. Jur. Exch. 271.

1183. When a tender has been accepted by both the plaintiffs and intervenors whose claims are adverse, the court will allow issue to be joined between them upon their respective allegations as to the apportionment of the amount. *The Conchita*, 3 Ir. Jur. 408.

1184. In a cause of salvage a tender of £534 was made before action, and refused. After action a tender of £275 only was made, on the ground that the salvors, by their improper conduct subsequently to the service in causing a detention of the vessel, had occasioned a loss of £260 to the owners. *Held*, that assuming the truth of such misconduct, no such deduction from salvage could be made. *The Hopcwell*, 2 Spinks' Eccl. & Adm. Rep. 249.

1185. Where a tender was refused, a Vice-Admiralty Court awarded less than the amount tendered, on the ground that the master and crew of the salving vessel had misconducted themselves in rendering the salvage services. *The Scindia*, 2 Asp. (Vice-Adm. Court), 232.

See also Nos. 1170—1172, *supra*.

4. In Wages Actions.

1186. Motion by foreign seamen to take out in a wages cause the amount tendered, and proceed for wages *ultra*, rejected. *The Annie Childs*, 1 Lushington, 509.

1187. The *Mobile* arrived at Port Philip, where some of her crew deserted. The master gave promissory notes for £40 each, besides their wages, to the remainder of the crew to work the ship so short-handed to Bombay. On the ship's arrival at Liverpool, the owners offered the sailors the amount of their wages according to the ship's articles, on condition of their signing a statutory release in full, and giving up the promissory notes. Some of the seamen refused to do this, and brought a suit for wages in the Court of Admiralty for their wages, which were then paid. *Held*, that such a conditional tender was insufficient, and made by the owners with a view of availing themselves of the formal words of the statute for the purpose of eluding the claim of the sailors, which had since been decided in their favour in the Queen's Bench, and that the owners were liable for the whole costs incurred in the Admiralty Court.

The Mobile, Swabey, 256; 3 Jur. N.S. 893.

1188. In a suit for wages, the amount of wages, &c., was allowed to be paid into the registry, with an undertaking to pay such costs as might be decreed, the liability for costs being the question at issue between the parties. *The Margaret*, 3 Hagg. 239.

5. *Costs.*

1189. See previous sections *passim*, and tit. Costs, c. 16, pp. 354—358, and same title and chapter in Addenda.

33. Preliminary Acts.

1. *Generally.*

1190. In actions in any division for damage by collision between vessels, unless the court or a judge shall otherwise order, the solicitor for the plaintiff shall, within seven days after the commencement of the action, and the solicitor for the defendant shall within seven days after appearance, and before any pleading is delivered, file with the registrar, master, or other proper officer, as the case may be, a document to be called a preliminary act, which shall be sealed up and shall not be opened until ordered by the court or a judge, and which shall contain a statement of the following particulars:—(a) The names of the vessels which came into collision and the names of their masters; (b) the time of the collision; (c) the place of the collision; (d) the direction and force of the wind; (e) the state of the weather; (f) the state and force of the tide; (g) the course and speed of the vessel when the other was first seen; (h) the lights, if any, carried by her; (i) the distance and bearing of the other vessel when first seen; (k) the lights, if any, of the other vessel which were first seen; (l) whether any lights of the other vessel, other than those first seen, came into view before the collision; (m) what measures were taken, and when, to avoid the collision; (n) the parts of each vessel which first came into contact. Ord. XIX. r. 28, No. 224.

1190a. The court or a judge may order the preliminary act to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings; but in such case, if either party intends to rely on the defence of compulsory pilotage, he may do so, and shall give notice thereof

in writing to the other party, within two days from the opening of the preliminary act. *Ibid.*

1191. In an action for loss of life by collision between vessels, preliminary acts must be filed. *Webster v. M. S. & L. Railway Co.*, 5 Asp. 256, n.

1192. In an action of damage to cargo brought against the vessel carrying the cargo for damage sustained through a collision between such vessel and another vessel the parties are not bound to file preliminary acts. *The John Boyne*, 3 Asp. N.S. 341; 36 L. T. 297; 25 W. R. 756.

1193. Preliminary acts were instituted to get a statement *recenti facto* of the circumstances from the parties, and to prevent the defendant from shaping his case to meet the case put forward by the plaintiff. Prior to the Judicature Acts, neither party was allowed to depart from the case set up in his preliminary act. *The Vortigern*, Swabey, 518; 1 L. T. N.S. 507; H.M.S. *Inflexible*, Swabey, 33.

1194. The court would never, prior to the Judicature Acts, allow a party to contradict his own preliminary act at the hearing. *The Night Watch*, 16th July, 1863; *The Vortigern*, Swabey, 518; 1 L. T. N.S. 507.

1195. Whatever might be the evidence on either side as to the weather, neither party would be allowed to depart from the statement thereon in his preliminary act. *The Great Eastern*, February 4, 1864.

1196. In a cause of damage by collision, when the case is to be heard on *visâ voce* evidence only, the preliminary acts are to be exchanged before the evidence is taken. *The Ruby Queen*, 1 Lushington, 266.

1197. In a cause of damage by collision when, after petition and answer filed, the witnesses for the plaintiff are, upon special application, examined in open court, the court will order the preliminary acts to be exchanged before the witnesses are examined. *The Two Friends*, 1 Lushington, 552.

1198. Vice-Admiralty Courts should use the form of preliminary acts in use in the Admiralty Division of the High Court of Justice. *The Norma*, 3 Asp. N.S. 272; 35 L. T. 418.

2. *Amendment.**

1199. An application to amend a mistake in a preliminary act must be made immediately upon discovery, and must be

* (392) The object of the preliminary act is to commit the parties to statements of the

facts when they are fresh in their recollection. At the hearing of a cause of damage

supported by affidavit. *The Vortigern*, Swabey, 518; 1 L. T. N.S. 507.

1200. Application for leave to amend a mistake in a preliminary act refused, though such application was made before the hearing, and was supported by affidavit. *The Miranda*, 7 P. D. 185; 51 L. J. P. D. 56; 4 Asp. 595.

1200a. A similar application made at the hearing refused. *The Frankland*, L. R. 3 A. & E. 511; 41 L. J. Adm. 3; 25 L. T. 889; 20 W. R. 592.

3. Evidence.

See tit. EVIDENCE, p. 453.

34. Pleadings.

1. Generally.*

1201. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. See Ord. XIX. r. 4, No. 200.

1202. The forms in Appendices C., D. and E., when applicable, and, where they are not applicable, forms of the like character, as near as may be, shall be used for all pleadings, and where such forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be. *Ibid.* r. 5, No. 201.

the court refused to allow a material averment in the preliminary act to be amended, but admitted before the evidence was given a corresponding alteration in the answer. *The Frankland*, 41 L. J. N.S. Adm. 3; L. R. 3 A. & E. 511; 1 Asp. N.S. 207.

* (393) As to the Rules and Orders of 1883 as to pleading, and the cases thereon in the other divisions, see Wilson's Judicature Acts and Rules, 4th ed. pp. 247—271; and Archbold's Practice (14th ed. by Chitty), vol. 1, pp. 278 *et seq.*

(394) The rules of pleading in Admiralty are simple and free from technical requirements. *West v. Steamer Uncle Sam*, 1 McAll. C. C. (Cal.) 505; *The Aldebaran*, Olcott, Adm. 130; *The Navarro*, Olcott, Adm. 127. [AMERICAN.]

(395) In the American Admiralty Courts the libel is the commencement of the pro-

1203. The forms of pleading under Ord. XIX. r. 5, No. 201, are not under all circumstances to be rigidly complied with, but are rather to be taken as the class of pleading it is desired to introduce. *The Isis*, 8 P. D. 227; 5 Asp. 155.

1204. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid (see No. 1202, *supra*), particulars (with dates and items if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading. Ord. XIX. r. 6, No. 202.

1205. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings. Ord. XX. r. 8, No. 232.

1206. Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, the reference to the letter and number of the action, the division to which the judge (if any) to whom the action is assigned belongs, the title of the action, and the description of the pleading, and shall be indorsed with the name and place of business of the

ceedings, and is presented before any process is issued. Dunlap's Adm. Prac. 2nd ed. 193. [AMERICAN.]

(396) As to pleadings in the American Admiralty Courts, see 2 Conkling's Adm. Prac. 2nd ed. 72, 212; 2 Parsons on Maritime Law, pp. 676—683, 718; Dunlap's Adm. Prac. 2nd ed. pp. 116—131, 179—192. [AMERICAN.]

(397) For forms of pleadings and process there, see 2 Conkling's Adm. Prac. 2nd ed. 478—592; Dunlap's Adm. Prac. 2nd ed. 405—546; *Ibid.* pp. 488—496, 502, 517—528. [AMERICAN.]

(398) As to pleadings in causes of salvage in the American Admiralty Courts, see Marvin on Wreck and Salvage, pp. 46, 70.

(399) And for forms of pleadings in such causes there, see Dunlap's Adm. Prac. 2nd ed. pp. 529—546.

solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor. Ord. XIX. r. 11, No. 207.

1207. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading. *Ibid.* r. 14, No. 210.

1208. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim, or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. *Ibid.* r. 16, No. 212.

1209. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material. *Ibid.* r. 21, No. 217.

1210. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. *Ibid.* r. 22, No. 218.

1211. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material. *Ibid.* r. 23, No. 219.

1212. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative. *Ibid.* r. 24, No. 220.

1213. Neither party need in any pleading allege any matter of fact which the

law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied (*e.g.*, consideration for a bill of exchange, where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim). *Ibid.* r. 25, No. 221.

1214. No technical objection shall be raised to any pleading on the ground of any alleged want of form. *Ibid.* r. 26, No. 222.

1215. No new assignment shall be necessary or used. But everything which was formerly alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim, or by way of reply. Ord. XXIII. r. 6, No. 281.

1216. Pleadings should be so framed as to assist not only the party in his statement of the case, but also the court in investigating the truth between the litigants. *The Why Not*, L. R. 2 A. & E. 265.

1217. In deciding whether the pleading complies with the principle of fairly disclosing the nature of the case intended to be proved, it must be considered whether the matter charged be or be not within the knowledge of the party charged. *The Freedom*, L. R. 2 A. & E. 346; 38 L. J. Adm. 25.

1218. Where a pleading alleges general carelessness, neglect, default, bad seamanship, &c., the court will not go into an inquiry of so wide a nature, or investigate any alleged neglect not expressly raised by the petition. *The General Lee*, Ir. R. 3 Eq. 155; 3 Asp. 204. [IRISH.]

1219. It is not necessary to plead specially any Order in Council made under the provisions of this act. See the M. S. Act Amendment Act, 1862 (c. 63), s. 64.

1220. A pleading in a suit of personal damage, pleading matters of a criminal nature, directed to be reformed by the omission of such matters, as not proper to be introduced in a civil proceeding. *The Ruckers*, 4 C. Rob. 76.

1221. When a party conducts his own case he is bound to adhere, both in the court below as well as in that of appeal, to the established rules of pleading and practice in those courts. *Tommey v. White*, 1 Cl. & Fin. N.S. 161.

1222. As to petitions to the court and the service thereof, see Ord. LIII. rr. 8, 16, 17; Nos. 703, 711, 712; Ord. XIX. rr. 13 and 16, Nos. 209, 212; Ord. LXI. r. 31, No. 924; Ord. LII. rr. 16—19,

Nos. 711—714; Nos. 1356—1360, p. 1603; and c. 35, p. 1531.

2. Variance from Proofs.

1223. In a cause of collision the rule that a party is only entitled to recover *secundum allegata et probata*, is sufficiently complied with if the party proves one material allegation of negligence, even if all the others fail—P. C. *The Hochung v. The Lapwing*, 5 Asp. 39.

1224. See also for cases before the Judicature Acts and Rules, Nos. 1337—1345, p. 1600.

3. Signature by Counsel.

1225. The provision in Ord. XIX. r. 4, No. 200, since repealed, that the signature of counsel should not be necessary, did not import that the signature of counsel was improper. *Barnard v. Hardwick*, April 8, 1876; *Duckett v. Jones*, 33 L. T. 777.

4. Statement of Claim.*

1226. The delivery of statements of claim shall be regulated as follows:—Where the writ is specially indorsed under Ord. III. r. 6, No. 16, no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim. Ord. XX. r. 1, No. 225, div. (a).

1227. Subject to the provisions of Ord. XIII. r. 12, No. 112, as to filing a statement of claim when there is no appearance, no statement of claim need be delivered unless the defendant at the time of entering appearance, or within eight days thereafter, gives notice in writing to the plaintiff or his solicitor that he requires a statement of claim to be delivered. *Ibid.* div. (b).

1228. If no statement of claim has been delivered and the defendant gives notice requiring the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the court or a judge, deliver it within five weeks from the time of the plaintiff receiving such notice. *Ibid.* div. (c).

1229. The plaintiff may (except as in div. (a) mentioned) deliver a statement of claim, either with the writ of summons or notice in lieu of writ of summons, or at

any time afterwards either before or after appearance, notwithstanding that the defendant may have appeared and not required the delivery of a statement of claim: provided that in no case where a defendant has appeared shall a statement (*semble* of claim) be delivered more than six weeks after the appearance has been entered, unless otherwise ordered by the court or a judge. *Ibid.* div. (d).

1230. Where the plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires such statement, the court or a judge may make such order as to the costs occasioned thereby as shall be just, if it appears that the delivery of a statement of claim was unnecessary or improper. *Ibid.* div. (e).

1231. In Admiralty actions *in rem* the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim. *Ibid.* r. 3, No. 227.

1232. Whenever a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ. *Ibid.* r. 4, No. 228.

1233. The statement of claim must in all cases in which it is proposed that the trial should be elsewhere than in Middlesex, show the proposed place of trial. *Ibid.* r. 5, No. 229.

1234. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the court or a judge may think just, to the same extent as if it had been asked for. *Ibid.* r. 6, No. 230.

1235. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. *Ibid.* r. 7, No. 231.

1236. The plaintiff shall, subject to the provisions of Order XX. (above set forth), and at such time and in such manner as therein prescribed, deliver to the defendant a statement of his claim, and of the relief or remedy to which he claims to be entitled. The statements shall be as brief as the nature of the case will admit. See Ord. XIX. r. 2, No. 198.

* (400) As to statements of claim, see Wilson's Jud. Acts and Rules, 4th ed. p. 262;

Archbold's Practice (14th ed. by Chitty) vol. 1, pp. 288 *et seq.*

1237. The forms in Appendices C., D. and E. (of statements of claim, statement of defence and replies), when applicable, and where they are not applicable forms of the like character, as near as may be, shall be used for all pleadings, and where such forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be. *Ibid.* r. 5, No. 201.

1238. For forms of statement of claim in actions of bottomry, necessities, repairs, and supplies, possession, salvage, collision, see R. S. C. 1883, App. C., s. 5, Nos. 3—6; in actions of damage to cargo, s. 5, Nos. 4 and 5; in actions of damage by collision, s. 6, No. 5, and Roscoe's Admiralty Practice (2nd ed.), App. vi., pp. 472—516. See also No. 1203, p. 1590.

1238a. As to the effect of non-delivery of statement of claim when required, see Ord. XXVII. r. 1, No. 294, and No. 934, p. 1562.

5. *Particulars of Demand.*

See c. 24, p. 1570.

6. *Statement of Defence and Counter-claim.*

(a) *Statement of Defence.**

1239. The defendant shall, subject to the provisions of Order XXI. (as to which see *infra*), and at such time and in such manner as therein prescribed, deliver to the plaintiff his defence, set-off, or counter-claim, if any; the statements shall be as brief as the nature of the case will admit. See Ord. XIX. r. 2, No. 198.

1240. In actions for a debt or liquidated demand comprised in Ord. III. r. 6, classes (A.) and (B.), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e.g.*, in actions for goods bargained and sold, or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed. See Ord. XXI. r. 3, No. 236.

1241. And a mere denial of the debt is inadmissible. *Ibid.* r. 1, No. 234.

1242. In every counter-claim, or where relief is claimed by the defendant in his defence, he shall state specifically the relief he claims either simply or in the

alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the court or a judge thinks fit, to the same extent as if it had been asked for. See Ord. XX. r. 6, No. 230.

1243. Where the defendant relies upon several distinct grounds of defence, set-off or counter-claim, founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. *Ibid.* r. 7, No. 231.

1244. No denial or defence shall be necessary as to damages claimed, or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted. Ord. XXI. r. 4, No. 237.

1245. If either party wishes to deny the right of any other party to claim as executor, or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically. *Ibid.* r. 5, No. 238.

1246. Where a statement of claim is delivered to a defendant he shall deliver his defence within ten days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the court or a judge. *Ibid.* r. 6, No. 239.

1247. A defendant who has appeared in an action, and who has neither received nor required the delivery of a statement of claim, must deliver his defence (if any) at any time within ten days after his appearance, unless such time is extended by the court or a judge. *Ibid.* r. 7, No. 240.

1248. Where leave has been given to a defendant to defend under Ord. XIV., he shall deliver his defence (if any) within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within eight days after the order. *Ibid.* r. 8, No. 241.

1249. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of an act of parliament, he shall insert in the margin of his pleading the words "by statute," together with the year of the reign in which the act of parliament on which he relies was passed, and also the chapter and section of such act, and shall specify whether such act is

* (401) As to statements of defence and counter-claim, see Wilson's Jud. Acts and Rules, 4th ed. p. 266; Archbold's Practice p.

(14th ed. by Chitty), vol. 1, pp. 297 *et seq.*; and Chitty's Forms (12th ed.), pp. 143, 156.

public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any act of parliament. Ord. XXI. r. 19, No. 252.

1250. Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead, he shall not plead any other defence to the same cause of action without the leave of the court or a judge. See Ord. XIX. r. 12, No. 208.*

1251. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition. *Ibid.* r. 13, No. 209.

1252. The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality either by statute or common law, or Statute of Frauds. *Ibid.* r. 15, No. 211.

1253. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, but he must deal specifically with each allegation of fact of which he does not admit the truth, except damages. *Ibid.* r. 17, No. 213.

1254. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he

must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances. *Ibid.* r. 19, No. 215.

1255. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the Statute of Frauds or otherwise. *Ibid.* r. 20, No. 216.

1256. Payment into court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein. Ord. XXII. r. 2, No. 256.

1257. No plea or defence shall be pleaded in abatement. Ord. XXI. r. 20, No. 253.

1258. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the court or a judge, deliver a further defence setting forth the same. Ord. XXIV. r. 2, No. 283.

1259. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence. *Ibid.* r. 1, No. 282.

1260. As to forms of statements of defence and counter-claim, and the use thereof, see No. 1237, *supra*.

1261. For forms of statement of defence in actions of bottomry, necessaries, repairs, or supplies, possession and salvage, see R. S. C. 1883, App. D., sect. 3, Nos. 3, 4, 5, and 6, and Roscoe's Admiralty Practice (2nd ed.), pp. 472—516.

* (402) The plea of "not guilty" by statute puts in issue not only the defence peculiar to the statute, but also the defence which may be admissible under the general issue at common law. As to the plea of "not guilty" by statute and the acts of par-

liament regulating the same, see Charley's New System of Practice and Pleading under the Judicature Acts, 3rd ed. p. 503, and Wilson's Judicature Acts and Rules (4th ed.), p. 256.

1262. For various forms of denial in general defences, see R. S. C. 1883, App. D. ss. 4 and 5.

1262a. As to the effect of non-delivery of statement of defence, see Nos. 934—942, p. 1562.

(b) *Counter-claim.*

1263. A defendant in an action may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right of claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the court or a judge may, on the application of the plaintiff before trial, if in the opinion of the court or judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. Ord. XIX. r. 3, No. 199.

1264. Where any defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall, in his statement of defence, state specifically that he does so by way of counter-claim. Ord. XXI. r. 10, No. 243.

1265. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff. *Ibid.* r. 11, No. 244.

1266. As to the mode of proceeding to bring such other persons before the court, see c. 6, p. 1500, and No. 1284, *infra*.

1266a. A third party is not allowed to deliver a counter-claim. *Street v. Gover*, L. R. 2 Q. B. 498 ; 46 L. J. Q. B. 582.

1267. Where a defendant sets up a counter-claim, if the plaintiff or any

other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before reply apply to the court or a judge for an order that such counter-claim may be excluded, and the court or a judge may, on the hearing of such application, make such order as shall be just. *Ibid.* r. 15, No. 248.

1268. The set-off must be connected with the original cause of action. *Padwick v. Scott*, 2 Ch. D. 736 ; 45 L. J. Ch. 350.

1268a. As to a counter-claim in an action for limitation of liability, see *The Clutha*, 35 L. T. N.S. 36.

1269. For form of notice of counter-claim, see R. S. C. 1883, App. B. No. 2.

See also Nos. 1242, 1243, 1252, 1260, *supra*, and No. 1404, p. 1607.

7. *Reply and subsequent Pleadings.**

1270. The plaintiff shall, subject to the provisions of Ord. XXIII., and at such time and in such manner as therein prescribed, deliver his reply (if any) to such defence, set-off, or counter-claim. The statements shall be as brief as the nature of the case will admit. Ord. XIX. r. 2, No. 198.

1271. As to forms of reply and the use thereof, see No. 1237, p. 1593.

1272. Any person named in a defence as a party to a counter-claim may deliver a reply within the time allowed for a defence. Ord. XXI. r. 14, No. 247.

1272a. No pleading, not a petition or summons, shall, except by way of amendment, raise new ground of claim or contain any allegation of fact inconsistent with the party's previous pleadings. See Ord. XIX. r. 16, No. 212.

1273. It shall not be sufficient for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counter-claim, but he must deal specifically with each allegation of fact of which he does not admit the truth except damages. *Ibid.* r. 17, No. 213.

1274. Subject to the last rule the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any) subsequent to reply may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every

* (403) As to reply and subsequent pleadings, see Wilson's Judicature Acts and Rules (4th ed.), p. 79 ; Archbold's Practice (14th

ed. by Chitty), vol. 1, pp. 312 *et seq.* ; and Chitty's Forms (12th ed.), p. 163.

material allegation of facts in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted. See Ord. XIX. r. 18, No. 214.

1275. A plaintiff shall deliver his reply, if any, in Admiralty actions within six days, and in other actions within twenty-one days, after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the court or a judge. Ord. XXIII. r. 1, No. 276.

1276. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the court or a judge, and then shall be pleaded only upon such terms as the court or judge shall think fit. *Ibid.* r. 2, No. 277.

1277. Subject to the last preceding rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the court or a judge. *Ibid.* r. 3, No. 278.

1278. Where a counter-claim is pleaded, a reply thereto shall be subject to the rules applicable to statements of defence. *Ibid.* r. 4, No. 279.

1279. As to the insertion in the reply, of matters of new assignment, see No. 1215, p. 1591.

1280. Where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the court or a judge, deliver a further reply setting forth the same. Ord. XXIV. r. 2, No. 283.

1281. If, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply. *Ibid.* r. 1, No. 282.

1282. In a cause of necessaries a reply leaving it uncertain whether the person in possession of the vessel at the time of the supply was the original mortgagee or the defendant, the transferee of the mortgage, held bad. *The Troubadour*, L. R. 1 A. & E. 302; 2 Asp. 475.

1283. For forms of reply, see R. S. C. 1883, App. E.

8. Third Parties.

1284. Action of collision by the owners

of the S. against the C., alleging negligence on the part of the C. and her tug, or one of them. The owners of the C. served a notice on the owner of the tug, claiming indemnity, and the court ordered that the owner of the tug be bound as between him and the owners of the C., by any decision as to the cause of the collision. No issue was directed as between the owners of the C. and the owner of the tug. At the hearing, the court found that the C. was alone to blame for the collision, and that her owners were not entitled to indemnity from the owner of the tug. *Held*, by the Court of Appeal, that unless issues are directed between the defendant and a third party the court cannot make a decree deciding questions of liability between them, and therefore that so much of the decree as declared that the owners of the C. were not entitled to indemnity must be struck out. *The Cartsburn*, 5 P. D. 35; (C. A.) 59; 49 L. J. P. D. 14; 4 Asp. 202.

9. Joinder of Issue and Close of Pleadings.

1285. Subject to Ord. XIX. r. 17, No. 213 (as to specific denials in the reply, of grounds alleged in the statement of defence), the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any), subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined, but it may except any fact which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted. Ord. XIX. r. 18, No. 214.

1287. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the court or a judge, and then shall be pleaded only upon such terms as the court or judge shall think fit. Ord. XXIII. r. 2, No. 277.

1288. As soon as any party has joined issue upon the preceding pleading of the opposite party simply without adding any further or other pleading thereto, or has made default as mentioned in Ord. XXVII. r. 13, No. 306, the pleadings as between such parties shall be deemed to be closed. *Ibid.* r. 5, No. 280.

1289. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the ma-

terial statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue. Ord. XXVII. r. 13, No. 306.

1290. *Quare*, is joinder of issue necessary where the defendant in an action of salvage has admitted the allegations in the statement of claim, and paid money into court, which, however, has not been received in satisfaction by the plaintiff? *The Maria*, 4 Asp. 94.

10. Under Rules and Orders of 1859.

(a) Generally.*

1291. Of the pleadings under the Rules and Orders of Nov. 1859, the present statement of claim was called the "petition," and the statement of defence the "answer."

1292. The Rules and Orders of 1859 are annulled by the Rules and Orders of 1883, App. O. (No. 22).

1293. *Semble*, two defences of a totally different nature, *i. e.* a declinatory plea, and a plea of an absolute bar, should not be pleaded together. *Harmer v. Bell (The Bold Buccleugh)*; 7 Moore, P. C. C. 281.

1294. The pleadings in a cause must be so specific as to enable, if necessary, an examiner to elicit in evidence all the facts of the case. *The Claus Thomesen*, 1 Asp. 327; 8 L. T. N.S. 121; 9 Jur. N.S. 388; 11 W. R. 538.

1295. In a cause of damage, when the evidence is taken before an examiner of the court, the defence of inevitable accident must, if it is to be relied upon, be distinctly pleaded. *The E. Z.*, 2 Asp. 42; 10 L. T. 790.

1296. An allegation of fraud, if relied upon, should be distinctly pleaded. *The Emilian Marie*, 44 L. J. Adm. 9.

1297. The rule *qui ponit fatetur* must be rigidly enforced with respect to every averment within the personal knowledge of the party alleging, but must be applied less stringently, and in some instances rejected, when the party states facts which are not within his personal knowledge, and as to which he has not the means of

acquiring accurate information. *Greville v. Tylee*, 7 Moore, P. C. C. 320.

(b) *Petition*.

1298. It is not necessary in a petition to state every fact material to a case. It is sufficient to state such facts as will, if proved, establish the plaintiff's case. *The West of England*, L. R. 1 A. & E. 308; 36 L. J. N.S. 4.

1299. Where, therefore, in a case of collision caused by a vessel drifting and driving down upon another at anchor in the same anchorage, though the relative bearing of the two vessels previous to the collision was incorrectly pleaded and alleged by the vessel proved to be entitled to redress; it was *held*, by the Judicial Committee, that the vessels not being in motion their previous relative bearing when at anchor was not a fact so material to the issue (*i. e.*, which vessel caused the collision), as to render the actual proof of the damage of no avail, and so entitle the offending party to the benefit of the rule. *Semble*, in the case of a collision between two vessels originally at anchor, the bearing of one vessel with respect to the other is not such a material fact as necessary to be stated upon the issue raised between the parties. *The Alice and The Rosita*, 5 Moore, P. C. C. N.S. 300; L. R. 2 P. C. 214; 38 L. J. Adm. 20; 3 Asp. 193; 19 L. T. 753; 17 W. R. 209.

1300. If a plaintiff in a collision suit intends to rely upon a particular act of negligence by the defendant he is bound specifically to allege that act in his pleadings. *The Marpesia*, 8 Moore, P. C. C. N.S. 468.

1301. It is not sufficient that the act may be included generally in an allegation in the pleadings which does not clearly state such particular act, as it is likely to mislead the defendant, and prevent his being prepared to meet that particular case. *Ibid.*

(c) *Answer*.

1302. A defendant in a cause of collision must not rely in his answer upon a

* (404) The rules of pleading introduced by the Jud. Acts and Rules are substantially framed upon the plan of the rules of pleading in force in the Admiralty Court at the time of the passing of those acts, *i. e.* under the Rules and Orders of Nov. 1859.

(405) For the Rules and Orders of Nov. 1859, and the forms of petition, answer, reply

and conclusion therein prescribed, see Pritchard's Adm. Dig. 2nd ed. App. p. cclv.

(406) As to the construction of the Rules and Orders of Nov. 1859, see *The Claus Thomesen*, 8 L. T. N.S. 121; 32 L. J. Adm. 106; 9 Jur. N.S. 388; *The Don Francisco*, 31 L. J. Adm. 14; 5 L. T. N.S. 460.

simple negative, but must state the principal circumstances relating to the collision. *The Why Not?*, L. R. 2 A. & E. 265; 38 L. J. Adm. 26; 3 Asp. 135.

1303. In a salvage suit instituted by A. against the vessel B., A. in his petition alleged that he rescued the B. (which had been abandoned by her crew) from the hands of C., who was stripping the vessel. A salvage suit having been instituted by C. against the B., the owners of the B. pleaded that for the purposes of their answer they adopted, being ignorant of the actual facts, the allegations in A.'s petition. On motion by C. the court disallowed this plea. *The Kathleen*, L. R. 4 A. & E. 269, 272, n.; 2 Asp. N.S. 267.

1304. In a cause of damage by collision a general denial of the statements in the petition was pleaded in answer, and also a special defence that the damage complained of was the same as had already been adjudicated upon in a court of law, and that judgment thereon had been obtained and satisfied. The judge of the Admiralty Court dismissed the action, on the ground that the damage proceeded for was occasioned by acts done by a third party on his own responsibility, and not as agent for the owners, the defendants, and he ordered each party to pay his own costs, on the ground that this defence had not been sufficiently raised on the pleadings, and he refused to go into the special defence. *Held*, by the Privy Council, that the defendants were entitled to have the judgment of the court on the special defence pleaded by them, as it was at least material in respect of costs. *The Orient*, L. R. 3 P. C. 696; 40 L. J. Adm. P. C. 29; 39 L. J. Adm. 8; 3 Asp. 321; 1 Asp. N.S. P. C. 108; 8 Moore, P. C. N.S. 74.

1305. If an averment in the pleadings is not denied in the opposite pleadings, but a conclusion is drawn from that averment, it must be taken that the truth of the averment is admitted. *The Peerless*, 13 Moore, P. C. C. 488; 1 Lushington, 103; 30 L. J. Adm. 89; 3 L. T. N.S. 126.

1306. P., in his pleading, quoted certain acts and regulations of an Indian governor, and pleaded that by virtue of the same he was exempt from certain responsibility. J., the opponent, pleaded that P. was not, by virtue of the said

acts and regulations, exempt. *Held*, that the acts and regulations were admitted by the pleadings, and P. was not bound to prove them. *Ibid*.

(d) *Subsequent Pleadings.*

1307. The plaintiff should in his first pleading set up his whole case, so far as the facts are within his knowledge. If further facts subsequently come to his knowledge, the court will permit him to plead them, giving the other party opportunity to answer. *The Bothnia*, 1 Lushington, 53; 29 L. J. Adm. 65; 2 L. T. N.S. 160; *The Hebe*, 2 W. Rob. 146.

1308. Plaintiff's petition alleged that his vessel, while at anchor, was run down by the defendant's vessel. The petition did not assign any particular cause of blame. The defendant pleaded that, from the violence of the tempest and sea, his anchors were unable to hold, and that the collision was solely caused thereby (a plea of inevitable accident). *Held*, that the plaintiffs were entitled in their reply to allege that the collision was occasioned solely by the negligence of those on board the defendant's vessel, and the default of her ground tackle. *The Bothnia, supra*.

1309. In a cause of necessities a reply leaving it uncertain whether the person in possession of the vessel at the time of the supply was the original mortgagee, or the defendant, the transferee of the mortgage, *held bad*. *The Troubadour*, L. R. 1 A. & E. 302; 2 Asp. 475.

1310. The whole case of either party must be stated in his first pleading, nothing must be kept back. Reply, pleading further facts, rejected on the ground that they should have been pleaded in the petition. *The Henrietta*, 19th April, 1860.

1311. See also *The Anne and Jane*, 2 W. Rob. 104; *The Test*, 2 Hagg. 312; *The Aurora*, 1 W. Rob. 325.

(e) *Double Pleading.**

1312. *Semble*, in causes of damage by collision, inevitable accident and fault on board the plaintiff's vessel cannot both be pleaded. *The Daphne*, No. 1343, 27th November, 1863.

1313. It is competent to the defendant to plead that his vessel and crew are not to blame at all for the collision, that if

* (407) Double pleading is not allowed in the American Admiralty Courts. See Dunlap's American Adm. Prac. (2nd ed.) 182.

blame is attributable to any one on board his vessel it is to the licensed pilot in charge, and that the plaintiff's vessel and crew are to blame for the collision. *The Canadian*, 1 W. Rob. 345; *The Batavier*, 10 Jur. 20; 4 Notes of Cases, 356; *The Admiral Boxer*, Swabey, 193; *The Argo*, *ibid.* 465; *The George*, 4 Notes of Cases, 161.

1314. In a cause of collision if the owners of the damaging vessel intend to attribute the cause of damage to the wilful misconduct of their master, the facts of the case should be admitted, and the wilful acts of the master set forth. *The Seine*, 5 Jur. N.S. 299.

(f) *Charges not pleaded.**

1315. In causes of collision it is often impossible to state in the first instance all the important facts bearing on the collision. Sometimes the collision takes place in darkness, and it cannot be known on board one ship what orders were given on board the other, what look-out was kept, &c. If these are discovered subsequently to pleading no wrong is done in admitting evidence of them if the other party has opportunity of contradicting them. *The Schwalbe*, Swabey, 523.

1316. When extra-articulate evidence is pertinent to the issue, and especially when it forms part of the *res gesta*, the court is most reluctant to exclude it. On the other hand, if the opposite party has been surprised, and desires an opportunity of meeting the extra-articulate evidence, the court will give leave to counter-plead, and produce evidence on the counter-plea. *Ibid.*

1317. Evidence pertinent to the issue, objected to as extra-articulate, admitted, the other party having leave to counter-plead and produce evidence in reply. *Ibid.*

1318. A party cannot, at the hearing, avail himself of a rule of seamanship in order to impute misconduct to the other party in not acting up to the rule, unless such misconduct is charged in the plead-

ings. *The Ebenezer*, 2 W. Rob. 210; 7 Jur. 1117.

1319. *Semble*, a defence in law not raised in the pleadings, cannot be relied on at the hearing. *The Seine*, Swabey, 411.

1320. When a defence is so framed that, although it puts in issue all the facts alleged on the part of the claimants, it gives no notice, or insufficient notice, of any particular point to which the evidence should be especially directed, the court, in judging of the effect of such evidence, will have regard to the degree of notice so given by the defendants. *The Minnehaha*, 9 W. R. 925.

1321. The practice of the court requires that all the essential particulars of the defence should be set forth in the pleadings in the first instance; and *semble*, the court will not sanction the attempt to supply such omissions in the plea by importing them into the proofs. *The Virgil*, 2 W. Rob. 204; *The Speed*, *ibid.* 227; *The Lady Anne*, 15 Jur. 18; 5 Notes of Cases, 36; *The Anne and Jane*, 2 W. Rob. 104; *The Hebe*, *ibid.* 146.

1322. The court will not put a question to the Trinity masters as to a fact not pleaded. *The Ebenezer*, 2 W. Rob. 209; *The Speed*, *ibid.* 227.

1323. The court will reject evidence extraneous to the pleadings. *The Ebenezer*, 7 Jur. 1117.

1324. It is a matter of right to either party to object to extra-articulate evidence either at the hearing or previously. *The Neptunus*, Swabey, 297; 30 L. T. 219.

1325. Application to strike out extra-articulate evidence on an allegation in a collision cause before the papers were printed and put in the hands of the Trinity masters, granted. *Ibid.*

1326. If the Trinity masters seemed to the court to form their opinion from parts of the evidence which were inadmissible, the court would not adopt their advice, but proceed on that only which was clear evidence. *The Acteon*, 1 Spinks' Eccl. and Adm. Rep. 178.

* (408) The rules of pleading in Admiralty must be strictly complied with, and the evidence confined to the points put in issue by the pleadings. *McKinlay v. Morrish*, 21 How. U. S. 343. [AMERICAN.]

(409) The case as presented by the pleadings is the only one upon which the court can be called upon to decide. *Soule v. Rodocanachi*,

The Oregon, 1 Newb. Adm. 504. [AMERICAN.]

(410) A decree must be in consonance with the pleadings in the cause, and evidence outside the allegations made by either party cannot be regarded in support of his charge or defence. *The Rhode Island*, Olcott, Adm. 505; *Davis v. Leslie*, 1 Abb. Adm. 123. [AMERICAN.]

1327. Appeal remitted to the court below with leave to both parties to plead further, and give further evidence, the Trinity masters having given advice to the judge on a point not mentioned in the pleadings. *The Lady Anne*, 15 Jur. 18.

1328. A question of set-off not having been properly raised, or discussed in the Admiralty Court, the Judicial Committee, sitting as a court of appeal, refused to entertain it. *The Christina*, 6 Moore, P. C. C. 372.

1329. Any particular ground of defence in opposition to a bottomry bond should be distinctly pleaded, and not raised for the first time at the hearing. *The Bonaparte*, 8 Moore, P. C. C. 475; 17 Jur. 285; 3 W. Rob. 298; 7 Notes of Cases, Supp. 55.

1330. In a cause of damage, held that the defendant's vessel was to blame for not having ported her helm and eased off her main-sheet. No such charge was contained in the plaintiff's pleadings, though a general charge of mismanagement was pleaded besides other charges. The court, but with doubt, pronounced for the damage. *The Lady Ann*, 7 Notes of Cases, 370.

1331. In a cause of damage those on board the vessel proceeded against were found to have been guilty of negligence, and therefore to blame for the collision. Objection then taken that such negligence was not the negligence of the defendants, the owners, or their servants, but of certain independent contractors to whom the vessel had been entrusted; held to have been urged too late after an absolute appearance and pleadings not raising this objection. *The Ruby Queen*, 1 Lushington, 266.

1332. Defence that navigating the wrong side of the river was a wilful act of the master for which the owners were not liable, overruled because not pleaded. *The Seine*, Swabey, 413.

1333. In a cause of wages the court refused to regard proofs of the plaintiff's general incapacity, as that charge had not been pleaded. *The Exeter*, 2 C. Rob. 261.

1334. In a suit for wages, the defendant having rested his defence *formaliter* on the ground of an asserted consent of the mariner, which was held not to bar him, the court will, nevertheless, take into consideration matters forming a just ground of defence, but which the defendant may have improperly overlooked. *The Elizabeth*, 2 Dodson, 406.

1335. In a cause of wages the owners pleaded a forfeiture, under the statute, of the wages, on the ground of desertion, but did not plead a charge of temporary desertion. The evidence established the latter, but not the former charge. The court pronounced for the full wages. *The Two Sisters*, 2 W. Rob. 125, 146.

1336. As to what evidence is or is not extra-articulate, see *The Harvey*, 2 Hagg. 83; *The Towan*, 8 Jur. 222; *Evans v. Evans*, 1 Hagg. Cons. 96, n. (Eccl.)

1336a. As to what charges should be pleaded in actions of bottomry, see a. 22, p. 1605, and in actions of collision, see s. 23, p. 1606.

(g) *Variance from Proofs.**

1337. A party complaining of an injury and suing for redress, can recover only *secundum allegata et probata*. *The Ann and Magnet*, 1 Lushington, 55; 13 Moore, P. C. C. 198; 3 L. T. N.S. 128; 8 W. R. 567; *The Despatch*, 1 Lushington, 98; 14 Moore, P. C. C. 83; *The North American*, Swabey, 358; 12 Moore, P. C. C. 331; *The Wakefield*, 5 Jur. 69 [IRISH]; *The Ebenezer*, 2 W. Rob. 209; 7 Jur. 1117.

1338. There is no hardship or injustice in adhering strictly to this rule against the complainant, for he knows

* (411) Libellants must recover on the allegations in their libel; respondents must rely exclusively on the grounds they have selected in their answer. *Campbell v. Steamer Uncle Sam*, 1 McAll. C. C. (Cal.) 77. [AMERICAN.]

(412) The defence in the answer in a cause of collision between a schooner and a steamboat rested on faults imputed to the schooner in holding her course across the bows of the steamer, under circumstances in which it was her duty to have gone about, and the defence set up by the proofs rested upon faults com-

mitted on the part of the schooner in an attempt to come about abruptly, and falling off or drifting against the steamer in the attempt. Held, that the latter defence was a deviation from the answer, and that, under the pleadings, the claimants were not entitled to the benefit of it. *The Washington Irving*, 1 Abb. Adm. 336. [AMERICAN.]

(413) As to the practice in American Admiralty Courts in cases of variance of the evidence from the pleadings, see *Dunlap's Adm. Prac.* (2nd ed.) 246. [AMERICAN.]

the nature of the wrong for which he seeks a remedy, and can easily state it with precision and accuracy. But great inconvenience would follow to the opposite party unless this strictness was required, because he might constantly be exposed to the disadvantage of having prepared himself to meet one state of facts, and of finding himself suddenly and unexpectedly confronted by a totally different one. The great object of all courts where trials of fact take place ought to be to bring the parties to a distinct agreement as to what is in contest between them, and this object would be entirely frustrated if it were competent to a party to place his right to redress on one ground, and then to abandon it at the trial for another, although the latter ground would originally have given him a right to recover against the other party. *The Ann and Magnet*, 13 Moore, P. C. C. 206; 1 Lushington, 55.

1339. The rule that a party can only recover *secundum allegata et probata* applies only to cases where the averments alleged in the pleadings are material to the issue raised. *The Alice and The Rosita*, L. R. 2 P. C. 214; 5 Moore, P. C. C. N.S. 300; 38 L. J. Adm. 20; 3 Asp. 193.

1340. In a case of collision, by drifting, between two vessels originally at anchor, the bearing of the one vessel when at anchor with respect to the other is not such a material fact as is necessary to be stated upon the issue raised between the parties, and a variance therefore in the pleadings from the proof is immaterial. *Ibid.*

1341. In a case of collision the plaintiff alleged, first, that the defendant improperly starboarded; and secondly, if he did not starboard, at all events he neglected to port as he ought to have done. *Held*, the court might, on the evidence, well find for the plaintiff without deciding whether the defendant had starboarded or not, for the first charge, if proved, necessarily involved the second, and if not proved, the second was sufficient to sustain the judgment. There-

fore the objection of want of certainty in pleading was untenable. *The Amalia and Marie de Brabant*, 2 Asp. 58; 10 L. T. N.S. 826.

1342. The rule as to proof *secundum allegata* does not apply so stringently to the defendant. *The East Lothian*, 14 Moore, P. C. C. 177; 1 Lushington, 241; 1 Asp. 76; 4 L. T. N.S. 487.

1343. An erroneous allegation of the mode in which the injury occurred may, as an answer, fail to be proved; but the plaintiff is, nevertheless, equally bound to rely on his own case, and not on the failure of his adversary. *Ibid.*

1344. As a general rule, if a plaintiff's proof is at variance with his pleadings his petition will be dismissed with costs, but if the defendant has also pleaded in defence matter at variance with the facts proved the case will be dismissed, each party being left to bear his own costs. *The Lioness*, 10 Jur. N.S. 20. [IRISH.]

1345. In a cause of damage the defendant in his pleadings charged that the collision was the fault of the plaintiff's vessel, and at the hearing argued the case as one of inevitable accident. *Seemle*, the court would not have permitted this variation in the defence but for certain expressions in the defendant's pleadings from which an averment of inevitable accident might be inferred. *The England*, 5 Notes of Cases, 171, 174.

(h) Short of Proofs.*

1346. In a cause of damage by collision the defendants pleaded in defence compulsory pilotage, and the plaintiffs in reply generally denied this allegation. At the hearing evidence was offered by the plaintiffs to show that the defendants' vessel was improperly trimmed, that the master was responsible for this, that he had not informed the pilot of the fact, and that this improper trimming, coupled with the fact that the pilot was ignorant of it, contributed to the accident. *Held*, by the Court of Appeal in Chancery (reversing the decision of the Admiralty Court), that evidence on these points was

* (414) As to what evidence was or was not extra-articulate or irrelevant to the pleadings according to the former practice of the court, and as to striking out or admitting the same, see *The Neptunus*, Swabey, 295; 30 L. T. 219; *The Schwalbe*, Swabey, 521, 523; *The Speed*, 7 Jur. 1068; 2 W. Rob. 230; *The Actæon*, 1 Spinks' Eccl. & Adm. Rep. 178;

The Harvey, 2 Hagg. 83; *The Towan*, 8 Jur. 222.

(415) For the principles and practice as to evidence in the American Admiralty Courts, see Dunlap's Adm. Prac. (2nd ed.) p. 207; 2 Conkling's Adm. Prac. (2nd ed.) p. 270; and 2 Parsons on Maritime Law, p. 719. [AMERICAN.]

admissible, though they were not alleged in the petition or the reply. *The Meteor*, Ir. R. 9 Eq. 567. [IRISH.]

11. Rules prior to 1859.*

12. Admissions by—

(a) Generally.

1347. Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party. Ord. XXXII. r. 1, No. 371.

(b) Confession of Defence.

1348. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence (which confession may be in the Form No. 5 in Appendix B., with such variations as circumstances may require), and may thereupon sign judgment for his costs up to the time of the pleading of such de-

fence, unless the court or a judge shall, either before or after the delivery of such confession, otherwise order. Ord. XXIV. r. 3, No. 284.

13. In Proceedings by Default.

(a) Generally.

1349. In all actions not by the rules of this Order otherwise specially provided for, in case the party served with the writ, or in Admiralty actions *in rem*, the defendant does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and, if the writ is not specially indorsed under Order III. r. 6, of a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Order XV. Ord. XIII. r. 12, No. 112.

(b) Filing.

See c. 12, p. 1531.

14. Proceedings in lieu of Demurrer.†

1350. No demurrer shall be allowed. Ord. XXV. r. 1, No. 285.

* (416) As to the pleadings and rules of pleading generally, prior to the rules and orders of Nov. 1859, see *The Apollo*, 1 Hagg. 315; *The Maria*, 5 C. Rob. 148; *The Minerva*, 1 W. Rob. 169; *The Actæon*, 1 Spinks' Eccl. & Adm. Rep. 176; *The Baldur*, 16 Jur. 802; *The Fame*, 7 Notes of Cases, 55; 13 Jur. 546; *The Bothnia*, 1 Lushington, 53; 29 L. J. Adm. 65; 2 L. T. N.S. 160; *The Virgil*, 2 W. Rob. 204; *The Speed*, *ibid.* 227; *The Lady Anne*, 15 Jur. 18; 5 Notes of Cases, 364; *The Anne and Jane*, 2 W. Rob. 104; *The Hebe*, *ibid.* 146; *The Ebenezer*, *ibid.* 209; 7 Jur. 1117; *The Rouen*, 6 L. T. N.S. 508; Pritchard's Adm. Dig. (2nd ed.) p. 559; 2 Brown's Civil and Adm. Law (2nd ed.), p. 413; Life of Sir L. Jenkins, vol. i. p. 82.

(417) As to pleadings of set-off or counter-claim, see *The Don Francisco*, 5 L. T. N.S. 460; 1 Lushington, 468; 1 Asp. 169.

(418) As to pleadings by act on petition, see *The Ville de Varsovie*, 2 Dodson, 184; *The Minerva*, 1 W. Rob. 160; *The Anne and Jane*, 2 *Ibid.* 98; *The Hebe*, *ibid.* 146; 10 Jur. 231; 4 Notes of Cases, 361; *The Actæon*, 1 Spinks' Eccl. and Adm. Rep. 176; Orders of Court of March 18, 1835; *The Towan*, 8 Jur. 221; *The Gosfabrick*, 31 L. T. 345; *The Ebenezer*, 2 W. Rob. 209; 7 Jur. 1117; *The Glasgow Packet*, 2 W. Rob. 308; 3 Notes of Cases, 108; 8 Jur. 675; *The Armadillo*, 1 W. Rob. 257; *The Speed*, 2 *ibid.* 230; 7 Jur. 1068; *The Carlota*, 4 Jur. 237 [IRISH]; *The Liffey*,

ibid. N.S. 232 [IRISH]; *The Justyn*, 11 W. R. 44; and Pritchard's Adm. Dig. (2nd ed.), p. 560.

(419) As to pleadings to the character, or in impeachment of the testimony, of witnesses, see *The Apollo*, 5 C. Rob. 286; *The Georgiana*, 1 Dodson, 399; *The Centurion*, 1 Hagg. 162, n.; *The Volcano*, 2 W. Rob. 344; 3 Notes of Cases, 211; *The Schwalbe*, Swabey, 461, 523; *The Lochlido*, 14 Jur. 792; *The Thomas Fielden*, 32 L. J. N.S. Adm. 63; and Pritchard's Adm. Dig. 2nd ed. vol. ii. p. 575.

(420) As to pleading in exception to and substantiation of witnesses in the American Admiralty Courts, see Dunlap's Adm. Prac. (2nd ed.), 205. [AMERICAN.]

† (421) As to the practice on this head in the Queen's Bench Division, see Archbold's Practice (14th ed.), vol. 1, p. 324; and Chitty's Forms (12th ed.), p. 178; and as to delivery prior thereto of points for argument, see *The Anna*, 1 P. D. 253; 45 L. J. Adm. 98.

(421a) By the old practice in the Court of Admiralty, pleadings were required to be admitted, and questions of demurrer were raised on their admission.

(422) For cases under the old practice before 1859 in regard to the admission, and opposition to the admission of pleadings, see *The Empress*, 1 Dodson, 369; *The Rouen*, 1 Lush. 510; *The Anne and Jane*, 2 W. Rob. 98; *The Hebe*, *ibid.* 146; *The N. R. Gosfa-*

1351. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the court or a judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial. *Ibid.* r. 2, No. 286; and see *The Horlock*, 2 P. D. 243; 36 L. T. N.S. 622; *The Sir Charles Napier*, 5 P. D. 73; 49 L. J. Adm. 23.

1352. If, in the opinion of the court or a judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the court or judge may thereupon dismiss the action or make such other order therein as may be just. Ord. XXV. r. 3, No. 287.

1353. The court or a judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just. *Ibid.* r. 4, No. 288.

1354. No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed, or not. *Ibid.* r. 5, No. 289.

15. Proceedings to set aside Service of Writ.

(a) Generally.

1355. See c. 8, s. 12, p. 1513.

(b) Previous Practice.*

1356. A petition on protest was de-

livered by the defendant before the plaintiff's petition (now statement of claim). *The Pieve Superiore*, L. R. 5 P. C. 482; L. R. 4 A. & E. 170; 43 L. J. Adm. 1; *ibid.* P. C. 20; 2 Asp. N.S. 162; *ibid.* P. C. 319. See also *The Evangeline*, 5 Jur. N.S. 108; 2 L. T. N.S. 137. [IRISH.]

1357. It was required to state the facts which showed want of jurisdiction. *Ibid.*

1358. A defendant in a cause of salvage filed a petition on protest alleging that the vessel proceeded against was worth less than £1,000 when brought into a place of safety, and that no proceedings were taken against the cargo in the suit. Held, that the petition on protest did not disclose sufficient ground to oust the jurisdiction of the court, inasmuch as it was not stated that the value of the property saved did not exceed £1,000. *The Empire Queen*, Ir. R. 3 Eq. 71; 3 Asp. 221. [IRISH.]

1359. As to petitions generally, see c. 35, p. 1531; and No. 1222, p. 1591.

1360. See also c. 8, s. 12, p. 1513.

16. Amendment.

(a) Generally.†

1361. A further and better statement of the nature of the claim or defence, or of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just. Ord. XIX. r. 7, No. 203.

1362. The court or a judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case order the costs of the application to be paid as between solicitor and client. *Ibid.* r. 27, No. 223.

1363. The court or a judge may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be

brick, 6 W. R. 871; *The Actæon*, 1 Spinks' Eccl. & Adm. Rep. 176.

(423) As to pleas in bar under the old practice before 1859, see *Ewer v. Jones*, 6 Mod. 26; 2 Ld. Raym. 937; *The Lord Hobart*, 2 Dodson, 101; *The Charlotte*, 3 W. Rob. 73; *The Sarah Jane*, 7 Jur. 659; *The Alexandra*, 1 W. Rob. 293.

(424) As to demurrers or pleas in bar in the American Admiralty Courts, see 2 Conk-

ling's Adm. Pr. (2nd ed.) 229. [AMERICAN.]

* (425) Compulsory pilotage is matter of defence, not of protest. *The Girolamo*, 3 Hagg. 173; *The Gladiator*, *ibid.* 340; *The Eliza Jane*, *ibid.* 337; *The Protector*, 1 W. Rob. 62.

† (426) As to the amendment of pleadings, see Wilson's Jud. Acts and Rules (4th ed.), p. 260; Archbold's Practice (14th ed. by Chitty), vol. 1, p. 315; and Chitty's Forms (12th ed.), pp. 170—173.

just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Ord. XXVIII. r. 1, No. 309.

1364. In all cases not provided for by the preceding rules of this order, application for leave to amend may be made by either party to the court or a judge or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just *Ibid.* r. 6, No. 314.

1365. As to the insertion of matter of new assignment by way of amendment of statement of claim or of reply, see No. 1215, p. 1591.

1366. No pleadings shall be amended in the long vacation, unless directed by a court or a judge. Ord. LXIV. r. 4, No. 964.

1366a. For cases of applications to amend pleadings rejected as made at the hearing, and therefore too late, see, in collision actions, *The Alhambra*, B. & Lush. 286; in salvage actions, *The Cybele*, No. 1466, *infra*, and *The Antelope*, No. 1472, *infra*.

(b) Mode.

1367. An indorsement or pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the document difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the document as amended. Ord. XXVIII. r. 8, No. 316.

1368. Whenever any indorsement or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: "Amended day of pursuant to order of dated the of ." *Ibid.* r. 9, No. 317.

(c) Time.

1369. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such

order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the court or a judge. *Ibid.* r. 7, No. 315. As to the previous practice thereon, see *The Justyn*, 11 W. R. 44.

1370. The time for amending any pleading may be enlarged by consent in writing, without application to the court or a judge. Ord. LXIV. r. 8, No. 968.

(d) Statement of Claim.

1371. The plaintiff may, without any leave, amend his statement of claim, whether indorsed on the writ or not, once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared. Ord. XXVIII. r. 2, No. 310.

(e) Counter-claim or Set-off.

1372. A defendant who has set up any counter-claim or set-off may, without any leave, amend such counter-claim or set-off at any time before the expiration of the time allowed him for answering the reply, and before such answer, or in case there be no reply, then at any time before the expiration of twenty-eight days from defence. *Ibid.* r. 3, No. 311.

See also No. 1404, p. 1607.

(f) Pleadings in Answer.

1373. Where any party has amended his pleading under rules 2 or 3 the opposite party shall plead to the amended pleading, or amend his pleading within the time he then has to plead, or within eight days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment. *Ibid.* r. 5, No. 313.

(g) Objection to—

1374. Where any party has amended his pleading (under Rules No. 310, as to statement of claim, or No. 311, as to counter-claim or set-off), the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the court or a judge to disallow the amendment, or any part thereof, and

the court or judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just. *Ibid.* r. 4, No. 312.

(h) *Prior to Judicature Acts and Rules.*

1375. In a cause of damage by collision, the plaintiff pleaded that both vessels were riding at anchor, and that defendant's vessel drove from her anchor foul of plaintiff's vessel. Defendant pleaded that it was not his vessel, but plaintiff's vessel that drove. At the hearing and after examination of the plaintiff's witness, the defendant applied for leave to amend his pleadings by alleging that there was a duly-licensed pilot on board his vessel, who, if any one, was to blame for the collision. Application refused. *The Ahkera*, 15th June, 1864.

1376. In a salvage action against ship, cargo, and freight, the petition alleged that the owners had paid £300 in discharge of the plaintiff's claim against ship and freight. On motion by defendants, owners of cargo, the court directed the pleading to be amended by leaving out the amount paid to the plaintiffs. *The Duc Checchi*, L. R. 4 A. & E. 35, n.; 1 Asp. N.S. 294.

17. *Issues.*

(a) *Generally.*

1377. For provisions that where it appears to the court or judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues which, if the parties differ, shall be settled by the judge, see Ord. XXXIII. r. 1, No. 380.

1378. As to the powers of the court on motion for judgment to direct such issues or questions to be tried as it may think fit, see Ord. XL. r. 10, No. 568.

1379. As to issues in interpleader cases, see Ord. LVII. rr. 7, 9, 13, Nos. 856, 858, 862.

(b) *Third Parties.*

1380. Where in a collision cause the defendant claims indemnity from a third party, who appears and defends, the court may find the original defendant solely to

blame, but unless issues are directed between the defendant and the third party the court cannot make a decree deciding questions of liability between them. *The Carlsburn*, 5 P. D. 35 (C. A.) 59; 4 Asp. 202; 49 L. J. Adm. 14.

(c) *Joinder of—*

See s. 8, p. 1596.

18. *Special Case.*

See c. 24, p. 1572.

19. *Questions of Fact agreed to be decided.*

1381. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the court or a judge, proceed to the trial of any such questions of fact without formal pleadings. Ord. XXXIV. r. 9, No. 397.

1382. As to the entry for trial and mode of trial of such questions of fact, see c. 38, p. 1639.

20. *Cross Actions.*

1383. As to the old practice as to the pleadings and evidence for the trial of cross causes, see *The Admiralty Court Act*, 1861 (c. 10), s. 34; *The Tecla Carmen and North American*, 1 Lushington, 79; 5 Jur. N.S. 659; *The Vortigern*, Swabey, 518; 1 L. T. N.S. 307; *The Gauntlet and Lady Franklin*, 17th March, 1854; Coote's Adm. Prac. 30; *The Gabriel*, 4 W. R. 91; *The Annapolis and Johanna Stoll*, 4 L. T. N.S. 418, 424; 1 Lushington, 313; and Pritchards' Adm. Digest (2nd ed.), vol. 2, p. 591.

21. *Interpleaders.*

See c. 43, p. 1667.

22. *In Bottomry Actions.*

(a) *Before the Judicature Acts and Rules.**

1384. In cases of bottomry it is not necessary, as a general proposition, for the bondholder in the first instance to mention in his pleadings all the circumstances, for he relies on the execution of

* (427) For form of statement of claim in a bottomry action, see R. S. C. 1883, App. C., s. 3, No. 3, and Roscoe's Adm. Practice (2nd

ed.), App. p. 502.

(428) For form of statement of defence, *Ibid.* App. D. s. 3, No. 3; and *ibid.* p. 503.

the bond. *The Mary Ann*, 10 Jur. 255; 4 Notes of Cases, 376.

1385. A bottomry bond may be supported by facts which come out incidentally in the evidence, but the attention of the court must be primarily directed to those points more immediately put in issue in the pleadings, and it would be most inconvenient to decide the case, not according to what is alleged and proved, but according to that which incidentally transpires in the course of the suit. *The Ariadne*, 1 W. Rob. 412; 6 Jur. 513; 1 Notes of Cases, 494.

1386. The existence of a local law may be properly pleaded as material evidence to support an averment that the agreement was to make advances on the credit of the ship and freight, and that the commissions were customary. *The Laurel*, 3 N. R. 48.

1387. Bottomry bond pleaded as given in February, 1852, to secure an advance of money. At the hearing it appeared that the bond was for goods furnished in the previous September under an alleged agreement. *Held*, that upon the pleadings the holder could not recover. *The Wakefield*, 5 Jur. 69. (Court of Delegates.) [IRISH.]

1388. An objection to a bottomry bond, that sea risk was not stipulated for, ought to be raised on the pleadings, so that if answerable it may be answered. *The Royal Arch*, Swabey, 281.

1389. In opposing a bottomry bond the defence intended to be relied upon (e.g. the want of notice of the necessity for or the intention to execute a bottomry bond) should be clearly stated in the pleadings. *The Bonaparte*, 17 Jur. 285; 3 W. Rob. 298; 21 L. T. 280; 7 Notes of Cases, Supp. 55; and S. C. on appeal, 8 Moore, P. C. C. 460.

1390. This point not having been distinctly raised in the pleadings the cause was remitted, with liberty to supply further proof in respect of such notice. *Ibid.*

1391. An objection by the owners of cargo that the master should have communicated with them before hypothe- cating their cargo, cannot prevail unless pleaded. *The Olivier*, 6 L. T. N.S. 259; 31 L. J. N.S. Adm. 137; 1 Lushington, 484; *Glascott v. Laing*, 2 Phillips, 310.

1392. In a suit to establish the validity of a bottomry bond, a prayer in the answer that before pronouncing the validity of the bond or otherwise the court would disallow certain charges in the accounts, was considered as without

precedent. Answer directed to be amended by the omission of such prayer. *The Osmanli*, 3 W. Rob. 207.

1393. In a cause of bottomry, on motion on behalf of the bondholder, the defendants, the assignees of the owner, ordered to bring in all proofs then in their power or possession before the bondholder filed his answer to the defendants' pleadings, and on the further proofs being so brought in, the bondholder allowed further time to send out to the Mauritius before pleading. *The Orelia*, 3 Hagg. 77, n.

1394. The defence that a bottomry bond was given as a collateral security for bills of exchange, which it was alleged had been accepted and paid, ought to be raised on the pleadings, so as to give plaintiffs notice thereof. Leave to amend given. *The Onward*, 1 Asp. N.S. 542, n.

23. In Collision Actions.

(a) Generally.

1395. The pleadings should be confined to the merits of the collision. *The George Arkle*, 1 Lushington, 222; *The Transit*, No. 1992, 16 Feb. 1864; *The Clarence*, 1 Spinks' Eccl. and Adm. Rep. 208.

1396. The pleadings should state accurately the facts and the reasons on which both parties rely. Nothing should be left to inference. *The Lady Anne*, 15 Jur. 18; 5 Notes of Cases, 364.

1397. A party cannot, at the hearing, avail himself of a rule of seamanship in order to impute misconduct to the other party in not acting up to the rule, unless such misconduct is charged in the pleadings. *The Ebenezer*, 2 W. Rob. 210; 7 Jur. 1117; and see *The Marpesia*, 8 Moore, P. C. C. N.S. 468.

1398. Where it was intended to charge non-observance of the 296th (now repealed) section of the Merchant Shipping Act, 1854 (c. 104), with respect to the rule of port helm, the act done or not done was required to be specifically pleaded to be in violation of the statute. *The Bothnia*, 1 Lushington, 52; 29 L. J. Adm. 65; 2 L. T. N.S. 160; *The Ironmaster*, 6 Jur. N.S. 782.

1399. It appearing from the evidence that both vessels were partly to blame, but that in the case of one of them there had been culpable delay in porting the helm on perceiving the approach of the other, *held*, reversing the sentence of the

Court of Admiralty, that under the Merchant Shipping Act, 1854 (c. 104), ss. 296, 298 (now repealed), the owners of the vessel so neglecting to port her helm in time could not maintain their suit in the Court of Admiralty, or recover any damages in respect of the collision; but the point not having been raised in the court below, no costs of appeal given. *The James*, 4 W. R. 353.

1400. In a cause of damage by collision the protest should be brought in, but it is unnecessary to plead the contents of it. *The Mellona*, 10 Jur. 994; *The Speculator*, 12 Jur. 546; *The Rob Roy*, 13 Jur. 756.

1401. Objections to pleading the protest and value of the ship. *Held*, that the protest would be before the court in the regular course of the cause, and that the value of the ship, where not agreed upon or ascertained by appraisal, was a question for the registrar and merchants. Objections allowed. *The Speculator*, 12 Jur. 546.

1402. A verdict obtained at common law could not be introduced into Admiralty pleadings. *The Clarence*, 1 Spinks' Eccl. and Adm. Rep. 208, 209.

(b) *Before the Judicature Acts and Rules.*

(aa) *Generally.**

1403. Plaintiffs, the owners of a sailing vessel in proceedings against a steamer, need not plead that their vessel, after

sighting the steamer, kept her original course. *The West of England*, L. R. 1 A. & E. 308; 36 L. J. Adm. 4.

1404. The court having found both vessels to blame, refused at such a late stage to allow the defendants to amend their statement of defence by adding a counterclaim, but left them to institute a cross action. *The Leon*, 6 P. D. 148; 50 L. J. P. D. 59.

1405. In a cause of damage by collision, if the owners of the damaging vessel intend to attribute the cause of damage to the wilful misconduct of their master, the facts of the case should be admitted, and the wilful acts of the master set forth. *The Seine*, 5 Jur. N.S. 299.

1406. If the defendants in an action of collision desire to claim limitation of liability in such action, they must do so by their pleadings. *Wahlberg v. Young*, 45 L. J. C. P. 783; 4 Asp. 27, n.; 24 W. R. 847.

(bb) *By Plaintiffs.*

1407. It is a rule to be observed in all courts, that a party complaining of an injury, and suing for redress, can recover only *secundum allegata et probata*. *The Ann and Magnet*, 1 Lushington, 55; 13 Moore, P. C. C. 198; 3 L. T. N.S. 128; 8 W. R. 567; *The Despatch*, 1 Lushington, 98; 14 Moore, P. C. C. 83; *The North American*, Swaby, 358; 12 Moore, P. C. C. 331; *The Wakefield*, 5 Irish

* (429) The statement of claim in a collision action is entitled in the cause, and avers that the plaintiffs have suffered damage by collision with the defendants' ship by the negligence and bad navigation of the defendants' servants at a particular time and place. It then proceeds to state shortly and in separate paragraphs the name, tonnage, description of the plaintiffs' vessel, whence and whither bound, and with what cargo, the description of wind, weather and tide, about the time of the collision, the position, bearing and conduct of the defendants' vessel, manœuvres of the plaintiffs' vessel to avoid collision, the wrongful conduct of the defendants' vessel causing the collision, and the mode of collision. It charges in separate paragraphs blame to those on board the defendants' vessel in respect of such bad navigation and such breaches of the sea or local collision rules as are considered to have been committed. It concludes with a claim for judgment against the defendants for the damages occasioned to the plaintiffs by the collision, for costs, and for a reference to the

registrar and merchants to assess the damages.

(430) The statement of defence is similarly entitled, and states shortly similar particulars, and the defendants' account of the circumstances of the collision, averring that the defendants' master and crew were in no degree to blame for the collision, and charging such bad navigation and breaches of the sea or local collision rules as are considered to have been committed on board the plaintiffs' vessel.

(431) If it is intended to prefer a counterclaim for damages to the defendant's vessel, the defendant, in a concluding paragraph, headed counter-claim, declares he repeats (so far as necessary) the paragraphs (stating the number of them) of the defence, avers that he has sustained damage by such collision, and claims judgment, costs, and a reference to the registrar and merchants to assess the damages.

(431a) For forms of statement of claim and defence in such actions, see Roscoe's Adm. Practice (2nd ed.) App. pp. 484, 485, 509.

Jur. 60; *The East Lothian*, 14 Moore, P. C. C. 177; 4 L. T. N.S. 487.

1408. *Semble*, slight discrepancies between the pleadings and evidence will not be regarded by the court, owing to the difficulty of practitioners always clearly understanding all the points of the cause before filing their pleadings. *The Traveller*, 2 W. Rob. 198.

1409. In causes of damage by collision a considerable degree of elasticity is allowed in pleading, because of the difficulty of getting at or understanding all the facts requisite to the case. The court would not therefore stop the plaintiff's case for ordinary errors in his pleading, but it will do so when his evidence is irreconcilable with his petition. *The Haswell*, No. 1673, 9th July, 1863.

1410. In causes of collision it is often impossible to state in the first instance all the important facts bearing on the collision. Sometimes the collision takes place in darkness, and it cannot be known on board one ship what orders were given on board the other, what look-out was kept, &c. If these are discovered subsequently to pleading no wrong is done in admitting evidence of them, if the other party has opportunity of contradicting them. *The Schwalbe*, Swabey, 523.

1411. A plaintiff is bound to plead facts, from which the law will infer that the collision was occasioned by the default of the defendant, but not to plead the legal inference. *The East Lothian*, 1 Lushington, 241; 14 Moore, P. C. C. 177; 4 L. T. N.S. 488.

1412. It is sufficient for a party who complains of an injury to his vessel occasioned by the improper course of another vessel, to describe that course, without undertaking to attribute it to any particular conduct on board the other vessel. *Ibid.*

1413. The plaintiff cannot recover in full if he fails to prove the case as set up in his pleading and evidence, although fault is otherwise established against the other vessel, and none proved against his vessel. *The North American*, Swabey, 358; 12 Moore, P. C. C. 331.

1414. It was pleaded that the default of the defendant's vessel took place in a particular manner. *Held*, that such default must be proved in the manner in which it was alleged in the pleadings. *The Ann and Magnet*, 1 Lushington, 55; 13 Moore, P. C. C. 198; 8 W. R. 567; 3 L. T. N.S. 128.

1415. It is not enough to establish by evidence that the default was committed in another manner, although the result would be the same upon the merits, as the court will confine its judgment to the issues raised upon the pleadings. *Ibid.*

1416. Plaintiffs in a cause of damage by collision against the *Ann*, charged in their pleadings that the collision was caused by the *Ann* having suddenly and improperly starboarded her helm. Issue having been taken on this fact, it was proved that the collision arose from the *Ann* not having altered her course till the last moment when a collision was inevitable, and that the *Ann* had not starboarded her helm at all, but ported it too late. *Held*, a fatal variance, and suit dismissed. *Ibid.*

1417. According to the plaintiffs' pleadings their vessel, the *T. C.*, was close-hauled on the starboard tack, and the defendant's vessel, the *N. A.*, was on the port tack without a good look-out; and the vessels would have gone clear, but that the *N. A.* starboarded, and with her starboard bow came into collision with the port bow of the *T. C.* *Held*, by the court below, that the collision was caused by the want of a good look-out on board the *N. A.*, and by the porting of her helm, and also by the starboarding of the *T. C.*, and that both vessels were to blame. On appeal, *held*, that there was a want of good look-out on board the *N. A.*, that her helm was improperly ported, that such conduct sufficiently accounted for the collision, that neither the *T. C.* nor *N. A.* starboarded, and that the collision took place with the port, and not the starboard, bow of the *N. A.*, but that the case was not proved as alleged in the plaintiffs' pleadings. Judgment therefore affirmed. *The North American*, Swabey, 358; 12 Moore, P. C. C. 331.

1418. Plaintiff charged that the engines of his vessel, the *S.*, were stopped to bring the ship up, that the lights of the *H.* coming up behind her were then observed, and that the *H.* continued her course until about fifty yards off, when she suddenly starboarded her helm and ran into the *S.*, and that the collision was occasioned solely by want of skill or the negligence or other misconduct of those on board the *H.*, and especially in their not having kept out of the way of the *S.* as they ought to have done. The evidence for the plaintiff was to the effect that the *H.* was to blame, either because

she did not keep her course or did not starboard her helm, and that had she starboarded the collision would have been avoided. *Held*, that the plaintiff's evidence was irreconcilable with the case laid in his pleading, and that the general charge of negligence was too general to include the charge as disclosed by the evidence. Judgment for the defendant on the plaintiff's own case. *The Haswell*, No. 1673, 9th July, 1863. Affirmed on appeal, 18th February, 1864.

1419. The plaintiff pleaded that the collision was caused solely by the A. not having carried the regulation lights. *Held*, that the A. was to blame as to her lights, and that the other vessel was also to blame. *Held*, further, that the plaintiff was not barred from recovery of a moiety of the damage by his having pleaded that the A. was solely to blame. *The Aurora* and *The Robert Ingham*, 1 Lushington, 327.

1420. Plaintiff pleaded *inter alia*, to the effect that half an hour previous to the collision in question, the vessel proceeded against had run foul of a barge, and that on being threatened with legal proceedings the owners of the vessel proceeded against had paid the damage. On objection to this paragraph the court ordered it to be struck out. *The Cosmopolitan*, 1 Spinks' Eccl. and Adm. Rep. 179.

1421. Circumstances may sometimes be relied upon which are not pleaded, but they must be circumstances of which the party pleading was necessarily ignorant, such as where the person in charge of the other vessel was drunk, or where the pilot was below, or where there was no look-out, or where there was misconduct. *The East Lothian*, 1 Lushington, 244.

1422. Neither of two sailing vessels which came into collision, had observed the Admiralty regulations respecting lights, but neither had pleaded that the collision was occasioned by such non-observance on the part of the other. The court, nevertheless, *held*, that under the circumstances of the case, both vessels were barred of recovery by 14 & 15 Vict. c. 79, s. 28 (now repealed). *The Aliwal*, 1 Spinks' Eccl. and Adm. Rep. 96; 18 Jur. 296.

1423. The plaintiff alleged, first, that the defendant improperly starboarded; and secondly, if he did not starboard, at all events he neglected to port as he ought to have done. *Held*, the court might, on the evidence, well find for the plaintiff without deciding whether the defendant

had starboarded or not, for the first charge, if proved, necessarily involved the second, and if not proved, the second was sufficient to sustain judgment. Therefore the objection of want of certainty in pleading was untenable. *The Amalia* and *Marie de Brabant*, 10 L. T. N.S. 826.

1424. The defendant was found to blame for improperly porting his helm. *Held*, that this charge, though not specially pleaded by the plaintiff, was sufficiently to be inferred from his pleadings. *The Moderation*, 1 Moore, P. C. C. N.S. 528; 9 L. T. N.S. 586.

1425. The plaintiffs charged the vessel proceeded against with having caused the damage by two separate collisions, whereby the damaged vessel, being at anchor, was driven on the rocks and sunk. In the pleadings the defendants admitted the fact of the first collision, but denied that a second collision had occurred as alleged by the plaintiffs. The evidence established that the first collision was of such a nature that the plaintiffs' vessel might have been driven ashore on the rocks even if no second collision had occurred, which fact was not clearly established by the evidence. *Held*, that the first collision being proved the plaintiffs were entitled to recover, as they had proved a fact sufficient to found a judgment in their favour, and to satisfy the rule that a plaintiff can recover only *secundum allegata et probata*, although the allegation charging the second collision was not proved. *The Despatch*, 14 Moore, P. C. C. 83; 1 Lushington, 98.

1426. Special damages as rewards paid to salvors for services rendered necessary by the collision, are not to be pleaded. *The George Arkle*, 1 Lushington, 222.

1427. Averments in the plaintiffs' pleadings of particulars of salvage services rendered to the damaged ship, and that £130 had been paid for salvage, directed to be struck out. *Ibid*.

1428. Where the plaintiffs' vessel is at anchor at the time of a collision and the defendant's vessel under weigh, the plaintiffs need not, as in other cases, plead the specific acts of negligence which occasioned the collision. *The Secret*, 1 Asp. N.S. 318. [IRISH.]

1429. In a collision between plaintiff's vessel at anchor, and defendant's vessel under weigh, it will be sufficient for the plaintiff to set forth the circumstances of the collision within his knowledge, and charge generally that it was owing to the mismanagement or misconduct of the do-

defendant's vessel and crew, and the burthen of proof is *prima facie* on the defendant to make out a satisfactory defence. *The Bothnia*, 1 Lush. 54; 2 L. T. N.S. 160; 29 L. J. Adm. 65.

1430. The plaintiff should charge the defendant's vessel and crew with whatever fault or blame on their part he may consider occasioned or contributed to the collision. It is not, however, always in the plaintiff's power to set forth all the circumstances of the case in his first pleading, as the collision may have occurred at night or under other circumstances preventing his knowing all that transpired on the occasion. Therefore, where the defendant's answer discloses circumstances enabling the plaintiff to make further charges of misconduct or default against the defendant's vessel or crew, the plaintiff is at liberty to do so in his reply. *Ibid.*

1431. Where a plaintiff's vessel was run down at anchor, and the plaintiff pleaded that fact, charging negligence generally, and the answer pleaded that the collision was not occasioned by negligence, but by the violence of the tempest and sea, which prevented the anchors of the defendant's vessel from holding, the plaintiff may reply that the collision was occasioned by the default of the defendant's ground tackle. *Ibid.*

1432. Where it is pleaded by the defendant that his ship was in charge of a duly-licensed pilot, the plaintiff should plead that the pilot was not taken on board by compulsion of law, by reason that the ship was in ballast, and therefore exempt from being compelled to take a pilot, if the plaintiff intends to rely on that fact in impeachment of the defence. *The Agricola*, 2 W. Rob. 16.

1433. *Held*, that the defendant's vessel was to blame for not having ported her helm and eased off her main-sheet. No such charge was contained in the plaintiff's pleadings, though a general charge of mismanagement was pleaded besides other charges. The court, but with doubt, pronounced for the damage. *The Lady Ann*, 7 Notes of Cases, 370.

1434. The plaintiff may plead a certain state of facts, and charge generally that the defendant's vessel and crew were to blame for the collision. The court will not order the pleading to be amended so as to limit the general charge by the case laid, but will not permit under the general charge an entirely different case to be proved to that laid. *The Great Eastern*, 10th Nov. 1863.

1435. The plaintiff pleaded, first, the regulations of the Admiralty respecting the exhibition of lights, and other regulations respecting the courses to be followed by steamers, published by the Admiralty, and republished by the Trinity House at Hull; secondly, a printed copy of such regulations as republished; thirdly, the history of the voyage in one article, at great length. *Held*, first, that the regulations respecting the exhibition of lights were the only binding regulations under the act of parliament; secondly, the publication of those regulations must be shown from the *Gazette*, as an exhibit; thirdly, the article pleading the transactions must be divided for the convenience of taking evidence thereon by an examiner. *The Rob Roy*, 13 Jur. 615.

1436. It was pleaded to the effect that defendant admitted his liability to pay and promised to pay, and had the ship taken into his yard to be repaired. Objections to these pleadings allowed with costs. *The Transit*, No. 1992, 16th Feb. 1864. See also *The Friendship*, No. 1050, 13th May, 1861.

1437. If such matters should be material on the question of costs, the court, after judgment on the question of damage, might permit evidence thereon to be given in reference to costs. *Ibid.*

(cc) *By Defendants.*

1438. A defendant is not bound to do more in his pleading than deny that the collision was occasioned by the default of his vessel or of his servants. *The East Lothian*, 1 Lushington, 241; 14 Moore, P. C. C. 177; 4 L. T. N.S. 487.

1439. A defendant, though pleading a particular fact as the cause of the collision, is not bound to prove it, and if he fails in so doing he is not thereby concluded. *Ibid.*

1440. The reason of the rule laid down in the *Ann and Magnet* (13 Moore, P. C. C. 198) altogether fails in its application to the defence of the vessel proceeded against. An erroneous allegation of the mode in which an injury occurred does not, if made by way of answer, narrow the issue down to the particular fact alleged, so as to entitle the complainant to recover if the proof of it fails. *Ibid.* 4 L. T. N.S. 488; 14 Moore, P. C. C. 177.

1441. In pleading immunity by reason of the vessel's being under a dock-master's orders, it is not sufficient to state that the collision occurred in a dock, and that the defendant's servants were acting at the

time under the dock-master's orders, and were bound by law so to do, and therefore not responsible for the collision. It must be further stated that the dock was a public dock, and the act of parliament should also be referred to by reason of which it was compulsory upon the defendant's servants to act under the orders of the dock-master. *The Bilbao*, No. 298, Nov. 3, 1860.

1442. A starboard-tacked vessel came in collision with a port-tacked vessel, both close-hauled. The weather was thick and foggy. The port-tacked vessel proceeded against averred in plea thick fog, and that the other vessel was to blame in not keeping a good look-out, giving notice of her approach, and putting her helm down. At the hearing the case was argued as one of inevitable accident. The court, though reprehending such a variation between plea and argument, held the facts to be sufficiently stated to admit of its considering both grounds of defence. *The England*, 5 Notes of Cases, 174.

1443. A steamer came into collision with a sailing vessel. Defence, that the sailing vessel, just previous to the collision, "was seen to be suddenly, and in violation of the 296th section of the Merchant Shipping Act, approaching the steamer on her port bow." Held, that in pleading it is necessary to state, as accurately as the circumstances of the case will admit, in what respect it is intended to allege that the Merchant Shipping Act has been violated, but that in the instance before the court it was sufficient to plead that the helm of the sailing vessel had not been ported in accordance with the terms of the statute. *The Ironmaster*, 6 Jur. N.S. 782.

1444. Averments in the defendant's pleadings of unnecessary delay in bringing the suit directed to be struck out. *The Mellona*, 3 W. Rob. 10.

1445. Those on board the vessel proceeded against were found to have been guilty of negligence, and therefore to blame for the collision. Objection then taken that such negligence was not the negligence of the defendants, the owners, or their servants, but of certain independent contractors to whom the vessel had been entrusted; held, to have been urged too late, the pleadings not raising this objection. *The Ruby Queen*, 1 Lushington, 266.

1446. Defence that navigating the wrong side of the river was a wilful act of the master for which the owners were

not liable, overruled because not pleaded. *The Seine*, Swabey, 413.

1447. Where the evidence is taken before an examiner, the defence of inevitable accident must, if it is to be relied upon, be pleaded. *The E. Z.*, 10 L. T. N.S. 790; 33 L. J. Adm. 200.

1448. Objections to defendant's pleading, 1st, the history of the ship proceeded against for some days prior to the collision; 2nd, statements made by the mate and seamen of the ship proceeding with respect to the state of their vessel, &c.; 3rd, the age of the ship; 4th, variations between the accounts given in the protest and plaintiff's pleading; and 5th, delay in instituting proceedings. Held, 1st, that the previous history of the ship was admissible, as being usual and convenient; 2nd, that such only of the statements as formed part of the *res gesta* were admissible; 3rd, that the age of the ship might be pleaded to account for the loss; 4th, that inasmuch as the protest itself was to be brought in the statements contained in it need not be pleaded; and 5th, that the delay appearing on the face of the proceedings, and not being accounted for, it was not necessary to allege it in the responsive pleading. *The Mellona*, 3 W. Rob. 10; 10 Jur. 993.

1449. Averment, that the A. ran into the vessel B. at sea, and caused her to founder, whereby some of the crew of the B. and a passenger on board her were drowned, and that the collision was caused by the improper navigation of the A. The legal representatives of the deceased persons were the plaintiffs. Defence, that the collision took place on the high seas, that the deceased persons were aliens, and the B. a French vessel, ordered to be struck out as irrelevant. *The Explorer*, L. R. 3 A. & E. 289.

1450. Defence of compulsory pilotage, under 6 Geo. 4, c. 125, should be stated in the pleadings, but the omission to do so will not deprive the defendant of the exemption from responsibility conferred by the statute; the act being a public act the court is bound to take notice of it without its being specially pleaded. *The Canadian*, 1 W. Rob. 343.

1451. A defence that the ship proceeded against was in charge of a duly-licensed pilot, taken by compulsion of law, must be pleaded specifically. *The Northampton*, 1 Spinks' Eccl. and Adm. Rep. 155, n.

1452. It was pleaded by the defendant that there was a duly-licensed pilot on board his vessel, but it was not pleaded

under what act of parliament he was taken, nor whether compulsorily, nor whether he was to blame for the collision, nor that all his orders were obeyed. The court therefore refused to take cognizance of such claim of exemption. *The Philomele*, cited in 1 Spinks' Eccl. and Adm. Rep. 155, n.

1452a. In a cause of damage by collision plaintiff pleaded that both vessels were riding at anchor, and that defendant's vessel drove from her anchor foul of plaintiff's vessel. Defendant pleaded that it was not his, but plaintiff's, vessel that drove. Defendant applied to be and was allowed to prove his case by affidavits. Plaintiff examined his witnesses *vid voce*, and after he had done so defendant applied for leave to amend his pleadings by alleging that there was a duly-licensed pilot on board his vessel, who, if any, was to blame for the collision. The court refused the application. *The Akhera*, 15th June, 1864.

24. In Damage to Cargo Actions.

(a) Generally.*

1453. In an action of damage to cargo, the petition ought generally to state, as far as practicable, the cause to which the plaintiff attributes the loss or damage. *The Helene*, B. & L. 415.

(b) Before the Judicature Acts and Rules.

1454. Indorsees of a bill of lading, signed by the captain, raised an action against the shipowners for short delivery of the goods mentioned in the bill of lading. *Held*, that the action was irrelevant, as the pursuers did not allege that there was short delivery of the quantity

actually shipped. *M'Lean and Hope v. Munck*, 3rd Series, vol. 5, p. 893. [SCOTCH.]

1455. In an action for damage to cargo, the defendants pleaded that the damage was occasioned by accidents and perils by the bill of lading excepted, and by causes for which the defendants by the terms thereof were not responsible. *Held*, that the defendants must give particulars of the accidents, perils, and causes which occasioned the damage. *The Hakon Adelstein*, 43 L. J. Adm. 9.

1456. The Court of Admiralty, prior to the Judicature Acts, although influenced by equitable considerations, was not a court of equity, so as to allow matters foreign to the issue to be introduced in order that complete justice might be done between the parties; it followed rather in its pleadings and practice the courts of common law. *The Don Francisco*, 1 Lushington, 468; 31 L. J. Adm. 14; 5 L. T. N.S. 460.

1457. A plaintiff having sued in the Admiralty Court, in respect of damage done to cargo, through the default of the crew of the vessel on board of which it was conveyed, *held*, prior to the Judicature Acts, that the defendant was not entitled to plead by way of set-off that the plaintiff had illegally deducted from the freight and primage a sum greater than the amount of the damage. *Ibid*.

25. In Marine Insurance Actions.

See tit. MARINE INSURANCE, p. 1102.

26. In Actions for Necessaries, Repairs, and Supplies.†

(a) Before the Judicature Acts and Rules.

1458. A reply in a cause of necessaries,

* (432) For form of statement of claim and statement of defence in an action of damage to cargo, see Roscoe's Adm. Practice, 2nd ed. App. pp. 489—494.

(433) The plaintiff declaring in trover for goods sold for less than their value at an intermediate port must allege special damage to recover the difference of value at the place of delivery. *Atkinson v. Stephens*, 7 Exch. 567, per Parke, B.

(434) The rules of pleading in Admiralty must be strictly complied with, and the evidence confined to the points put in issue by the pleadings. *McKinlay v. Morrish*, 21 How. U. S. 343. [AMERICAN.]

(435) Thus, where the libellants put their case upon bad and careless stowage of the cargo and upon leaks in the deck of the ship, through which water passed and

damaged it, and the respondents specifically deny both allegations, these two points are the only ones in issue, and testimony in regard to the effect of a gale upon the general seaworthiness of the ship and the like is irrelevant. *Ibid*.

(436) Where, in a libel for damage to a cargo, the allegations are—1. That the master falsely represented the ship to be tight, &c.; and 2. That the damage resulted from the negligence of the master and mariners, the libellant cannot at the trial set up a third ground of complaint, namely, that the master failed in his duty in not putting into port after a storm to refit and dry the cargo. *Saule v. Rodocanachi*, *The Oregon*, 1 Newb. Adm. 504. [AMERICAN.]

† (437) For form of statement of claim and statement of defence in an action for

leaving it doubtful whether the person in possession of the vessel at the time of the supply was the original mortgagee or the defendant, the transferee of the mortgage, is bad. A mortgagee in possession would not be liable for necessaries supplied, unless the master in ordering them acted as the agent of the mortgagee. An allegation that a defendant was in possession of the vessel at the date of the supplies, and personally liable for them, would not, therefore, be a good reply to an answer of a defendant claiming to be a mortgagee prior to the date of the supply. *The Troubadour*, L. R. 1 A. & E. 802; 2 Asp. 475.

1459. The petition claimed in respect of cordage and similar articles supplied to

the A., which plaintiff contended was a French vessel. Defendants, by petition on protest, pleaded the vessel was British, and her owners domiciled in this country. The plaintiffs by their answer denied this, and averred she was the property of certain American citizens. *Held*, that this averment was too vague, and must be amended by stating who the citizens were. *The Beatrice*, 22 December, 1866.

1460. In an action for necessaries it is not sufficient to allege, in general terms, that money was advanced for necessary expenses, but it must be stated what those expenses were. *The Riga*, L. R. 3 A. & E. 523.

27. In Limitation of Liability Actions.*

necessaries, see Roscoe's Adm. Prac., 2nd ed. App. p. 496.

(438) For form of statement of claim and statement of defence in an action for repairs and supplies, *Ibid.* p. 498; and R. S. C. of 1883, App. C. s. 3, No. 4, and App. D. s. 3, No. 4.

* (439) The statement of claim in an action of limitation of liability is entitled with the names of all the owners of the ship A. (whose liability is sought to be limited) as plaintiffs, and the other ship B. and her owners made defendants.

(440) It sets forth that the plaintiffs are the owners of the ship A.; that she is (if British) a duly-registered British ship (if a foreign ship state so); that she came in collision on such a day with ship B., which with her cargo was damaged or lost (as the case may be); and — persons were drowned or injured (as the case may be).

(441) The actions instituted and the judgments thereon, and that the plaintiffs admit they were wholly or partially to blame (as the case may be), and that further actions are expected to be commenced.

(442) That the collision occurred without the actual fault or privity of the plaintiffs or any of them, and that the damages will exceed the amount of their statutory liability.

(443) That there is no claim for loss of life or personal injury, or setting forth the claims or actions instituted in respect thereof.

(444) The gross tonnage of ship A., and the crew space to be deducted, according to the M. S. Act, 1867 (c. 124), s. 9, showing the precise balance on which the plaintiff's liability is to be estimated.

(445) The amount of such liability at £8 or £15 per ton, as the case may be, on such balance of tonnage.

(446) That the plaintiffs are willing to pay this sum into court with such further sum to cover interest as the court may direct.

(447) That the plaintiffs claim a declaration that they are not liable beyond that amount, and that on payment into court of that amount, with interest, all further proceedings in the recited actions may be stayed, and that directions may be given for ascertaining the persons having claims on the fund, and the exclusion of those not claiming within a time to be limited for the purpose.

(448) The statement of defence usually traverses the averments as to the collision having occurred without the fault or privity of the plaintiffs, as to the gross tonnage, and as to the amount for which the plaintiffs are liable, so as to put them on proof of those averments.

(449) See also for form of statement of claim and statement of defence in an action for limitation of liability, Roscoe's Adm. Practice, 2nd ed., App. pp. 505—508.

(450) The judgment usually sets forth that on payment by the plaintiffs into court of the amount of their statutory liability (setting forth the same which is usually that mentioned in the statement of claim), with interest at four per cent. to the date of the judgment, or if paid in afterwards to the date of payment and of costs in the several recited actions, such actions are directed to be stayed.

(451) A time is limited in the judgment within which all claims are to be made.

(452) All claims and accounts are referred to the registrar and merchants to examine and report upon, and plaintiffs are by the judgment condemned in the costs of all parties in the limitation action.

(453) If there is unusual and unnecessary litigation between claimants in the limitation suit, the registrar will, on taxation, disallow these costs as against the plaintiffs.

(454) Limitation of liability may be claimed by the defendant's pleadings in a collision action. *Wahlberg v. Young*, 45 L. J. C. L. 783; 4 Asp. 27; 24 W. R. 847.

28. *In Possession Actions.*(a) *Prior to the Judicature Acts and Rules.**

1461. In a cause of possession the allegation of the party proceeding stated the instrument of purchase, and that he had never sold or transferred the possession. Objection that the manner in which the title was avowed was not sufficiently expressed, overruled. *The Sisters*, 3 C. Rob. 213.

1462. If a party intends to contend that a sale, in itself null and void, was subsequently ratified by the owner of the vessel, the fact of such ratification should be pleaded. *The Empress*, Swabey, 163; 3 Jur. N.S. 119.

29. *In Salvage Actions.*(a) *Generally.†*

1463. In salvage actions a fuller form of statement of claim than that given in R. S. C. of 1883, App. C. s. 3, No. 6, must generally be adopted. Order in this case made accordingly. *The Isis*, 8 P. D. 227; 53 L. J. P. D. 14; 5 Asp. 155; 49 L. T. N.S. 444; 32 W. R. 171.†

1464. Because, where the defendants admit the facts alleged in the statement of claim, the plaintiffs are not allowed to give any evidence at the hearing. *Ibid.*

1465. In salvage actions, the plaintiffs in their statement of claim should state fully the material facts of the service. *The Hardwick*, 5 Asp. 199.

1466. The court, on the motion of the defendants, struck out paragraphs in the statement of claim which alleged that in rendering the salvage services the plaintiffs' vessel had lost the benefit of an engagement, orders to fulfil which were not received in due time by reason of the rendering of the services. *The Cybele*, 3 Asp. N.S. 478; 37 L. T. N.S. 165.

(b) *Before the Judicature Acts and Rules.*

1467. In a claim for salvage arising out of unexpected dangers in the performance of a towage contract the plaintiffs must prove that the ship having got into danger from no fault of theirs, they did

all they could to prevent it, and performed services not covered by their towage contract. The defendants by denying the performance of salvage services will put all these matters in issue, and need not, if they contend their ship was placed in danger by negligence or error in judgment of the claimants, allege these matters. *The Minnehaha*, 1 Lushington, 335, 350; 15 Moore, P. C. C. 133.

1468. But under such a traverse wilful misconduct cannot be put in issue. *Ibid.*

1469. In every case the court will have regard to the degree of notice given by the defendants to the claimants of the objections on which they intended to rely. *Ibid.* 9 W. R. 925.

1470. The court refused to allow the defendants to add to their pleas an allegation that the salvors since the commencement of the suit had assaulted some of the witnesses who were going to give evidence on behalf of the owners. *The Thomas Fielden*, 11 W. R. 156.

1471. Defendants, in pleading an agreement for salvage, must allege it was entered into by the master on behalf of himself and the other plaintiffs, the owners and crew. *Buchanan v. Barr*, 3rd Series, vol. 5, p. 973. [SCOTCH.]

1472. The defendants alleged that they had been decreed by the judge of the Court of Admiralty of the Cinque Ports to pay £240 to parties other than the plaintiffs, who had assisted in the salvage service. Objections by plaintiffs to this averment overruled. *The Antelope*, L. R. 4 A. & E. 33; 42 L. J. Adm. 42; 1 Asp. N.S. 513; *The Duc Chechti*, L. R. 4 A. & E. 35, n.; 1 Asp. N.S. 513.

1473. Whenever the defendants intend to rely upon sect. 460 of the M. S. Act, 1854 (c. 104), as governing the question of costs, the facts material for that purpose should be distinctly pleaded and proved. *The Favourite*, 5 L. T. N.S. 773.

30. *In Wages Actions.*(a) *Generally.§*

1474. In an action of wages by master against shipowner, the defendant, by way

* (455) For forms of statement of claim and statement of defence in a possession action, see Roscoe's Adm. Practice, 2nd ed., App. pp. 499, 500; and R. S. C. 1883, App. C. s. 3, No. 5, and *Ibid.* App. D. s. 3, No. 5.

† (456) For forms of statement of claim and statement of defence in a salvage action, Roscoe, *Ibid.* pp. 472—480, 509; and R. S. C. App. C. and D. No. 6.

(457) For the like in a towage action, Roscoe, *Ibid.* pp. 482, 483.

‡ (458) Under this decision the form of pleading prior to these rules, and setting forth full particulars of the services rendered, is still substantially adopted.

§ (459) For forms of statement of claim and statement of defence in a wages action, see Roscoe's Adm. Practice, 2nd ed., App. pp. 494, 495.

of set-off and counter-claim, claimed damages for the loss of the ship by the negligence of the plaintiff. Reply, that the ship was insured against a total loss, and that the underwriters had paid or agreed to pay to the owners the whole amount payable by them on a total loss. *Held*, on demurrer, that the reply was bad, because the plaintiff had not pleaded that the money had been actually paid to the defendant, or that the counter-claim had been brought without the authority of the underwriters. *The Sir Charles Napier*, 5 P. D. 73. C. A.

1475. In an action by master, also part owner, for his wages and disbursements, the defendants (his co-owners) may allege counter-claims against him in respect of the co-ownership, and pray for a settlement of those claims. *The City of Mobile*, L. R. 4 A. & E. 191; 43 L. J. N.S. Adm. 41.

(b) *Before the Judicature Acts and Rules.**

1476. It is not necessary or proper for the mariner to plead ill-treatment by the master. It may be pleaded subsequently, if necessary, and responsively to a charge of drunkenness. *The New Phoenix*, 1 Hagg. 198.

1477. A charge of ill-treatment may be pleaded as historically accounting for a fact afterwards relied on. *The Jack Park*, 4 C. Rob. 312.

1478. *Quære*, whether, according to the ordinary practice of the Court of Admiralty, alleged drunkenness of the mariner can be made available as a defence to his claim for wages, unless specifically pleaded and put in issue in the cause? *The Duchess of Kent*, 1 W. Rob. 284, 285.

1479. It is not necessary to plead the

entries in the log of the several acts of disobedience and mutinous conduct relied upon to work a forfeiture of wages. *The John Knox*, 16 Jur. 1161.

1480. The defendant having rested his defence *formaliter* on the ground of an asserted consent of the mariner, which was *held* not to bar him, the court will, nevertheless, take into consideration matters forming a just ground of defence, but which the defendant may have improperly overlooked. *The Elizabeth*, 2 Dodson, 406.

1481. The court refused to regard proofs of the plaintiff's general incapacity, as that charge had not been pleaded. *The Exeter*, 2 C. Rob. 261.

1482. The owners pleaded a forfeiture, under the statute, of the wages, on the ground of desertion, but did not plead a charge of temporary desertion. The evidence established the latter, but not the former charge. The court pronounced for the full wages. *The Two Sisters*, 2 W. Rob. 125, 146.

1483. The shipping agreement having been brought in and not contradicted, it is unnecessary for the defendants to plead the execution of it. *The Test*, 3 Hagg. 312.

1484. A pleading in defence that the wages were earned under an agreement entered into for the purpose of breaking the blockade of the Confederate States of America, and that such agreement was contrary to law, ordered to be struck out. *The Helen*, 11 Jur. N.S. 1025; 14 W. R. 136.

31. *Delivery.*

See c. 12, p. 1531.

32. *Printing.*

See c. 37, p. 1632.

* (460) In wages actions generally all that is required of the plaintiff in the first instance is to plead the hiring, rate of wages, performance of the service, determination of the contract, and refusal of payment. *The Newham*, Stuart's Vice-Adm. Rep. 71. [LOWER CANADA.] See also Browne's Civ. & Adm. Law, 2nd ed. 410.

(460a) An appearance having been entered, the court, in a wages action, ordered the plaintiff to bring in his libel on the following day at eleven o'clock. *The Newham*, Stuart's Vice-Adm. Rep. 70. [LOWER CANADA.]

(461) If misconduct (e.g. desertion) on the part of a mariner be set up as a defence to a claim of wages, not only must the misconduct be pleaded, but the pleading containing such defence must furnish a specification of

the acts of misconduct with a proper degree of certainty. *The Agnes*, Stuart's Vice-Adm. Rep. 57. [LOWER CANADA.] See also *Macomber v. Thompson*, 1 Sumner's Rep. C. C. U. S. for the First Circuit, p. 384. [AMERICAN.]

(461a) No facts of misbehaviour, or other cause of forfeiture of wages, are admissible, unless the answer distinctly propounds them and puts them in issue. *Orne v. Townsend*, 4 Mason, 541. [AMERICAN.]

(462) A defence that the 189th section of the M. S. Act, 1854 (c. 104), prohibits any suit in a superior court for the recovery of wages under £50, is not good upon the plea of never indebted, but must be pleaded specially. *Johnston v. Hilberry*, 3 H. & C. 328.

33. *Costs.*

1485. As to costs in connection with pleadings, see tit. COSTS, c. 7, p. 348.

35. *Proofs.*1. *View.*

See tit. EVIDENCE, p. 424, and *ibid.* in Addenda.

2. *Foreign Law.*

See tit. EVIDENCE, p. 423.

3. *Declaration of Agent.*

1486. In a cause of damage declarations made by the master, either immediately after the collision or in subsequent conversations, are admissible evidence against the owners of the vessel, on the principle that the declarations of an agent are evidence against his principal. *The Manchester*, 1 W. Rob. 62; *The Virgil*, 2 W. Rob. 202.

1487. But declarations of the mate, pilot, or seamen cannot be received, as they are not agents of the owners. *The Europa*, 14 L. T. 66; *The Midlothian*, 15 Jur. 806; *The Lord Seaton*, 2 W. Rob. 391; 9 Jur. 603; *The Foyle*, 1 Lushington, 10. *Held*, however, that the chief engineer's log may be put in evidence for the purpose of contradicting the statements of the second engineer on his cross-examination. *The Earl of Dumfries*, 10 P. D. 31; 54 L. J. Adm. 7; 51 L. T. 906; 33 W. R. 568; 5 Asp. 342.

4. *Beyond Pleadings.*

See c. 34, p. 1601.

5. *Variance from Pleadings.*

Ibid. pp. 1592 and 1600.

6. *Answers.*

1488. As to the old practice of answers on oath to the pleadings, see tit. EVIDENCE, p. 429.

7. *In Cross Actions.*

See c. 34, p. 1605.

8. *In Actions by Default in rem.*

1489. In a default action *in rem* evidence

may be given by affidavit. See Ord. XXXVII. r. 2, No. 484.

9. *Evidence in particular Actions.*

See tit. EVIDENCE, pp. 443—462.

10. *Evidence after Trial.*

See s. 30, p. 1626.

11. *Interrogatories.**

1490. See tit. EVIDENCE, c. 7, p. 424, and *ibid.* in Addenda, c. 7.

1491. And as to security for costs in reference thereto, see tit. COSTS, No. 203*a*, p. 363; and tit. EVIDENCE, n. 1*a*, p. 425.†

1492. In deciding upon any application for leave to exhibit interrogatories, the court or judge shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents relating to the matter in question, or any of them. Ord. XXXI. r. 2, No. 344.

1493. It is not necessary before the hearing of a summons for leave to deliver interrogatories under this Order to serve the opposite party with a copy of the proposed interrogatories. *Hall v. Liardet*, 17th Nov. 1883.

1494. Upon an application for leave to interrogate, the judge will not decide as to the relevancy of particular interrogatories so long as their general character is not improper, and they may, by possibility, be relevant. *Ibid.*

1495. Interrogatories as to documents are not generally permissible after an affidavit of documents has been filed. *Robinson v. Budgett*, L. R. W. N. 1884, p. 94.

1496. An objection to an interrogatory as to documents that an order for discovery of documents has not been obtained, is a good answer. *Jacobs v. Great Western Railway Co.*, 9th Feb. 1884.

1497. For provisions, in any action by or against a sheriff officially, enabling the court to order the officer actually concerned to make the affidavit in answer to interrogatories or to give discovery, see Ord. XXXI. r. 28, No. 370.

1498. For form of order for delivery of interrogatories, see R. S. C. 1883, App. K. No. 16.

* (463) See as to interrogatories in the Queen's Bench Division, Wilson's Jud. Acts and Rules, 4th ed. p. 302 *et seq.*, and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 515.

† (464) As to the mode of obtaining payment

out of the deposit, see p. 1483. As however this involves an expense of more than half the deposit it is probable that some new order thereon will shortly be issued. For the procedure where there has been no taxation of costs, see Ord. XXXI. r. 1 of October, 1884.

1499. Interrogatories shall be in the form No. 6 in App. B., with such variations as circumstances may require. Ord. XXXI. r. 4, No. 346.

1500. An affidavit in answer to interrogatories shall, unless otherwise ordered by a judge, if exceeding ten folios, be printed, and shall be in the form No. 7 in App. B., with such variations as circumstances may require. *Ibid.* r. 9, No. 351.

1501. A solicitor upon whom an order for interrogatories, discovery, or inspection, has been served, and who neglects, without reasonable excuse, to give notice to his client is liable to attachment. *Ibid.* r. 23, No. 365.

1502. As to the use of answers to interrogatories at trial, see c. 38, p. 1638.

12. Documentary Evidence.

1503. As to documentary evidence, including foreign documents, judgments, reports and orders of naval courts, official logs, ship's logs, light-house and coastguard logs, protests, depositions before the Receiver of Wreck, and shipping agreements, see tit. EVIDENCE, pp. 430, 442, and *Ibid.* in Addenda.

13. Discovery.*

1504. As to discovery of documents, see tit. EVIDENCE, p. 426, and same cap. in Addenda.

1505. As to costs in reference thereto, see tit. Costs, pp. 386, 387.

1505a. Before moving the court for an order against the opposite party to produce documents, previous application should be made to the opposite solicitor, or the applicant will be condemned in the costs of the motion. *The Memphis*, L. R. 3 A. & E. 23; 3 Asp. 317.

1506. The affidavit in support of the application for discovery of documents must formerly have stated that some one document of those required to be produced is in the possession of the party against whom discovery was sought. The proceeds of *The Cordelia*, 2 Asp. N.S. 35; and *Evans v. Lewis*, L. R. 1 C. P. 656.

1507. For form of order for affidavit as to documents, see R. S. C. 1883, App. K. No. 17.

1508. The affidavit, to be made by a party against whom an order of discovery mentioned in Rule 12 has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be in the form No. 8 in App. B., with such variations as circumstances may require. Ord. XXXI. r. 13, No. 355.

1509. It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used as against such party. Ord. LXV. r. 27, No. 1002, sect. 54.

1510. An affidavit of documents is conclusive against the party seeking discovery, unless it can be shown either from the affidavit itself, or from the documents therein referred to, or from an admission in the pleading of the party swearing the affidavit, that other documents exist in his possession or power which are material and relevant to the action. In any of these instances, but not otherwise, a further affidavit may be ordered. *Jones v. The Monte Video Gas Co.*, 5 Q. B. D. 556.

1511. A plaintiff will not in general be allowed production from a defendant until he has delivered a statement of claim. *Cashin v. Craddock*, L. R. 2 Ch. D. 140.

14. Production.†

1512. As to production of documents, see tit. EVIDENCE, c. 8, p. 426, and same chapter in Addenda; and as to costs in reference thereto, tit. Costs, c. 28, s. 7 ((c)&(d)), pp. 386, 387; and as to production of depositions made before Receiver of Wreck, tit. EVIDENCE, c. 10, s. 11, p. 440, and same chapter in Addenda.

15. Enforcing Production of Documents before Trial.

1513. See tit. EVIDENCE, p. 426.

16. Inspection.‡

1514. As to inspection of documents, see tit. EVIDENCE, c. 8, p. 426, and same

* (465) See as to discovery in the Queen's Bench Division, Wilson's Jud. Acts and Rules, 4th ed., p. 308, and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 491.

† (465a) As to production by order in the Queen's Bench Division, see Wilson's Jud.

Acts and Rules, 4th ed. p. 310.

‡ (466) See as to inspection in the Queen's Bench Division, Wilson's Jud. Acts and Rules, 4th ed. p. 313, and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 505.

cap. in Addenda; and as to costs in reference thereto, see tit. COSTS, c. 28, s. 7 ((c) and (d)), pp. 386, 387.

1515. For form of order to produce documents for inspection, see R. S. C. 1883, App. K. No. 18.

1516. For form of notice to inspect documents, *Ibid.* App. B. No. 10.

1517. The notice as to the time when documents (an order for production of which has been obtained) may be inspected must be in the form No. 10 in App. B., with such variations as circumstances may require. See Ord. XXXI. r. 17, No. 359.

17. Notices to admit.*

1518. See tit. EVIDENCE, p. 429; and as to costs in relation thereto, tit. COSTS, p. 386.

1519. A notice to admit documents shall be in the form No. 11 in App. B., with such variations as circumstances may require. Ord. XXXII. r. 3, No. 373.

18. Notices to produce.*

1520. See tit. EVIDENCE, p. 427; and as to costs in relation thereto, tit. COSTS, p. 386.

1521. A notice to produce documents shall be in the form No. 14 in App. B., with such variations as circumstances may require. See Ord. XXXII. r. 8, No. 378.

1522. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the form No. 9 in App. B., with such variations as circumstances may require. See Ord. XXXI. r. 16, No. 358.

19. Notice to admit Facts.

1523. See tit. EVIDENCE, p. 429; and as to costs in reference thereto, tit. COSTS, p. 386.

1524. A notice to admit facts shall be in the form No. 12, in App. B., with such variations as circumstances may require. See Ord. XXXIII. r. 5, No. 375.

20. Admissions.†

1525. See tit. EVIDENCE, p. 429; as to costs in reference thereto, see tit. COSTS, p. 386; and as to admissions in pleadings, see c. 34, p. 1602.

1526. Any party to a cause or matter may give notice in writing, that he admits

the truth of the whole or any part of the case of any other party. See Ord. XXXII. r. 1, No. 371.

1527. In an action of salvage where the defendant admits all the facts pleaded in the statement of claim, the plaintiff will not be allowed to call evidence except by permission of the court and on special grounds. *The Hardwick*, 9 P. D. 32.

21. Admission of Facts.†

1528. See tit. EVIDENCE, p. 429; and as to costs in reference thereto, tit. COSTS, p. 386.

1529. Admissions of facts shall be in the form No. 13 in App. B., with such variations as circumstances may require. See Ord. XXXIII. r. 5, No. 375.

22. Admissions in Pleadings.

See c. 34, p. 1602.

23. Copies of Documents.

1530. Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared. Ord. LXVI. r. 7, No. 1009 (h).

1531. The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the court or a judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges. *Ibid.* (i).

1532. In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be payable to the solicitor so making default

* (466a) See as to notices to admit and produce, Archbold's Practice (14th ed. by

Chitty), vol. 1, p. 479.

† (467) See as to admissions, *Ibid.* p. 477.

in respect of the copy so applied for. *Ibid.* (n).

1533. As to the copies of affidavits to be furnished in the case of an *ex parte* application for an injunction or writ of *ne exeat regno*. *Ibid.* (j).

1534. The note at the foot of every affidavit, stating on whose behalf it is filed, shall be copied on every copy furnished to a party. *Ibid.* (k).

1534a. The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be. *Ibid.* (l).

1535. All accounts, copies, and papers left at chambers shall be written upon foolscap paper bookwise, unless the nature of the document renders it impracticable. *Ibid.* r. 2, No. 1004.

1536. As to printed copies, see c. 37, p. 1633.

1537. As to printed copies of pleadings, *Ibid.*; and as to the delivery thereof, see c. 12, p. 1531.

24. Admission of Proofs from other Actions.*

1538. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the court or a judge, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence. Ord. XXXVII. r. 3, No. 485.

1539. The court cannot, except by consent, order that evidence in an action that has been heard shall be admitted as evidence in an action to be heard. *The Demetrius*, L. R. 3 A. & E. 523; 41 L. J. Adm. 69; 26 L. T. 324; 20 W. R. 761.

1540. Two actions were instituted *in rem* by the owners of two ships which

had come into collision, and judgment was given. Application, that the evidence in those actions should be admitted in an action *in personam* by the owners of cargo on board one of these ships, refused. *Ibid.*

1541. In a cause of damage affidavits relative to what transpired at the trial in an action at law between the same parties in respect of damage arising out of the same collision, rejected; the court intimating that it could receive no evidence of such a nature as to the occurrences at the trial, and that the only authority to which it could resort, if requiring any such information, would be the notes of the judge who tried the action. *The Ann and Mary*, 7 Jur. 1001; 2 W. Rob. 196.

1542. The High Court of Admiralty may, on the application of the defendant in any cause of damage, and on his instituting a cross cause for the damage sustained by him in respect of the same collision, direct that the principal cause and the cross cause be heard at the same time and upon the same evidence. The Admiralty Court Act, 1861 (c. 10), s. 34.

1543. After judgment in a cause of damage by collision, proceedings were prosecuted in a cross cause in respect of the same collision. The court ordered all the pleadings and evidence taken in the first cause to be admitted in the cross cause. *The North American and the Tecla Carmen*, 1 Lushington, 79; 5 Jur. N.S. 659.

1544. Prior to the Admiralty Court Act, 1861, the court would not order the pleadings in the principal cause to be used in the cross cause if either party objected. *The London*, 8th March, 1860.

1545. Cause and cross cause. Order made that the libel in each action should be taken as the defensive allegation in the cross action, and that the witnesses on each libel should be examined in the country at the same time on the same commission by separate examiners. *The Gauntlet and Lady Franklin*, 17th March, 1854, cited in Coote's Adm. Prac. 30.

1546. *Semble*, that proceedings in the Ecclesiastical Courts could not be invoked but when the cause was between

* (468) As to the admissibility in evidence in a subsequent suit of the testimony of witnesses taken on oath in a previous suit in which the adverse litigant had the power of cross-examination, when the witness cannot

be called in the subsequent suit, and that suit relates to the same subject or involves substantially the same questions, see Petersdorff's Abridgment (2nd ed.) vol. 4, p. 314, and cases there cited.

the same parties or on the same point. Application for proceedings to be invoked from another cause, rejected. *Dearle v. Southwell*, 2 Lee, 93 (Ecl.).

1546a. As to invocation of proceedings in prize causes, see *The Vriendschap*, 4 C. Rob. 166; *The Nied Elwin*, 1 Dodson, 54.

25. *Witnesses.*

(a) *Generally.*

1547. See tit. EVIDENCE, p. 420.

(b) *Competency.*

1548. See tit. EVIDENCE, p. 421, and same tit. and cap. in Addenda.

(c) *Nautical Experts.*

1549. See tit. EVIDENCE, p. 421.

(d) *Depositions not to be found.*

1550. See tit. EVIDENCE, p. 422.

(e) *Examination of Witnesses in one part of H.M.'s Dominions in Proceedings in another part.*

1551. See tit. EVIDENCE, p. 422.

(f) *Examination of Witnesses in H.M.'s Dominions in Proceedings in Foreign Courts.*

1552. See tit. EVIDENCE, p. 422.

(g) *Contradicting—*

1553. See tit. EVIDENCE, p. 421, and same tit. and cap. in Addenda.

(h) *Conviction for Felony or Misdemeanour.*

1554. See tit. EVIDENCE, p. 422, and same tit. and cap. in Addenda.

(i) *Compelling Attendance of—*

(aa) *By Order.*

1555. See s. 28, p. 1624.

(bb) *By Subpcena.*

1556. See s. 32, p. 1630.

(k) *Costs of, or against—*

1556a. See tit. COSTS, p. 416.

26. *Examination of Witnesses before Trial.**

1557. A defendant in a cause is not bound to examine foreign witnesses by commission or affidavit prior to any evidence being gone into in support of the plaintiff's pleadings, and the necessary expenses incidental to the detention of such witnesses will be allowed if the defendant succeeds in the suit. *The Karla*, 13 W. R. 295.

27. *Examination of Witnesses in Court before Trial.*

1558. The court or a judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before the court or judge or any officer of the court, or any other person and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the court or a judge may direct. See Ord. XXXVII. r. 5, No. 487, and Ord. XXXVIII, r. 1, No. 483.

28. *Examination of Witnesses out of Court before Trial.†*

(a) *Generally.*

1559. The practice of the court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case. Ord. XXXVII. r. 23, No. 505.

1559a. The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination. *Ibid.* r. 11, No. 493.

1560. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evi-

* (469) As to examination of witnesses before trial in the Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty), vol. 1, p. 533.

† (469a) As to the old practice in the Court

of Admiralty in regard to the examination of witnesses before trial in London, in the country, and by commission in this country and abroad, see Pritchards' Adm. Dig. (2nd ed.) pp. 578—584.

dence taken in any cause or matter at any stage. *Ibid.* r. 22, No. 504.

1561. For form of order for examination of witnesses before trial, see R. S. C. 1883, App. K. No. 35.

(b) *By Commission.**

1562. An order (short order) for a commission to examine witnesses is to be in the form No. 36 in App. K., with such variations as circumstances may require. Ord. XXXVII. r. 6, No. 488.

1563. For form of long order for ditto, see R. S. C. 1883, App. K. No. 37.

1564. For form of præcipe for a commission for examination of witnesses, see R. S. C. 1883, App. G. No. 17.

1565. The writ of commission for examination of witnesses is to be in the form No. 13 in App. J., with such variations as circumstances may require. See Ord. XXXVII. r. 6, No. 488.†

1566. This form includes forms of witnesses', commissioners', interpreters', and clerks' oaths. See R. S. C. 1883, App. J. No. 13.

1567. For form of commission to ex-

amine witnesses in the Admiralty Division, see R. S. C. 1883, App. J. No. 14.‡

1568. If in any case the court or a judge shall so order, there shall be issued a request to examine witnesses in lieu of a commission. The Forms 1 and 2 in the Appendix hereto shall be used for such order and request respectively, with such variation as circumstances may require, and may be cited as Forms 37A and 37B in Appendix K. Ord. XXXVII. r. 6, of Oct. 1884.

1568a. The defendants in a cause of damage moved the court for a commission to be issued to Spain to examine witnesses there as to the law of Spain. The Court of Appeal (affirming the decision of the Court of Admiralty) considered that it would be more satisfactory to have the witnesses in court, and refused to direct the issue of a commission. *The Moxham*, 1 P. D. 43, 107; 46 L. J. P. D. (C. A.) 17; 3 Asp. N.S. 191.

1569. For provisions enabling the Court of Admiralty in any action to issue special commissions to take evidence upon oath, and for the commissioner, if need be, to make a special report to the court

* (470) When it is desired to obtain a commission, an order of court for that purpose must be obtained. A præcipe for commission must then be filed, with an adhesive stamp of fifteen shillings thereon; one pound placed on the præcipe for sealing the commission. The commission is prepared in the registry, and bears a £1 impressed stamp thereon. It may be obtained after a day's notice.

† (471) This might be advantageously used in the Admiralty Division for the examination of witnesses out of the United Kingdom.

(472) Commissions for taking evidence out of the United Kingdom are in the Admiralty Division generally directed to the British consul or vice-consul of the place where the commission is to be executed, or to both, so that one may act in the place of the other, but commissioners are not selected one by each side according to the practice in the Queen's Bench Division. The appointment of the consul, and the holding of the commission in his office, are less likely to be considered as an infringement of the law of the foreign state forbidding the exercise of judicial powers by other than the judicial officers of the country.

(473) In Germany recently the examiner of witnesses, under an order from the English Divorce Court, was arrested and put upon his trial for infringement of the German law in that respect. The rule mentioned in No. 1568, *supra*, has probably been framed

to meet this difficulty.

(474) Prior to the R. S. C. 1883, however, evidence has been taken abroad under the authority of commissions, in which examiners of the court and other persons have been appointed commissioners, and by examiners under orders of court, as in cases of examination of witnesses in this country, and the practice in both respects has received the judge's sanction.

(475) It is always advisable, however, to obtain a commission, even though an examiner be the commissioner, as such a document is useful for the satisfaction of foreign functionaries to whom it may be necessary to apply for assistance indirectly in executing the commission.

(476) When an examiner is not appointed commissioner, it is usual to appoint an English solicitor or notary public, or an analogous foreign functionary well acquainted with the English language, to act as registrar, actuary or scribe to the commissioner or commissioners, and to take down the evidence in writing under his or their direction, and prepare the proper return to the commission.

‡ (477) This is the form ordinarily used in the Admiralty Division.

(478) When, however, evidence is taken in the United Kingdom by an examiner, it is unnecessary to take out a commission for the purpose, the usual order for taking evidence out of court before trial sufficing for the purpose.

touching such examination, and the conduct or absence of any witness or other person relating thereto, see 3 & 4 Vict. c. 65, s. 8.

1570. For provisions enabling any such commissioner to require the attendance of witness, and the production of any documents, by writs to be issued by him in similar forms to writs of *subpœna ad testificandum* and of *subpœna duces tecum*, and providing that every person disobeying the same shall be considered as in contempt of the said Court of Admiralty, and punishable accordingly, *Ibid.* s. 9.

1571. By the practice in the Court of Admiralty the commission to examine witnesses runs jointly and severally, and if one commissioner absented himself, the other proceeded alone. *The Ceres*, 3 C. Rob. 128.

(c) *By Examiners, &c.*

(aa) *Generally.**

1572. For form of order for commission to examine witnesses before an examiner before trial, see R. S. C. 1883, App. K. No. 35.†

1572a. The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination. Ord. XXXVII. r. 11, No. 493.

1573. An examiner's office is not a public court. *Re Western of Canada Oil Co.*, 6 Ch. D. 109; and see *Re Cambrian Co.*, 51 L. J. Ch. 221.

1574. Any officer of the court, or other person directed to take the examination of any witness or person, may administer oaths. Ord. XXXVII. r. 19, No. 501.

* (479) As to the examiners in the Admiralty Division, see Pt. I., note 27, p. 1471.

(480) The solicitor whose witnesses are to be examined selects the examiner.

(481) The understanding in the profession used to be that the adverse solicitor is entitled to object to a witness being examined in London out of office hours, *i. e.*, before 10 a.m. or after 4 (now 6) p.m.; but the practice is frequent to examine witnesses after those hours, and at any time convenient to all parties. Concession on the part of solicitors is in such matters desirable, as, to nautical witnesses, delay is often productive of the greatest inconvenience, and the adverse solicitor may, when he has witnesses to examine, be in need of similar indulgence from his opponent.

(482) The examiner, before commencing the examination of a witness, administers to him the usual oath of a witness.

(483) The statutory declaration may be substituted for this oath in the cases allowed by act of parliament, as to which see s. 33, p. 1631.

(484) In the event of the examiner being impeded or interfered with in the examination of a witness, he should make complaint thereon to the registrar in the first instance, and through him to the judge.

(485) The counsel, solicitors, and substitutes on both sides may make notes of the evidence as the examination proceeds.

(486) In London the solicitor producing the witness is entitled, at the completion of his deposition in chief, to require that the witness be dismissed if the adverse solicitor or his counsel is not then prepared to cross-examine him.

(487) It was not necessary in the Court of Admiralty to sue out any commission for examination of witnesses; but any examiner of the court had the same power as commissioners under commissions to take evidence.

See the Admiralty Court Act, 1854 (c. 73), s. 6.

(488) If the solicitor on either side has witnesses to be examined who cannot from illness or age attend in London for the purpose, and whom he therefore desires should be examined where they are residing or staying, he should apply for an order of court for that purpose.

(489) If the evidence is to be taken by an examiner, an office copy of the order of court is obtained from the registry, and an appointment made with the examiner and adverse solicitor as to the time and place at which the examination of witnesses is to be commenced.

(490) The evidence of the witnesses is taken at an hotel or in any private room accessible to all parties interested, and selected by the solicitor producing the witnesses.

(490a) The examination should be commenced on the day named in the commission, and the execution of the commission may be proceeded with whether the adverse solicitor is present or not.

(491) In cases of examination of witnesses in the country, the adverse solicitor, should he require time to collect materials for cross-examination, is entitled to object to a witness being dismissed until after the expiration of forty-eight hours from the time of his being sworn.

(492) Either solicitor may object to the examination of another witness being commenced until the examination of the previous witness has been concluded, the objecting solicitor not being the cause of the delay.

† (493) In the Admiralty Division, however, the depositions so taken are not filed in the Central Office but in the Admiralty Registry, and the office copy of them is obtained from that registry.

(493a) The depositions so taken may be read at the trial without proof of the absence of the witness.

1574a. As to the oaths or affirmations to be administered by him, see sect. 33, p. 1631.

1575. For the rules as to the examination of witnesses (*semble*) in the Chancery Division by the examiners of that division according to a rota, the duties of their clerks in reference thereto, and to such rota, the appointment of time and place to be given by the examiner, and the transference of the examination from one examiner to another, see R. S. C. of February 4, 1884, as altered by R. S. C. of Oct. 1884.

(bb) *Supply of Writ and Pleadings to Examiner.*

1576. Where any witness or person is ordered to be examined before any officer of the court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order

was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties. Ord. XXXVII. r. 10, No. 492.*

(cc) *In Shorthand.*†

(dd) *By Narration in the First Person.*‡

1577. The depositions taken before an officer of the court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or of such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall

* (494) This is usually a print of the pleading for the party on whose behalf the witness is examined. If the pleading has not been printed, a MS. copy will suffice.

† (495) The practice of taking down in shorthand evidence given before an examiner has been found so much more expeditious than when the evidence is transcribed by the examiner himself, that it has become the general mode adopted in the Admiralty Division in examining witnesses before trial in London and the neighbourhood.

(495a) The court shorthand writers are employed in taking the evidence. See *The Marbella*, 25 April, 1883.

(496) They are Messrs. Carruthers and Barnet, of No. 203, Strand.

(496a) If, however, the examiner has a private shorthand clerk, he is at liberty to employ him.

(497) The shorthand writer must, before commencing his duties in each cause, be sworn by the examiner faithfully to take down the evidence in shorthand.

(497a) The shorthand writer takes down and transcribes both question and answer exactly as expressed by counsel and the witness.

(498) When an interpreter is employed, the shorthand writer takes down the answer of the interpreter in lieu of that of the witness.

(498a) When the evidence is taken in shorthand, it is not read over to nor signed by the witness, nor by the interpreter, if any.

(499) The shorthand writer afterwards transcribes the evidence so taken, and certifies at the foot that it is a faithful transcript of the evidence.

(499a) He transmits the transcript to the examiner, who files it with his report or return.

‡ (500) Whether the examiner or counsel

conducts the examination-in-chief, the examiner takes down the witness's answer to each question put to him, and does so as nearly as possible in the witness's own words, but in a narrative form, embodying the question in the answer.

(500a) The evidence-in-chief of each witness, as it is taken down by the examiner, was, according to the old practice, divided and numbered similarly to the articles of the pleading on which he was examined.

(501) When the examination-in-chief has been completed, the examiner reads over to the witness the answers he has taken down, and procures his signature at the end of that part of the deposition, and, according to the old practice, also at the end of each preceding sheet thereof.

(501a) The same course is pursued on the cross-examination and re-examination.

(502) In the cross-examination the examiner, in taking down the evidence, embodies the question in the answer.

(502a) On reading over to the witness his deposition, the examiner makes such slight alterations therein as the witness may desire. If, however, the witness desires to make material alterations in his evidence, and the examiner is satisfied that he did not misapprehend the witness's meaning in the first instance, it is the examiner's duty to decline to permit such alterations to be made in the body of the evidence, but to put in writing at the end of the deposition-in-chief, or on cross-examination or re-examination, as the case may be, the alteration the witness desires to make therein. The witness then signs his name at the end of his deposition, and, according to the old practice, also at the end of each of the preceding sheets thereof.

sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Ord. XXXVII. r. 12, No. 494.

(ee) *By Interpretation.**

(ff) *Objections to Questions.*

1578. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question. *Ibid.*

(gg) *Objections by Witness.*

1579. If any person duly summoned by subpoena to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed at the Central Office, and thereupon the party requiring the attendance of the witness may apply to the court or a judge *ex parte* or on notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be. *Ibid.* r. 13, No. 495.

* (503) If any or all of the witnesses are unacquainted with the English language, and speak a foreign language, the solicitor whose witnesses are to be examined selects some gentleman conversant with that language to act as interpreter between the witness and the examiner.

(503a) The interpreter must of course be a person wholly uninterested in the cause. If otherwise, the adverse solicitor may object to his acting as interpreter.

(504) The interpreter must, before commencing his duties, be duly sworn by the examiner as to his being well acquainted with the language he is to interpret, and faithfully to interpret the same.

(504a) The adverse solicitor may, if dissatisfied with the interpreter, require the witness to be cross-examined through the medium of an interpreter nominated by him, the adverse solicitor.

(505) That interpreter must of course also be wholly disinterested in the result of the suit, or he may be objected to by the solicitor producing the witness, and he must be duly sworn.

(506) The cross-examination of a witness

1580. If any witness shall object to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Central Office to be there filed, and the validity of the objection shall be decided by the court or a judge. *Ibid.* r. 14, No. 496.

1581. In any case under the two last preceding rules, the court or a judge shall have power to order the witness to pay any costs occasioned by his refusal or objection. *Ibid.* r. 15, No. 497.

(hh) *Orders enforcing Obedience of Witness.†*

1582. The court or a judge may, in any case or matter at any stage of the proceedings, order the attendance of any person for the purpose of producing any writings or other documents named in the order which the court or judge may think fit to be produced, provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial. *Ibid.* r. 7, No. 489.

1583. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of court, and may be

by a different interpreter is, however, an unusual and invidious course of proceeding, rarely acted on, except under special circumstances.

(507) When the evidence is taken by interpretation the interpreter should, as well as the witness, sign the deposition, describing himself as "sworn interpreter."

(508) Such of the evidence as is taken by interpretation should be specified accordingly in the examiner's return, which should state who was the interpreter, and that he was first duly sworn.

† (509) Subpoenas may, when required, be obtained in the registry, to compel the attendance of witnesses before an examiner or commissioner, and the costs of such subpoenas, when necessary, are generally allowed as of course.

(509a) For cases under the old practice of compelling the attendance of persons who had refused to make affidavits, see *The Glory*, 7 Notes of Cases, 262; and of enforcing the attendance of witnesses for cross-examination on their affidavits, see *The Resultatet*, 17 Jur. 353.

dealt with accordingly. *Ibid.* r. 8, No. 490.

1584. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in court. *Ibid.* r. 9, No. 491.

1585. A witness subpoenaed to attend and be examined in open court did not attend on the day appointed. On the same day, on the motion of the party subpoenaing him, founded on an affidavit that the witness was wilfully absenting himself, and that the vessel on board which he was serving was about to sail, the court granted an attachment against him. *The Victor*, No. 1194, 1st March, 1864.

(ii) *Transmission of Depositions.**

1586. When the examination of any

witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the central office, and there filed. Ord. XXXVII. r. 16, No. 498.

(kk) *Examiner's Report.†*

1587. The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the court touching such examination and the conduct or absence of any witness or other person thereon, and the court or a judge may direct such proceedings and make such order as upon the report they or he may think just. *Ibid.* r. 17, No. 499.

(ll) *Examiner's Fees.‡*

1588. For the examiner's fees (*semble*)

* (510) The examiner files the transcript or depositions in the Admiralty Registry, and pays the necessary stamps on filing the transcript or depositions, as the case may be, and his report, and charges them in his account against the solicitor who employed him. For the stamps upon the transcript, or depositions when not taken in shorthand, and on the examiner's report, see note 519, *infra*.

(511) The examiner retains the custody of the original depositions until filed in the registry.

† (512) The examiner's report is headed with the title of the cause, and states that on such a day and, if out of London, at such a place, in the presence of the counsel and solicitors of the parties, he administered the usual oath of a witness to the several witnesses examined before him, stating their names, and caused them to be duly examined and cross-examined on behalf of the respective parties, and that the document marked A is the transcript of such evidence taken down in shorthand by the shorthand writer, to whom he states he had previously administered an oath, faithfully to take down the evidence in shorthand, and faithfully to transcribe the same.

(513) If any witnesses are examined by interpretation, the examiner mentions their names and that they were examined by interpretation through the assistance of the interpreter, to whom, as he therein states, he had first administered an oath that he was well acquainted with the English and (the language of the witness) languages, and faithfully to interpret.

(514) Where the examiner takes down the evidence, he states that he transmits with his report the depositions of the several witnesses

he has examined and cross-examined.

(515) He may add any special matter occurring in the course of the proceedings.

(516) Any objections taken to the proceedings, or any part thereof, may, on the application of either solicitor, be also recorded there.

(517) The report is dated and signed by the examiner.

(518) The examiner's report is much the same on executing a commission for the examination of witnesses, except that he there mentions place as well as time, and transmits the commission with the other papers.

‡ (518a) The examiner's and commissioner's fees are:—

For examining witnesses <i>vivâ voce</i>	From	2	2	0
on a pleading, according to the length of time occupied per day		4	4	0

If the examination takes place at a greater distance than three miles from the General Post Office, London, the examiner or commissioner will be entitled in addition to his proper and reasonable expenses for travelling, board, and maintenance.

For drawing and engrossing a return of the witnesses examined in London	-	-	-	-	1	1	0
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For drawing and engrossing a return of the witnesses examined under a commission	-	-	-	-	1	1	0
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The above are the fees allowed by the Rules and Orders of November, 1859, now annulled, but they continue to be taken and allowed.

in the Chancery Division, see Appendix to R. S. C. of 18 Dec. 1885.

(mm) *Before the Judicature Acts.*

1589. In a cause of damage by collision, before appearance of defendant witnesses were allowed to be examined on proof that the ship was about to sail for Syria. She sailed in fact, and no opportunity was given to cross-examine. The court allowed the defendant to examine his witnesses, but ordered that the cause should not be heard till the plaintiff should have submitted his witnesses for cross-examination. *The Chance*, Swabey, 294; 30 L. T. 219; 6 W. R. 221.

1590. Where there is reason to expect that the plaintiff's witnesses, whose evidence may be desirable, will not be accessible at a future period, their evidence may be taken, and the costs of taking them will be allowed, though the defendants afterwards admit the plaintiff's pleadings. *The Spirit of the Age*, Swabey, 209.

29. *Examination of Witnesses at Trial.*

1591. See c. 38, p. 1637.

30. *Examination of Witnesses after Trial.*

1592. Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial. Ord. XXXVII. r. 21, No. 503.

1593. The practice as to evidence at a trial, when applied to evidence to be taken before an officer of the court or other person in any cause or matter after the hearing or trial, shall be subject to any special

directions which may be given. *Ibid.* r. 23, No. 505.

1594. All evidence taken at the trial may be used in any subsequent proceedings in the same matter. *Ibid.* r. 25, No. 507.

31. *Affidavits.*

(a) *Generally.**

1595. The court or a judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received. Ord. XXXVIII. r. 14, No. 534.

1596. An ignorant seaman made an affidavit in a cause, and afterwards was prevailed upon by the opposite party to make another affidavit denying his former testimony. The court attached no credit whatever to his second statement. It is well known how men of this class may be practised upon. *The Commerce*, 3 W. Rob. 295.

(b) *Preparation.*

1597. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. Ord. XXXVIII. r. 3, No. 523.

1598. Every affidavit shall be intitled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant,

The registrar also allows a fee of six shillings and eightpence to the examiner when a witness does not attend pursuant to an appointment with the examiner for his examination. Mem. of 14 February, 1870.

The examiner is also allowed a fee of one shilling and sixpence for the oath to each witness, *ibid.*; and a fee of two shillings and sixpence for a certificate on each exhibit.

(519) The examiner places an adhesive stamp of five shillings on the deposition of each witness or on the transcript thereof from shorthand. The stamp is placed in the margin against the name of the witness at the commencement of the depositions.

The examiner also places an adhesive stamp of five shillings on the return.

The examiner charges for and is allowed these stamps.

The examiner makes no charge for filing the depositions.

No stamp is required on the minute on filing them.

As to deposit of stamps for fees and money for expenses and undertaking for fees when required, see R. S. C. Fees, 1884; Sched. No. 51.

* (519a) As to affidavits in the Queen's Bench Division, see Archbold's *Practices* (14th ed. by Chitty), vol. 1, p. 453.

(520) For the old practice in Admiralty as to affidavits, see *The Speed*, 7 Jur. 1069; 2 Notes of Cases, 230; *The Gauntlet*, 3 W. Rob. 95.

it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing officer. *Ibid.* r. 2, No. 522.

1599. Every affidavit shall state the description and true place of abode of the deponent. *Ibid.* r. 8, No. 528.

1600. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed book-wise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule. *Ibid.* r. 7, No. 527.

1601. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript. Ord. LXVI. r. 4, No. 1006.

(c) *Scandalous or Irrelevant Matter.*

1602. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same. Ord. XXXVIII. r. 3, No. 523.

1603. The court or a judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client. *Ibid.* r. 11, No. 531.

(d) *Interlineations and Alterations.*

1604. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall without leave of the court or a judge be read or made use of in any matter depending in court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, if taken at the Central Office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialled in the margin of the affidavit by the officer taking it. *Ibid.* r. 12, No. 532.

1605. The court or a judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received. *Ibid.* r. 14, No. 534.

1606. Every alteration in an account verified by affidavit to be left at chambers shall be marked with the initials of the commissioner or officer before whom the affidavit is sworn, and such alterations shall not be made by erasure. *Ibid.* r. 22, No. 542.

(e) *Swearing.*

(aa) *Generally.*

1607. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself. *Ibid.* r. 16, No. 536.

1608. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk or partner. *Ibid.* r. 17, No. 537.

(bb) *Exhibits.*

1609. Accounts, extracts from parish registers, particulars of creditors' debts, and other documents referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits. *Ibid.* r. 23, No. 543.

1610. Every certificate on an exhibit referred to in an affidavit signed by the commissioner or officer before whom the affidavit is sworn, shall be marked with the short title of the cause or matter. *Ibid.* r. 24, No. 544. See also No. 1606, *supra*.

(cc) *Jurats.*

1611. Every commissioner to administer oaths shall express the time when and place where he takes the affidavit, or it cannot be filed without leave. *Ibid.* r. 5, No. 525.

1612. Where made by two or more deponents, the names of each must be inserted in the jurat; but if the affidavit of all the deponents is taken at one time by the same officer it is sufficient to state that it was sworn by both (or all) of the "above-

named" deponents. Ord. XXXVIII. r. 9, No. 529.

1613. See also No. 1604, *supra*.

(dd) *Illiterate or Blind Persons.*

1614. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent. *Ibid.* r. 13, No. 533.

(ee) *Oaths.*

See s. 33, p. 1631.

(f) *Cross-Examination.**

1615. The court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any affidavit upon any motion, petition, or summons. *Ibid.* r. 1, No. 521.

1616. When evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit for the opposite party may serve upon that party a notice in writing to produce the deponent for cross-examination at the trial, such notice to be served before the expiration of fourteen days from the time allowed for filing affidavits in reply, or within such time as the court or judge may appoint; and unless the deponent is produced accordingly, his affidavit shall not be used unless by special leave. *Ibid.* r. 28, No. 548.

1617. The party receiving the notice is entitled to compel the attendance of the deponent for cross-examination like an ordinary witness. *Ibid.* r. 29, No. 549.

1618. As to subpoena to compel the witness' attendance, see s. 32, p. 1630.

(g) *Filing—.*

1619. Every affidavit or other proof used in Admiralty actions shall be filed

in the Admiralty Registry. *Ibid.* r. 10, No. 530.

1620. Every affidavit used in a cause or matter proceeding in a district registry shall be filed there. *Ibid.*

1621. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the court or a judge. *Ibid.* r. 18, No. 538.

1622. Except by leave of the court or a judge, no order made *ex parte* in court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion. *Ibid.* r. 19, No. 539.

1623. There shall be appended to every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the court or a judge shall otherwise direct. *Ibid.* r. 10, No. 530; and Ord. LXVI. r. 7, No. 1009 (k).

(h) *Stamps.*

1624. Where an original affidavit is allowed to be used, it must first be stamped with a proper filing stamp. See Ord. XXXVIII. r. 15, No. 535.

1625. The stamp on filing each affidavit is five shillings. It is an adhesive stamp. See S. C. Fees, 1884, No. 35.

(i) *Proof by—.*

(aa) *Generally.*

1626. The court or a judge may for sufficient reason order that any fact or facts may be proved by affidavit. Ord. XXXVII. r. 1, No. 483.

1627. Upon any motion, petition, or summons, evidence may be given by affidavit. Ord. XXXVIII. r. 1, No. 521.

1628. Where it appears that the other party *bond fide* desires the production for cross-examination of a witness who can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit. Ord. XXXVII. r. 1, No. 483.

1629. See also No. 1622, *supra*.

1630. The court will not receive, on the mere affidavit of the defendant, facts which might be a bar to the action. Such

* (521) For the old practice under 3 & 4 Vict. c. 65, s. 7, see *The Resultatet*, 17 Jur. 353; *The Prince of Wales*, 12 Jur. 163; 6

Notes of Cases, 39; *The Glory*, 13 Jur. 991; 3 W. Rob. 187; 7 Notes of Cases, 262; *The Ripon*, 6 Notes of Cases, 247.

an affidavit rejected. *The Lord Hobart*, 2 Dodson, 101.

(bb) *In Default Actions.*

1631. In default actions *in rem*, evidence may be given by affidavit. Ord. XXXVII. r. 2, No. 484.

1632. R. S. C. 1883, No. 550, that in cases of trial by affidavit the evidence shall be printed and notice of trial given, as therein mentioned, does not apply to default actions *in rem*. Ord. XXXVIII. r. 30, No. 550.

(j) *Trial by—.*

(aa) *Generally.**

1633. Subject as therein mentioned, the court or a judge may in any cause or matter, and at any time, or from time to time, order that different questions of fact arising therein may be tried by different modes of trial. Ord. XXXVI. r. 8, No. 432.

1634. No affidavit filed or made before issue joined is, without special leave, to be received at the trial, unless, within one month after issue joined, or such longer time as may be allowed by special leave, notice in writing thereof has been given to the opposite party. Ord. XXXVII. r. 24, No. 506.

(bb) *Time of Delivery.*

1635. Within fourteen days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the court or a judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof. Ord. XXXVIII. r. 25, No. 545.

1636. The defendant, within fourteen days thereafter, or such other time as aforesaid, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof. *Ibid.* r. 26, No. 546.

1637. Within seven days thereafter, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which are to be strictly confined to matters in reply, and shall deliver to the defendant or his solicitor a list thereof. *Ibid.* r. 27, No. 547.

1638. When the evidence under this order is taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time after the close of the evidence as in other cases is by these rules provided after the close of the pleadings: provided that other affidavits may be printed if all the parties interested consent thereto, or the court or a judge so orders; provided also, that this rule shall not apply in the Probate, Divorce, and Admiralty Division to default actions *in rem*, or references in actions, or actions for limitation of liability, unless the court or a judge shall otherwise order. *Ibid.* r. 30, No. 550.

(cc) *Terms of Admission of Affidavits at Trial.*

See c. 38, p. 1641.

(k) *Use of Original.*

(aa) *Generally.*

1639. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall, at the time when it is used, be delivered to and left with the proper officer in court, or in chambers, who shall send it to be filed. *Ibid.* r. 15, No. 535.

(bb) *In Chambers.*

1640. All affidavits previously read in court in any proceeding may be used before the judge in chambers. *Ibid.* r. 21, No. 541.

(cc) *Use of Office Copies.*

1641. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the seal of the office. *Ibid.* r. 15, No. 535.

1642. In cases in which an original affidavit can be used, and to which Ord. XXXVIII. r. 15 applies, it is not necessary to take an office copy. Ord. LXV. r. 27, No. 1002, sub-r. 53.

(l) *Copies.*

See s. 23, p. 1618.

* (522) For cases under the old practice as to whether the mode of taking the evidence should be by affidavit or *vivâ voce*, see *The Earl Bathurst*, 3 Notes of Cases, 446; *The Baldur*, 16 Jur. 802; *The Swanland*, 2 Spinks' Eccl. & Adm. Rep. 107; *Fyler v. Fyler*, *ibid.*

69; *The Oliver Cromwell*, March 8, 1860; *The Argo* (Nos. 110 and 156), May 10, 1860; *The Glory*, 3 W. Rob. 187; 7 Notes of Cases, 262; 13 Jur. 991; 3 & 4 Vict. c. 65, s. 7; and Pritchards' Adm. Digest (2nd ed.), p. 589.

32. *Subpœnas.*(a) *Generally.**

1643. Every *subpœna* other than a *subpœna duces tecum* shall contain three names where necessary or required, but may contain any larger number of names. Ord. XXXVII. r. 29, No. 511.

1644. No more than three persons shall be included in one *subpœna duces tecum*, and the party suing out the same shall be at liberty to sue out a *subpœna* for each person if it shall be deemed necessary or desirable. *Ibid.* r. 30, No. 512.

1645. The party to whom such notice has been given to produce a deponent to an affidavit, in order to his being cross-examined, as mentioned in r. 28, No. 548, is entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined. Ord. XXXVIII. r. 29, No. 549.

1646. No *subpœna* for the payment of costs shall be issued. Ord. XLIII. r. 7, No. 619.

(b) *Præcipe.*

1647. For form of *præcipe* for *subpœna*, see R. S. C. 1883, App. G., No. 21.

1648. Where it is intended to sue out a *subpœna*, a *præcipe* for that purpose, in the Form No. 21, in Appendix G., and containing the name or firm and the place of business or residence of the solicitor intending to sue out the same, and, where such solicitor is agent only, then also the name or firm and place of business or residence of the principal solicitor, shall in all cases be delivered and filed at the Central Office. Ord. XXXVII. r. 26, No. 508.

(c) *Forms.*

1649. A writ of *subpœna* shall be in one of the Forms 1 to 7 in Appendix J., with such variations as circumstances may require. *Ibid.* r. 27, No. 509.

(d) *Period in force.*

1650. *Subpœnas* remain in force only till the end of the sitting or assize for which they were issued. A new writ must afterwards be issued or the former writ may be (at the option of the parties) altered as to date and sitting, or assize, and re-issued as a new writ. See C. O. Prac. Rules, 1880—82, in Wilson's Jud. Acts and Rules, 4th ed. p. 848.

* (523) All *subpœnas* in Admiralty actions are issued from the Admiralty Registry, and not from the Central Office.

(e) *Amendment.*

1651. In the interval between the suing out and service of any *subpœna* the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected *præcipe* of such *subpœna* marked with the words "altered and re-sealed," and signed with the name and address of the solicitor suing out the same. Ord. XXXVII. r. 31, No. 513; and see C. O. Prac. Rules, 1880—82, in Wilson's Jud. Acts and Rules, 4th ed. p. 848.

(f) *Service.*

See c. 12, p. 1530.

(g) *For Examination of Witnesses before Trial.*

1652. Where a *subpœna* is required for the attendance of a witness for the purpose of proceedings in chambers, such *subpœna* shall issue from the Central Office upon a note from the judge. Ord. XXXVII. r. 28, No. 510.*

1653. Any party in any cause or matter may by *subpœna ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the court, or other person appointed to take the examination, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used, or which shall be used on any proceeding in the cause or matter, shall be bound on being served with such *subpœna* to attend before such officer or person for cross-examination. *Ibid.* r. 20, No. 502, and see *Ibid.* Nos. 489, 490, p. 1624.

(h) *In Interpleader Issues.*

1654. A *subpœna* in an interpleader issue should be headed in the title of the original action, and in the title of the interpleader issue, and should be applied for in, and issued out of, the room in which the writ of summons in the original action was issued. See C. O. Prac. Rules, 1880—82, in Wilson's Jud. Acts and Rules, 4th ed. p. 848.

(524) As to *subpœnas* in the Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty), vol. 1, pp. 560 *et seq.*

33. Oaths.

(a) *Generally.**

1655. Every person who, at the commencement of this act, is authorized to administer oaths in any court whose jurisdiction is thereby transferred to the High Court of Justice, is a commissioner to administer oaths in all causes and matters in the High Court and Court of Appeal. The Supreme Court of Judicature Act, 1873 (c. 66), ss. 77, 82.

1656. Any officer of the court, or other person directed to take the examination of any witness or person, may administer oaths. Ord. XXXVII. r. 19, No. 501.

1657. The taxing officers of the Supreme Court, or any division thereof, shall, for the purposes of any proceedings before them, have authority to administer oaths. Ord. LXV. No. 1002, sub-r. 25.

1658. Every master and every first and second class clerk in the Filing and Record Department, have authority to take oaths and affidavits in the Supreme Court. Ord. LXI. r. 5, No. 898.

1659. Affidavits sworn in England shall be sworn before a judge, district registrar, commissioner to administer oaths, or officer empowered under these rules to administer oaths. Ord. XXXVIII. r. 4, No. 524.

1660. No affidavit is sufficient if sworn before the party on whose behalf it is used, his solicitor, partner, clerk, agent, or correspondent. *Ibid.* r. 16, Nos. 536, 537.

1661. As to the appointment of commissioners to administer oaths, see Pt. I. c. 4, p. 1472.

1661a. As to oaths administered to persons in the form they declare binding, being binding on them, see 1 & 2 Vict. c. 105.

(b) *Affirmations and Declarations.*

1662. If any person called to give evidence in any court of justice objects to take an oath, or is objected to as incompetent to take an oath, such person shall, if the judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the promise and declaration therein mentioned; and if any

person who has made the same wilfully and corruptly gives false evidence he shall be liable to be convicted for perjury. The Evidence Further Amendment Act, 1869 (c. 68), s. 4.

1663. See also as to declarations by other persons objecting to take an oath, or objected to as incompetent to take an oath, *Ibid.* 1870 (c. 49), s. 1.

1664. See further as to declarations and affirmations in lieu of oaths, 5 & 6 Will. 4, c. 62, and The Common Law Procedure Act, 1854 (c. 125), s. 20.

(c) *Out of England.*

1665. All examinations, affidavits, declarations, and affirmations in the High Court may be sworn and taken in Scotland, Ireland, the Channel Islands, or any colony or place under the dominion of her Majesty in foreign parts, before any judge, court, notary public, or person authorized to administer oaths there, or before any of her Majesty's consuls or vice-consuls out of her dominions; and the judges and other officers of the High Court shall take judicial notice of the seal or signature of such functionaries. Ord. XXXVIII. r. 6, No. 526.

1666. Every British ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or of legation, exercising his functions in any foreign country, and every British consul-general, consul, vice, acting or pro-consul, or consular agent exercising his functions in any foreign place may administer there any oath or affirmation, and do and perform every notarial act. See 6 Geo. 4, c. 87, s. 20; and 18 & 19 Vict. c. 42, s. 1.

1667. Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any British ambassador, envoy, minister, chargé d'affaires, secretary of embassy or of legation, consul-general, consul, vice, acting, or pro-consul or consular agent, in testimony of any such oath, affidavit, affirmation, or act having been administered, affirmed, or done by or before him under this act, shall be admitted in evidence, without proof of the seal and signature being those of the

* (524a) As to the persons before whom answers, affidavits, depositions, declarations and affirmations in the Court of Admiralty might, prior to the Judicature Acts, be sworn or made, see the Admiralty Court Act, 1854 (c. 78), ss. 8, 11.

(525) As to oaths, see Archbold's Practice

(14th ed. by Chitty), vol. 1, p. 466.

(525a) The registrar and deputy registrar of the Court of Admiralty had power to administer oaths in that court, and to exercise the same powers as any surrogate in chambers. See the Admiralty Court Act, 1861 (c. 10), es. 25, 26.

person they purport to be, or of the official character of such person. See 18 & 19 Vict. c. 42, s. 3.

1668. The consular officer therein mentioned may, in any proceeding under this act relating to salvage, take affidavits and receive affirmations. See the M. S. Act, 1854 (c. 104), s. 487.

(d) *House of Lords.*

1669. Affidavits taken by officers of the High Court of Justice of England or Ireland, authorized to take oaths, or in Scotland by a justice of the peace, are received in the House of Lords. See Form of Appeal, Method of Procedure, and Standing Orders of the House, of June, 1883, p. 4, n.

1670. As to oaths administered out of the United Kingdom, see Nos. 1665—1668, *supra*.

(e) *Privy Council.*

1671. As to the powers of the Judicial Committee of the Privy Council, and their registrar or acting registrar, to administer oaths and affirmations, see 6 & 7 Vict. c. 38, s. 2, and 16 & 17 Vict. c. 85.

(f) *Court of Appeal.*

1672. Affidavits taken by officers of the High Court authorized to take oaths in that court are received in the Court of Appeal.

1673. As to oaths administered out of the United Kingdom, see Nos. 1665—1668, *supra*.

36. View.

1674. As to view, see tit. EVIDENCE,

c. 6, p. 424; *Ibid.* in Addenda; and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 527.

37. Printing.

1. *Generally.**

1675. The rules of court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed. Ord. LXVI. r. 6, No. 1008.

1676. When the evidence under this order (for trial by affidavit) is taken by affidavit the evidence shall be printed. Ord. XXXVIII. r. 30, No. 550.

1677. R. S. C. No. 550, that in cases of trial by affidavit the evidence shall be printed does not apply to Admiralty actions for limitation of liability, or *in rem*, by default or references. *Ibid.*

1678. An indorsement or pleading may be amended by written alterations in the copy delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the document difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the document as amended. Ord. XXVIII. r. 8, No. 316.

1678a. In an action between B. and C. it was agreed by the parties that the evidence taken in an action between A. and C., and printed, should be used in the first-named action. The plaintiffs paid

* (526) The rules of the Court of Admiralty of 1859 and 1871 as to printing, are annulled by R. S. C. 1883, App. O, No. 22.

(526a) Pleadings in the Admiralty Division are always printed except in proceedings by default.

(527) The cost of forty printed copies is allowed on taxation between party and party. Copies of these when supplied to the adverse solicitor may be charged for at the rate of one penny per folio for one copy and one halfpenny per folio for every other copy. R. S. C. 1883, Ord. LXVI. r. 7 (c).

(527a) In addition to the allowances for printing and taking printed copies a further sum of threepence per folio on the higher scale and twopence on the lower scale is allowed for copies of the following documents only:—Pleading for opposite party or for filing in default of appearance. Special case

for filing. Petition of right for presentation and for treasury solicitor and service on any party. Pleading, special case, or petition of right, for the use of a court or judge. Any affidavit to be sworn to in print. Any of above for the use of counsel in court and in country agency cases when proper as close copy. Where written copies have been made previously to printing, the above allowances are not to be made, and in no case more than once. R. S. C. 1883, App. N.

(527b) On taxation between party and party the printer's bill for pleadings or evidence is allowed at the rate of one shilling per folio for the first twenty copies, with an extra allowance of one penny per folio for every twenty copies beyond the first twenty. The printing of diagrams and other exhibits is allowed at such sum as the taxing officer thinks reasonable.

the solicitors of A. for such prints, and charged the sums so paid in addition to the regular charge of threepence per folio, as though the printing had been done in the actions between B. and C. under Ord. LXVI. r. 7, No. 1009. *Held*, on objection to the taxation, that such charge was not improper. *The Mammoth*, 9 P. D. 126; 53 L. J. Adm. 70; 51 L. T. 549; 33 W. R. 172.

2. Paper, Type, and Margin.

1679. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide. Ord. LXVI. r. 3, No. 1005.

3. Of what Documents.

(a) Generally.

1680. Every pleading which shall contain less than ten folios (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed. Ord. XIX. r. 9, No. 205.

1680a. And see as to printing amended pleadings, No. 1678, *supra*.

1681. Where any written deposition of a witness has been filed, such deposition shall be printed, unless otherwise ordered. Ord. LXVI. r. 5, No. 1007.

1681a. When the evidence is taken by affidavit under Ord. XXXVIII. of R. S. C. of 1883, such evidence shall be printed, and other affidavits may be printed if all the parties interested consent thereto, or it is so ordered. Ord. XXXVIII. r. 30, No. 550.

1682. All the rules respecting the printing of pleadings and proofs in an action apply so far as they are applicable on an objection to a report of the registrar. See Ord. LVI. r. 12, No. 849.

1682a. Every special case shall be printed by the plaintiff, who shall file it and deliver printed copies for the use of the judges. See Ord. XXXIV. r. 3, No. 391.

1683. An affidavit in answer to interrogatories shall, unless otherwise ordered by a judge, if exceeding ten folios, be printed. Ord. XXXI. r. 9, No. 351.

1683a. As to printing in the House of Lords, see tit. APPEALS, p. 21; in the

Privy Council, *Ibid.* pp. 28, 39; and in the Court of Appeal, *Ibid.* p. 54.

1684. Where, pursuant to these rules, any pleading, notice, special case, petition of right, deposition, or affidavit is to be printed, and where any printed or other office copy of any such document is to be taken, the following regulations shall be observed. Ord. LXVI. r. 7, No. 1009.

1684a. As to such rules, see the divisions following.

(b) By whom.

1685. The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by Rule 3 of this order (for which see No. 1679, *supra*). Ord. LXVI. r. 7, No. 1009 (a).

(c) Office Copies.

1686. To enable the party printing to print any deposition or affidavit, the officer with whom it is filed shall, on demand, deliver to such party a copy written on draft paper on one side only. *Ibid.* (b).

1687. (Except as provided by Ord. LV. r. 48, relating to Chancery proceedings,) the party by or on whose behalf any deposition, affidavit, or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed. *Ibid.* (f).

(d) Copies and Price.

1688. The party printing shall, on demand in writing, furnish to any other party any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1d. per folio for one copy, and $\frac{1}{2}$ d. per folio for every other copy. *Ibid.* (c).

1689. The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the court or a judge shall otherwise direct. *Ibid.* (e).

(e) Credit of Copies to Client.

1690. As between a solicitor delivering any printed copies and his client, credit shall be given by the solicitor for the whole amount payable by any other party for such printed copies. *Ibid.* (d).

(f) Numbering and Marking of Folios.

1691. The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered

consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies. Ord. LXVI. r. 7, No. 1009 (m).

1692. Where this rule is not followed the costs of the printing will not be allowed—Per the President of the P. D. & A. Division. *The Rose*, 27th January, 1885.

(g) *Note of Filing.*

1693. It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party. Ord. LXVI. r. 7, No. 1009 (k).

(h) *Expenses.*

1694. Where, by any order of the court (whether of appeal or otherwise) or a judge, any pleading, evidence, or other document is ordered to be printed, the court or judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit. *Ibid.* (o).

38. Trial.

1. Generally.*

1695. Every action and proceeding in the High Court of Justice, and all business arising out of the same, except as hereinafter provided, shall, so far as is practicable and convenient, be heard and determined by a single judge. See the Appellate Jurisdiction Act, 1876 (c. 59), s. 17.

1696. And all proceedings subsequent to the hearing or trial, and down to and including the final judgment or order, shall be had before the judge before whom the trial or hearing of the cause took place. *Ibid.*

2. Directions for—

(a) *Third Parties.*

1697. If a third party appears pursuant to the third-party notice, the defendant

giving the notice may apply to the court or a judge for directions, and the court or judge, upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action, as the court or judge may direct. Ord. XVI. r. 52, No. 174.

1697a. For provisions whenever an application is made before trial for an injunction or other order, and the matter in controversy is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence, that the judge may make an order for an early trial at the assizes or elsewhere, see Ord. L. r. 11, of October, 1884.

3. *Appointment of—*

1698. In Admiralty actions the court or a judge shall have power at any stage of the proceedings in any such action, upon a motion or summons by either party, for the trial to take place on an early day to be appointed by the court or a judge, to appoint that such trial shall take place on any day or within any time which the court or judge shall think fit; and for such purpose the court or judge shall have power upon such motion or summons to dispense with the giving of notices of trial, or to abridge the time or times appointed by these rules for giving such notice, for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as the nature of the case may require. Ord. LXIV. r. 9, No. 969.

4. *Notice of—*

(a) *Generally.†*

1699. Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact

* (528) As to the mode of trial of actions in other divisions, see Wilson's *Jud. Acts and Rules* (4th ed. 1878), pp. 337—361; and Archbold's *Practice* (14th ed. by Chitty), vol. 1, pp. 577—655; and Chitty's *Forms*, 12th ed., p. 339.

(528a) As to the mode in which trials are

conducted in American Admiralty Courts, see 2 Conkling's *Adm. Prac.* (2nd ed.), p. 349; Dunlap's *Ibid.* 253. [AMERICAN.]

† (529) As to notice of trial in the Queen's Bench Division, see Archbold's *Practice* (14th ed. by Chitty), vol. 1, p. 577; and Chitty's *Forms*, 12th ed. p. 335.

are ready for trial. Ord. XXXVI. r. 11, No. 435.

1700. If the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as the court or a judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the court or judge to dismiss the action for want of prosecution; and on the hearing of such application, the court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the court or judge may seem just. *Ibid.* r. 12, No. 436.

1701. Notices of trial shall state whether it is for the trial of the cause or matter or of issues therein. It shall be in the Form No. 16 in App. B., with such variations as circumstances may require. *Ibid.* r. 13, No. 437.

1702. Ten days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms or has been ordered to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the court or a judge. Short notice of trial shall be four days' notice, unless otherwise ordered. *Ibid.* r. 14, No. 438.

1703. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the trial may come on in its order upon the list. *Ibid.* r. 17, No. 441.

1704. In London and Middlesex, unless within six days after notice of trial is given the trial shall be entered by one party or the other, the notice of trial shall be no longer in force. *Ibid.* r. 16, No. 440.

1705. As to notice of trial elsewhere than in London or Middlesex, *Ibid.* r. 18, No. 442.

1706. Notice of trial shall be given before entering the trial. *Ibid.* r. 15, No. 439.

1707. No notice of trial shall be coun-

termanded except by consent, or by leave of the court or a judge, which leave may be given subject to such terms as to costs, or otherwise as may be just. *Ibid.* r. 19, No. 443.

1708. As to the power of the court in Admiralty actions to appoint a day for the trial, and for that purpose to dispense with, or abridge the time for notice of trial, and for doing other acts, see Ord. LXIV. r. 9, No. 969, in No. 1698, *supra*.

(b) *By Affidavit.*

1709. When the evidence under this Order is taken by affidavit the notice of trial shall be given at the same time or times after the close of the evidence as is in other cases by these rules provided after the close of the pleadings. See Ord. XXXVIII. r. 30, No. 550.

1710. But this rule does not apply to Admiralty actions for limitation of liability, nor *in rem* by default, nor to references. *Ibid.*

5. *Entry for—.**

1711. If the party giving notice of trial for London or Middlesex omits to enter the trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last preceding rule, within four days enter the trial. Ord. XXXVI. r. 20, No. 444.

1712. The trial may be entered notwithstanding that the pleadings are not closed, provided that notice of trial has been given. *Ibid.* r. 15, No. 439.

1713. If a trial be entered by both parties, it shall be tried in the order of the plaintiff's entry, and the defendant's entry shall be vacated. *Ibid.* r. 28, No. 452.

1714. The party entering the trial shall deliver to the proper officer two copies of the whole of the pleadings, one of which shall be for the use of the judge at the trial. Such copies shall be in print, except as to such parts (if any), of the documents as are by these rules permitted to

* (530) As to the lists of trials without juries in Queen's Bench Division for London and Middlesex, see Ord. XXXVI. r. 29, No. 453.

(531) As to the entry of trial at the next assizes in the district registry (if any) of the city or town where the trial is to be had, or with the associate, *Ibid.* r. 4, of Oct. 1884.

(531a) And for provisions that where the lists in Ord. XXXVI. Part IV. mentioned have been closed for the autumn and spring

assizes at Liverpool or Manchester, there shall be special sittings for the trial of certain cases in the Chancery Division, *Ibid.* r. 3.

(532) As to entries for trial in certain district registries, *Ibid.* r. 23, No. 447.

(533) As to the lists of causes for trial at the assizes to be made by district registrars and entries therein, *Ibid.* rr. 24—27, No. 448—451.

be written. Ord. XXXVI. r. 30, No. 454.*

See also No. 1704, *supra*.

6. Place of—

1715. There shall be no local venue for the trial of any action, except where otherwise provided by statute. Every action in every division shall, unless the court or a judge otherwise orders, be tried in the county or place named on the statement of claim, or (where no statement of claim has been delivered or required) by a notice in writing to be served on the defendant, or his solicitor, within six days after appearance. Where no place of trial is named, the place of trial shall, unless the court or a judge shall otherwise order, be the county of Middlesex. Ord. XXXVI. r. 1, No. 525.

1715a. The provisions of the above rule shall apply to every action, notwithstanding that it may have been assigned to any judge. *Ibid.* r. 2, of October, 1884.

7. Admission of Evidence taken before Trial.

1716. Except where by this Order otherwise provided, or directed by the court or a judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the court or judge is satisfied that the deponent is dead, or beyond the jurisdiction of the court, or unable from sickness or other infirmity to

attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate. Ord. XXXVII. r. 18, No. 500.†

1717. No affidavit or deposition filed or made before issue joined in any cause or matter shall without special leave of the court or a judge be received at the hearing or trial thereof, unless within one month after issue joined, or within such longer time as may be allowed by special leave of the court or a judge, notices in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf. *Ibid.* r. 24, No. 506.

1718. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the court or a judge, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence. *Ibid.* r. 3, No. 485.

8. With or without Jury.‡

1719. In an action in the Admiralty Division trial by jury refused. *The Temple Bar*, 10 Nov. 1885. Decision affirmed on appeal, *Ibid.* 12 Nov. 1885. See also *The Seaham*, 4 Asp. 58.

* (533a) Four prints are all that are allowed on taxation, but ten prints are usually asked for and left.

† (534) In the Admiralty Division, however, evidence taken before trial under order of court is not taken under the above order, and is (unlike the practice in the other divisions) read at the hearing without any further application to the court being necessary for the purpose, and without its being necessary to prove that the witness has not returned from sea, and even though he may have returned, and it is probable he would not be allowed to be called again as a witness at the trial without special grounds being shown for such a course.

(534a) The notice of trial in the Admiralty Division is entitled in the cause, and addressed to the adverse solicitor, requiring him to take notice of trial of the action (specifying it), or the issues ordered to be tried in the action (as the case may be) in (stating venue), for the day of next. It is dated and signed by the solicitor, or agent of the solicitor, in the cause giving the notice.

The notice of trial bears an impressed stamp of two pounds, of which one pound is for the stamp on the judgment or decree issued to the successful party, filed in the filing-room in the Admiralty registry.

‡ (535) Actions in the Admiralty Division are always tried without a jury, though it would seem that anciently the judge of the Admiralty Court had power to convene a jury. See 2 Chitty's General Practice, pp. 513, 535, also note to *The Ruckers*, 4 C. Rob. 74, and the Admiralty Division as a branch of the Supreme Court, probably now has the same power. The court, however, has the assistance of Trinity Masters as assessors, where nautical assistance is advisable.

(536) This enables the court to dispense with the allowance of scientific nautical evidence, and much expense is thus saved to suitors.

(537) As to the causes in the Queen's Bench Division in which trials may be had with and without a jury, see Ord. XXXVI. r. 4—9, Nos. 428—433, as amended by r. 11 of Dec. 1885.

9. *With Assessors.*

(a) *Generally.*

1720. Trials with assessors shall take place in such manner and upon such terms as the court or a judge shall direct. Ord. XXXVI. r. 43, No. 467.

(b) *Trinity Masters.*

1721. Trinity Masters. See Pt. I. c. 2, p. 1466, and tit. EVIDENCE, p. 421.

10. *Where one Party does not appear.*

1722. If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him. *Ibid.* r. 31, No. 455.

1723. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment, dismissing the action, but if he has a counter-claim then he may prove such counter-claim so far as the burden of proof lies upon him. *Ibid.* r. 32, No. 456.

1724. Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the court or a judge upon such terms as may seem fit, upon an application made within six days after the trial. *Ibid.* r. 33, No. 457.

11. *Examination of Witnesses in Court.*

(a) *Generally.**

1725. In the absence of any agree-

ment in writing between the solicitors of all parties, and subject to these rules, the witnesses at the trial of any action or at any assessment of damages shall be examined *vivâ voce* and in open court; but the court or a judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the court or judge may think reasonable, or that any witness, whose attendance in court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner; provided that, where it appears to the court or judge that the other party *bond fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.† Ord. XXXVII. r. 1, No. 483.

1726. Nothing in this act or in the first schedule thereto, or in rules of court to be made under the act, except as therein mentioned, affects the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence. See the Judicature Act, 1875 (c. 77), s. 20.

(b) *Evidence taken down by Shorthand Writer.‡*

* (538) Evidence on the trial of an action in the Admiralty Division is now usually given *vivâ voce*, and taken down in shorthand by the shorthand writers appointed by the court.

(539) If it is important to secure the testimony of witnesses about to leave the country, the court will generally entertain an application to have those witnesses on either side or both sides examined and cross-examined in court prior to the hearing; or an order may be obtained for their evidence being taken before an examiner of the court or by commission.

(540) As to evidence before trial, see c. 35, ss. 27, 28, pp. 1620 *et seq.*

(541) As to oral proof by witnesses, including attendance, examination, and cross-examination of witnesses, see Roscoe's Digest of the Law of Evidence (15th ed.), pp. 143 *et seq.*

(542) As the pleadings are sufficiently explicit to indicate the respective cases of the parties, no opening by counsel precedes the examination of witnesses on either side.

(543) When the witnesses are examined *vivâ voce* the court only hears one counsel on each side, except on questions of law, on which both counsel may be heard.

(544) When the hearing takes place on written proofs all the counsel engaged on each side are entitled to be heard.

† (545) As to the powers of the Court of Admiralty, prior to the Judicature Acts, to examine witnesses *vivâ voce*, see 3 & 4 Vict. c. 65, s. 7.

‡ (546) In the Admiralty Division, where the evidence is taken *vivâ voce*, and there is any probability of an appeal by either party—*i. e.*, substantially in all cases—the questions and answers are taken down in shorthand by one of the authorized reporters of the court, who is first duly sworn faithfully to take down the same. One of them attends the sittings of the court for that purpose. On appeal, an order is obtained that this transcript of the evidence shall be received as authentic proof of the evidence in the cause.

(c) *Disallowance of Irrelevant and Vexatious Questions.*

1727. The judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter. Ord. XXXVI. r. 38, No. 462.

(d) *Use of Answers to Interrogatories.*

1728. Any party may, at the trial of a cause, matter, or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always, that in such case the judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in. Ord. XXXI. r. 24, No. 366.

12. *Notes of Commencement and Termination.*

1729. The registrar, master, or other proper officer present at any hearing or trial, shall make a note of the times at which such hearing or trial shall commence and terminate respectively, on each day on which the same shall take place, for communication to the taxing officer if required. See Ord. XXXVI. r. 40, No. 464.

13. *Special Case.**

1730. Upon the argument of a special case the court and the parties shall be at liberty to refer to the whole contents of the documents referred to therein, and the court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether

of fact or law, which might have been drawn therefrom if proved at a trial. See Ord. XXXIV. r. 1, No. 389.

1731. On a special case upon a question of law being ordered, such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed. *Ibid.* r. 2, No. 390.

1732. As to the printing signatures to and filing of a special case, see c. 24, p. 1573.

1733. No special case in a cause or matter to which a married woman (except as therein mentioned), infant, or person of unsound mind not so found by inquisition, is a party, shall be set down for argument without leave of the court or judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true. *Ibid.* r. 4, No. 392.

1734. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the form No. 25 in App. G., and also if any married woman, infant, or person of unsound mind not so found by inquisition, be a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument. *Ibid.* r. 5, No. 393.

1735. As to agreement by parties to a special case for payment of an agreed sum, according to the judgment of the court in the affirmative or negative on the questions of law, see c. 24, p. 1573.

1736. This order applies to every special case in a cause or matter, or proceeding incidental thereto. *Ibid.* r. 7, No. 395.

1737. Any special case may be stated for the same purposes, and in the same manner as was provided by the act 13 & 14 Vict. c. 35, and the same shall be deemed to be a special case within the

(547) As to the court shorthand writers, see Pt. I. c. 4, p. 1473.

(548) The shorthand writer's charges for attending and taking down the evidence are two guineas a day, besides his charge for the transcript, if ordered.

(549) The plaintiff's solicitor is entitled, on taxation between party and party, to a fee for bespeaking the attendance of the shorthand writer, whose charges of attendance are usually paid by him.

(550) All witnesses, except the one under

examination, those who have been examined, parties in the cause, and scientific witnesses, such as surveyors, &c., are generally required to be kept out of court.

* (551) As to proceedings by special case, see Wilson's Jud. Acts and Rules (4th ed.), pp. 323—326.

(552) As to trials of questions of law by special case in the Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty), vol. 2, p. 1343.

meaning of this order. *Ibid.* r. 8, No. 396.

1738. As to the powers of arbitrators and referees to state a special case, see the Common Law Procedure Act, 1854 (c. 125), s. 4; and also of referees to do so, see Ord. XXXVI. r. 52, No. 476. As to statement of special case in interpleader, see Ord. LVII. r. 9, No. 858.

1739. Where the statement of defence denied specifically all the allegations in the statement of claim, and further alleged that the defendant's liability was limited to £5 by the terms of a bill of lading, held that the question of law should be first decided, and a special case ordered. *Tattersall v. National Steamship Co.*, 9th Feb. 1884.

1739*a*. See also c. 24, pp. 1572, 1573; as to special cases in the Privy Council, see tit. APPEALS, p. 48.

14. Question of Law.

See c. 24, No. 1020, p. 1573.

15. Issues.

(a) Generally.*

1740. For provisions that where issues or questions of fact have been ordered to be tried or determined, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined; and if he does not do so, and give notice thereof to the other parties within ten days, any defendant may do so, Ord. XL. r. 7, No. 565.

1741. For provisions that where issues or questions of fact have been ordered to be tried or determined, and some only of them have been tried, any party who considers the result of the trial renders the trial of the others unnecessary, or requiring postponement, may apply for leave to set down a motion for judgment, without waiting for such trial, *Ibid.* r. 8, No. 566.

See also Nos. 1744—1747, *infra*.

(b) Third Parties.

1742. Unless issues are directed and prepared between the defendant and a third party the court cannot try questions

of liability between them. *The Cartsburn*, 5 P. D. 59; 4 Asp. 202.

1743. *Semble*, it is competent to the court to order issues between the defendant and a third party to be tried either at the same time as those between plaintiff and defendant or after they have been decided. *Ibid.* (C. A.)

16. Questions of Facts agreed to be decided.

1744. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the court or a judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an issue in the form No. 15, in Appendix B., with such variations as circumstances may require; and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdiction of the court or judge, in the same way as the proceedings in an action. Ord. XXXIV. r. 9, No. 397.

1745. The court or a judge may by consent of the parties order that, upon the finding thereof in the affirmative or negative, a sum of money, fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other with or without costs. *Ibid.* r. 10, No. 398.

1746. Upon the finding on any such issue, judgment may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the court or a judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial. *Ibid.* r. 11, No. 399.

1747. The proceedings upon such issue may be recorded at the instance of either party, and the judgment, whether re-

* (553) As to the powers of the Court of Admiralty before the Judicature Acts to direct issues for trial at common law before a jury, see 3 & 4 Vict. c. 65, ss. 11—16, now repealed by the Civil Procedure Acts Repeal Act, 1879 (c. 59).

(554) For case of an issue so directed and new trial refused, see *The Harriot*, 1 W. Rob. 429.

(555) And for refusal to direct such an issue, see *The Flecha*, 1 Spinks' Eccl. and Adm. Rep. 440.

corded or not, shall have the same effect as any other judgment in a contested action. Ord. XXXIV. r. 12, No. 400.

17. By Referees.

See c. 41, p. 1658.

18. Counsel.

(a) Generally.

1748. In a cause of salvage the defendants appeared, but without pleading. They appeared by counsel at the hearing and claimed to be heard in depreciation of the services. *Held*, that a party who has not pleaded cannot be heard. *The Emerald* (2300), 13th December, 1864.

1748a. The counsel of rival salvors may cross-examine each other's witnesses, but only as to circumstances in dispute between them. *The Morocco*, 1 Asp. N.S. 46; 24 L. T. N.S. 598.

(b) In Consolidated Actions.

1749. Where the interests of the plaintiffs in a consolidated salvage action are adverse, separate counsel will be heard on their behalf at the hearing. *The Scout*, L. R. 3 A. & E. 512; 41 L. J. Adm. 42; 1 Asp. N.S. 258.

(c) Right to begin and Reply.

(aa) Generally.

1750. As to the order of counsel being heard in cases of trial with a jury, see Ord. XXXVI. r. 36, No. 460.

1751. Where the *onus probandi* has been imposed upon a party it is his duty to begin. Those who claim to share in a joint capture begin to state their case, and afterwards are entitled to reply. *The Banda and Kirwee Booty*, 35 L. J. Adm. 11; 2 Asp. 323.

1752. Where the Crown appears to protest against the jurisdiction of the court being exercised against a vessel belonging to a foreign power, it has the same right of reply as in cases where it appears on its own behalf. *The Parliament Belge*, 4 Asp. 83.

(bb) In Bottomry Actions.

1753. In a bottomry action in which the bond had been pronounced for in proceedings by default, but which was afterwards allowed to be contested by the owners, the counsel for the bondholder was called on to begin. *The Orelia*, 3 Hagg. 78, n.

(cc) In Collision Actions.*

1754. In collision actions generally the plaintiff begins. *The Otter*, 2 Asp. N.S. 208.

1755. In a collision action where the plaintiffs' ship was at anchor when the collision occurred, *held*, that the burden of proof was upon the defendants to account for the collision, and that they ought to begin. *The George Arkle*, 1 Asp. 154.

1756. In a cause of collision where the defendant admits that his vessel ran into a vessel at anchor, but denies that such vessel was the plaintiff's, the plaintiff must establish identity, and must therefore begin. *The Earl of Leicester*, B. & L. 188.

1757. The defendants' vessel came into collision with the plaintiffs' vessel which was riding to her nets. The defendants charged the plaintiffs with not exhibiting a proper light. *Held*, that the plaintiffs must begin. *The Bottle Imp*, 42 L. J. Adm. 48; 1 Asp. N.S. 571.

1758. Where defendants in a cause of collision plead inevitable accident alone, it lies on the plaintiffs to show a *prima facie* case of negligence (see the *Marpesia*, L. R. 4 P. C. 212; 1 Asp. N.S. (P. C.) 261), and the plaintiffs must therefore begin. *The Abraham*, 2 Asp. N.S. 34: overruling *The Thomas Lea*, *infra*.

1759. The defendants in their answer pleaded inevitable accident, and generally denied the allegations of the petition, but did not charge the plaintiffs with any blame. *Held*, that it rested with the defendants to show, in the first instance, that they were not responsible for the damage, and that therefore they ought to begin. *The Thomas Lea*, 38 L. J. Adm. 37; 2 Asp. 389.

* (556) If the defendant calls for the plaintiff's log and puts it in evidence, it is put in evidence by the defendant, and though the defendant calls no witness the plaintiff's counsel is entitled to reply.

(557) For the old practice as to the admission of further pleadings and evidence

after the formal close of pleadings and written evidence, see *Le Niemen*, 1 Dodson, 10; *The Fortitude*, 2 *Ibid.* 70; *The Sydney Cove*, 2 *Ibid.* 10; *The Bonaparte*, 8 Moore, P. C. C. 460; *The Speed*, 7 Jur. 1069; 2 W. Rob. 230; *The Julindur*, 1 Spinks' Eccl. & Adm. Rep. 71.

1760. Where the only defence pleaded in a cause of collision is that of inevitable accident the plaintiff begins. *The Benmore*, L. R. 4 A. & E. 132; 43 L. J. Adm. 5; *The Otter*, L. R. 4 A. & E. 203; 2 Asp. N.S. 208.

(dd) *In Salvage Actions.*

1761. In a salvage action the right to begin does not shift with the burden of proof, but is almost universally with the claimant. *The Magdalen*, 31 L. J. N.S. Adm. 22.

1762. Salvage services were admitted, but it was charged by the defendants that salvage reward was forfeited by the subsequent misconduct of the salvors. *Held*, that the counsel for the plaintiffs, the salvors, were nevertheless entitled to begin. *Ibid.*

1763. In the case of rival salvors those who first entered their action should, as a rule, begin. *The Morocco*, 1 Asp. N.S. 46; 24 L. T. N.S. 598.

1764. In salvage actions, where several actions have been instituted, there is no inflexible rule to entitle the plaintiffs in the action first instituted to begin. *The Willem III.*, L. R. 3 A. & E. 487; 1 Asp. N.S. 129.

1765. See as to the right to begin of counsel for different sets of salvors in a consolidated cause of salvage, *Ibid.* 1 Asp. 132.

1766. In this case counsel for those first on the spot were first heard. *Ibid.*

(ee) *In the Privy Council.*

See tit. APPEALS, p. 29.

19. *By Affidavit.*

(a) *Generally.*

1767. No deposition filed or made before issue joined is, without special leave, to be received at the trial, unless within one month after issue joined, or such longer time as may be allowed by special leave, notice in writing thereof has been given to the opposite party. See Ord. XXXVII. r. 24, No. 506.

20. *Of Cross Actions.*

See o. 34, p. 1605, and Nos. 1542—1545, p. 1619.

21. *Postponement or Adjournment.*

(a) *Generally.*

1768. The judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit. Ord. XXXVI. r. 34, No. 458.

1769. Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of habeas corpus duly issued from the Central Office, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of habeas corpus may be issued for such future day, if the court or a judge shall so direct, without payment of any fee. *Ibid.* r. 35, No. 459.

1770. The judge may, at or after a trial, adjourn the case for further consideration, or leave any party to move for judgment. *Ibid.* r. 39, No. 463.

(b) *Before Trial commenced.*

1771. In a cause of bottomry, on motion on behalf of the bondholder, the assignees of the owner directed to bring in all the affidavits and proofs then in their power or possession before the bondholder should be required to file his answer to their pleadings, and on the further affidavits and proofs being so brought in, the bondholder allowed further time to send out to the Mauritius. *The Orelia*, 3 Hagg. 77, n.

1772. An application to postpone the hearing of a cause until the return of a person to this country, there having been abundance of time for the person to have given his evidence before he left, refused. *The Blendenhall*, 1 Dodson, 417.

1773. Time having been frequently prayed by the defendant to examine, in a cause of personal damage, a witness who had afterwards been suffered to leave the country without being examined, the court, it being uncertain when he would return, refused to grant any further time, and closed the case. *The Enchantress*, 1 Hagg. 395.

1774. The court will not, at the instance of a defendant, postpone the trial of a cause on the ground of the absence of a material and necessary witness, where the witness is a captain in the service of the defendant, and the defendant has been guilty of laches in abstaining from securing the testimony of the witness when within his power. *Wright v. M'Guffie*, 4 C. B. N.S. 441.

1775. Motion, after publication, to permit further affidavits to be given in,

and to allow further time to procure them, the parties being at sea, on the ground that it had been intended originally to apply for time to procure these affidavits, but that the case had been closed through inadvertence granted, the court intimating, however, that it would view the affidavits introduced at such a stage of the cause with great suspicion; and that, without reference to the result of the suit, the party would be liable to the costs of the application, should the affidavits prove unnecessary. *The Speed*, 7 Jur. 1069; 2 Notes of Cases, 230.

1776. Application to postpone the hearing of a cause, on the ground that a bill of indictment for perjury had been found against one of the principal witnesses, granted to the extent of a limited postponement, but a further postponement refused. *The Jane and Matilda*, 1 Hagg. 187; see also *Maclean v. Maclean*, 2 Hagg. 601; *Kenrick v. Kenrick*, 4 *ibid.* 133; *Panton v. Williams*, 2 Curteis, 552. (Ecl.)

(c) *After Trial commenced.*

See No. 1770, *supra*.

22. Evidence in Proceedings after Trial.

See c. 35, p. 1626.

23. New Trial or Re-hearing.

1777. Every motion for a new trial, or to set aside a verdict, finding, or judgment, shall be made (1) in every cause or matter by the Principal Act assigned to the Probate, Divorce and Admiralty Division, where there has been a trial thereof, or of any issue therein with a jury, to a Divisional Court of that Division, one of the judges of which shall (when practicable) sit on the hearing of such motion; (2) in every other cause or matter, where there has been a trial thereof or of any issue therein with a jury, to a Divisional Court of the Queen's Bench Division; and (3) where there has been a trial without a jury, by appeal to the Court of Appeal. Ord. XXXIX. r. 1, No. 551.

1778. When the trial takes place before a judge without a jury, an application for a new trial, whatever the ground, must be made to the Court of Appeal. *Oastler v. Henderson*, 2 Q. B. D. 575. (C. A.)

1779. As to applications to the Court

of Appeal for leave to give further evidence in the Court of Appeal, see tit. APPEAL, pp. 37 and 54.

1780. In courts of common law there may be a new trial in cases of surprise, but there can be no new trial in the Court of Admiralty. *The Minnehaha*, 1 Lushington, 340.

1781. The practice of the Court of Admiralty does not admit of new trials, owing to the wandering habits of seamen and for other reasons. *The Constitution*, 2 Asp. 60.

1782. On an appeal to the Judicial Committee the sentence must be either affirmed or altered, and it will not be altered unless the Appellate Court is reasonably convinced that the sentence was wrong. *Ibid.*

1783. *Semble*, where an objection is taken to the exclusion of evidence by the judge of the Admiralty Court, the proper course is to apply to the Court of Appeal for a new trial on that ground, and not to tender the evidence afresh in the Court of Appeal. *The Sir Robert Peel*, 4 Asp. 321. (C. A.)

1784. *Semble*, where the court sees clearly that, unless a re-hearing were granted, its intention declared in its judgment would be defeated, it is within the competency of the court to grant it. *The Singapore*, L. R. 1 P. C. 378.

1785. As to applications for new trials from judgments or verdicts in the Common Law Division, see Ord. XXXIX. Wilson's Judicature Acts and Rules (2nd ed.), p. 272; Archbold's Practice (14th ed. by Chitty), vol. 1, p. 729; and Chitty's Forms (12th ed.), p. 368.

1786. As to rules nisi and absolute, see Ord. LIII. rr. 2 to 6.

1787. On motion for judgment, or for a new trial, the court may give judgment accordingly, or may direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit. Ord. XL. r. 10, No. 568.

24. Costs.

See tit. Costs, p. 342.

39. Judgments and Orders.

[Judgments.]

1. Generally.*

1788. In the construction of this act,

* (558) As to judgments and orders in the Queen's Bench and Chancery Divisions, the

drawing up, signing, and entry thereof, see Central Office Practice Rules, 1880—1882, in

unless there is anything in the subject or context repugnant thereto, "judgment" shall include decree, "order" shall include rule. The Supreme Court of Judicature Act, 1873 (c. 66), s. 100.

1789. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be indorsed a memorandum in the words or to the effect following, viz.: "If you, the within-named A. B., neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment (or order)." Ord. XLI. r. 5, No. 573.

1790. The judge may, at or after a trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of a court or judge. Ord. XXXVI. r. 39, No. 463.

1791. The court will not make a decree against the master in an action of wages against the ship only, even though the master appeared in the action and gave bail. *Lee v. Rous*, anno 1750, Marsden's Rep. p. 318.

1792. For forms of judgments, see R. S. C. 1883, App. F.

1793. As to interest on judgments, see tit. REGISTRAR AND MERCHANTS.

2. Motion for—

(a) Generally.*

1794. Except where by the acts or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the court shall be obtained by motion for judgment. Ord. XL. r. 1, No. 559.

1795. Where at the trial the judge or referee abstains from directing any judgment to be entered, the plaintiff may set down a motion for judgment. If he does not set down such a motion and give notice thereof to the other parties within ten days after the trial, any defendant may set down a motion for judgment, and give notice thereof to the other parties. *Ibid.* r. 2, No. 560.

1796. No motion for judgment shall, except by leave of the court or a judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. *Ibid.* r. 9, No. 567.

(b) Notice of—

1797. See No. 1795, *supra*.

3. Entry of—

(a) Generally.†

1798. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The forms of entries

Wilson's Jud. Acts and Rules (4th ed.), p. 850.

(559) As to judgments or orders for mandamus and prerogative mandamus, see Ord. LIII. r. 4—15, Nos. 722—733.

(560) A decree in the Court of Admiralty for damages and reference to the registrar and merchants, *held*, a definitive sentence. *The Saracen*, 6 Moore, P. C. C. 75.

* (561) As to judgments, motions for, and to set aside or enter other judgments and registrations of judgments in the Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty), vol. 1, pp. 755—769; Chitty's Forms (12th ed.), pp. 371—376; and Wilson's Jud. Acts and Rules (4th ed.), pp. 384—392.

(562) For provisions on motions for judgment, or applications for a new trial, after verdict of a jury enabling the court to draw certain inferences of fact, and to direct the motion to stand over for further consideration, and to direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it

may think fit, see Ord. XL. r. 10, No. 568.

† (563) In the Admiralty Division judgments are not registered nor filed in the Admiralty Registry or the Central Office.

(564) The registrar being the proper officer in the Admiralty Division to enter the judgment, no copy of the pleadings as required by this rule are given by or to him, as printed copies of the pleadings have previously been filed in the registry.

(565) For provisions that where under the acts or these rules, or otherwise, any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the same, and if regular and sufficient he shall enter judgment accordingly; or similarly, he may do so where judgment may be entered pursuant to any order or certificate, or return to any writ, on the production thereof sealed with the seal of the court, or of such return, see Ord. XLI. rr. 6, 7, Nos. 574, 575.

(566) As to entries of judgments in the Queen's Bench Division, *Ibid.* r. 8, No. 576.

of judgments in App. F. shall be used, with such variations as circumstances may require. Ord. XLI. r. 1, No. 569.*

1799. It is not necessary to enrol any judgment or order. Ord. LXI. r. 8, No. 901.

See also Nos. 1789, 1790, *supra*.

(b) *Date of—*

1800. Where any judgment is pronounced by the court or a judge in court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the court or judge shall otherwise order, and the judgment shall take effect from that date. Provided that by special leave of the court or a judge a judgment may be ante-dated or post-dated. Ord. XLI. r. 3, No. 571.

1801. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date. *Ibid.* r. 4, No. 572.

1802. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the court or a judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. Ord. XXI. r. 17, No. 250.

(c) *For want of Statement of Claim or Defence*, see Nos. 934—942, p. 1562.

(d) *In Actions in rem by Default*, see Nos. 948, 949, 952, p. 1564.

(e) *In Actions for Accounts*, see Nos. 712, 713, p. 1535.

(f) *Actions under Directions*, see Nos. 1001, 1002, p. 1571.

(g) *Third Parties not appearing*, see Nos. 709—711, p. 1535.

4. *On Counter-claim or Set-off.*

1803. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dis-

missing the action, but if he has a counter-claim, then he may prove such counter-claim so far as the burden of proof lies upon him. Ord. XXXVI. r. 32, No. 456.

5. *On Confession of Defence.*

1804. For provisions that where the defendant alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, and thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the court or a judge shall otherwise order. Ord. XXIV. r. 3, No. 284.

6. *By Consent.*

1805. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent. Ord. XLI. r. 9, No. 577.

1806. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, conveyancer, special pleader, or solicitor. *Ibid.* r. 10, No. 578.

7. *Third Parties.*

1807. If a third party appears pursuant to the third-party notice, the defendant giving the notice may apply for directions to the court or a judge, who may, if not satisfied there is a proper question to be tried as to the liability of the third party, order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party. Ord. XVI. r. 52, No. 174.

8. *In Proceedings by Default.*

See Nos. 925—932, p. 1561; Nos. 934—942, p. 1562; Nos. 944—952, p. 1563.

9. *In Actions in rem without Pleadings in Defence.*

1808. Ord. XXIX. r. 2 (now Ord. XXVII. r. 2, No. 295), allowing the plaintiff when his claim was only for a debt

* (567) As to the registry of judgments in the Queen's Bench Division, searches for and

certificates as to same, see Ord. LXI. rr. 22, 24, Nos. 915, 917.

or liquidated demand, and the defendant had delivered no defence or demurrer, to enter final judgment, did not apply to cases where the defendant in proceedings *in rem* in the Admiralty Court had failed to deliver a defence within the proper time.* *The Sfactoria*, 2 P. D. 3; 3 Asp. N.S. 271.

10. *Obtained by prior petens—Effect of—*.
See c. 14, p. 1536.

11. *On Foreign Judgments.*

1809. See also tit. JURISDICTION, pp. 661—666, and *ibid.* in Addenda.

12. *Enforcement of—*†

(a) *Generally.*

1810. A judgment for the recovery by, or payment to, any person, of money, may be enforced by any of the modes by which a judgment or decree for the payment of money of any court whose jurisdiction is transferred by the principal act might have been enforced at the time of the passing thereof. Ord. XLII. r. 3, No. 581.

1811. A judgment for the payment of money into court may be enforced by writ of sequestration, or in cases in which attachment is authorized by law, by attachment. *Ibid.* r. 4, No. 582.

1812. A judgment for the recovery of any property other than land or money may be enforced, (a) by writ for delivery of the property; (b) by writ of attachment; (c) by writ of sequestration. *Ibid.* r. 6, No. 584.

1813. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal. *Ibid.* r. 7, No. 585.

1813a. As to discovery in aid, see c. 43, s. 19, p. 1663; and as to enforcing obedience to acts ordered to be done, *Ibid.*

(b) *Against Corporations.*

1814. As to the enforcement of judgments or orders against a corporation by sequestration against its property or attachment against its directors or other officers, see *Ibid.* r. 31, No. 609.

13. *Alteration of—*‡

1815. An application to amend an error in a decree must be made with the utmost expedition. *The Orient*, 3 Asp. 322; 39 L. J. Adm. 10; *The Monarch*, 1 W. Rob. 21.

1816. On an application to alter a minute of a decree the court refused to do so as the application was not made until five months after the decree, and as the minute on the whole accurately recorded the decree of the court. *Ibid.*

1817. A salvage suit having been instituted against ship, freight, and cargo. The value of the ship and freight and the value of the cargo were taken as stated on affidavit by the shipowner and the owner of the cargo respectively, and a certain sum was awarded as salvage remuneration. Subsequently the owner of the cargo discovered that he had included the value of the freight, which proved to be larger than the amount stated by the shipowner, in his valuation of the cargo, and moved the court to reduce the amount awarded as salvage. *Held*, that the court had power to correct the mistake and vary its decree both as to the amount of salvage and the proportions payable by the different parties. *The James Armstrong*, L. R. 4 A. & E. 380; 3 Asp. N.S. 46.

1818. The court has power, where it has *per incuriam* made a decree for the payment of money out of court, to revoke

* (568) *Semble*, R. S. C. 1883, for proceedings by default apply. See, as to same, c. 22, p. 1561.

† (569) Application to the English Court of Admiralty to enforce a sentence of the Irish Admiralty Court refused. *Pilkington v. The Orrory*, anno 1679, Marsden, p. 253.

‡ (570) As to the old practice thereon in the Admiralty Court, see *The Vrouw Hermina*, 1 C. Rob. 168; *The Elizabeth*, 2 Acton, 57; *The Geheimirath*, *Ibid.* 58, n.; *The Harmony*, *Ibid.* 60, n., and note to *The Herstelder*, 1 C. Rob. 118; *The Harmony*, 2 Dodson, 78; *The Fortitude*, *Ibid.* 70; *The Mo-*

narch, 1 W. Rob. 21; *The Glenburn*, Bro. & Lush. 62; 11 W. R. 685. See also as to the practice in other courts, *Cheese v. Scales*, 10 Mee. & W. 488, cited in *Dysart v. Dysart*, 1 Robertson, 545; 5 Notes of Cases, 261; *Galton v. Hancock*, 2 Atk. 430; *Souter v. Souter*, *Ibid.*; *Dysart v. Dysart*, 1 Robertson, 545; 5 Notes of Cases, 261; *Gossain v. Gossain*, 8 W. R. 196.

(571) As to the power of the American Admiralty Courts to review their decisions, see 1 Conkling's Adm. Prac. (2nd ed.), p. 280. [AMERICAN.]

or vary such decree, if before the money has been paid out, application is made to it for that purpose. *The Markland*, L. R. 3 A. & E. 340; 1 Asp. N.S. 44.

1819. In a collision action, in which both vessels had been found to blame, the court, after the general hearing of the cause, but before decree, allowed the defendant, under special circumstances, and on payment of costs of the motion, to move "that a moiety of the damages sustained by his vessel be ascertained and deducted from the amount of damages decreed to the owners of the plaintiff's vessel." *The Emily*, 4 Jur. N.S. 140. [IRISH.]

14. Rescinding of—

1820. As to applications to set aside judgments at or after trial by jury, see Ord. XL. r. 3, No. 561.

1821. Or at or after a trial without a jury, *Ibid.* r. 4, No. 562.

1822. As to such application being to the Court of Appeal, unless, where there has been a trial with a jury, there is also a motion for a new trial, in which case it shall be to the Divisional Court, *Ibid.* r. 5, No. 563.

1823. Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the court or a judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex. Ord. XXXVI. r. 33, No. 457.

1824. See also *The Belleairn*, tit. OWNERS, p. 1344; and 10 P. D. 161; 54 L. J. P. D. 88.

15. Dismissing Action.

See c. 29, p. 1579.

16. On Issues.

1825. As to judgments or orders on the finding of issues, see c. 38, p. 1639.

17. On Admissions of Evidence.

1826. No judgment or order wherein any written admissions of evidence are entered as read shall be passed, until the written admissions of evidence shall have been filed in the Central Office, or, where the proceedings are taken in a district registry, in the district registry, and a note thereof made on the judgment or

order by the proper officer. Ord. LXI. r. 15, No. 908.

18. On Admission of Facts.

1827. Any party may at any stage of a cause or matter, where admissions of fact have been made on the pleadings, or otherwise, apply for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and such order or judgment as he may think just may be made or given thereon. Ord. XXXII. r. 6, No. 376.

19. On Condition.

1828. As to the effect of a judgment or order upon a condition not complied with, see Ord. XLII. r. 2, No. 580.

20. In Proceedings in District Registries.

See Nos. 964, 965, p. 1567.

21. For Injunction or Receiver.*

1829. No writ of injunction shall be issued. An injunction shall be by a judgment or order, which shall have the effect a writ of injunction previously had. Ord. L. r. 11, No. 667.

1830. For provisions as to applications for injunction, before or after judgment, to restrain the defendant from the commission, repetition, or continuance of the injury, wrongful act, or breach of contract complained of, *Ibid.* r. 12, No. 668.

1830a. As to the powers of the court or judge to grant injunction or appoint a receiver and the proceedings thereon, see Ord. L. r. 6, No. 662, and Wilson's Jud. Acts and Rules, 4th ed. p. 428.

1831. As to the appointment of liquidators and receivers, and proceedings thereon, their accounts and liabilities, see Ord. L. rr. 16—23, Nos. 672—679.

1831a. As to the appointment of receivers in actions of co-ownership, see *The Amphill*, 5 P. D. 226, No. 2324, tit. OWNERS, p. 1420. See also c. 43, p. 1666.

22. For Payment of Money or Delivery or Transfer of Property.

1832. Where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any

* (572) As to injunctions in the Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty), vol. 1, p. 427, and vol. 2, p. 1277.

property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand. Ord. XLII. r. 1, No. 579.

23. *For Inquiries or Accounts.*

See c. 24, ss. 5, 6, p. 1571.

24. *Rules Nisi and Orders to show Cause.*

1833. As to the abolition thereof, see Ord. XXXIX. r. 3, No. 553.

25. *Enforcement of—.*

1834. As to the enforcement of judgments and orders generally, see c. 43, p. 1659.

1835. As to their enforcement against corporations, see No. 1814, *supra*.

[Orders.]

26. *Generally.**

1836. As to orders to enter a judgment or order *nunc pro tunc*, see Ord. LII. r. 15, No. 710.

1837. For forms of different orders, see R. S. C. 1883, App. K.

27. *Date.*

1838. Every order, if and when drawn up, shall be dated the day of the week, month, and year, on which the same was made, unless the court or a judge shall otherwise direct, and shall take effect accordingly. Ord. LIII. r. 13, No. 708.

28. *Note of—.*

1839. Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave—(a) for the issue of any writ other than a writ of attachment; (b) for the amendment of any writ or pleadings; (c) for the filing of any document; or (d) for any act to be done by any officer of the court other than a solicitor, it shall not be necessary to draw up such order unless the court or a judge shall other-

wise direct; but the production of a note or memorandum of such order, signed by a judge, registrar, master, chief clerk, or district registrar, shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this rule. The solicitor of the person on whose application such order is made, shall forthwith give notice in writing thereof to such person (if any) as would, if this rule had not been made, have been required to be served with such order. *Ibid.* r. 14, No. 709.

29. *On Petition.*

1840. No order on a petition shall be passed until the original petition shall have been filed, and a note thereof made on the order by the proper officer. Ord. LXI. r. 15, No. 908.

30. *Solicitor's Agreements.*

1841. As to the making of solicitor's agreements orders of court, see c. 24, p. 1572.

31. *Making Submissions or Awards Rules of Court.*

1842. No order to make a submission to arbitration or an award an order of court shall be passed until the original submission or award has been filed, and a note thereof made on the order by the proper officer. Ord. LXI. r. 15, No. 908.

32. *Charging Stocks or Shares and Stop Orders.*

1843. For provisions as to orders for charging stocks or shares in lieu of distringas, see Ord. XLVI. Nos. 631—643; 1 & 2 Vict. c. 110, s. 1; Wilson's Jud. Acts and Rules, 4th ed. p. 412; and Archbold's Practice (14th ed. by Chitty), vol. 2, pp. 919—926.

33. *Payment of Money under Lien.*

1844. For provision in actions to recover directly, or by way of counterclaim, specific property other than land, and the title is not disputed, but a lien

* (573) As to orders where a mandamus, mandatory order, injunction or judgment has not been complied with, that (besides proceedings for contempt) the act required to be done may be done as far as practicable by

the party obtaining the order, or other person appointed by the court at the cost of the disobedient party, see Ord. XLII. r. 30, No. 608.

thereon for money is set up, enabling the court or a judge to order the amount of money claimed, with interest and costs, to be paid into court, and the property claimed to be given up to the party claiming it, Ord. L. r. 8, No. 664.

34. *Order of Execution on Conditional Order taking Effect.*

See c. 43, p. 1660.

35. *For Inspection, Interim Preservation, Custody, and Sale of Property.*

1845. See Ord. L. rr. 1—7; Nos. 657—663; Wilson's Jud. Acts and Rules, 4th ed. p. 426; and Archbold's Practice (14th ed. by Chitty), vol. 1, p. 426.

36. *Mandamus, Injunction, or Receiver.*

1846. See Ord. L. rr. 6, 11, 12; and 15a of 1884; Nos. 662, 667, 668; Wilson's Jud. Acts and Rules, 4th ed. p. 662; Archbold's Practice, 14th ed. vol. 1, p. 426; and Chitty's Forms, 12th ed. p. 246.

37. *As to Costs only.*

1847. No order of the High Court, or any judge thereof, by consent, or as to costs only, by law are left to the discretion of the court, is subject to appeal, except by leave. See the Supreme Court of Judicature Act, 1873 (c. 66), s. 49; and see tit. APPEAL, p. 12.

* (574) The calculation of damages and all matters of account in actions in the Admiralty Division are referred by the judge to the registrar to examine and report upon. In these investigations the registrar is generally assisted by two merchants, who hold standing appointments from the judge for the purpose. After the accounts and proofs on both sides have been filed, the solicitors on both sides attend the registrar and merchants, when the accounts are investigated, and witnesses on both sides are often examined in addition to the proofs filed. The registrar afterwards prepares a report to the judge, setting forth the items of the claim made, and the items he has allowed and disallowed.

(575) Where the defendant does not desire to dispute his legal liability for the claim set up, but only its amount, the defendant's solicitor may admit his client's legal liability, and have the claim referred to the registrar and merchants to examine and report upon the amount thereof.

(576) This is done by the solicitors on both sides entering into an agreement to that effect.

(577) The following is the form of such an

38. *In Chambers.*

(a) *Proceedings to set aside.*

1848. Every order made by a judge of the High Court in chambers, except orders as to costs, by law left to his discretion, may be set aside upon notice by any divisional court, or by the judge sitting in court, according to the course and practice of the division; and no appeal lies from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal. *Ibid.* a. 50.

39. *Orders or Decrees of Sale.*

See c. 44, p. 1667.

40. *Registrar's Certificate as to Deposit Security.*

1848a. If, after a case has been finally disposed of, no taxation of costs is required, the taxing officer may, by consent of the parties, or on being satisfied that any party who has lodged money therein to the "security for costs account" is entitled to have it paid to him, give a certificate thereof, which shall be acted on like an order. See Ord. XXXI. r. 1 of Oct. 1884.

40. *References.*

1. *Generally.**

1849. Ord. LVI. applies to references

agreement, after setting out the title of the cause:—We, the undersigned, solicitors for the defendants, hereby admit that the defendants are liable for the damages caused by the collision in question in this action, and pray a reference as usual to the registrar, assisted by merchants, to assess the amount thereof; and we, the undersigned, solicitors for the plaintiffs, hereby agree to such reference. It is dated and signed by the respective solicitors.

(578) The minute bears a filing stamp of 5s.; but no stamp is placed on the agreement.

(578a) In a claim involving accounts, the court will generally, as a matter of course, order a reference at the prayer of either party, unless it can be shown that the whole claim turns upon a question of law.

(579) A seaman's claim for loss of effects dealt with by the registrar and merchants, although not supported by affidavit, no objection being taken by the defendants. *The Black Diamond*, No. 3298, Nov. 1866. R. & M.

(579a) Action in *personam* for collision. The defendants were a limited company. Defendants held solely to blame. They appealed, admitting they were to blame, but contending that plaintiffs were also to blame. On appli-

by the court or a judge to the Admiralty registrar, whether alone or assisted by one or by two merchants. Ord. LVI. r. 1, No. 838.

1850. The provisions of R. S. C. No. 550, that in cases of trial by affidavit the evidence shall be printed and notice of trial given as therein mentioned, do not apply to Admiralty references. Ord. XXXVIII. r. 30, No. 550.

1850*a*. In Admiralty actions *in rem*, upon default of appearance, if, when the action comes before him, the judge is satisfied that the plaintiff's claim is well founded, he may pronounce for the claim with or without a reference to the Admiralty Registrar or to the Admiralty Registrar assisted by merchants. See Ord. XIII. r. 13, No. 113.

1851. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of the assessment. Ord. XXXVI. r. 58, No. 482.

1851*a*. In Admiralty proceedings, when a ship is arrested on a specific demand before a reference of accounts to the registrar and merchants can be made, it must be shown to the court that something is due, although the actual amount may be the proper subject of inquiry. The practice differs from a reference by a court of equity on an unsettled account where the court directs an account to be taken, leaving it to be shown by the result on which side the balance lies. *The West Friesland*, otherwise *Twentje*, 13 Moore, P. C. C. 185; Swabey, 454, 459; 8 W. R. 423; 2 L. T. N.S. 613.

1852. When the legal effect of a bottomry bond is intended to be questioned before the registrar and merchants, it is more convenient that the reference to them should be made under the directions of the court. *The Cognac*, 2 Hagg. 384.

1853. The registrar and merchants can never allow a demand unless it is substantiated by proper vouchers or by proper evidence. *The Julindur*, 1 Spinks' Eccl. and Adm. Rep. 76.

1854. Although it is the usual practice of the court in collision cases to refer all questions involving the amount of da-

mages to the registrar and merchants, yet when consequential damages are claimed, it is in the discretion of the court to deal, at the hearing of the action, with the question whether such damages are recoverable. *The Maid of Kent*, 6 P. D. 178; 50 L. J. P. D. 71; 4 Asp. 476.

1855. Where it is convenient to do so, the court will refer to the registrar separately one of several consolidated causes. *The Helen R. Cooper*, L. R. 3 A. & E. 339; 40 L. J. Adm. 46.

1856. A reference to the registrar as to damages will not be ordered where the court can satisfactorily dispose of the question. *The Eleonore*, 3 N. R. 95.

1857. A collision having occurred between the vessels B. & E., whereby the E.'s cargo was lost, a suit was instituted against the B. by the plaintiffs, who described themselves as the owners of the cargo ex E. The B., being held to blame, a reference to the registrar was directed. At the reference it appeared that the plaintiffs were underwriters who had paid the shippers as on a total loss. The plaintiffs produced the bills of lading and invoices of the cargo. *Held*, that the defendants were entitled to evidence of a discharge from the owners of the cargo, and to better evidence of the value of the cargo before the registrar proceeded to make his report. *The John Bellamy*, L. R. 3 A. & E. 129; 3 Asp. 360.

1857*a*. In an action of damage to cargo the court referred the assessment of damages to the registrar and merchants, with directions to bear in mind the decisions at common law in two similar cases. *The St. Cloud*, Br. & Lush. 18.

1858. A claim by the owners of a damaged vessel for loss sustained, estimated moderately to avoid litigation, having been rejected, and the matter afterwards referred to the registrar and merchants, the owners are not bound by their original estimate, nor barred of their right to prove an actual loss greater than that estimate. *The Two Sisters*, 1 Spinks' Eccl. and Adm. Rep. 99.

1858*a*. On an award of costs and damages to a Dutch claimant against an

execution by the defendants for a stay pending the appeal, the registrar directed the reference to be proceeded with, notwithstanding the appeal. *The Portugalete*, 21st Feb. 1885.

(580) The registrar having, pending the appeal, reported the amount of damages due to the plaintiffs, the defendants, to prevent

execution issuing, gave bail to the plaintiffs in an agreed amount of the damages and costs. *Ibid*.

(580*a*) As to references in the Queen's Bench Division, to ascertain amount of damages, see Archbold's Practice (14th ed. by Chitty), vol. 2, p. 1326.

English captor, the court directed the registrar to examine and report as to the damages due, taking to his assistance for that purpose two merchants, to be named by the parties and approved by the court, and recommended that the English captor should select a Dutch merchant, and the Dutch claimant an English merchant, for the purpose of such reference. *The Vander Leye*, Hay & Marriott, 184.

1859. Where, in an action prior to the Judicature Acts and Rules and Counterclaims, decree had been made of both vessels to blame, the court would not refer the damage of both vessels to the registrar, but would leave the defendant to his cross action, notwithstanding that the ship of the plaintiff perished in the collision and the plaintiff resided out of the jurisdiction. *The North American*, Swabey, 466.

1860. As to the powers and authority of the registrar and assistant registrar, see Pt. I. p. 1470.

1860a. See also as to inquiries and accounts, c. 24, p. 1571.

2. In Proceedings by Default.

1861. In proceedings by default the judge may pronounce for the claim with or without a reference to the registrar and merchants. Ord. XIII. r. 13, No. 113.

3. On what Subjects.

1862. *Semble*, it is not competent to the court to devolve on the registrar and merchants the solution of any point of law. *The Ocean*, 10 Jur. 506.

1863. A decree pronouncing for the validity of a bottomry bond, though conclusive unless appealed from, determines nothing as to the amount the bondholder is entitled to recover. That is to be ascertained by a reference to the registrar and merchants. *The Catherine*, 3 W. Rob. 3.

1864. In a cause of bottomry, the court, before deciding upon the validity or invalidity of the bond, referred the case to the registrar and merchants to report, on the whole accounts, whether any and what balance was due to the bondholder upon which a bottomry bond could be taken, and any other special matter which might occur to them. *The Ocean*, 10 Jur. 505; 4 Notes of Cases, 410; *The Gauntlet*, 13 Jur. 414; *The Roderick Dhu*, Swabey, 178.

1865. The court on pronouncing for a

bottomry bond will refer the accounts to the registrar and merchants to examine and report thereon. *The Nelson*, 1 Hagg. 181; *The Albion*, *ibid.* 333.

1866. When the premium on a bottomry bond is excessive, the court, even in proceedings by default, will refer the matter to the registrar and merchants to report the proper amount to be allowed. *The Humiley*, 1 Lushington, 24.

1867. The rate of interest at which money may be lent on bottomry is a proper subject for reference to the registrar and merchants. *La Ysabel*, 1 Dodson, 277; *The Alexander*, *ibid.* 279; *The Lord Cochrane*, 8 Jur. 716; 3 Notes of Cases, 172.

1868. In a bottomry transaction, if the charges for the repairs are excessive, the amount will be referred to the registrar and merchants. *The Lord Cochrane*, 8 Jur. 716; 3 Notes of Cases, 172.

1869. Objections to bills of exchange (given as collateral securities to a bottomry bond), as having been drawn at too high a rate of exchange, referred to the registrar and merchants. *The Nelson*, 1 Hagg. 179.

1870. In an action under the Admiralty Court Act, 1861, for damage to goods, before the Admiralty Court will make a decree as to the amount of damages, the amount must have been ascertained by a reference to the registrar and merchants. *The St. Cloud*, 8 L. T. N.S. 55.

1871. Where to a claim for damage to cargo, made in an Admiralty action, a counter-claim of general average is set up, it is not necessary that such general average should have been adjusted; but if the evidence supports the fact of a general average loss having been sustained, the amount thereof, together with the amount of loss sustained through damage to the cargo, will be referred to the registrar and merchants to report on. *The Oquendo*, 3 Asp. N.S. 558; 38 L. T. N.S. 151.

1872. *Semble*, in cases of account between master also mortgagee and his co-mortgagee, a question of unliquidated damages cannot be investigated by the registrar and merchants, but must be assessed by a jury. *The Repulse*, 5 Notes of Cases, 362; 11 Jur. 716.

1873. When a claim for necessaries or supplies is for a large amount, and consists of various items, and the proceedings are by default, the court will sometimes, on making a decree in favour of the plaintiff, refer *ex mero motu* the accounts

and vouchers to the registrar with or without merchants to examine and report thereon. *The Revenir*, 5th August, 1858.

1874. The court will refer a claim, if objected to, of agents' expenses, as a deduction from a salvage award, to the consideration of the registrar and merchants. *The Louisa*, 2 W. Rob. 24.

1875. Reference decreed to the registrar and merchants of the accounts of a party appointed agent by the master, and claiming also as salvor in that capacity. *The Happy Return*, 2 Hagg. 207.

1876. Loss and damage of salvors attending a salvage service referred to the registrar and merchants to examine and report upon. *The Oscar*, 2 Hagg. 261; *The Salacia*, *ibid.* 269; *The Gladiator*, No. 1594, 6th Nov. 1863.

1877. In a cause of wages, accounts for wages, payments on account, &c. referred to the registrar to examine and report upon. *The Lady Campbell*, 2 Hagg. 14, 15.

1878. In a cause of wages, brought by a mariner, an application of the owner after judgment to refer the schedule of deductions from the wages, respecting which the owners and mariner were not agreed, to the registrar, refused. *The Test*, 3 Hagg. 316.

1878a. Accounts of charges attending the execution of a commission of unlivery and appraisal referred to the consideration of the registrar and merchants as being enormous. *L'Esperance*, 1 Dodson, 50.

4. *Where dispensed with.*

1879. On a question of small damages, the court, though it might ascertain them more exactly by a reference to the registrar and merchants, will, to avoid expense, refrain from ordering a reference if it can itself satisfactorily dispose of the question. £20 awarded as damages, with costs, without a reference. *The Eleanore*, 33 L. J. N.S. Adm. 19.

1879a. In a cause of damage in which the amount of damages claimed was £10,000, and the net proceeds only amounted to about £800; motion to pay out the balance of proceeds to the proctor for the plaintiffs, duly authorized, granted without a previous reference of the claim and accounts to the registrar and merchants. *The Viscountess Canning*, 15 March, 1860.

1880. In a cause of damage in which judgment had been given for the plaintiff, he claimed £600, and the net proceeds amounted to £300 only. Motion for payment of the balance of proceeds without a reference, granted. *The Zaide Celine*, No. 1909, January 26, 1864.

5. *Claim and Proofs.**

(a) *Generally.*

1881. In references in Admiralty actions evidence may be given by affidavit. See Ord. XXXVII. r. 2, No. 484.

1882. Within twelve days from the day when the order for the reference is made, the solicitor for the claimant shall file the

* (581) The claim should be entitled in the cause in which it is made. A very short statement of the circumstances under which the claim is made should be inserted. Then should follow a list of the different items of claim numbered consecutively. The vouchers (bills and receipts) for each item should be brought in with the claim, and be numbered to correspond with the item to which they refer in the claim.

(582) A stamp of 5s. should be affixed to the minute on filing the claim, and a stamp of 5s. on each affidavit or other proof, such as protest, survey, &c., but no stamp is required for any of the ordinary vouchers (bills or receipts).

(583) It is sometimes sufficient in the first instance to file in addition to the claim the surveys (if any) and the accounts and vouchers, though if any items are open to exception it is desirable to file at once affidavits in support of them. The counter-proofs filed on the other side will generally show what items are intended to be impugned, and further proofs in support of these should then be

filed.

(584) But, in general, the claimant's solicitor, unless he intends to examine witnesses at the hearing, should file adequate proofs in support of his claim, as sometimes his opponent files no counter-proofs, but besides or instead of those proofs examines witnesses at the hearing on the reference, and the claimant's solicitor, if not fully prepared to disprove or answer such evidence or objections, will be driven to apply for an adjournment, and if the report is against him he will not, without good cause shown, be allowed to go into further evidence in objection to the report.

(585) Cargo books, portage accounts, and other books and accounts in the possession of either party are usually produced by that party on notice in writing to that effect from the opposite party. When this is not done an order for the purpose may be obtained by summons in the usual way. A stamp of 5s. must be affixed to the minute on filing each book or account, if filed, and not produced merely.

claim and affidavits. Ord. LVI. r. 2, No. 839.

1883. In references in Admiralty actions evidence may be given by affidavit. Ord. XXXVII. r. 2, No. 484.

(b) *In Actions of Bottomry.**

(c) *In Actions of Damage to Cargo.†*

(d) *In Actions of Damage by Collision.‡*

1884. In estimating the value of a ship lost by collision, the best evidence is the opinion of competent persons who knew the ship shortly previous to the time it was lost. The second best evidence is the opinion of persons conversant with shipping, and the transfers thereof. Many other circumstances may be called in aid,—as the original price of the vessel, the amount of repairs done to her, the sum at which she was insured, and the like; but these facts have a slighter bearing upon the case. *The Ironmaster*, Swabey, 443.

1885. Shipwrights or persons accustomed to shipbuilding, and, *semble*, who saw the vessel under repair, would be

better judges than the merchants assisting the registrar of the repairs necessary in consequence of a collision. *The Alfred*, 7 Notes of Cases, 355; 3 W. Rob. 232.

1886. The owner's books are the best evidence of the earnings of the vessel, and should be produced. *The Hebe*, 5 Notes of Cases, 182; 2 W. Rob. 523.

1887. The owner's affidavit of prime cost, unsupported by documentary proofs, is not sufficient evidence to produce legal conviction. *The Clyde*, Swabey, 23.

1888. In a case of total loss at sea by collision, a shipowner who has cargo of his own on board is entitled to recover in lieu of freight what would have been the enhanced value of the cargo at its destination, less the expenses of earning that value, and that is the proper form of claim, and not a claim for expenses in making the ship fit for sea. *The Thyaira*, No. 125, 5 Asp. 178.

(e) *In Actions of Masters' Accounts.*

1889. The registrar and merchants cannot allow in a master's accounts items for which no vouchers are produced, or which are not substantiated by proper evidence. The affidavit of the master thereon is not

* (586) In actions of bottomry the proofs to be filed are *inter alia* the surveys and the accounts and vouchers for the several sums making up the amount raised on bottomry.

† (587) In actions of damage to cargo, when the cargo is lost, or sold in a damaged state, the proofs to be filed are *inter alia* the bills of lading or invoice showing the nature and quantity of the cargo shipped, the account sales when it is sold in a damaged state, affidavits of its value at the port of consignment at the time when in ordinary course it would have arrived there, and *pro formâ* account sales showing the disbursements that would have attended its landing, storing, sale, and delivery there.

(588) When the cargo is only damaged, instead of the *pro formâ* account sales, proofs should be filed of the expenses of re-coopering the casks, drying or otherwise repairing the cargo, and of superintending these repairs.

‡ (589) In actions of damage by collision, when the ship is lost, the proofs to be filed are *inter alia* her register, if she were a comparatively new vessel; affidavits of her classification at Lloyd's, if she had a good class; affidavits of the different occasions of her having been repaired, and the amounts spent in the repairs, particularly on the last occasion.

(590) Affidavits as to her value from persons experienced in shipping, and who had seen her shortly before she was lost; and

affidavits of shipwrights of standing and experience, setting forth the amount for which they would build a new vessel of the same class, size, and equipment.

(591) Affidavits of shipwrights and others experienced in shipping, deposing to her value from the particulars contained in her register and classification at Lloyd's, are often filed for want of better proofs, but do not carry much weight with them.

(592) The proofs to be filed as to the loss of freight are the charter-party, when the freight is for a lump sum, or the ship's manifest; and a freight account showing the amount of freight that would have been earned and the expenses that would have been incurred in earning it.

(593) In actions of damage by collision when the vessel damaged has been repaired, the proofs to be filed are *inter alia* the surveys, the protest, the accounts, and vouchers for the repairs. As to demurrage, affidavits as to the time the vessel was under repair, that the repairs were effected with all practicable expedition, and proof of the vessel's average earnings, if she is a vessel of a superior class or engaged in any special trade.

(593a) The registrar and merchants made deductions from a bill, on the ground that articles were charged therein which had not been mentioned in the report of survey. *The Thomas Adam*, Feb. 1884. R. & M.

sufficient. *The Julindur*, 1 Spinks' Eccl. and Adm. Rep. 72.

1890. As to actions on masters' accounts generally, see tit. MASTERS, c. 7, p. 1123.

6. Interrogatories.

1891. Either party may apply to the court for an order against the other party to answer interrogatories as well in proceedings before the registrar and merchants as in other proceedings. *The Killarney*, No. 997, 26 Sept. 1862.

1892. On a reference to the registrar and merchants in a cause of damage by collision, certain of the plaintiffs had filed affidavits as to their private effects lost in the collision. Motion to the court by the defendants before the hearing on the reference to order those plaintiffs to answer interrogatories touching the matters referred to in their affidavits, granted. *The Killarney*, No. 997, 26 Sept. 1862.

1893. As to interrogatories generally, see c. 35, p. 1616.

7. Counter-Claim.*

8. Counter-Proofs.

1894. Within twelve days from the day when the claim and affidavits were filed

by the solicitor for the claimant, the adverse solicitor shall file his counter-affidavits. Ord. LVI. r. 2, No. 839.

9. Further Proofs.

1895. From the filing of the counter-affidavits of the adverse solicitor six days only shall be allowed for filing any further affidavits by either solicitor, save by order of the court or a judge, or by permission of the registrar. *Ibid.* r. 3, No. 840.

10. Notice of Hearing.†

1896. Within three days from the expiration of the time allowed for filing the last affidavits, the solicitor for the claimant shall file in the registry a notice, with the stamps for the reference affixed thereto, praying to have the reference placed on the list for hearing. Ord. LVI. r. 4, No. 841.

1897. If he shall not do so, the adverse solicitor may apply to the court or a judge to have the claim dismissed with costs. *Ibid.*

11. Hearing.‡

1898. At the time appointed for the reference, if either solicitor be present,

* (594) When a contradictory set of accounts is intended to be set up by the defendant, as in cases of masters' accounts and accounts between part owners, the proper course is for the defendant's solicitor to file a counterclaim setting forth the items in the plaintiff's account to which the defendant objects, and any further payments or other counter-charges the defendant claims to be allowed. The issue is thus conveniently narrowed to the items in the counterclaim only, and those items only are discussed on the reference.

(595) When it is probable that a counterclaim will be set up, the plaintiff should, in the first instance, confine himself to filing his claim and vouchers, reserving his proofs until he is made aware by the filing of the counterclaim what items in his accounts are disputed.

(596) When the accounts are much involved it is desirable for the defendant, besides filing a counterclaim, to file, in illustration of his case, an account current showing the state of accounts he contends for.

(596a) As to accounts under directions, see c. 24, s. 6, p. 1571.

† (597) The notice to place a reference on the list for hearing should set forth the proper style and title of the court and cause, and that the solicitor (stating his name) for the plaintiff or defendant, as the case may be,

desires that the reference in that action may be placed on the list for hearing.

(597a) The notice should be dated and signed by the solicitor or his clerk for him. Forms of these notices may be obtained in the registry.

(598) A stamp of ten shillings must be impressed on the notice.

‡ (598a) In addition to the proofs filed, witnesses may be examined at the hearing on the reference, and subpoenas to enforce their attendance may be obtained from the registry in the usual way. As to subpoenas, see c. 35, p. 1630.

(599) Notice of the time appointed for the hearing of the reference is sent from the registry to the practitioners on both sides.

(600) The hearing fees are paid after the reference, and when the report is taken up.

(601) The parties interested, their clerks or managers, or the master of the vessel, or others engaged in superintending the repairs or other matters the subject of the claim, may attend the reference and make statements thereon, not on oath, to the registrar and merchants, though the other side generally requires them to be sworn as witnesses.

(602) It is generally advisable that one of such parties on each side should attend the reference, in order to answer inquiries of the registrar and merchants on technical matters.

the reference may be proceeded with. Ord. LVI. r. 5, No. 842.

1899. Witnesses may be produced before the registrar for examination, and the evidence shall, on the application of either solicitor, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by a shorthand writer or reporter appointed by the court, who shall be sworn faithfully to report the evidence. *Ibid.* r. 6, No. 843.*

1900. A transcript of the shorthand writer's or reporter's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the registrar's report. *Ibid.*

1901. Counsel may attend the hearing of any reference, but the expenses attending the employment of counsel shall not be allowed on taxation, unless the registrar shall be of opinion that the attendance of counsel was necessary. *Ibid.* r. 7, No. 844.

1902. As to the shorthand writers of the court, see Pt. I. c. 4, p. 1473; and c. 35, p. 1623.

1903. In an action for damage by collision in which the damage was pronounced for and a reference ordered to the registrar and merchants, the defendant's solicitor declined to attend the reference, on the ground that the damages were fixed when the bail was accepted. *Held*, that he ought to have attended the reference and urged his objection. *The Mellona*, 3 W. Rob. 16; 6 Notes of Cases, 62.

1904. The fees payable on proceedings before the registrar and merchants are,

when the reference is to the registrar only, from five guineas to fifteen guineas (including examination of witnesses, if any), according to the nature and importance of the accounts and matters and the time occupied. If the attendance of one or more merchants is required, for each merchant the same fee as to the registrar. See R. S. C. Oct. 1884, Nos. 84, 85.

1905. In cases of great intricacy or of very large amount occupying more than two full days, larger fees may be taken not exceeding five guineas additional per day to the registrar and to each merchant for every subsequent day. *Ibid.* No. 86.

1906. In cases where the accounts to be investigated do not exceed £500, and where the time occupied is short, fees may be taken for the registrar and each merchant of from one guinea to four guineas. *Ibid.* No. 87.

1907. The same fees are payable on a reference before a district registrar. *Ibid.*

12. *Adjournment.*†

1908. The registrar may adjourn the reference from time to time, as he may deem proper. Ord. LVI. r. 5, No. 842.

1909. The registrar will adjourn the further hearing on the reference for reasonable cause. *The Kepler*, 1 Lushington, 201.

1910. The court will generally condemn in costs the party who applied for the adjournment, and failed in the proofs to supply which the adjournment was allowed. *Ibid.*

13. *Special Case.*

1911. The registrar may, if he thinks

in which the practitioners cannot be expected to be proficient.

(603) By the old practice the case of each party was conducted by his solicitor at the hearing on the reference, but the practice of employing counsel is increasing, and is in important cases favoured by the court.

(603a) An affidavit, of which no copy had been served on the other side, was tendered by the defendants at a late stage of the reference, and after the plaintiff's witnesses had been examined. No sufficient excuse for this irregularity being given, the affidavit was rejected. *The Argos*, No. 5958, July, 1872. R. & M.

* (604) In ordinary cases, however, the registrar will take notes of the evidence, and furnish an office copy of them to the parties should the report be objected to.

(604a) Where large charges for labour were made in a shipwright's account the re-

gistrar called for the production of the shipwright's books. *The Bergo*, Nov. 1884. R. & M.

† (605) If either party is taken by surprise by any objections of his opponent, of which, from the counter-proofs filed, or the absence thereof, or otherwise he had not received reasonable notice, the registrar will usually adjourn the reference to give that party the opportunity of further proof.

(605a) In an action of damage, the hearing of the reference on the plaintiff's claim, which had already extended over several days, was adjourned, in order that the defendants might send a commission abroad to obtain further evidence in support of an important objection raised by them during the hearing, although ample time had elapsed since the collision to enable them to be fully prepared to establish their objection. *The Atalanta*, No. 6056, Aug. 1875. R. & M.

proper, and before making his report, submit a special case for the decision of the court on any question of law. *The Immacolato Concezione*, 9 P. D. 37.

1912. See also *The John Bellamy*, L. R. 3 A. & E. 129; 39 L. J. Adm. 28; and as to special cases generally, see c. 24, p. 1572, and c. 38, s. 13, p. 1638.

14. Report.*

1913. The report of the registrar and merchants need not be special upon every particular matter. Their allowing the item to stand is sufficient, the inference therefrom being, not that they have omitted to take it into consideration, but that they consider it a proper and allowable charge. *The Ocean*, 10 Jur. 506.

1914. The registrar may, if he think fit, report whether any and what part of the costs of the reference should be allowed, and to whom. Ord. LVI. r. 8, No. 845.

15. Filing of Report.

1915. The solicitor for the claimant shall, within six days from the time when he has received a notice from the registry that the report is ready, take up and file the same in the registry. *Ibid.* r. 9, No. 846.

1915a. If the solicitor for the claimant shall not take the steps prescribed in the last preceding rule, the adverse solicitor may take up and file the report, or may apply to the court or a judge to have the claim dismissed with costs. *Ibid.* r. 10, No. 847.

16. Costs and Damages.

1916. When a party is condemned in costs and damages the damages will be ordered to be assessed by the registrar. *The Cathcart*, L. R. 1 A. & E. 314; *The Don Ricardo*, 5 P. D. 121; 49 L. J. Adm. 28; *The Hazard*, 29 March, 1860.

1916a. For cases of condemnation in costs and damages, see tit. Costs, p. 369.

* (606) No stamp is now charged for the registrar's report. The usual stamps for an office copy are payable on an office copy of the report bespoken by each party when the report is taken up.

(607) By the old practice, prior to the Rules and Orders of 1859, now annulled, a formal order of the court was taken confirming the report; but by the new practice no express confirmation of the report is necessary, unless it is required to enforce it.

(608) Where the report of the registrar had been confirmed by the court, it could not be reopened except under very peculiar circum-

17. Costs.

1917. As costs are in the discretion of the court, the rule in the Admiralty Court as to costs of references, that where more than a fourth is struck off a claim, each party pays his own costs, and, where more than a third, the claimant pays the other party's costs, is wrong. The court must exercise its discretion according to the circumstances of each case (*The Empress Eugenie*, Lush. 140, overruled). *The Friedeberg*, 10 P. D. 112.†

1918. See also No. 1914, *supra*, and tit. Costs, c. 17, p. 358, and same title and chapter in Addenda.

18. Objections to Report.

(a) Generally.†

1919. On objection to the report of the registrar and merchants, assessors were appointed to assist the registrar and merchants in the re-consideration of their report, the judge himself being also present in the registry. *The Sir George Seymour*, 1 Spinks' Eccl. and Adm. Rep. 67; 17 Jur. 402.

1920. On objection to a report on a question of consequential damage the judge was assisted by Trinity Masters. *The Pensher*, Swabey, 213.

1920a. In actions of bottomry the court will not interfere with the discretion of the registrar and merchants in disallowing or reducing the accounts where they deem them unnecessary or exorbitant, unless it is shown they have acted on an erroneous principle. *The Pontida*, 9 P. D. 102, 177, C. A.; 5 Asp. 330.

1921. On objections to the report, the court will not allow the party to set up a case which he did not endeavour to establish at the reference. *The Glenmanna*, 1 Lushington, 115.

1922. On objection to the report of the registrar and merchants no objection can

stances—*res noviter ad notitiam perventa*, into which the court might think it fitting to inquire. *The Catherine*, 5 Notes of Cases, 402; *The Gauntlet*, 13 Jur. 414.

(609) And it has been held that a report after confirmation was binding upon the court. *The Gauntlet*, 13 Jur. 414.

† (610) The court, however, though exercising its discretion in each case, is still influenced by similar considerations.

† (610a) For forms of pleadings in objection to the registrar's report, see Roscoe's Adm. Practice, 2nd ed. App. pp. 513—516.

be made before the court to an item which was not questioned before them. *The Princess Helena*, 30 L. J. Adm. 137; 1 Lushington, 190.

1923. The court strongly disapproves of objections to the registrar's report on small items (such as an item of £1 : 10s.) even along with larger items. *Ibid.* No. 68, Jan. 18, 1861.

1924. On objection to such minor items as £9 : 12s. in cases of damage, the court will not enter into the *minutiae* of the objections, nor of the reasons by which the judgment of the registrar and merchants was influenced. *The Hebe*, 2 W. Rob. 533.

1925. See also No. 1914, *supra*.

(b) *Notice of Objection.*

1926. A solicitor intending to object to the registrar's report shall, within six days from the filing of the report, file in the registry a notice, a copy of which shall have been previously served on the adverse solicitor. Ord. LVI. r. 11, No. 848.

1927. A report of the registrar and merchants does not necessarily stand confirmed by reason of the defendants failing to take objection thereto within the time provided for in Admiralty Court Rules, 1859, r. 117, so as to absolutely entitle the plaintiffs to payment to them by the defendants of a sum of money which the court is of opinion ought not to have been allowed them in the report. *The Thyatira*, 5 Asp. 178.

1928. The court has power to extend the time within which objection to the report of the registrar and merchants may be taken. *Ibid.*

(c) *Petition in Objection.**

1929. The solicitor objecting to the registrar's report shall, within twelve

days from his filing in the registry the notice of objection to the report, file his petition in objection to the report. Ord. LVI. r. 11, No. 848.

1930. In proceedings by a defendant in objection to the registrar's report, the prayer with which the petition concludes should not be to *deduct* from the sum awarded in the report the amount of the items objected to, but to *reject* such items. *The Edmund*, 15 March, 1860.

(d) *Pleadings and Proofs.*

1931. All the rules respecting the pleadings and proofs in an action and the printing thereof, shall, so far as they are applicable, apply to the pleadings, proofs, and printing in an objection to a report of the registrar. Ord. LVI. r. 12, No. 849.

1932. A transcript of the shorthand writer's or reporter's notes of the evidence of witnesses produced before the registrar, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the registrar's report. *Ibid.* r. 6, No. 843.

(e) *Further Evidence.*

(aa) *Generally.†*

1933. Fresh evidence will not be allowed unless the party seeking to introduce it can satisfy the court that by proper diligence and by proper application it could not have been produced in the court below. *The Thuringia*, 41 L. J. Adm. 20; 1 Asp. N.S. 166; 20 L. T. N.S. 446.

1934. The Rules and Orders of Nov. 1859 (now annulled, see App. O. to Rules of 1883, No. 22, but substantially re-issued in Ord. LVI. of 1883), have no effect on the restraining power of the judge, nor did they fetter his discretion as to the admissibility of fresh evidence upon an ob-

* (611) Under the Rules and Orders of 1859, which were similar to the present, held that objections to a report of the registrar and merchants could not be made by motion except by consent of both parties. *The Edmond*, 2 L. T. N.S. 521; 1 Lush. 211.

(612) The court, in a case occurring prior to the Rules and Orders of Nov. 1859 (now repealed), consented to hear objections to the report of the registrar and merchants on motion, the amount being small. *The Zodiac*, 1 Hagg. 323.

† (613) On objection to the registrar's report in a cause of damage, new evidence was, under the old practice, admissible as of course. *The Ironmaster*, Swabey, 442; *The*

Alfred, 3 W. Rob. 232; 14 Jur. 155; 7 Notes of Cases, 352; *The Sir George Seymour*, 1 Spinks' Eccl. & Adm. Rep. 68, 70; and see *The Julindur*, *ibid.* 73; *The Egyptian*, No. 1321, March 15, 1864.

(614) Although even then it was not permitted to parties to withhold evidence at the reference, and make a new case before the court on objection to the report. *The Glenmanna*, 1 Lush. 122.

(615) In a cause of wages, on objection by the master to the registrar's report, the court allowed the master at the risk of costs to examine a witness orally in open court in support of his objections. *The Julindur*, 1 Spinks' Eccl. & Adm. Rep. 73.

jection to a report of the registrar and merchants. *The Flying Fish*, 3 Moore, P. C. C. N.S. 85; Br. & Lush. 436; 34 L. J. Adm. P. C. 113; 2 Asp. 121; 12 L. T. N.S. 619.

1935. Upon objections to the registrar's report, the discretion possessed by the judge as to the admissibility of further evidence must always be exercised with great caution, and with a careful regard to the peculiar circumstances of each case. *Ibid.*; *The Thuringia*, *supra*.

(bb) *Applications to admit.*

1936. A motion to admit additional evidence on objection to the report of the registrar and merchants, by reason of surprise, should be founded upon affidavits setting forth the names of the proposed witnesses and the nature of their testimony. *The Thuringia*, *supra*.

(f) *Burthen of Proof.**

1937. The court will not interfere with the report of the registrar and merchants unless it is fully convinced that they are in error. *The Clyde*, Swabey, 23.

1938. The court has not the benefit of the oral communications which take place at the reference between the registrar and merchants, and the parties concerned who are there present,—explanations which may be of great utility to ascertain the truth. It inclines, therefore, to support the report. *The Sir George Seymour*, 1 Spinks' Eccl. & Adm. Rep. 70; *The Clyde*, Swabey, 25.

1939. The court is extremely unwilling to disturb the reports of the registrar and merchants, made in cases of damage, on the amount of loss incurred, and of the compensation due; because, from their experience in such matters, they are fully competent to arrive at a just and proper conclusion, and most able to judge of the value of the property lost. *The Matchless*, 10 Jur. 1017; *The Sir George Seymour*, 1 Spinks' Eccl. & Adm. Rep. 67, 70.

1940. In considering objections to the report in a cause of damage, the court is inclined to confirm the report, especially in matters within the practical knowledge

of the merchants. *The Alfred*, 7 Notes of Cases, 354; 3 W. Rob. 235; 14 Jur. 155; *The Clyde*, Swabey, 25.

1941. But it is the duty of the court to form its own opinion on the evidence as to whether the items objected to have or have not been properly disallowed, and when satisfied with the evidence adduced in support of the objections to direct the report to be reformed. *Ibid*.

1942. It is an established principle of the Admiralty Court that those who take objections to the report of the registrar and merchants are bound to prove their objections by clear and satisfactory evidence. The onus of proof rests with the objectors. *The Edmond*, 1 Lush. 63; 2 L. T. N.S. 194; 29 L. J. Adm. 77; *The Clarence*, 3 W. Rob. 286; *The Gazelle*, 2 *ibid*. 285; 8 Jur. 429; 3 Notes of Cases, 75; 2 W. Rob. 285.

1943. The court will not overrule the report without being perfectly satisfied that upon the evidence, which it is their duty to take into consideration, the report ought not to be maintained. *The Ironmaster*, Swabey, 443; *The Clyde*, *ibid*. 23.

1944. In all ordinary questions, especially those of a mercantile nature, and connected with the customs of merchants, the presumption is strong in favour of the report of the registrar and merchants. *The Princess Helena*, 30 L. J. N.S. Adm. 137; Lush. 191.

1945. On questions of commission and the like great trust is reposed by the court in the judgment of the registrar and merchants, who have greater practical knowledge than the court on these subjects. To induce the court to support objections to their report, the affirmative of proving that the report is wrong must be clearly substantiated by the objectors. *The Glenmanna*, 1 Lush. 123.

(g) *Second Reference.*

1946. The report of the registrar and merchants was objected to on the ground of the insufficiency of evidence produced to them as to the value of the property, and a second reference prayed for the purpose of offering further evidence. A second reference allowed on payment of the costs both of the first reference and

* (616) The commissioner's report of damages, when parties have been fully heard before him with their proofs, and no question of law is involved in his decision, will be

adopted by the court, unless palpable errors or inadvertencies have been committed by him. *The Narragansett*, Olcott, Adm. 246. [AMERICAN.]

of the application for the second. *The Matchless*, 10 Jur. 1017.

1947. On objection to the report of the registrar and merchants, assessors were appointed to assist the registrar and merchants in the re-consideration of their report, the judge himself being also present in the registry. *The Sir George Seymour*, 17 Jur. 402.

1948. After certain objections to the registrar's report had been made and considered, and the report referred back to the registrar for amendment, objections to the amended report made and considered, and some items allowed and some disallowed, and no order made as to costs. *The City of Buenos Ayres*, 25 L. T. 672.

(h) Costs.

1949. As to costs of objections to report of registrar and merchants, see tit. COSTS, c. 18, p. 362.

19. Measure of Damages.

1950. As to the measure of damages and their awards thereon, see tit. REGISTRAR AND MERCHANTS.

20. Awards of Registrar and Merchants.

1951. As to the awards of the registrar and merchants on investigation of accounts in actions of bottomry, limitation of liability, master's accounts, mortgage, necessaries, repairs and supplies, possession, accounts between part owners, and wages, see tit. REGISTRAR AND MERCHANTS.

1952. As to the measure of damages awarded by the registrar and merchants in actions of damage by collision, damage to cargo, and in actions of salvage where the salving vessel has sustained damage in rendering the service, *Ibid.*

1953. As to the measure of costs and damages, *Ibid.*

21. Official or Special Referees.

1954. As to the appointment of official referees, their duties and remuneration, see the Supreme Court of Judicature Act, 1873 (c. 66), ss. 83, 85.

1955. For provisions as to references to an official or special referee, the enforcement of his report, the trial and

procedure before him, and his authority in reference thereto, *Ibid.* ss. 56—59.

22. District Registrars.

1956. As to the reference of accounts and inquiries, to district registrars, *Ibid.* s. 66.

1957. As to the fees payable on references to district registrars, see R. S. C., Oct. 1884, Nos. 84—87.

1958. Where in a co-ownership action in a district registry an account is claimed under Ord. III. r. 8, and the registrar directs and takes such account under Ord. XV. r. 1, his report is like the ordinary report in an Admiralty action, and should be objected to within the six days prescribed by Ord. LVI. r. 11. *Gowan v. Sprott*, 5 Asp. 288.

1959. After the registrar has taken the account and made his report it is too late to object to the original order directing the account. *Ibid.*

1960. As to district registrars generally, see Pt. I. p. 1471; and as to proceedings generally in district registries, see Pt. II. p. 1566.

41. Official Referees.*

1961. As to the distribution of business among official referees, see Ord. XXXVI. rr. 45, 47, Nos. 469, 471.

1961a. As to their sittings, see Ord. LXIII. r. 16, No. 960.

1962. As to powers of official referees to order discovery and production of documents, see Ord. XXXVI. rr. 50, 51, Nos. 474, 475.

1963. As to trial generally by official referees, see *ibid.* rr. 48—50, Nos. 472—474; and Ord. XL. r. 6, No. 564.

1964. As to the power of an official referee before the conclusion of any trial before him, or by his report to submit any questions for the decision of the court, or state facts specially, see Ord. XXXVI. r. 52, No. 476.

1965. As to referee's report, see *ibid.* rr. 53—55, Nos. 477—479.

1966. As to the fees of official referees, see Order of 24th April, 1877, in Wilson's Jud. Acts and Rules, 4th ed. p. 786.

* (617) In the Admiralty Division the duties of official referees are discharged by the registrar and merchants of the court. See tit. REGISTRAR AND MERCHANTS; and as to their practice, c. 40, p. 1648.

(617a) As to official referees, their appointment, powers, procedure, &c., see Wilson's Judicature Acts and Rules (4th ed.), pp. 63—65.

42. Arbitrations.

1. Generally.*

1967. For the principles and rules of procedure in cases of arbitration, both compulsory and by consent, see 9 Will. 3, c. 15; 3 & 4 Will. 4, c. 42, the Common Law Procedure Act, 1854 (c. 125), ss. 3—17; Archbold's Practice of the Court of Queen's Bench (14th ed. by Chitty), vol. 2, p. 1585; Wilson's Judicature Acts and Rules (4th ed.), pp. 340—345; and the provisions of the Common Law Procedure Act, 1854 (c. 125), therein referred to.

1968. All submissions to arbitration made orders of court shall be transmitted to and left at the Central Office to be there filed and preserved. Ord. LXI. r. 31, No. 924.

1969. No order to make a submission to arbitration, or an award an order of the court, shall be passed until the original submission to arbitration or award shall have been filed in the Central Office; or where the proceedings are taken in a district registry, in the district registry, and a note thereof made on the judgment or order by the proper officer. *Ibid.* r. 15, No. 908.

1970. The court has no power under the Common Law Procedure Act, 1854 (c. 125), nor under the Rules of 1883, to enforce the attendance, before an arbitrator not being an official referee, of witnesses residing in Scotland or Ireland. *Hall v. Brand*, 16 November, 1883.

1971. For provisions in compulsory references to arbitration, that any party to the reference may appeal from the award upon any question of law, and that the appeal shall be to a divisional court, see Ord. LIX. r. 3, No. 886.

1972. An application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties. Ord. LXIV. r. 14, No. 974.

1973. Nothing in this order (as to trials and arbitrations) shall affect any proceedings under any of the provisions of the Common Law Procedure Acts relating to arbitration. Ord. XXXVI. r. 10, No. 434.

1974. As to the powers of the Court of Admiralty prior to the Judicature Acts in relation to arbitrations, see the Admiralty Court Act, 1861 (c. 10), s. 23.

1975. Negotiation by the owner to refer a claim of salvage to arbitration, is no conclusive admission of salvage services rendered, or negation of a defence, on the ground of the salvor's misconduct. *The Martha*, Swabey, 490.†

2. Forms.‡

1976. For forms of order of reference to arbitration, see R. S. C. 1883, App. K. No. 24.

1977. For forms of orders of reference to arbitration under ss. 56 and 57 of the Judicature Act, 1873 (c. 66), *Ibid.* Nos. 32 and 33.

1978. For forms of orders for witnesses to attend and be examined, and produce documents before arbitrator, *Ibid.* Nos. 25 and 26.

43. Writs of Execution.

1. Generally.§

1979. In these rules the term "writ of execution" shall include writs of *feri*

* (618) No case of a submission to arbitration made a rule of court in an action in the Admiralty Division has as yet arisen, but it is apprehended the submission should be filed in the Central Office and not in the Admiralty Registry.

† (619) As to the effect of a reference to arbitration on the jurisdiction of the Court of Admiralty prior to the Judicature Acts, see *The Purissima Concepcion*, 7 Notes of Cases, 151.

‡ (620) As to arbitration in the Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty), vol. 2, pp. 1585—1669; and for forms of orders, agreements, and deed of reference by consent, bond of submission, revocation, notices, appointments, and awards, and other forms connected with arbitrations

both compulsory and by consent, see Chitty's Forms of Proceedings in the Queen's Bench Division (12th ed.), pp. 827—861.

§ (621) As to the old practice of the Court of Admiralty in regard to monitions, see *The Governor Raffles*, 2 Dodson, 17; *The Lusitano*, 1 W. Rob. 166; *The Wilhelmine*, 2 Notes of Cases, 218; *The Eliza*, No. 1605, 16th Feb. 1864; *The Wilhelmine*, 2 Notes of Cases, 218; *The Johannes Christoph*, 2 Spinks' Eccl. & Adm. Rep. 93.

(622) And in a case of misnomer, see *The Perseverance*, 2 Browne's Civ. & Adm. Law App. 542.

(623) A monition to pay money would be decreed to issue at the same time against the party principal and his bail.

(624) As to the procedure and writs of

facias, capias, elegit, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules of this order shall be applicable to the case. Ord. XLIII. r. 8, No. 586.

1980. Every order of the court or a judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect. *Ibid.* r. 24, No. 602.

1981. Nothing in this order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever. *Ibid.* r. 28, No. 606.

1982. Nothing in this order shall affect the order in which writs of execution may be issued. *Ibid.* r. 29, No. 607.

1983. No subpoena for the payment of costs shall be issued. Ord. XLIII. r. 7, No. 619.

2. Order of Execution on Conditional Order taking Effect.

1984. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the court or a judge for leave to issue execution against such party. And the court or judge, if satisfied that the right to relief has arisen according to the terms of the judgment or order, may order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried. Ord. XLIII. r. 9, No. 587.

3. For or against Third Parties.

1985. Any person not being a party to a cause or matter, who obtains any order, or in whose favour any order is made, shall be entitled to enforce obedience to

such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter. *Ibid.* r. 26, No. 604.

4. Against Corporations.

1986. Any judgment or order against a corporation wilfully disobeyed may, by leave of the court or a judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property. *Ibid.* r. 31, No. 609.

5. Against a Firm.

1987. Where a judgment or order is against a firm, execution may issue:— (a) Against any property of the partnership; (b) against any person who has appeared in his own name under Ord. XII. r. 15, or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner; (c) against any person who has been served, as a partner, with the writ of summons, and has failed to appear. If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the court or a judge for leave so to do; and the court or judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. *Ibid.* r. 10, No. 588.

6. Liability of Ship.

(a) For Orders against Owner or Master.

1988. For provisions in cases where any court, justice, or other magistrate, has power to order payment of any seaman's wages, penalties, or other sums of money, then, if the party so directed to pay is the master or owner of a ship, the

attachment for enforcing decrees in the American Admiralty Courts, see 2 Conkling's Adm. Prac. (2nd ed.) p. 430; Dunlap's *Ibid.* 135—140, 258.

(624a) As to writs of execution in the

Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty), vols. 1 and 2, pp. 836—927; and Chitty's Forms (12th ed.), pp. 389—460.

functionary who made the order may, in addition to other powers for compelling payment, direct the amount unpaid to be levied by distress or pouncing and sale of the ship, her tackle, furniture, and apparel, see the M. S. Act, 1854 (c. 104), s. 523.

7. *When Issuable.*

1989. Every person to whom any sum of money or costs shall be payable under a judgment or order shall, so soon as the amount is payable, be entitled to sue out one or more writs of *fiery facias* or of *elegit* to enforce payment thereof, but if the judgment or order is for payment within a period therein mentioned, no such writ shall be issued until after the expiration of such period. Ord. XLII. r. 17, No. 595.

1990. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the court or a judge shall order execution to issue at an earlier or later date with or without terms. *Ibid.* r. 19, No. 597.

1991. As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment or the date of the order. *Ibid.* r. 22, No. 600.

8. *Applications for Leave to issue.*

(a) *In Special Cases.**

1992. For provisions that:—(a) where six years have elapsed since the judgment or order, or a change has taken place by death or otherwise in the parties entitled or liable to execution; (b) where a husband is entitled or liable to execution for or against a wife; (c) where a party is entitled to execution on a judgment of assets *in futuro*; (d) where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against the company, or their representative, the court or a judge may be applied to for leave to issue execution. *Ibid.* r. 23, No. 601.

9. *Separate Writs.*

(a) *For Money and Costs.*

1993. Upon any judgment or order for

the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs, and shall be issued not less than eight days after the first writ. *Ibid.* r. 18, No. 596.

10. *Stay of—.*

1994. The court or a judge may, at or after judgment or order for payment of money or costs, stay execution until such time as they or he shall think fit. *Ibid.* r. 17, No. 595.

1995. Owners of cargo on board the M. recovered judgment against the A. for damage by collision. The M. then instituted a suit against the A. in respect of the same collision. The owners of the A. applied for a stay of execution in the first action until after judgment in the second, on the ground that otherwise it would be necessary for them to commence a suit for limitation of liability, which, in the event of their succeeding in the second, would be unnecessary. Application refused. *The Alne Holme* (1st action), 4 Asp. 593.

1996. For provisions abolishing proceedings by *auditū querelā*, and that any party against whom judgment has been given may apply to the court or a judge for a stay of execution or other relief against the judgment, on the ground of facts having arisen too late to be pleaded, see Ord. XLII. r. 27, No. 605.

11. *Forms.*

1997. The forms of the various writs of execution in Appendix H. are to be used, with such variations as circumstances may require. *Ibid.* r. 14, No. 592.

12. *Date and Teste.*

1998. Every writ of summons and also (unless by any statute or by these rules it is otherwise provided), every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England. Ord. II. r. 8, No. 10.

13. *Endorsement.*

1999. Every writ of execution shall be

* (625) As to proceedings for leave to issue executions after lapse of time and change of

parties, see Archbold's Practice (14th ed. by Chitty), vol. 2, p. 955.

indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be endorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be. Ord. XLIII. r. 13, No. 591.

14. Taking out.

(a) Generally.*

2000. No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the creditor to execution. *Ibid.* r. 11, No. 589.

(b) Notice or *Præcipe*.

2001. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firm against whose goods, the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms in Appendix G. shall be used, with such variations as circumstances may require. *Ibid.* r. 12, No. 590.

15. Levy.

(a) Generally.

2002. Every writ of execution for the recovery of money shall be indorsed with

a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of £4 per cent. per annum from the time when the judgment or order was entered or made, provided that in cases where there is an agreement between the parties that more than £4 per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed. *Ibid.* r. 16, No. 594.

(b) Interest.

See previous No.

(c) Poundage Fees and Expenses.

2003. In every case of execution the party entitled to execution may levy the poundage fees, and expenses of execution, over and above the sum recovered. *Ibid.* r. 15, No. 593.

16. How long in Force.

2004. A writ of execution, if unexecuted, remains in force for one year only from its issue, unless renewed. *Ibid.* r. 20, No. 598.

17. Renewal.

2005. A writ of execution may, at any time before its expiration, by leave of the court or a judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the court bearing the date of the day, month and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof. *Ibid.*

2006. The production of the writ, or of the notice renewing it, duly sealed as renewed, is sufficient evidence of its having been so renewed. *Ibid.* r. 21, No. 599.

* (626) In actions in the Admiralty Division writs of attachment and *feri facias* are

issued from and filed in the Admiralty Registry and not the Central Office.

18. *Notice to Sheriff to return.**

2007. No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or by his solicitor, calling upon the sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff. Ord. LII. r. 11, No. 706.

2008. When any sheriff shall, before going out of office, arrest any defendant, and render return of *cepi corpus*, he may be called upon by a notice, as provided by the last preceding rule, to bring in the body within the time allowed by law, although he may be out of office before such notice is given. *Ibid.* r. 12, No. 707.

19. *Discovery in Aid.*

2009. For provisions that on a judgment or order for payment of money, the party entitled to enforce it may apply for an order that the debtor liable under it, or in the case of a corporation any officer thereof, may be examined, as to debts owing to him, and other property, and for the production of books or documents, see Ord. XLII. r. 32, No. 610.

2010. In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the court or a judge, and the court or judge may make such order thereon for the attendance and examination of any party or otherwise as may be just. *Ibid.* r. 33, No. 611.

2010a. As to the costs of applications, see the above two rules, *ibid.* r. 34, No. 612.

20. *Enforcing Obedience to Acts ordered to be done.*

2011. For provisions that if a mandamus, mandatory order, injunction, or judgment for the specific performance of

any contract be not complied with, the court or a judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the court or judge, at the cost of the disobedient party, and for execution for the expenses so incurred and costs. *Ibid.* r. 30, No. 608.

21. *In Actions of Possession.*

2012. For form of writ of possession in an Admiralty action, see R. S. C. 1883, App. H. No. 9.

22. *On finding of Issues.*

See c. 38, p. 1639.

23. *Fieri Facias.*

(a) *Generally.†*

2013. Writs of *feri facias* and of *elegit* shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed. Ord. XLIII. r. 1, No. 613.

2014. Writs of *venditioni exponas, distringas nuper vice comitem*, and all other writs in aid of a writ of *feri facias* or of *elegit*, may be issued and executed in the same cases and in the same manner as heretofore. *Ibid.* r. 5, No. 617. See further as to writs of *venditioni exponas, Ibid.* r. 2, No. 614.

2015. For forms of writ of *feri facias*, see R. S. C. 1883, App. H. Nos. 1 and 2.

2016. A defendant in an execution, being a registered proprietor of shares in a ship, a *fi. fa.* was delivered to the sheriff; and the solicitor for the creditor, by the direction of the sheriff, procured the certificate of registry from the ship, and delivered it to the sheriff, who retained it. The sheriff was registered at the Custom House, under the M. S. Act, 1854 (c. 104), as the owner of the shares, which were afterwards sold by him and transferred to the purchaser by a bill

* (627) As to sheriffs, under-sheriffs and their officers, see Archbold's Practice (14th ed. by Chitty), vol. 1, p. 31.

† (628) As to writs of *feri facias* in the Queen's Bench Division, *Ibid.* p. 836, and Chitty's Forms (12th ed.), p. 389.

(629) Owing to the respectability of the bail generally taken in the Admiralty Divi-

sion, no case of enforcing payment has as yet occurred there beyond in one or two cases the taking out of a writ of execution, which, however, has never been executed. In the late Court of Admiralty the process by attachment was found sufficient in the few cases in which it was necessary to enforce payment. See also note 635, *infra*.

of sale, duly registered. *Held*, that the seizure was effectual, although the sheriff did not go on board the ship, and that the property in the shares was duly transferred. *Harley v. Harley*, 11 Chan. Rep. 451. [IRISH.]

24. Attachment.

(a) Generally.*

2017. A writ of attachment shall have the same effect as a writ of attachment issued out of the Chancery Division has heretofore had. Ord. XLIV. r. 1, No. 620.

2018. For form of writ of attachment, see R. S. C. 1883, App. H. No. 12.

2019. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. Ord. XXXI. r. 21, No. 363.

2020. A judge in chambers has jurisdiction to issue a writ of attachment. *Salm Kyrburg v. Posnanski*, 13 Q. B. D. 218.

2021. A solicitor not entering an appearance, or putting in bail, or paying money into court in lieu of bail, in an Admiralty action *in rem*, in pursuance of his written undertaking so to do, or neglecting to give his client notice of order served for interrogatories, discovery, or inspection, is liable to an attachment. See Ord. XII. r. 18, No. 88; and Ord. XXXI. r. 23, No. 365.

2021a. As to attachments for the rescue or attempt at rescue of property arrested, see c. 11, s. 11, p. 1521. As to notice to sheriff to return writ, see Nos. 2007, 2008, *supra*.

(b) Application for—†

2022. No writ of attachment shall be issued without the leave of the court or a judge, to be applied for on notice to the party against whom the attachment is to be issued. Ord. XLIV. r. 2, No. 621. As to the notice and affidavit to lead same, see Ord. LII. r. 4, No. 699.

(c) Forms.

2023. For form of writ of attachment, see R. S. C. 1883, App. H. No. 12.

(d) In the Court of Admiralty.

(aa) Generally.‡

2024. As to the powers of the Court of Admiralty in reference to attachment, see 3 & 4 Vict. c. 65, s. 20; *Skin*. 93; *Sti*. 129; and for cases thereon, see *Sparks v. Martin* (20 Car. 2), 1 Vent. 1. The case of the Admiralty (7 Jac. 13), Rep. 53; 6 *Viner's Abr.* 522; *Hook v. Shoreton*, 1 *Ld. Raym.* 397; *S. P.* 2 *ibid.* 632; *Greenway v. Barker*, *Godb.* 261. See *Motion on a Ship unknown*, 1 *C. Rob.* 331; *The Minerva*, 3 *ibid.* 34; *The John of London*, 1 *Hagg.* 342; *The San Juan Nepomuceno*, 1 *ibid.* 268; *The King v. Benson*, 3 *ibid.* 97, n.; *The Petrel*, 3 *ibid.* 304; *The Athol*, 1 *W. Rob.* 379; *The Wilhelmine*, 1 *ibid.* 340. See *The Victor*, 1 *Lushington*, 72; 2 *L. T. N.S.* 331.

2025. The court would issue an attachment against salvors seeking to retain possession of a vessel after the production to them of the release of arrest. Instantaneous obedience must be paid to the release. *The Towan*, 8 *Jur.* 222; and see *The Tritonia*, 4 *Notes of Cases*, 112.

2026. Attachment decreed against the

* (630) As to writs of attachment in the Chancery Division, see *Daniell's Chancery Forms and Precedents* (4th ed.), pp. 393—404.

(631) And as to attachments in the Queen's Bench Division, see *Archbold's Practice* (14th ed. by *Chitty*), vol. 2, p. 927, and *Chitty's Forms* (12th ed.), p. 472.

† (632) The solicitor who has obtained an order for an attachment should file in the registry a præcipe (for form see R. S. C. App. G. No. 10), and deposit the following fees in impressed stamps:—

	£	s.	d.
On the præcipe	0	15	0
On the form of attachment	1	0	0

and a further fee of £1 for its execution by the marshal. Forms may be obtained at

Room No. 420. The attachment is prepared in the registry, and may be obtained at a day's notice, or earlier if required.

(633) The attachment, when obtained, must be filed at the marshal's office, with a præcipe for its service which bears no stamp. If the service is to be effected at a greater distance than five miles from the offices of the marshal or his substitute, he may charge for travelling, and other expenses incurred.

‡ (634) When the infringement of the court's authority is by official persons, acting under some semblance of law, the court will make an order against them to show cause why an attachment should not issue, but when the infringement is of a more flagrant character an attachment will be directed to issue in the first instance.

owner of a collier, who, having appealed from a salvage award, which was affirmed with costs, had not obeyed an order against him for their payment. *The John Dunn*, 3 Hagg. 168.

2027. An attachment for contempt of court decreed against a brig of war's agent residing in the Island of Granada, for non-payment into the mixed Commission Court at Sierra Leone of the proceeds of a slave capture, as directed by an order from the Court of Admiralty. *The Florida*, 2 W. Rob. 97.

2027a. Attachment against agent decreed, but ordered to be directed to the judge of a Vice-Admiralty Court where the party resided, with special instructions to enforce the same at a given time, and under certain circumstances only. *The Harregaard*, 1 Hagg. 23, n.

2028. As to attachment against parties for the rescue or attempted rescue of arrested property, see c. 11, p. 1521.

2028a. As to attachment against commissioners of appraisement and sale for delay in making return to commission, see No. 2071, p. 1670.

(bb) *Against Bail.**

2029. *Quære*, how far is it necessary to prosecute the principal in the first instance before proceedings can be instituted against the bail? When, however, the principal is a bankrupt, no such question can arise. *The Harriet*, 1 W. Rob. 193.

2030. Attachment against bail directed not to issue for a month. *The Vreede*, 1 Dodson, 8.

(cc) *Discharge.*

2031. The judge of the Court of Admiralty might order the discharge of any person in custody for contempt of court, for any cause other than for non-payment of money, on such conditions as to the judge should seem just: but the order for such discharge did not purge the original contempt. See 3 & 4 Vict. c. 65, s. 21.

2032. Attachment under which a party had been confined five years, decreed to be superseded. *The Harregaard*, 1 Hagg. 23, n.

2033. Motion to supersede an attachment for informality in the endorsement on the writ, rejected. *The Plym*, 2 W. Rob. 345; 8 Jur. 990.

2034. An attachment for non-payment of money can only be superseded by reason of irregularity in its execution. A contempt of this nature is excepted from the operation of s. 21 of 3 & 4 Vict. c. 65. *Ibid.*

2035. A party had been taken in Scotland upon a warrant of attachment from the Court of Admiralty, backed by the Lord Ordinary there, who afterwards revoked his original concurrence, as having been granted *per incuriam*, and directed the immediate liberation of the party. The court directed the attachment to be superseded, nor would it enforce a fresh attachment against the party compulsorily, and it might be illegally brought within the jurisdiction. *The Mathesis*, 2 W. Rob. 296; 3 Notes of Cases, 133; 8 Jur. 582.

2036. A vessel was arrested at suit of a part owner, to give bail for her safe return; shortly after which, the master, with the assistance of the mate and six others, took forcible possession of the ship, and carried her to Jersey, where she was arrested for a debt due from the master, and sold to A. B. The court, on motion founded on affidavit, decreed an attachment against the master and mate. The mate, after two months' imprisonment, petitioned the court to be released, on the ground that he acted in ignorance, under the master's orders, and had a sick wife and aged mother dependent on him, and acknowledging his misconduct. His petition was not opposed by the part owner, at whose prayer he was attached, and the court decreed his discharge. *The Petrel*, 3 Hagg. 299.

2037. On appeal from a decree of a Vice-Admiralty Court, condemning a vessel as engaged in the slave trade, the appeal was dismissed with costs, and an attachment for non-payment of costs pursuant to monition was decreed, under which the appellant was arrested. The respondents in the appeal were the Crown and the captor, and it was subsequently directed that the costs of the Crown be paid out of the proceeds in the registry,

* (635) Under the old practice an opinion obtained that the court would attach the defendant only in the first instance, and upon his failing to pay, and not before, would

attach the bail, thus giving to the latter what is called in the civil law *beneficium ordinis*. Coote's Adm. Prac. 91.

and a moiety of the nett proceeds to the captor. The Queen's proctor, on behalf of the Crown, afterwards consented to the attachment against the appellant being superseded. Motion accordingly on behalf of the appellant, though opposed by the captor as having a vested interest in the proceeds, granted, and the attachment directed to be superseded. *The Augusta*, 4 Moore, P. C. C. 369.

25. Attachment of Debts.*

2038. For proceedings to enforce orders against judgment debtors, for their examination and the production of their books and documents, for orders against their debtors, and for proceedings against such garnishees, attachment of such debts, and costs of such proceedings, see Ord. XLV. rr. 1—9, Nos. 622—630.

26. Orders of Commitment.†

(a) Under Debtors Act, 1869.

2039. For provisions for the imprisonment of judgment debtors having the means to pay but who refuse to do so, see the Debtors Act, 1869 (c. 62); the rules made in March, 1874, in pursuance of the powers conferred by the 10th section of that Act; Ord. XLII. r. 25, No. 603; Ord. LIV. r. 19, No. 752, and Ord. LXIX. rr. 1—7, Nos. 1030—1036.

2040. As to the powers of the Lord Chancellor to direct such proceedings to be assigned to the Bankruptcy Court and registrars, and for general rules to be made to carry the Act into effect, see the Bankruptcy Act, 1883 (c. 52), ss. 45, 46, 103.

27. Sequestration.‡

2041. Where any person is by any judgment or order directed to pay money into court or to do any other act in a limited time, and after due service thereof refuses or neglects to obey, the person prosecuting such judgment or order shall, at the expiration of the time limited, be entitled, without any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestra-

tion shall have the same effect as a writ of sequestration in Chancery had before the commencement of the principal Act, and the proceeds thereof may be dealt with in the same manner. See Ord. XLIII. r. 6, No. 618.

2041a. On disobedience of order for payment of costs, sequestration granted under 7 & 8 Vict. c. 69, s. 12. *The Australia*, Swabey, 480.

2042. No sequestration to enforce payment of costs shall be issued unless by leave of the court. Ord. XLIII. r. 7, No. 619; and *Snow v. Bolton*, 17 Ch. D. 433.

2043. For form of writ of sequestration, see R. S. C. 1883, App. H. No. 13.

28. Mandamus, Injunction, or Receiver.

2044. As to the provisions of the Supreme Court of Judicature Act, 1873, in regard to mandamus, injunctions, and appointment of receivers, see that Act, s. 25, sub-s. 8; and Wilson's Jud. Acts and Rules, 4th ed. pp. 29—34.

2045. As to writs of mandamus and prerogative mandamus, and the enforcement of mandatory orders, see Ord. LIII. rr. 1—15, Nos. 720—733; Ord. XLII. r. 30, No. 608; Archbold's Practice (14th ed. by Chitty), vol. 1, p. 426; and Chitty's Forms, 12th ed. p. 246.

2046. As to judgment or order in lieu of writ of injunction, and as to receivers, see c. 39, p. 1646.

29. Delivery.

2047. As to writs of delivery for enforcing judgments or orders for the recovery of property other than land or money, see Ord. XLVIII. rr. 1, 2, Nos. 647, 648.

2048. For forms of writs of delivery, see R. S. C. 1883, App. H. Nos. 10, 11.

30. Charging Orders, Distringas, and Stop Orders.

2049. As to orders charging stocks or shares and distringas, see Ord. XLVI. rr. 1—13, Nos. 631—643; *Ibid.* r. 14, of July, 1885; Wilson's Judicature Acts and Rules (4th ed.), pp. 412—417; Archbold's Practice (14th ed. by Chitty), vol. 2,

* (636) As to the attachment of debts, see Wilson's Jud. Acts and Rules (4th ed.), pp. 407—412, and in the Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty), vol. 2, p. 927, and Chitty's Forms, 12th ed. p. 461.

† (637) As to such orders of commitment, see Archbold, *Ibid.*

‡ (638) As to writs of sequestration, see Daniell's Chancery Forms and Precedents (4th ed.), p. 404; Archbold's Practice (14th ed. by Chitty), vol. 2, p. 907; Chitty's Forms (12th ed.), p. 448.

p. 919; and Chitty's Forms (12th ed.), p. 478.

31. *Interpleaders.**

2050. As to the law and practice in regard to interpleaders, see 1 & 2 Will. 4, c. 58, and 23 & 24 Vict. c. 126, ss. 12—18; the Admiralty Court Act, 1861 (c. 10), s. 16; Ord. LVII. rr. 1—15, Nos. 850—864; Wilson's Judicature Acts and Rules (4th ed.), pp. 481—485; and in the Queen's Bench Division, Archbold's Practice (14th ed. by Chitty), vol. 2, p. 1354.

2051. *Semble*, where rival claimants are proceeding against the ship for non-delivery of goods, a bill of interpleader in Chancery on behalf of the master will not lie, and the Court of Admiralty has jurisdiction over the whole matter. *Sablich v. Russell*, L. R. 2 Eq. 441.

2052. *Semble*, in proceedings *in rem* arising out of conflicting claims to goods under separate parts of a bill of lading, the Court of Admiralty has the power, if applied to, to relieve the vessel by interpleader from resisting at the same time the two conflicting demands. *The Argentina*, 2 Asp. 529.

44. Appraisement and Sale.

1. *Generally.†*

2053. In all cases of bottomry, salvage, and wages, the Court of Admiralty possesses an undoubted power to decree a sale of the vessel proceeded against, unless the demand of the successful suitor

is satisfied. The jurisdiction of the court therein is confirmed by the municipal law of this country, and by the general principles of the maritime law; and the title conferred by the court in the exercise of this authority is a valid title against the whole world, and is so recognized by the courts of this and of all other countries. *The Tremont*, 1 W. Rob. 164.

2054. In an action for master's wages and disbursements, the ship being subject to other claims, the court, there being no opposition, ordered an official appraisement and a sale by private contract for a sum not less than the appraised value on proof of mortgagee's assent and service of notice of motion on all claimants. *The Planet*, 49 L. T. 204; 5 Asp. 144.

2055. Order made by the Judicial Committee on application of the respondents in a pending appeal, for unlivery of the cargo and sale of a mortgaged ship, the unlivery and sale of which had been decreed by the Court of Admiralty. *The Jeff Davis*, 5 Moore, P. C. C. N.S. 25.

2056. If a party purchases a ship at a sale directed under a decree of the Court of Admiralty, he will not be held to his purchase if it appears that he was misled by the advertisements or conditions of sale to buy a vessel unsuited for his purposes; but if on investigation of all the facts, the court should be satisfied that he had full information from another reliable quarter prior to the confirmation of the sale, it will hold him bound to complete his purchase. *The Luna*, 8 Jur. N.S. 400. [IRISH.]

* (639) The general principles recognized in the application of interpleader are (1) that the person applying that others may be required to interplead be already defendant in an action at the suit of one of them; (2) that the claims of both claimants be in respect of the very same matter (see *Staney v. Sidney*, 14 M. & W. 800); (3) that the party applying claim no interest in the subject-matter (see *Braddick v. Smith*, 9 Bing. 84); (4) that the applicant be not colluding with either party (see *Belcher v. Smith*, *Ibid.* 82); (5) that the applicant be in possession of the matter in dispute, and thus able to obey such order as may be made in regard to it (see *Ireland v. Bushell*, 5 Dowl. 147); and (6) that the same question be raisable upon the interpleader issue as was in dispute between the original parties (see *Baker v. The Bank of Australasia*, 1 C. B. N.S. 515). See Charley's Practice and Pleading under the Judicature Acts (3rd ed.), p. 354.

† (640) Ordinarily to proceedings *in rem* in Admiralty all the world are parties, and a sale of a vessel in such proceedings conveys a perfect title to the purchaser. But if the owner fraudulently and collusively procure his vessel to be sold under the forms of law, and himself become the purchaser for the purpose of cutting off just claims against her, such sale is void as against creditors. *Thompson v. Steamboat J. D. Morton*, 8 Ohio, N.S. 222. [AMERICAN.]

(641) When the proceeds of sales are brought into court in a proceeding *in rem* they are not liable to make good a loss of the purchaser sustained by a defect found in the article sold, the sale by the marshal carrying with it no warranty to that effect. *The Monte Allegre*, 9 Wheat. 648. [AMERICAN.]

(642) As to sale of property by the American Admiralty Courts, see 2 Parsons' Maritime Law, 643. [AMERICAN.]

2057. If application is made by the defendants for sale of the ship, proof that they are the owners must be given. *The Friendship*, May 3, 1860.

2058. As to the title conferred by a sale under an order or decree of the court, see tit. OWNERS, p. 1218.

2059. As to decrees of sale to be made by the court of a ship, or share in a ship, when a non-qualified person becomes entitled thereto, see tit. OWNERS, p. 1205.

2060. As to sale by court in disputes between part owners, *Ibid.* Pt. VIII. p. 1423.

2061. As to the allowance for amelio-

ration, or repairs and improvements of the ship, see tit. OWNERS, Pt. I. p. 1226.

2062. As to sales by the court in the Chancery Division, see Ord. LI. rr. 1—7, Nos. 680—686, and *Ibid.* rr. 1a, 3a, and 6a, or 16, 17, and 18 of Dec. 1885.

2063. As to the priority of sale over other liens, see tit. LIENS, pp. 827—829.

2. Commission of—

(a) Generally.*

(b) Execution of—†

2064. In Admiralty actions every commission for the appraisalment or sale of

* (643) A commission of appraisalment usually accompanies a commission of sale, in order to guard against the property being sold at an improper price.

(643a) Where an order for a commission of appraisalment and sale has been made the solicitor who has obtained the order files in the registry a præcipe bearing a 15s. impressed stamp. (For form of præcipe, see R./S. C. 1883, App. G. No. 9.) He at the same time leaves a blank form of commission impressed with a £1 impressed stamp thereon, and another £1 impressed stamp for the marshal's fee for its execution. The forms can be obtained ready stamped at Room No. 420.

(644) In the commission of appraisalment and sale is embodied, where required, a commission of unlivery or removal, or both.

(645) The commission of appraisalment and sale is prepared in the registry (for form, see App. H. No. 16), and may be obtained after about a day's notice, or earlier if required. The solicitor obtaining it must then lodge it at the marshal's office with a præcipe for its service (which bears no stamp). The other fees and expenses are paid subsequently, and by the paymaster of the Supreme Court, on a judge's order obtained by the marshal.

† (646) The marshal appoints the time and place of sale, and the broker who is to sell the property.

(647) The marshal, by his broker, then causes to be prepared and inserted in the public newspapers the necessary advertisements of the property to be sold, and the time and place of sale.

(648) The marshal, by his broker, also causes handbills or notices of sale to be printed and posted up, or otherwise circulated in such places as he may think advisable.

(649) The marshal, by his broker, also causes to be prepared and printed and circulated the usual catalogues of sale, with conditions of sale annexed.

(650) The following are the usual conditions of sale of a ship:—

1. The buyer is to take the said vessel, her tackle, apparel, and furniture, with all faults,

in the condition they now lie, without any allowance or abatement for weights, lengths, qualities, quantities, errors of description, or any defects or injuries whatsoever, and neither the age, tonnage nor description of the vessel or stores, as expressed in the inventories, are warranted.

2. The buyer is immediately to pay into the hands of R. G. M. Browne, Esquire, marshal of the said court, one-fourth part of the purchase-money (and two guineas to the auctioneer, to bind the bargain), and the remainder thereof within fourteen days unto the said marshal, and upon payment thereof he will be put into possession of the said vessel, her tackle, apparel, and furniture, as aforementioned. But in case of non-payment of the remainder of the purchase-money within such time before mentioned, the deposit aforesaid of one-fourth part shall and is hereby declared to be forfeited, and the said vessel, her tackle, apparel and furniture may again be exposed to and sold at public or private sale, and the deficiency, if any, by such re-sale shall be made good by the defaulter at this sale, together with the expenses attending such re-sale; and neither the right honourable the judge, nor the marshal, nor any other officer of the said court, nor the auctioneer, shall be sued, either at law or in equity, for the said money paid in part, and forfeited as aforesaid; but the buyer so neglecting shall be liable for all loss, costs and damages which may arise thereby.

3. The buyer (if he requires it) may have the marshal's bill of sale for the said vessel.

4. The vessel will be at the risk of the buyer immediately after he receives an order for the delivery thereof.

Lastly. The said marshal is to be the judge who is the lawful buyer of the said vessel. Not less than £5 is to be advanced at each bidding.

(650a) The following are the usual conditions of sale of cargo:—
The highest bidder (in due time) to be deemed the purchaser, and in case of any dispute the lot to be put up again.

property under the order of the court shall, unless the court or a judge shall otherwise order, be executed by the marshal or his substitutes. Ord. XLI. r. 14, No. 693.

2065. It is the duty of the marshal to make the inventory in person and not by deputy. *The Queen* (No. 1), 3 Asp. 189. [IRISH.]

2066. The marshal, or any other person

The buyers to declare their names and residences, and deposit ten per cent. on the computed value of each lot if required; the remainder of or all the purchase-money, with 1s. per lot for lot money, payable to the brokers at the time an order for delivery is given.

The goods to be paid for to the brokers on or before the prompt of fourteen days, either in money, deducting six months' discount at the rate of five per cent. per annum (or the Bank of England rate on the day of sale if above five per cent. per annum), or by such acceptances as the sellers may approve of, due at or within six months from the day of sale.

The goods to be received as and where they lie, at the buyers' expense, with all faults and defects, and without any allowance for error in description; the timber and logs according to the razed contents, and other goods as they may rise from the piles; the dimensions when given being according to the dock returns, and the quality when given according to the shippers' assortment or designation, unless otherwise specially described. Any rent incurred after four weeks to be paid by the buyers of the respective lots.

When the sale shall extend over more than one day, the prompt will be reckoned, the bills drawn and the rent allowed from the second day, with the exception of mahogany and cabinet woods, for which the invoices and delivery orders will date from the day of sale.

Fourteen days from the date of the issue of the delivery order will be allowed for rent and cash payment on any lot that may not be ready for delivery on or within the prompt.

In default of compliance with the above conditions the deposit money, if any received, to be forfeited to the owners of the goods, and the purchasers liable to them for all loss and charges attendant upon a resale, either by private contract or public auction.

All goods sold at this sale to be at the risk of the sellers in respect of fire, provided such goods have not been removed from the docks for thirty days from the date of the second day's sale. In the event of non-delivery by loss from fire, the contract for such portion to be void, and the deposit, if any paid, to be returned.

(651) The sale generally takes place in London at Lloyd's Captains' Rooms, Royal Exchange.

(652) The marshal attends the sale and re-

ceives the deposit, and subsequently the balance of the purchase-money from the purchaser, and delivers the property over to him.

(653) The marshal usually executes to the purchaser a formal bill of sale of the property.

(654) The marshal also prepares, signs and annexes to the commission of sale a formal return of the proceedings taken under it.

(655) For directions that in all motions for commissions and decrees of appraisement and sale the time shall be specified within which it is prayed that the commissions or decrees shall be made returnable; that the commissioners and marshal shall make regular returns, stating the progress made in the execution of the commissions or decrees, and bring in the proceeds collected and all vouchers with their returns, see Order of Court of 3rd July, 1799.

(656) The following are the further fees of the marshal, appraisers and broker:—

	£	s.
On attending, appointing and swearing appraisers.	1	0
On delivery of the property to the purchaser	1	0
On attending the delivery of cargo, or sale, or removal of a ship or goods, per day	2	0
Poundage on the sale of any vessel or goods, for every £50 or fraction of £50	0	10
See R. S. C. Oct. 1884, Nos. 95—97, 101.		

(656a) For the appraiser, half per cent. and his travelling expenses when necessary. *Ibid.*

(657) For the broker, one per cent. on the proceeds of sale, and 6s. for the bill of sale. *Ibid.*

(657a) When a broker appraises a ship and subsequently sells her, he is not entitled to a per-centage fee on the appraisement, but to a commission of one per cent. on the proceeds of the sale. *The Black Eagle*, April, 1859; *The Falcon*, May, 1859, R. & M.

(658) In the case of appraisement of a sailing vessel one appraiser is usually employed; but in the case of a steamer two are employed, one for the ship, and the other for the engine department.

(659) In the case of cargo, an appraiser experienced in the particular kind of cargo is employed.

(660) The commission of sale, account sales, vouchers and return are filed by the marshal in the registry, but no fees are payable thereon.

undertaking a commission, incurs all the responsibility belonging to a prudent and honest execution of that commission, but the responsibility is limited to the exercise of common prudence and common integrity, notwithstanding which, if a loss occur, the commissioner is not responsible, but only for *dolus* or *negligentia dolo proxima*. *The Rendsborg*, 6 C. Rob. 155.

2067. The duties of commissioners of appraisement are, according to the terms of their appointment, to reduce into writing a full, true, and perfect inventory of the ship and cargo, and to appoint two good and lawful men, well experienced in such affairs, and swear them faithfully and justly to appraise the same according to their true values. *The Princessa Zavala* and *La Reine Elizabeth*, 2 C. Rob. 36.

2068. Commissioners of appraisement and sale are merely ministerial officers of the court, deriving all their authority therefrom, and from no other source. *Ibid.* 34.

2069. They are not the agents of the persons that recommend them. *Ibid.*

2070. Before the marshal became the sole person authorized to execute such commission, though the court might, for its own convenience, accept the recommendation by the parties of commissioners, it was in no degree bound to do so. *Ibid.*

2071. It was at the option of the court whether it would grant any commission or not, and to whom it would grant it. *Ibid.*

2072. It might revoke commissioners, though approved by the party, or continue a commissioner in office, though against the approbation of the party. *Ibid.*

2073. They were to account to the court, and not to the persons who recommended them. *Ibid.*

2074. If difficulties arose in the execution of their office, they ought to resort to the court, and in due time, not waiting until the business was concluded. *Ibid.*

2075. If the interests of the Crown were affected, they should apply to the Crown officers of the court, and act under their directions with respect to the Crown's property. *Ibid.* 37.

2076. In a case of re-capture, the

commission for the appraisement and sale not having been returned for two years, attachment decreed against the commissioners, and at their expense. *The Fortuna*, 4 C. Rob. 78.

3. When Biddings below Appraised Value.*

2077. When property is ordered to be sold in proceedings which are not by default, and it has been found impracticable to sell the property at the appraised value, the court, on proof thereof and on the consent of both parties, will direct it to be sold by private contract. *The Linda Flor*, 1 Sept. 1857, cited in Coote's Adm. Prac. 94.

2078. Where the bidding is much under the appraised value, the court will not always order the property to be sold at what it will fetch, but will sometimes fix upon a specific sum, and direct that the property shall not be sold for less than that amount. *The Ceres*, June 26, 1857.

4. Leave to bid.

2079. Application of the mortgagee of a vessel, to be allowed to bid as a purchaser on the sale of the vessel and part of the cargo under the decree of the court, granted. *The Wilsons*, 1 W. Rob. 173.

5. Payment of Proceeds into Court.

2080. The marshal shall pay into court the gross proceeds of sale of any property sold by him. Ord. XLI. r. 15, No. 694.

6. Account Sales.

(a) Generally.

2081. The marshal shall at the same time that he pays into court the gross proceeds of sale of any property sold by him, bring into the registry the account of sale, with vouchers in support thereof, for taxation by the Admiralty registrar. *Ibid.*

(b) Taxation.†

2082. Any person interested in the proceeds may be heard before the Admiralty

* (661) The property cannot, except by direction of the court, be sold at a less amount than the appraised value when it has been appraised.

(662) If the biddings do not reach that value the sale must be postponed, and a motion made to the court, supported by affi-

davits, for permission to sell the property at whatever amount it will fetch; and on sufficient cause being shown, the court will generally make the order or name a sum as the minimum amount at which the property may be sold.

† (663) One pound per cent. held to be the

registrar on the taxation of the marshal's account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs. *Ibid.* r. 16, No. 695.

2083. Where the marshal went *bond fide* to attend a sale, but arrived there after it was over, his travelling and hotel expenses were allowed. *The Queen* (No. 1), 3 Asp. 189. [IRISH.]

7. Appraisalment.

(a) Generally.*

2084. The ordinary modes by which the value of a ship may be ascertained are twofold. The first is by appraise-

ment, in which case the return of the commission, being a proceeding by the court, the appraised value, unless objected to, binds both parties. A second mode is by agreement (*semble*, to be filed in the registry), in which case both parties are bound by their own act and consent. *The Mellona*, 3 W. Rob. 23; 6 Notes of Cases, 69.

2085. When there is any dispute as to the value of the property itself, the proper course is to take out a commission of appraisalment, but when there is no dispute as to the value, but whether certain deductions may be made according to law, a commission of appraisalment is unnecessary. *The Charlotte*, 5 Notes of Cases, 6.

usual rate of brokerage on the sale of prize goods generally. *The Harreguard*, 1 Hagg. 22.

(664) Marshal's charge of half per cent. on the value of cargo for superintending the unloading and ordering appraisalment thereof, disallowed by the court, and three guineas a day allowed in lieu thereof. *The Rendsborg*, 6 C. Rob. 169.

(664a) Accounts of charges attending the execution of a commission of unlivery and appraisalment referred to the registrar and merchants to report on. *L'Esperance*, 1 Dodson, 50.

* (665) Appraisalment is usually resorted to in proceedings by default and in salvage causes.

(665a) In proceedings by default, the court requires for the protection of the absent owners an appraisalment of the property proceeded against before its sale, and will not permit, except in special cases, the property to be sold under its appraised value. The commission of appraisalment is in these cases embodied in the commission of sale, together with a commission of unlivery in cases in which it is necessary to unliver the cargo for the purpose of the appraisalment, as generally happens when cargo is to be appraised.

(666) In salvage causes the value of the property salvaged being an ingredient in the consideration of the salvage to be awarded, the salvors are entitled, before the property arrested for salvage is released, to have its value correctly ascertained. This may be done by an agreement between the plaintiffs and defendants signed by the proctors and filed in the registry. (See as to such agreements, c. 24, p. 1572.) When the values cannot be so agreed, the defendants' solicitor files an affidavit of the values, and the plaintiffs' solicitor, if dissatisfied with that amount, takes out a commission of appraisalment.

(666a) The marshal selects a fit and proper person skilled in the valuation of vessels to make the required valuation, and administers

to him an oath faithfully to make the appraisalment.

(667) The appraiser, after being so sworn, appraises the property, and draws up, signs, and delivers to the marshal an inventory, and appraisalment thereof in writing.

667a. The marshal annexes this appraisalment to the commission, and draws up, signs, and annexes also to the commission a return thereto, setting forth what he has done under its authority.

668. By the old practice in force until the 1st January, 1860, if the *res* were situate within the port of London, the commission of appraisalment was directed to the marshal, but if situate at any outport it was directed to one or more special commissioners, selected by the practitioners on both sides, and latterly to commissioners to administer oaths in Admiralty, resident at or near the place where the *res* was situate.

(669) When in order to a proper appraisalment a commission of unlivery is necessary, such a commission may be obtained in the same manner as a commission of appraisalment, or it may be embodied in the commission of appraisalment, and this latter is, where practicable, the better course, as the registry and marshal's fees above mentioned are the same for a commission of appraisalment as for a commission of unlivery and appraisalment; but when a commission of unlivery is taken out separately the before-mentioned fees must be paid again thereon.

(669a) On a commission of unlivery the marshal's further fees are £2 per diem during the unlivery, and the expenses of a broker should the marshal deem it necessary or expedient to employ one.

(670) Before the order for the execution of all commissions of unlivery, appraisalment and sale by the marshal, the allowance to commissioners at the outports for an unlivery, for the purpose of appraisalment, was one guinea a day for each commissioner. *The Rendsborg*, 6 C. Rob. 171.

2086. An appraisement made by order of the court is binding upon all parties. Motion by the owner to have the vessel sold, and the value determined by the sale, rejected. *The R. M. Mills*, 3 L. T. N.S. 513; 1 Asp. 5.

2087. In a salvage action an appraisement made by the authority of the court will generally be conclusive as to the value of the property salvaged. *The Cargo ex Venus*, L. R. 1 A. & E. 50; 12 Jur. N.S. 379; 14 W. R. 460.

2088. *Semble*, a valuation by the receiver of wreck is superseded by a valuation under a commission of appraisement from the Court of Admiralty. *The Minna*, No. 2061, March 15th, 1864.

2089. On appeal from an award of salvage by magistrates, an application on the part of the owners for an appraisement by the court, though the appraisement before the magistrates was not objected to at the time by them or their agents, granted, though opposed by the salvors, but without prejudice, and at the expense of the owners. *The Oscar*, 2 Hagg. 258.

2090. An appraisement made after a sale is a nullity. *Ibid.*

2091. In a cause of damage by collision, *held*, that the value of the ship, when not agreed, or ascertained by appraisement, was a question for the registrar and merchants, and one which the court would not decide from evidence on the pleadings. *The Speculator*, 12 Jur. 546.

2092. A bottomry bond had been given upon the ship and cargo, and the value of the ship was very small. The court, considering there was reasonable suspicion that the cargo had been improperly hypothecated, directed a survey and appraisement of the vessel. *The Bonaparte*, 3 W. Rob. 305, 307; 13 Jur. 1059.

2093. A bottomry bond had been given upon the ship and cargo, and the value of the ship was small. *Held*, that the original valuation of the ship when the bottomry bond was taken having been made by competent authority, the amount for which the ship was sold after she had been detained a long time, and had become thereby deteriorated, was no evidence to disprove the previous valuation. *Ibid.*

2094. When property, whether in the Prize or Instance Court, in a case of capture or salvage is delivered on bail to the claimant, he is bound, on the one hand, by the appraised value, and cannot be called upon, on the other hand, to bring in more

than the appraised value. *The Betsey*, 5 C. Rob. 295; *The Jonge Bastiaan*, *ibid.* 322.

2095. In a case of salvage on recapture, in which the ship and cargo had been restored to the proprietor on bail to answer salvage, but were destroyed by fire before the appraisement of the cargo had been completed, *held*, as to the ship, that the appraisement having been executed, possession was restored to the owner, and that salvage was due thereon, according to the appraised value; but as to the cargo, that the appraisement not having been completed, that was in the custody of the court, and that therefore the loss must fall on both parties, according to their several interests. *The Three Friends*, 4 C. Rob. 268.

2096. Valuations or appraisements in pursuance of orders of any Court of Admiralty, Vice-Admiralty, or of any court of appeal therefrom, are exempt from stamp duty. See 33 & 34 Vict. c. 97, Schedule.

2097. A vessel and cargo having been arrested in an action of salvage and bail given, the ship and cargo daily deteriorating in value, an application was made by the owners to have the ship and cargo released, and by the salvors that a commission of appraisement should issue. Application of the owners granted, there being an action for damage also pending at the suit of the owners, and the owners making statements of the value in acts of court, and undertaking to afford every facility to the salvors for another valuation should the value be further impeached. *The Glasgow Packet*, 8 Jur. 67.

2098. Application for an order to stop salvors from unloading cargo at an outpost under a decree of appraisement after appearance and bail had been given, granted. *The Sussex*, 3 Hagg. 339.

(b) *By Receiver of Wreck.*

2099. Whenever any salvage question arises the receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been returned to him, give a copy of the valuation to both parties; and any copy of such valuation, purporting to be signed by the valuer, and to be attested by the receiver, shall be received in evidence in any subsequent proceeding; and there shall be paid in respect of such valuation, by the party applying for the

same, such fee as the Board of Trade may direct. The M. S. Act Amendment Act, 1862 (c. 63), s. 50.

2099a. A valuation by the receiver of wreck, under section 50 of the M. S. Act Amendment Act, 1862, is not conclusive on the Court of Admiralty. *The Minna*, No. 2061, 15th March, 1864.

(c) *Commission of*—*

2100. For form of commission of appraisal and sale, see R. S. C. 1883, App. H. No. 16, in Wilson's Jud. Acts and Rules, 4th ed. p. 671.

2101. See Nos. 2054, 2064, *supra*.

(d) *Costs of such Commission in Salvage Actions.*

See tit. Costs, p. 411.

8. *Sale.*

(a) *Generally.*†

2102. A ship sold by the court is thenceforth free of all demands due anterior to her sale. *The Clara*, 2 Jur. N.S. 46. And see *The Neptune*, 3 Hagg. 132.

2102a. In an action of collision against the G. and her freight, the G. was found solely to blame, and was ordered to be sold. On motion by the plaintiffs, the court directed the marshal to discharge the cargo and retain it as security for payment of charges and freight (if any) due from the consignees or owners, and in default of any application for delivery within fourteen days to sell sufficient cargo to pay those charges and the freight. *The Gettysburg*, 5 Asp. 347.

See also No. 2053—2078, pp. 1667—1671, and notes 640—657, and 660—663, *Ibid*.

(b) *Perishable Property.*

(aa) *Generally.*

2103. It shall be lawful for the court or a judge, on the application of any party, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as the court or judge may think desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once. Ord. L. r. 2, No. 658.

2104. In a cause of salvage the court directed that certain perishable cargo should be sold short of its destination, the proceeds to be brought into court and all questions of freight to be reserved. *The Kathleen*, L. R. 4 A. & E. 269; 43 L. J. Adm. 39; 31 L. T. N.S. 204.

2105. In a salvage action where there had been no appearance the court before decree ordered an appraisal and sale of the vessel and cargo salvaged, on an affidavit that they were daily deteriorating and incurring expense. *The Anna Helena*, 5 Asp. 61.

2106. In an action for necessities supplied to a foreign ship by D., on affidavit of D. that the ship was rapidly deteriorating, order made for her removal from a building yard in which she was lying and for appraisal and sale without prejudice to the lien of the owner of the yard for rent and other charges on the proceeds of sale. *The Nordstjernen*, Swabey, 260.

2107. On an application for the sale of perishable property, *semble*, the affidavits should state among other things who are the owners, and that notice of the appli-

* (671) Where, as in salvage actions, a commission of appraisal is desired to settle values, the solicitor desiring it must obtain an order for it on summonses, and then proceed to obtain it in the same manner and paying the same fees on the instrument as in the case of a commission of appraisal and sale. For which, see notes 643—645 and 655—659, pp. 1668, 1669.

(671a) The commission of appraisal is adapted in the registry from form of Commission of Appraisal and Sale in R. S. C. 1883, App. H. No. 16. See as to powers to alter forms, Ord. LXI. r. 33, No. 926.

(672) The stamps are impressed, and are on the præcipe 15s., on the commission £1, and a further fee of £1 for its execution by the marshal.

(672a) As to commissions of unlivery and
P.

appraisal in prize causes, see Phillimore's Commentaries on International Law, p. 631.

† (673) Sales under the authority of the court of property arrested take place in proceedings by default, and sometimes in contested causes.

(673a) As to the mode of obtaining a commission of sale and the fees payable thereon, and on the execution thereof, see notes 643—657, and 660—663, pp. 1668—1670.

(674) Where there are several actions against a ship ordered to be sold the plaintiff in the action entitled to precedence will generally, among rival claimants, be entitled to the conduct of the sale, unless he allows his rival to get in advance with his proceedings.

(674a) And he will be allowed his costs of sale as a first charge on the proceeds. *The Panthæa*, 1 Asp. N.S. 133; 25 L. T. N.S. 389.

cation has been given to them, or that efforts have been made to discover the owners but without effect. *The Bessy*, 4 W. R. 92.

2107a. As to release of perishable property without sale, see *The Glasgow Packet*, No. 911, p. 1559.

(bb) *By Receiver of Wreck.*

2108. In cases where any wreck in the custody of any receiver is under the value of £5, or is of so perishable a nature or so much damaged that it cannot, in his opinion, be advantageously kept, or if the value is not sufficient to defray the charge of warehousing, the receiver may sell the same before the expiration of the period therein mentioned, and hold the proceeds less the expenses for the same purposes and subject to the same claims as the property itself would have been liable to if unsold. M. S. Act, 1854 (c. 104), s. 453.

(cc) *Property of Small Value.*

See No. 2108, *supra*.

(c) *In Actions between Co-owners.*

See tit. OWNERS, Pt. VIII. p. 1423.

(d) *Ships or Shares of Unqualified Owners.*

Ibid. p. 1204.

(e) *By Foreign Courts.*

Ibid. p. 1218.

(f) *By Receiver of Wreck for Salvage and Expenses.*

2109. As to the powers of receivers of wreck to sell property salvaged in cases of non-payment of amount awarded for salvage, see the M. S. Act, 1854 (c. 104), s. 469, and tit. SALVAGE, c. 4.

2109a. As to his powers to sell unclaimed wreck, see tit. WRECK.

(g) *By Owners and their Agents.*

See tit. OWNERS, Pt. I. p. 1214.

(h) *By Certificates of Sale.*

Ibid. p. 1202.

(i) *By Masters Abroad.*

Ibid. p. 1220.

(j) *Ameliorations.*

2110. As to allowance by the court

for ameliorations made in the property by reputed owners, see tit. OWNERS, Pt. I. p. 1226.

9. *Commission of Unlivery.*

See notes 644, 669, pp. 1668, 1671.

10. *Commission of Removal.*

2110a. As to the removal of arrested property, and commissions for such removal, see c. 11, s. 10, p. 1520.

See also note 644, p. 1668.

45. *Laches.*

See tit. LACHES, p. 800.

46. *Priority of Liens.*

See tit. LIENS, p. 807.

47. *Costs and Damages.*

2111. See tit. COSTS, c. 20, p. 369, and *ibid.* in Addenda; and tit. OWNERS, Pt. III. p. 1265.

48. *Security for Costs.*

See tit. COSTS, c. 19, p. 363.

49. *Taxation of Costs.*

2112. As to taxation of costs, see tit. COSTS, c. 27, p. 378; as to allowances on taxation, *ibid.* c. 28, p. 384; as to review of taxation, *ibid.* c. 29, p. 390.

50. *Costs.*

See tit. COSTS, p. 343, and *ibid.* in Addenda.

51. *On Appeal.*

1. *To the House of Lords.*

See tit. APPEALS, pp. 18—24.

2. *To the Privy Council.*

See tit. APPEALS, pp. 24—51.

3. *To Her Majesty's Court of Appeal.*

See tit. APPEALS, pp. 51—55.

4. *To the Probate, Divorce and Admiralty Division.*

See tit. SHIPPING CASUALTIES INVESTIGATIONS.

5. *To the Admiralty Branch of the Probate, Divorce and Admiralty Division.*

See tit. APPEALS, pp. 56—59.

6. *From British Consular Courts in Foreign Countries.*

See tit. JURISDICTION, pp. 773—776.

7. *Appeal no stay.*

2113. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the court appealed from, or any judge thereof, or the Court of Appeal, may order; and no intermediate act or proceeding shall be invalidated, except so far as the court appealed from may direct. Ord. LVIII. r. 16, No. 880, and see tit. APPEALS, p. 53.

8. *Application for stay.*

2114. In an Admiralty action application for stay of proceedings, pending an appeal to the House of Lords, must be made to the Court of Appeal and not to the Admiralty Division. *The Khedive*, 5 P. D. 1; 4 Asp. 182.

9. *Costs.*

See tit. COSTS, p. 390.

Part III.—IN PARTICULAR ACTIONS.

1. *Bottomry Actions.*1. *Generally.*

2115. A foreign agent specially authorized, collected the gross freight, and thereout remitted a sum larger than the amount of the net freight. Expenses in respect of the outward voyage, *e. g.* discharging expenses and compensation to consignees for short delivery of cargo, then became payable. The agent advanced sums for these and other debts against the ship, and for repayment took a bottomry bond on ship and freight. *Held*, that the mortgagees, not in possession of the ship when the bond was given, had no right to object to the former items in the bond. *The Edmond*, 1 Lush. 63; 2 L. T. N.S. 192; 29 L. J. Adm. 76.

2116. As to bottomry generally, see tit. BOTTOMRY, p. 100, and *ibid.* in Admenda, as to the jurisdiction of the Admi-

rality Division and Admiralty Court in reference thereto, *ibid.* pp. 104, 105. As to county courts having no jurisdiction in actions of bottomry, see tit. JURISDICTION, p. 678. As to the law of the contract, the flag and the forum, as affecting bottomry, see tit. BOTTOMRY, p. 106, and tit. JURISDICTION, pp. 652, 653.

2117. As to what are bottomry bonds, see tit. BOTTOMRY, p. 106. As to such bonds being good in part and bad in part, *ibid.* p. 107. As to maritime risk being essential to such bonds, *ibid.* pp. 108—113. As to such bonds by owners, *ibid.* p. 114, and by masters, *ibid.* pp. 116—132. As to the necessity of notice before bottomry to owners, mortgagees or purchasers, *ibid.* pp. 129—132. As to such bonds on cargo, *ibid.* pp. 136—140, and on freight, *ibid.* p. 135. As to bills of exchange as collateral security, *ibid.* p. 140. As to payment and priority of payment thereof, *ibid.* pp. 145—150. As to their transfer, *ibid.* p. 150. As to the lien for bottomry, *ibid.* pp. 143, 144. And as to the priority of bottomry over other liens, see tit. LIENS, p. 816.

2. *In rem.*

2118. See c. 4, p. 1491.

3. *Parties.*

2119. The hypothecation of the ship by the master does not render the owners personally liable. *Johnson v. Shippen* (170), 1 Salk. 35; 14 Viner's Abr. 300.

2120. A bottomry bond is a negotiable instrument, which may be transferred and put in suit by the person so acquiring it. *The Rebecca*, 5 C. Rob. 102. But see *Marshall v. Wilson*, cited in Abb. Sh. (10th ed.), 115.

2121. The court discountenances the sale of bottomry bonds. *The Prince of Saxe Cobourg*, 3 Hagg. 394.

2122. Assignees are in no better situation in opposing a bottomry bond than owners where there is no bankruptcy. *The St. Catherine*, 3 Hagg. 253.

2123. *Semble*, a mortgagee whose interests are prejudiced by those of the bondholder, may oppose the validity of a bottomry bond. *The Dunvegan Castle*, 3 Hagg. 331.

2124. The title of mortgagees is in questions of bottomry and similar cases equivalent to that of the owners. *The Mary Ann*, 10 Jur. 255.

2125. A foreign agent especially authorized, collected the gross freight, and thereout remitted a sum larger than the

amount of the net freight. Expenses in respect of the outward voyage, e.g. discharging expenses and compensation to consignees for short delivery of cargo, then became payable. The agent advanced sums for these and other debts against the ship, and for repayment took a bottomry bond on ship and freight. *Held*, that the mortgagees, not in possession of the ship when the bond was given, had no right to object to the former items in the bond. *The Edmond*, 1 Lushington, 63; 2 L. T. N.S. 192; 29 L. J. Adm. 76.

2126. *Seem*, that the master, though the original hypothecator of the ship and a part owner, is not precluded by the practice of the Court of Admiralty from joining his co-owners in impugning the bond. *Soars v. Rahn (The Prince of Saxe Cobourg)*, 3 Moore, P. C. C. 1.

2127. When the bond is on ship, freight, and cargo, no appearance is given on behalf of the owners of the ship; and it is uncertain whether the ship and freight will not be sufficient to satisfy the bond; proceedings against the cargo should be suspended until the ship has been sold, and it has been ascertained that there is a deficiency rendering a resort to the cargo necessary. *The Bonaparte*, 3 W. Rob. 302.

2128. A bottomry bond was endorsed by the lender on bottomry as follows: "Pay to B. and G., or order of London, the within-named sum. Dated, Olbao, 7 July, 1845." *Held*, that it was immaterial whether the endorsement was to be considered as a *bonâ fide* assignment of the bond to B. and G., or as a mere endorsement to them as agents of the bondholder, and that in either character they would stand in precisely the same position, be entitled to the same advantages, and subject to the same liabilities in law and equity, as the original bondholder. *The Catharine*, 3 W. Rob. 2.

2128a. As to parties to actions generally, see Pt. II. c. 6, p. 1498.

4. Arrest.

(a) Generally.

2129. A ship having been arrested in an action of wages, on motion on behalf of a bondholder for a warrant of arrest against the ship and freight, the bond in terms binding only the ship, the court directed the warrant to issue, though it would not, upon motion, determine whether the bond in such a case ex-

tended to the freight. *The Mary Ann*, 9 Jur. 94.

2130. A warrant of arrest in a cause of bottomry having been executed on the ship and parties in possession of the freight, and no appearance having been given, the ship was sold under a decree of the court, after which an appearance was given for the owners. Motion, at the suit of a mortgagee of the ship, for an order against the parties in possession of the freight to bring in the same rejected, the court intimating, however, that the bondholder might so apply. On application of the bondholder for payment of the bond out of the proceeds of the ship sufficient for the purpose, further motion of mortgagee to suspend such decree until the freight should be brought into the registry in part discharge of the bond, rejected, the court holding that though the freight is part of the bondholder's security, he is not compellable to enforce it. *The Percy*, 3 Hagg. 402.

2131. Privileged goods not paying freight are, nevertheless, liable equally with the rest of the cargo to contribute to the payment of a bottomry bond on ship and cargo. *The Gratitude*, 3 C. Rob. 278.

2132. As to the arrest of vessels generally, see Pt. II. c. 11, p. 1515.

(b) Affidavit to lead—.

See Pt. II. c. 11, p. 1517.

(c) Before Bond due.

2133. The arrest of a ship by the holder of a bottomry bond before the bond was due, *held* to have been justifiable on the ground that the ship was going to leave the kingdom. *Aliter*, had there been an unfounded apprehension only thereof. *The Jane*, 1 Dodson, 461.

2134. The holder of a bottomry bond who arrested the vessel on her arrival before the bond was due and while the money was ready for payment, ordered to pay the costs of such arrest but not damages. *The Eudora*, 4 P. D. 208; 48 L. J. P. D. 32; 4 Asp. 78.

2135. Bottomry on ship, freight, and cargo. The property was arrested before the bond was due, in order to secure cargo, an affidavit having been filed that there was reasonable ground for apprehending the cargo would shortly be discharged. Proceedings by default directed to stand over, on the ground that, though

the property was arrested before bond due, no proceedings should have been taken until bond due, and therefore the time that would have elapsed under such circumstances must be allowed to elapse before such proceedings commenced. *San Jose Primeiro* (No. 22), 15th March, 1860.

2136. See also *The Armadillo*, tit. COSTS, p. 399.

2137. As to when a bottomry bond becomes due, see tit. BOTTOMRY, Pt. I. c. 6, pp. 111—113.

5. Consolidation.

2138. See Pt. II. c. 17, p. 1543.

6. Bail.

2139. See Pt. II. c. 19, p. 1554.

7. Proceedings in rem by Default.

2140. See Pt. II. c. 22, p. 1566.

8. Abatement and Revival.

2140a. See Pt. II. c. 30, p. 1581.

9. Liens.

(a) Payment of prior Claim under Order of Court.

2141. See tit. LIENS, c. 2, p. 811.

(b) Priority.

2142. As to priority of bottomry over other liens, *Ibid.* p. 816.

10. Prior p̄ctens.

2143. See Pt. II. c. 14, p. 1536.

11. Pleadings.

2144. See Pt. II. c. 34, p. 1605.

12. Evidence.

2145. See tit. EVIDENCE, p. 443.

13. Hearing.

(a) Right to begin.

2146. See Pt. II. c. 38, p. 1640.

(b) Production of Original Bond.

2147. In all actions of bottomry the original bond must be produced at the hearing. *The Rowena*, 3 Asp. N.S. 506; 37 L. T. N.S. 366.

2148. In a cause of bottomry, the original bond was preserved in the registry of the Court of Commerce at Malta, and a "legalized copy" entered in the minutes of the notary's acts there. An official or notarial copy was produced in

court, but the court refused to make a decree without having a certificate and affidavit that no further copy has been or will be issued. *The Jeune Nanette*, 4 W. R. 92.

14. Judgment.

2149. A decree pronouncing for the validity of a bottomry bond is conclusive on the validity of the bond, and unless it be appealed from the bond must be considered as valid. The decree determines nothing, however, with respect to the amount the bondholder is entitled to recover. That is to be ascertained by reference to the registrar and merchants. *The Catherine*, 3 W. Rob. 3.

2150. When the legal effect of a bottomry bond is intended to be questioned before the registrar and merchants, it is more convenient that the reference to them should be made under the directions of the court. *The Cognac*, 2 Hagg. 384.

2151. In a suit on a bottomry bond, the court, before deciding upon the validity or invalidity of the bond, referred the case to the registrar and merchants, to report, on the whole accounts, whether any and what balance was due to the bondholder upon which a bottomry bond could be taken, and any other special matter which might occur to them. *The Ocean*, 10 Jur. 505; 4 Notes of Cases, 410; *The Gauntlet*, 13 Jur. 414.

2152. In proceedings by default in a cause of bottomry, the rate of interest being excessive, the court, *ex mero motu*, in making its decree, referred the matter to the registrar and merchants to report the proper rate of interest to be allowed. *The Huntley*, 1 Lushington, 24.

2153. On taking the ship's accounts in a cause of bottomry, it was ascertained that, save as to the agent's commission, no money was due as against the ship, and the registrar and merchants reported that the commission was so excessive, that on the balance of accounts, after reducing the commission to a proper amount, the owners of the ship were creditors and not debtors. Bond pronounced against, with costs. *The Rhoderick Dhu*, Swabey, 177; 5 W. R. 168; 28 L. T. 238.

2154. The court refused an application to rescind a decree pronouncing for the validity of a bottomry bond, founded upon an affidavit by the defendant's solicitor that there was a good defence on the merits, the decree having been pronounced with the consent of the defendants. *The Glenburn*, 11 W. R. 685.

2155. As to decrees generally, see c. 33, p. 594.

2156. The court never pronounces against a bottomry bond on account of the extent of the premium. *La Ysabel*, 1 Dodson, 277; *The Alexander*, *ibid.* 279; *The Lord Cochrane*, 8 Jur. 716; 3 Notes of Cases, 172.

2157. As to judgments and orders generally, see Pt. II. c. 39, p. 1642.

2158. As to allowance, and rate, of interest on bottomry bonds, see tit. REGISTRAR AND MERCHANTS.

2159. As to *prior petens*, see Pt. II. c. 14, p. 1536.

15. References.*

2160. Where the validity of a bottomry bond is admitted, the registrar and merchants can still reduce the premium and commission if excessive. *The Pontida*, 9 P. D. 102; *Ibid.* C. A. 177; 53 L. J. P. D. 44; *Ibid.* 78; 5 Asp. 284, 330.

2160a. As to references generally, see c. 40, pp. 1460 and 1652.

2161. As to costs of such references, see tit. COSTS, c. 17, p. 358.

16. Payment.

2162. As to payment generally, see tit. BOTTOMRY, Pt. I. c. 18, p. 145, and No. 365, p. 146.

2162a. As to priority of payment in regard to ship, freight and cargo, *Ibid.* s. 6, p. 148.

2163. As to payment into court, see Pt. II. No. 182, p. 1482.

2163a. As to payment out of court, *Ibid.* p. 1486.

2164. As to priority of payment in regard to other claims, see tit. LIENS, c. 3, p. 816.

17. Laches.

See tit. LACHES, p. 802.

18. Costs.

See tit. COSTS, p. 398.

2. Collision Actions.

1. Generally.

2165. As to collision of ships generally, see tit. COLLISION, p. 176.

2166. As to the jurisdiction of the Admiralty Division and the Admiralty Court thereon, *Ibid.*

2167. As to inevitable accident, *Ibid.* p. 200.

2168. As to the duties generally to avoid collision, *Ibid.* p. 207.

2169. As to lights, *Ibid.* p. 240; and in fog, mist, or snow, *Ibid.* p. 251.

2170. As to cases of both vessels to blame, *Ibid.* p. 204.

2171. As to the duty of vessels after collision to stay by and assist each other, *Ibid.* pp. 188, 189.

2172. If A. is solely to blame for a collision with B., and B. afterwards comes into collision with C., owing to the first collision, B. is not liable to C. The action ought to be brought against A., and it is not necessary to show that the vessel proceeded against was in actual contact with the vessel proceeding. If there was joint blame for the first collision, and B. was driven in consequence against C., then B. would be responsible. *The Venus*, July 11, 1855.

2173. See also as to collision between three vessels, tit. COLLISION, p. 184.

2174. As to priority of liens for damage by collision over other liens, see tit. LIENS, p. 821.

2. In personam.

2175. See Pt. II. c. 4, p. 1489.

3. In rem.

(a) Generally.

2176. *Ibid.* p. 1491.

(b) Ship, Freight, and Cargo.

2177. As to ship, see tit. COLLISION, p. 185.

2177a. As to freight, *Ibid.* p. 187, and Pt. II. Nos. 183, 187, p. 1482.

2178. As to cargo, *Ibid.* c. 11, p. 1519; see tit. COLLISION, p. 185; and Pt. I. No. 183, p. 1482; and Pt. II. p. 1519.

(c) British and Foreign Government Vessels.†

See tit. JURISDICTION, Pt. I. p. 668, and *Ibid.* in Addenda.

* (675) In actions of bottomry the proofs to be filed are, *inter alia*, the surveys and the accounts and vouchers for the several sums for payment of which the bond was given.

† (675a) Where the colliding ship sought to be held to blame is a British Government

ship, the proceedings are instituted against the commander or other officer in charge at the time of the accident, and the Lords of the Admiralty usually instruct the Treasury solicitor to appear to the action. See notes 106, 107, p. 668,

4. *Cross Actions and Counter-claims.*

See Pt. II. c. 4, pp. 1492—1494.

5. *Amendment and Consolidation of Actions.*

See Pt. II. pp. 1494 and 1543.

6. *Parties.*(a) *Generally.**

2179. Owners of vessels damaged have their choice of three modes of proceeding in the Court of Admiralty, viz. against the owners or masters personally, or against the ship itself. *The Volant*, 1 W. Rob. 387.

2180. A cause of damage was instituted in the name of a party not the registered owner. Motion by the defendants to be dismissed, after damage pronounced for and the accounts referred, rejected, but the court stated that if after the amount of damage had been ascertained any doubt arose as to who was entitled to receive the money, it would direct the amount to be paid into the registry, and throw on the claimant the *onus* of establishing his ownership by competent proof. *The Ilos*, Swabey, 100.

2181. In the High Court of Admiralty the owners of the cargo have, equally with the damaged vessel, a distinct and separate remedy, either *in rem* or *in personam*, against the vessel doing the damage. *The Milan*, 1 Lushington, 388; 5 L. T. N.S. 590; 31 L. J. Adm. 105.

2182. Although a vessel has violated the provisions of the M. S. Act, 1854 (c. 104), as to the rule of port helm, and has thereby contributed to a collision, the owner of the cargo can, provided he is neither owner nor part owner of such ship, recover compensation from another vessel, which also contributed to the accident. But in such a case he is only entitled to

be recompensed to the extent of half the value of the damage done to his property. *Ibid.*

2183. See also Pt. II. c. 6, p. 1506.

2184. See as to parties to suits generally, *Ibid.* p. 1498; and as to third parties and proceedings by and against them, *Ibid.* c. 6, p. 1500, and c. 21, p. 1560.

7. *Proceedings against Foreign Vessels under M. S. Act, 1854 (c. 104), s. 527.†*

See Pt. II. c. 11, p. 1523.

8. *Against Master and Part Owner without Limit of Liability.*

2185. To render a master, being also a part owner and guilty of neglect, responsible beyond the value of the ship and freight, he must be sued as master in the first instance. The proceeding must be by charging him with being the cause of the damage by his misconduct; and that cannot be done, directly or indirectly, in another suit. In a cause of collision in which damage had been pronounced for, motion to condemn a part owner, who was on board and in command of the damaging vessel at the time of the collision, in the excess of the damage beyond the proceeds of the ship, rejected. *The Volant*, 1 W. Rob. 385, 390; *The Hope*, *ibid.* 154; *Wilson v. Dickson*, 2 B. & A. 2; overruling *The Triune*, 3 Hagg. 115.

2186. See also tit. OWNERS, pp. 1346, 1349.

9. *Bail.*

See Pt. II. p. 1554.

10. *Tender.*

Ibid. c. 32, p. 1587.

* (676) Causes of damage by collision may be brought by the owners of the vessel lost or damaged, or by the owners of the cargo or part of the cargo lost or damaged, and in one cause or in separate causes.

(677) These actions may subsequently be consolidated (as to the consolidation of actions, see Pt. II. c. 17, p. 1543), or in each action after the first an agreement may be entered into by the solicitors on both sides that that action shall abide the result of the first action, or that the pleadings and proofs in the first action shall be considered as the pleadings and proofs in the subsequent action. See as to such agreements, Pt. II. c. 24, p. 1572.

(678) The right of the Admiralty to proceed *in rem* is cumulative in many cases, and does not exclude the remedy *in personam*. A party, however, can have only one satisfaction. *Brevoor v. The Fair American*, 1 Pet. Adm. 87. [AMERICAN.]

† (679) The remedy under these sections is seldom resorted to in the Admiralty, that court having inherent jurisdiction, independently of the statute, over foreign vessels in cases of damage by collision. See tit. COLLISION, p. 193. It is, however, convenient so to apply to the Collector of Customs, in the case of a foreign ship, and where instructions arrive too late to obtain a warrant on the same day.

11. *Preliminary Acts.*

See Pt. II. c. 33, p. 1589.

12. *Pleadings.*

Ibid. c. 34, s. 23, p. 1606.

13. *Evidence.*

See tit. EVIDENCE, p. 447.

14. *Trial.*(a) *Right to begin.*

See Pt. II. c. 38, p. 1640.

15. *Judgments.**16. *References.*

See Pt. II. p. 1652.

2187. As to costs of references, see tit. COSTS, p. 360.

17. *Payment out of Court.*

See Pt. I. c. 10, p. 1486.

18. *Payment from Funds in Court in another Action.*

See *The Wild Ranger*, p. 1479.

19. *Measure of Damages.*

2187a. See tit. REGISTRAR AND MERCHANTS.

20. *Subsequent Salvage Action.*

2188. Where a vessel had been found to blame in a cause of collision, her owners were allowed to intervene in a salvage suit instituted against the injured vessel, and the court gave them the conduct of the defence on their furnishing bail in lieu of that furnished by the vessel proceeded against. *The Diana*, 2 Asp. N.S. 366.

21. *Laches.*

See tit. LACHES, p. 803.

22. *Costs.*

See tit. COSTS, p. 400.

3. **Damage to Cargo Actions.**1. *Generally.*

2189. As to the duties and responsibilities generally of owners and masters in reference to carriage of cargo, see tit. GOODS, CARRIAGE OF—, p. 467.

2190. Under charterparties, *ibid.* p. 465. Under bills of lading, *ibid.* p. 466.

2191. As to the jurisdiction of the Admiralty Division in regard to breaches of duty or contract as to cargo, *ibid.* p. 471.

2192. As to stoppage *in transitu*, *ibid.* p. 541.

2193. An indorsee of a bill of lading has a right to sue for damage to cargo arising from a breach of contract contained in the bill of lading under 18 & 19 Vict. c. 111, and in the case of a foreign vessel to take proceedings *in rem* under the Admiralty Court Act, 1861 (o. 10), although at the time of the institution of the action he has sold the cargo. *The Marathon*, 4 Asp. 75.

2193a. See also *The Nepoter*, p. 473, and *The Felix* and other cases, p. 517.

2194. Action by consignees of cargo damaged against the master, as representing either the owner or charterer, *held*, rightly brought against the master. *Denyssen v. Macfie*, 3 L. T. N.S. 25.

2194a. In an action against a carrier for damage to goods, it is enough to prove the condition and value of the goods when delivered to the carrier and when received by the consignee, and if damaged in the hands of the carrier he is entitled to recover; and the fact that the damage was partly caused by bad packing goes only to the amount of damage. *Higginbotham v. Great Northern Railway Company*, 2 F. & F. 796; 10 W. R. 358.

2195. In a case of damage to cargo, *held*, that the omission by the master of certain particulars in his protest is not a breach of duty or contract on the part of the shipowner or his servants, so as to give the owner of the damaged goods a right of action, even if such omission had been made from improper motives. *The Santa Anna*, 32 L. J. Adm. N.S. 198.

* (680) In causes of damage by collision in the Admiralty the amount of damages is not, as at common law, investigated at the same time as the question of liability, but the latter is first disposed of, and when that has been done the question of damages is referred to the consideration of the registrar and merchants. As to the procedure before them, see c. 40, p. 1648.

(680a) When it is not desired to dispute the liability for damages, but only the amount of damages, a decree as to the liability may be taken by consent, and the accounts referred to the registrar and merchants before whom the question of damages may be discussed. The consent should be by agreement between the solicitors on both sides. See as to such agreements, Pt. II. c. 24, s. 7, p. 1572.

2. *In personam*.*

See Pt. II. c. 4, p. 1490.

3. *In rem*.

Ibid. p. 1491.

4. *Particulars of Demand*.

Ibid. p. 1570.

5. *Preliminary Acts*.

Ibid. No. 1192, p. 1589.

6. *Pleadings*.

Ibid. p. 1612.

7. *Proofs*.

2196. As to proofs generally, see Pt. II. c. 35, p. 1458.

2197. As to evidence generally, see tit. EVIDENCE, p. 418.

2198. As to evidence in damage to cargo actions, *Ibid.* p. 446.

8. *References*.

See Pt. II. c. 40, p. 1652.

9. *Measure of Damages*.

See tit. REGISTRAR AND MERCHANTS.

10. *Priority of Liens*.

2199. As to priority of liens for damage to cargo over other liens, see tit. LIENS, p. 822.

11. *Costs*.

See tit. COSTS, c. 32, p. 400.

4. **Actions for Loss of Life or Personal Injury.**1. *Generally*.

2200. The Admiralty Division has no jurisdiction to entertain, in the first instance, an action *in rem* under Lord Campbell's Act for loss of life.† (Overruling *The Franconia*, 2 P. D. 163.) *The Vera Cruz*, 10 App. Cas. 59; 9 P. D. 96; 5 Asp. 270, 386.

2201. But it has jurisdiction to entertain such an action where an action for limitation of liability has been instituted

in the court—per Brett, M. R. *Ibid.* See also tit. COLLISION, Pt. I. c. 7, and Pt. II. c. 1, pp. 190, 191; and *Ibid.* in Addenda. 2202. See also *The Bowersfield*, No. 346a, p. 1499.

2202a. As to the jurisdiction of the Court of Admiralty in actions *in rem* for personal injury from collision, see *The Sylph*, L. R. 2 A. & E. 24; and by passengers or members of crew against masters for personal injuries, see tit. SEAMEN.

2. *In relation to Board of Trade Inquiries*.‡

2203. For provisions as to procedure by the Board of Trade in cases of loss of life or personal injury, for summoning a jury to ascertain the names, numbers and descriptions of the sufferers, for the assessment of the damages at £30 in each case, and as a first charge on the owners' liability, and as to the payment and distribution thereof, see M. S. Act, 1854 (c. 104), ss. 507—510, and tit. OWNERS, Pt. VI. p. 1339.

2204. For provisions that after the completion or compromise of the inquiry by the Board of Trade, if any person injured, or the legal representative of any person killed, estimates the damages awarded or compromised at a greater sum, he may bring an action for damages; but any damages so recoverable shall be payable only out of the residue (if any) of the aggregate amount for which the owner is liable, after deducting all sums so paid to her Majesty's Paymaster-General; and if the damages recovered do not exceed double the statutory amount, the plaintiff shall pay the defendant's costs as between solicitor and client, see M. S. Act, 1854 (c. 104), s. 511.

2205. In cases where such loss of life or personal injury has occurred, no person shall be entitled to bring any action in the United Kingdom until the completion of the inquiry by the Board of Trade, or it has refused to institute the same; and it shall be deemed to have so refused when notice has been served on it by any person of his desire to bring such action, and no inquiry is instituted by the board for one month afterwards. *Ibid.* s. 512.

* (681) Actions for damage to cargo may be *in personam* or *in rem*. See *The Pieve Superiore*, L. R. 5 P. C. 482. But as the action cannot be brought if any owner of the ship is domiciled in England or Wales, it follows that they must generally be brought *in rem*.

† (682) *Semble*, it has, as a branch of the High Court, original jurisdiction *in personam* in such actions. See *The Bernina*, 2nd March, 1886.

‡ (682a) The Board of Trade have not yet availed themselves of these provisions of the act to institute any such inquiry.

2206. Whenever the Board of Trade having so refused to institute any inquiry afterwards determines to institute it, the damages and costs (if any) recovered on such inquiry shall be payable rateably with and not in priority to the costs and damages recovered in any other action. See *M. S. Act, 1854 (c. 104), s. 513.*

3. Limitation of Liability.

2207. As to the limitation of the liability of owners of ships in respect of such damages for loss of life, personal injury, or damage to property, see tit. *OWNERS, Pt. VI. p. 1336.* As to the procedure to limit such liabilities, see c. 10, *infra.*

5. Actions of Marine Insurance.

2208. As to practice in actions of marine insurance, see tit. *MARINE INSURANCE, p. 1100*; including parties, p. 1100; pleadings, p. 1102; consolidation of actions, p. 1106; actions for return of premium, p. 1107; set-off, p. 1107; evidence, pp. 1107—1114; and costs, p. 1114.

6. Actions of Removal of Master.*

2209. See tit. *MASTERS, p. 1118.*

7. Actions of Master's Accounts.

2210. As to master's accounts generally, see tit. *MASTERS, p. 1123.*

2211. As to references in such actions, see *Pt. II. c. 40, p. 1652.*

2212. As to costs in master's actions for wages and disbursements, see tit. *COSTS, p. 414.* And as to their priority over other liens, see tit. *LIENS, p. 831.*

2213. As to the importance of presenting accounts before bringing action, *Ibid.*

8. Actions of Mortgage.†

2214. As to mortgage of ship generally, see tit. *MORTGAGE, p. 1129*; and as to the priority of mortgages over other liens, see tit. *LIENS, p. 822.*

2214a. As to mortgages as parties to actions, see *Pt. II. p. 1503.*

2215. As to mortgagee's right to release of ship, *Ibid. p. 1559.*

2215a. As to his not being required to bring freight into court like an ordinary holder of freight, see *The Ringdove, Swabey, 212.*

2216. As to proceedings by default in mortgage actions, *Ibid. p. 1566.*

2216a. As to costs in ditto, see tit. *COSTS, p. 405.*

9. Actions for Necessaries, Repairs, and Supplies.

1. Generally.

2217. Those are commonly called material men whose trade it is to build, repair, or equip ships, or to furnish them with tackle and provision necessary in any kind. *The Neptune, 3 Hagg. 142.*

2218. As to such actions generally, see tit. *NECESSARIES, REPAIRS, AND SUPPLIES, p. 1148.*

2219. As to the limits of the jurisdiction of the Admiralty Division in actions for necessaries, *Ibid. pp. 1154—1156.†*

* (683) When the master is also part owner, the proceedings should be *in rem*, and should be instituted as a cause of possession, and besides possession of the vessel, further relief by removal of the master may be asked for in the plaintiff's petition, or the majority of owners, on obtaining possession, may remove the master by their own authority. When the master is not a part owner, proceedings for his removal should be *in personam* against him.

† (684) For statutory forms of mortgage, of transfer thereof, of declarations and certificate of mortgage, and of revocation of certificate of mortgage, see *M. S. Act, 1854 (c. 104), ss. 66, 73, 74, 79, 83*; and for Board of Trade forms thereof, *Pritchard's Adm. Digest, 2nd ed. App. pp. 168—179, 184 and 185.*

(685) When the appointment and conduct of the master are matters of contention between part owners, the proceedings should be instituted under the 8th section of the Admi-

ralty Court Act, 1861 (c. 10).

‡ (685a) It will be seen, on reference to the pages mentioned in the text, that the action for necessaries can only be brought in the Admiralty Division, under 3 & 4 Vict. c. 65, against foreign ships, and only for necessaries supplied on the high seas or in British ports; and under the Admiralty Court Act, 1861 (c. 10), against British or colonial ships when no part owner of them is domiciled in England or Wales.

(686) And that the action for building, equipping or repairing vessels can only be brought in the Admiralty Division when the ship is under arrest of the court, or the proceeds of sale of the ship are in the registry of the court.

(686a) It is allowable and sometimes convenient to institute the cause as a combined claim of necessaries and repairs or supplies, where the claim partakes of both characters.

2220. As to what articles are and are not necessaries, *Ibid.* pp. 1156—1162.

2221. As to the limitation of the jurisdiction of the Admiralty Division in actions for building, equipping, or repairing vessels, *Ibid.* pp. 1152—1154, and note 30 therein.

2222. As to the maritime lien in respect of the supply of necessaries, *Ibid.* p. 1166.

2223. As to the statutory lien in respect of building, equipping, and repairing, *Ibid.*

2224. As to the transfer and discharge of such liens, *Ibid.* pp. 1168, 1169, and tit. LIENS, p. 811.

2225. As to the priority thereof, see tit. LIENS, p. 825.

2226. As to the priority of the lien of a shipwright in possession over other liens, *Ibid.* p. 830.

2227. As to accounts in connexion with such claims, see tit. REGISTRAR AND MERCHANTS.

2228. As to laches in reference to the prosecution of such claims, see tit. LACHES, p. 804.

2229. In law both the owner and the master may be responsible, not jointly, but separately, to the material man, who may bring his action against either of them. *The Alexander*, 1 W. Rob. 357.

2230. A partner may arrest the ship (the property of himself and co-partner) in a suit for necessaries. *The West Friesland*, Swabey, 495; 5 Jur. N.S. 658.

2231. The institution of an action as a cause of necessaries does not estop the

plaintiff from afterwards pleading and proving that his claim is in respect of repairs, but the title of the cause must be amended. Leave to amend given. *The Shipwith*, 10 Jur. Adm. N.S. 445; 10 L. T. N.S. 43; 2 Asp. 20.

2. Transfer.

2232. A cause of necessaries was instituted in a county court, and subsequently referred to the High Court of Admiralty. The pleadings in the High Court of Admiralty alleged that a bottomry bond was given as security for the amount due for necessaries. *Held*, first, that the claim for necessaries merged in the bottomry; secondly, that the suit having been transferred as one for necessaries could not be retained as a cause of bottomry. *The Elpis*, L. R. 4 A. & E. 1; 42 L. J. Adm. 43.

3. Pleadings.

See Pt. II. p. 1612.

4. Evidence.

See tit. EVIDENCE, p. 456.

5. Costs.

See tit. COSTS, p. 405.

10. Actions of Limitation of Liability of Owners.

1. Generally.*

2233. As to the statutory limitation of liability of owners generally for damage

* (687) The initiatory proceedings in the Admiralty Division in limitation actions are similar to those in other actions. As to the pleadings and judgment therein, and the references of the accounts to the registrar and merchants, and costs, see Pt. II. p. 1613.

(688) The amount of the percentage on the registered tonnage of the vessel is paid in promptly after the judgment to stop interest, but the court will allow bail to be given where denied.

(688a) The advertisements referred to in the decree are usually inserted at intervals of not less than a week, in the Times, the Shipping and Mercantile Gazette, and a local paper of good circulation. They are inserted by the plaintiff's solicitors. The form of advertisement is settled by the registrar.

(689) The advertisements, after reciting the institution of the action and the judgment thereon, proceed to give notice to all persons having any claim in respect of the loss or damage so caused to the vessel A., or to the goods, merchandize, or other thing,

on board thereof, that if they do not come in and enter their claims in the said cause on or before a day therein named, they will be excluded from sharing in the sum paid into court. The advertisements are dated, and signed by the registrar.

(689a) Claims should be filed (after entering appearance) with the necessary proofs, and they will be investigated by the registrar and merchants, as in ordinary references. The registrar's report will then be filed, and the court, on motion, will decree payment of the proper proportion of the fund due to each claimant with costs.

(690) For form of decree in Chancery, on paying value of ship into court, for injunction, account of claims and apportionment, see Seton on Decrees (3rd ed. by Harrison and Leach), p. 932.

(690a) For the form of decree in Chancery limiting the shipowners' liability in a case of damage by collision, see *The General Iron Screw Co. v. Schurmanns*, 29 L. J. Ch. 883.

(691) The averments in the petition, and

to goods, or loss of life, or personal injury, without their actual fault or privity, see tit. OWNERS, Pt. VI. p. 1336.

2234. As to the liability *ultra* of the master where part owner, and to blame for the collision, *Ibid.* pp. 1346, 1347, and 1349.

2235. As to the jurisdiction of the Court of Admiralty to entertain actions for limitation of liability, *Ibid.**

2236. As to the calculation of the registered tonnage of the vessel and the deductions therefrom for crew spaces, &c., *Ibid.* p. 1345, and Pt. I. pp. 1188 and 1193.

2237. Though the damage may have been committed with the privity of one part owner, the other part owners not privy thereto may limit their liability. *The Spirit of the Ocean*, Br. & Lush. 336; 34 L. J. Adm. 74.

2237*a*. It is not necessary for the owner of a vessel arrested in a collision action to admit his vessel to have been to blame for the collision, in order to found an action for limitation of liability, and protect him from a multiplicity of actions. (The case in Chancery of *Hill v. Andus*, 1 Kay & John. 263, not followed.) *The Amalia*, 2 N. R. 462; 8 L. T. N.S. 806; 1 Lushington, 191; 32 L. J. Adm. N.S. 191; 9 Jur. N.S. 1111; 12 W. R. 24.

2238. *Held*, that the owners could limit their liability under the statute in respect of damages by collision from a latent defect in the ship arising from negligence of a third party. *The Warkworth*, 9 P. D. 145; 5 Asp. 326.

2238*a*. Where the amount of a defendant's statutory liability has been paid into court in a collision action, with a sum to cover interest and costs, *held*, that it was not necessary for him to move the court to order that the sum paid in by him be transferred to the credit of the limitation action. *The Sisters*, 1 P. D. 281.

2239. And the court granted a decree of limitation of liability without ordering the transfer, the solicitors of the plaintiffs in the limitation action undertaking that the costs of such action should be paid. *Ibid.*

2239*a*. Where it was proved that all claims in respect of loss of life had been settled, the court ordered that on payment of £8 per ton, all claimants in respect of loss of life, personal injury, or property, not appearing as directed by the decree, should be restrained from bringing any action. *The Foscolino*, 5 Asp. 420.

2240. R. S. C. No. 550, that in cases of trial by affidavit the evidence shall be printed, and notice of trial given as therein mentioned, does not apply to Admiralty actions for limitation of liability. Ord. XXXVIII. r. 30, No. 550.

2240*a*. As to a counter-claim in an action for limitation of liability, see *The Clutha*, 35 L. T. N.S. 36.

2. Stay of other Actions.

See tit. OWNERS, Pt. VI. pp. 1342, 1343.

3. Bail.

2241. In an action of limitation of liability, a release of the ship in other actions pending decreed on bail being given in this action in a sum equivalent to £8 per ton (there having been no loss of life or personal injury), on the registered tonnage of the vessel, and in a sum to be settled by the registrar for interest and costs. *The John*, No. 2213, 10th May, 1864.

2242. In a limitation action the plaintiffs were ready to pay into court £3 per ton, but asked that in respect of loss of life and personal injury they might pay, into court or give bail for, less than the statutory amount. The court directed that the plaintiffs should first state on affidavit the names of the persons killed and injured, their condition in life, the number of those legally entitled to claim, the number of claims which had been settled, and the amounts paid in settlement. *The Dione*, 5 Asp. 347.

4. Security for Costs.

See tit. COSTS, p. 365.

5. Pleadings.

See Pt. II. p. 1613.

in particular the amount of the gross registered tonnage of the vessel which did the damage, and the names and addresses of her owners, should be verified by affidavit, to be filed by the plaintiffs, notwithstanding those averments may be admitted in the answer.

* (691*a*) Any doubt as to the jurisdiction of

the Admiralty Division to entertain such actions when the ship or the proceeds thereof are not under arrest of the court is now set at rest by that court having become a branch of the High Court, and therefore a superior court. See the Common Law Procedure Act, 1860 (c. 126), s. 35.

6. Evidence.

2243. In any proceeding for limitation of liability under the M. S. Acts in respect of loss of life, the master's list, or the duplicate list of passengers delivered to the proper officer of customs under the 16th section of "The Passengers Act, 1855," in the absence of proof to the contrary, is sufficient proof that the persons in respect of whose death any such proceedings are instituted were passengers on board at the time of their deaths. See M. S. Act Amendment Act, 1862 (c. 63), s. 56.

7. Interest.

See tit. COSTS, p. 403.

8. Costs.

Ibid. p. 403.

11. Actions of Possession.

1. Generally.*

2244. As to actions of possession generally, see tit. OWNERS, Pt. I. pp. 1180, 1181, and Pt. VIII. p. 1415.

2244a. As to the jurisdiction of the Admiralty Division and Admiralty Court in such actions, *Ibid.* pp. 1181, 1417.

2245. As to the ship's certificate of registry and the right to the possession thereof, see tit. OWNERS, Pt. I. pp. 1210—1214.†

2245a. As to the sale of ship generally, see tit. OWNERS, p. 1214; from builder, *ibid.* p. 1215; by decree of the Admiralty Division, *ibid.* p. 1218; by decree of foreign court, *ibid.*; under power of attorney, *ibid.* p. 1219; by fraud, *ibid.* p. 1220; by master, *ibid.* p. 1221; what property passes, *ibid.* p. 1217; and as to ameliorations or improvements by the purchaser whose title is defective, *ibid.* p. 1226.

2246. In a cause of possession, brought by the owner of the greater number of shares of a vessel, the master, owning the remaining shares, is not entitled to retain possession of the vessel upon an offer of security to the amount of his co-

owner's interest. *The Kent*, 1 Lushington, 495.

2246a. As to proceedings to displace master when he is, and is not, part owner, see tit. MASTER, p. 1118.

2247. In a cause of possession, where an account was also claimed against the managing owner who failed to appear, the court directed that he should be joined as a defendant under Ord. XVI. r. 3 (now r. 4), No. 126, so that his accounts might be inquired into. *The Native Pearl*, 3 Asp. N.S. 514; 32 L. T. N.S. 542; and see *The Annandale*, 2 P. D. 179, n.; 37 L. T. N.S. 364.

2247a. As to proceedings by default in such actions, see Pt. II. c. 22, p. 1566.

2248. Application to change the possession at the petition of a moiety of the interest rejected. *The Elizabeth and Jane*, 1 W. Rob. 278; *The Egyptienne*, 1 Hagg. 346.

2248a. But where the proceedings were by default, order made against the other parties to appear and show cause against dispossession. *Ibid.*

2249. Possession of a ship, time having been allowed for an appearance by the purchaser, decreed in proceedings by default to the plaintiffs, the former owners, on affidavits that the ship, having been abandoned by the master, was sold without their consent. *The Lagan*, otherwise *The Mimax*, 3 Hagg. 418.

2249a. For form of writ of possession in an Admiralty action, see R. S. C. 1883, App. H. No. 9.

2250. Action for possession of masts and rigging brought by the owner against a person in possession of them, order made for the property being restored to the owner. *Fowler v. Living*, anno 1714; *Marsden*, p. 302.

2. By Foreigners.

(a) Generally.

See tit. OWNERS, Pt. VIII. p. 1182.

(b) Notice to Consul.

Ibid.

* (692) A part owner may sustain a petitory suit against a merely fraudulent possessor, without joining the other part owners; and if they do not appear or object, and the libellant establishes his title, the court will decree the possession to him. *The Friendship*, 2 Curtis, C. C. 426. [AMERICAN.]

(692a) A proprietary suit will be enter-

tained in the case of a claim by British subjects, as the owners of a vessel found in England in the hands of foreigners. *Dunlap's Adm. Prac.* 47. [AMERICAN.]

† (693) In causes of possession it is usual to require in an early stage of the proceedings that the certificate of registry of the ship should be brought in.

3. *Arrest.*(a) *Generally.*

See Pt. II. c. 11, p. 1517.

(b) *Affidavit to lead Warrant.*

Ibid.

4. *Bail.*

Ibid. c. 19, p. 1554.

5. *Release.*

Ibid. c. 20, p. 1559.

6. *Security for Costs.*

See tit. COSTS, p. 365.

7. *Proceedings by Default.*

See Pt. II. c. 22, p. 1566.

8. *Pleadings.*

Ibid. c. 34, p. 1614.

9. *Evidence.*

See tit. EVIDENCE, p. 457.

10. *Writs of Execution.*

See Pt. II. p. 1663.

11. *Laches.*

See tit. LACHES, p. 804.

12. *Costs.*

See tit. COSTS, p. 406.

12. **Actions of Restraint.**1. *Generally.*

2251. As to actions by the minority owners against the majority to compel bail for safe return of the ship from a voyage of which the minority disapprove, see tit. OWNERS, Pt. VIII. p. 1418.

2251*a.* The Court of Admiralty is open all the year round to application by part owners to restrain the sailing of ships without their consent until security is given to the amount of their respective shares. *Haly v. Goodson*, 2 Mer. 77; 2 Dod. 420.

2252. When minority owners have instituted an action of restraint claiming security for the safe return of the ship to

a named port within the jurisdiction, and a bond is given by the defendants for that purpose, such bond remains in force until the ship returns to that port, and the plaintiffs are not entitled to institute another action for further security upon the ship's return to another port within the jurisdiction; and if such second action is instituted, it will be dismissed with costs. *The Regalia*, 51 L. T. 904; 5 Asp. 338.

2252*a.* Under the 70th section of the M. S. Act, 1854 (c. 104), a mortgagee not in possession of the vessel cannot maintain an action of restraint. *The Innisfallen*, L. R. 1 A. & E. 72; 35 L. J. Adm. 110.

2253. In a cause of restraint, the charterer of the vessel, if he has a substantial interest in the question before the court, is entitled to intervene in the action. *Ibid.*

2253*a.* *Semble*, when the actual loss cannot be directly proved, the Court of Admiralty will, on sufficient cause being shown, declare the bond forfeited, and require the amount to be paid into court if the vessel does not return within a time named in the decree. *The Margaret*, 2 Hagg. 279; and see *The Anne* and *The Water Hen*, therein cited.

2. *Warrants of Arrest.*(a) *Affidavit to lead—.*

See Pt. II. c. 11, p. 1517.

3. *Bail.*

For form of bond, see *The Robert Dickinson*, 10 P. D. 15; 5 Asp. 342; and see also Pt. II. c. 19, p. 1555.

13. **Actions between Part Owners.**1. *Generally.**

2254. As to actions in disputes between part owners and for accounts, see tit. OWNERS, Pt. VIII. p. 1420; and for the sale of the ship and the cases in which the court will, and will not, sell the ship, on application of part of the owners, *Ibid.* p. 1423; and as to the mode of proceedings for sale, see Pt. II. c. 44, p. 1673.

2254*a.* As to the rights, duties, and responsibilities of managing owners and ship's husbands, see tit. OWNERS, Pt. II. p. 1424.

* (694) For forms of decrees in Chancery for account of shares in ships and earnings, and

for sale, or of proceeds if sold, as between part owners, see Seton on Decrees (4th ed.), p. 1219.

2255. As to the taking of accounts between part owners, see tit. REGISTRAR AND MERCHANTS.

2255a. As to evidence in such actions, see tit. EVIDENCE, p. 457.

2256. As to proceedings by default in such actions, see Pt. II. c. 22, p. 1566.

2256a. All the part owners must be made parties to a bill filed for an account of the profits of the ship. *Moffat v. Farquharson*, 2 Brown, C. C. 338; Collyer on Partnership, 683.

2257. Only such accounts can be investigated and settled as are, or ought to have been, delivered, before the issue of the writ. *The Eider*, 4 Asp. 104; 40 L. T. N.S. 463.

2257a. In an action by master and part owner for wages and accounts, the defendants were allowed to set up a counterclaim in respect of the co-ownership accounts. *The City of Mobile*, L. R. 4 A. & E. 191; 43 L. J. Adm. 41.

2258. A managing owner, who had not delivered accounts for nine years, brought an action against his co-owners for an account and payment of balance due. The registrar, in his report, having allowed the plaintiff certain items in respect of the ship, which he had not paid, and for which the defendants were being sued in the Queen's Bench Division, the court decreed payment of the amount found due, but stayed execution until the defendants were secured against the claims in the Queen's Bench Division, and refused to give the plaintiff the costs of the action, on the ground of the delay in delivering his accounts. *The Charles Jackson*, 5 Asp. 399.

14. Actions of Pilotage.*

2259. A pilot is a mariner, and as such may sue for his wages in the Court of Admiralty, unless the work is done within the body of a county. *Ross v. Walker*, 2 Wils. 264. See also tit. PILOTS, pp. 1430, 1431.

2259a. The act 3 Geo. 1, c. 13 (now repealed), fixing rates of pilotage, was limited to the particular society of pilots, viz., Trinity pilots, therein described, who had the benefit of a monopoly under the provisions of that act, and the restrictions thereof were held to be taken as corresponding with the privileges conferred. Other pilots, therefore, engaged in the same navigation only casually, when the privileged pilots were out of the way, held to be at liberty to make special agreements for higher compensation. Such an agreement pronounced for. *The Nelson*, 6 C. Rob. 227.

2260. In a cause of co-ownership, order made against a dock company to bring in freight detained by them under a stop order of the defendants. *The Meggie*, L. R. 1 A. & E. 77.

2260a. By the ancient maritime law, the Court of Admiralty has an equity to moderate or supersede extortionate contracts made under the pressure of necessity arising out of the situation of a vessel at sea. This jurisdiction might embrace a case of extortionate contract for pilotage services. *The Nelson*, 6 C. Rob. 231.

2261. The master's agreement for pilotage services, not affected by collusion or fraud, would be as binding on the owner as if made in his own person. *Ibid.* 227.

2261a. The report by the master of the ship to the owner that certain additional charges were due to the pilot (such charges not being allowable under the table of remuneration for pilot services annexed to the 6 Geo. 4, c. 125), held not to bar or conclude the owner from objecting to such charges. *The Adah*, 2 Hagg. 332.

2262. The docking of a ship is to be considered as equivalent to bringing her to ordinary moorings. *Ibid.* 330.

2262a. As to pilotage authorities and pilots generally, see tit. PILOTS, p. 1429.

2263. As to pilot ships and boats, qualified and unqualified pilots, and their remuneration and responsibilities, *Ibid.*

* (695) Pilotage rates depend mainly upon Part 5 of the M. S. Act, 1854 (c. 104). Of that act, sects. 380 and 381 relate specially to the rating power of the Trinity House, and these rates are embodied in the Order in Council of 1st Nov. 1862. The Trinity House outpost district rates are framed by the Trinity House. See further, tit. PILOTS, pp. 1438, 1439, 1441, 1448, 1449.

(695a) Damage occasioned to a ship by the misconduct of a pilot in charge allowed to be

set off against his claim for pilotage. *The Sophia*, Stuart's Vice-Adm. Rep. 96. [LOWER CANADA.]

(696) To constitute pilotage a lien on the ship the contract must have been made by some person in the employment of the owner duly authorized to make the contract, such as the master or quasi master. But mere wrongdoers or mutineers have no authority to bind the ship. *The Anne*, 1 Mason, 508. [AMERICAN.]

2264. As to the priority of pilotage over other liens, see tit. LIENS, p. 827.

15. In Salvage Actions.

1. Generally.

2265. As to salvage generally, see tit. SALVAGE, c. 1.

2266. As to the jurisdiction of the Admiralty Division and Admiralty Court in salvage actions generally, and where the amount in dispute is under £200, and where the value of the property salvaged is under £1,000, *Ibid.* c. 2.

2267. As to salvage of life and payments thereon by Board of Trade, *ibid.* c. 7; as to salvage of wreck and payments by Board of Trade, *ibid.* c. 3; and as to the powers and duties, in connection with salvage, of the Board of Trade, *ibid.* c. 3; and of receiver of wreck, *ibid.* c. 4.

2268. As to salvage by officers and crews of H. M.'s ships, *Ibid.* c. 5.

2269. As to the consent of the Lords of the Admiralty to such parties taking proceedings being necessary before action can be brought by them, *Ibid.*

2270. As to salvage by officers and crews of H. M.'s ships out of the United Kingdom, the custody of the property, the statements on oath to the service to be interchanged, the bail to be given, the transmission of the documents, and the adjudication on the case, *Ibid.*

2271. As to the mode of proceeding in cases of salvage of British and foreign government ships, see tit. JURISDICTION, pp. 668, 669.

2272. As to the different kinds of salvors, and first and second salvors, *ibid.* c. 5; the various kinds of salvage services, *ibid.* c. 6; the property saved, *ibid.* c. 8; the values and rate of contribution, *ibid.*; the salvage of derelict property, *ibid.* c. 14; the losses and damages caused to the salvors in rendering their services, *ibid.* c. 6; and as to agreements for salvage, *ibid.* c. 10.

2272a. Owners setting up an agreement in bar of a salvage claim are bound to pay into court the amount stipulated for under the agreement. *The Catherine*, 6 Notes of Cases, Supp. 1.

2273. As to agreements to abandon lien for salvage, on the master of the ship salvaged agreeing to abide the decision as to salvage of the Court of Admiralty or a Vice-Admiralty Court, and giving security to abide its decree, the

statements therein, and the transmission thereof, *Ibid.* c. 5.

2274. As to the diminution or forfeiture of salvage for neglect or misconduct, *ibid.* c. 9; as to salvage agreements, *ibid.* c. 10; and liens for salvage, *ibid.* c. 11.

2275. As to awards of salvage, *ibid.* c. 16; and tit. SALVAGE AWARDS. As to the apportionment thereof among owners, masters, and crews, see tit. APPORTIONMENT OF SALVAGE AWARDS.

2276. As to the priority of salvage and other liens, see tit. LIENS, p. 830.

2277. And of towage and other liens, *ibid.* p. 831.

2278. As to laches in salvage actions, see tit. LACHES, p. 805.

2279. As a matter of right, and especially in cases of derelict, salvors are entitled to resort at once to the High Court of Admiralty to enforce their demands. The law entitles them to say, "We will have the judgment of the court as to the remuneration we ought to receive, and we will not negotiate." *The Tritonia*, 5 Notes of Cases, Supp. viii.

2280. The court is not limited to any particular demand of the salvors in a case of great merit. *The Jonge Bastiaan*, 5 C. Rob. 322.

2280a. An allotment of salvage having been awarded in proceedings by default, the ship salvaged was sold in that action under decree of the court, but at an amount far exceeding the appraised value. Application for increase in the salvage award on that ground rejected. *The Emanuel*, June, 1853.

2. By Officers and Crews of H. M.'s Ships Abroad.

2281. For provisions in cases of salvage by officers and crews of H. M.'s ships out of the United Kingdom and from seas adjoining, that the statements, bonds, and other documents required in such cases to be taken, be transmitted at the earliest opportunity by the consular officer or judge of a Vice-Admiralty Court acting in the case, with a notice of the sum he has fixed as bail to the Court of Admiralty of England, or if the salvor and the master or other person in charge agree that the bond shall be adjudicated upon by any Vice-Admiralty Court then to such court, see M. S. Act, 1854 (c. 104), s. 490.

2282. Such bonds when so transmitted to the High Court of Admiralty of England shall be adjudicated upon by that court. *Ibid.* s. 492.

See also tit. SALVAGE, c. 5.

3. *In personam*.*

2283. Proceedings for salvage may be either *in rem* or *in personam*. *The Hope*, 3 C. Rob. 215, and notes; *The Meg Merriles*, 3 Hagg. 346; *The Rapid*, 3 Hagg. 419; and see Pt. II. c. 4, p. 1490.

2284. As to proceedings *in personam* against cargo, see *The Peace*, Nos. 2290 and 2302, *infra*.

2285. As to proceedings generally *in personam*, see Pt. II. c. 4, p. 1489.

4. *In rem*.(a) *Generally*.

See Pt. II. c. 4, p. 1491.

(b) *Ship*.

2286. Ship and cargo must each pay its own share of salvage; neither can be made liable for the salvage due from the other, whether the salvors proceed in the Admiralty Court or before the magistrates. *The Pyrenée*, 3 N. R. 250.

2287. If in a suit for salvage the ship alone has been proceeded against, the question would be what amount of salvage should be decreed with reference to the united value of the ship, freight and cargo, and what proportion thereof the ship should defray. *The Maria Jane*, 14 Jur. 857.

(c) *Freight*.

2288. Freight must have been paid or earned before salvors can require it to be brought into court, in order to salvage being awarded on it. *The Aline*, 1 W. Rob. 123.

(d) *Cargo*.

2289. The real foundation of the jurisdiction of the Court of Admiralty in salvage cases is by proceedings *in rem*, though there may be some cases of special circumstances where salvors have been allowed to proceed *in personam*; but generally the ship and freight are alone

liable, and where they can be proceeded against the court is not disposed to regard salvors as having a right to follow cargo as prize goods may be followed, to abide the final adjudication. *The Rapid*, 3 Hagg. 422.†

2290. A ship was arrested, after discharge of cargo, in a suit for salvage, and an appearance and bail were given for ship and freight. Motion on behalf of the salvors for an order against the owners of the vessel proceeded against to bring in an account of freight on oath, and to set forth when, and the names of the parties by whom, the freight had been paid, in order to the discovery of the owners of the cargo, granted. *The Peace*, Swabey, 85.

5. *Initiation of Action*.

2291. Every dispute with respect to salvage may be heard and adjudicated on the application of either the salvor or the owner of the property salvaged, or their respective agents. See M. S. Act, 1854 (c. 104), s. 460; and *The Bessemer*, 1884, B. No. 273.‡

6. *Amount of Action*.

2292. Practitioners are not justified in entering actions and requiring bail to an amount quite disproportioned to the salvage service. *The Earl Grey*, 1 Spinks' Ecl. and Adm. Rep. 180.

2293. For cases of condemnation of plaintiffs in costs of giving bail in such circumstances, see tit. Costs, p. 409.

2294. In an action of salvage Lord Stowell gave a larger sum than the amount in which the cause was instituted, and directed a fresh action to be instituted. *The Silver Bullion*, 2 Spinks' Ecl. and Adm. Rep. 74.

7. *Separate Actions*.§

2295. The court is displeased when two actions are brought by two sets of salvors

* (697) The rights acquired by the salvors are only *in rem* to be paid by the property. They have no claim *in personam* against the owners if they (the owners) choose to abandon the goods. *The Emblem*, Daveis, 61. [AMERICAN.]

(698) But if the property is delivered by the salvors to the owners before a compensation for saving it is made, the salvors may maintain a libel *in personam* for the salvage. *Ibid*.

† (699) By the modern practice the court

is less strict in allowing proceedings against owners of cargoes. See the subsequent cases in the text, Nos. 2290 and 2302.

‡ (700) It is not unusual for owners of vessels salvaged to commence an action for the awarding of salvage, and where there are different claimants of salvage it is often more convenient to adopt such a course.

§ (701) Although there should be but one libel of co-salvors, if there are several sets of salvors, as the officers and crew of different vessels by whom distinct salvage services

where it can be avoided, but there may be cases in which this course is justifiable, and this was one, the salvors having opposite interests; the first set, smackmen, being the first salvors, and the second, a steamer, claiming to have rescued the vessel. *The Charles Adolphe*, Swabey, 156.

2296. Separate actions for salvage of life and property were entered and afterwards consolidated. The court approved of the course pursued. *The Coromandel*, Swabey, 208.

2297. Salvors who had saved life held to be justified in not consolidating with other salvors who had not saved life. *The Morocco*, 1 Asp. N.S. 46; 24 L. T. N.S. 598.

2298. Second salvors joined in an action with first salvors, which latter were held to have acted improperly, and the suit as to them was dismissed. The owners objected to salvage being awarded to the second salvors, on the ground that they had embarked in a common action with the first salvors, and were concluded by the decree as against them. The court overruled the objections, and awarded salvage and costs to the second salvors. *The Neptune*, 1 W. Rob. 302.

2298a. A first set of salvors who, while in possession, were assisted in the service by a second set of salvors, held, nevertheless, to have a primary interest, and therefore a right to choose their own jurisdiction (viz. whether to proceed for an award by magistrates or by a suit in the Court of Admiralty). They having elected to proceed before magistrates, the second salvors, who instituted proceedings in the Admiralty Court, held to have acted improperly in so doing, and in not intervening in the proceedings before the magistrates as their proper course. *Quare*, if parties have equal rights, would a resort to the subordinate jurisdiction, when objected to, be proper? *The Eugene*, 3 Hagg. 159.

2299. Owners of a salving vessel are

entitled to receive the value of sails and stores supplied from the salving vessel, and also the amount of any other loss or expense which they may fairly have incurred, but they are not justified in preferring such a claim through a separate practitioner and counsel, and thereby putting the owners of the vessel salvaged to an additional and unnecessary expense. Costs allowed, but directed to be strictly taxed. *The Baltimore*, 2 Dodson, 138.

2300. As to consolidation of actions, see Pt. II. c. 17, p. 1544.

2300a. As to costs in connection with actions which ought to have been, and were not consolidated, see tit. Costrs, pp. 349, 408.

8. Parties.

(a) Generally.*

2301. Every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor, or of the owner of the property salvaged, or of their respective agents. See the M. S. Act, 1854 (c. 104), s. 460.

2301a. Whenever any articles belonging to any foreign ship or cargo wrecked are found on or near the coasts, or are brought into any port, of the United Kingdom, the consul-general or any consular officer of the country to which the property belongs, authorized by treaty or agreement with such country, shall, in the absence of the owner, master or other agent of the owner, be deemed agent of the owner as to the custody and disposal of such articles. See the M. S. Act Amendment Act, 1855 (c. 91), s. 19.

See also Pt. II. c. 6, p. 1507.

(b) *Ship's Agents of Officers and Crews of her Majesty's Ships.*

See cap. 16, p. 1694.

(c) *Third Parties.*

See Pt. II. c. 4, p. 1507.

have been rendered, it is proper that their respective claims to remuneration should be asserted in distinct suits. 1 Conkling's Adm. Prac. (2nd ed.) 369; *The Boston and Cargo*, 1 Sumner, 328; *The Ship Henry Ewbank*, *Ibid.* 400, 408. [AMERICAN.]

* (702) After sale of property libelled for salvage, a foreign consul has authority to petition the court to order the marshal to pay into its registry the proceeds in which a citizen or subject of his country is interested,

such person being absent and having no legal representative in the United States. *Ship Adolph and Cargo*, 1 Curtis, Ct. Ct. 87. [AMERICAN.]

(703) Underwriters cannot claim for salvage property in the Admiralty unless the property has been abandoned to them and accepted by them. *The Henry Ewbank*, 1 Sumner, 400. [AMERICAN.]

(704) See, also, as to underwriters as parties to suits generally, Pt. II. c. 6, p. 1504.

(d) *Owners of Cargo subsequently proceeded against.*

2302. Salvage of £400 on ship, freight, and cargo, was decreed, in pursuance of an agreement made by the master. The values of ship and freight only were then known, but afterwards the owners of cargo were proceeded against and appeared, offering to pay their proportion of salvage. *Held*, that the cost of the salvage suit must be borne by the owners of ship and cargo rateably, though the latter were not before the court when the decree for salvage was made. *The Peace*, Swabey, 115.

(e) *After Collision Action.*

2303. Where a vessel had been found to blame in a cause of collision, her owners were allowed to intervene in a salvage suit instituted against the injured vessel, and the court gave them the conduct of the defence on their furnishing bail in lieu of that furnished by the vessel proceeded against. *The Diana*, 2 Asp. N.S. 366.

9. *Claims by her Majesty's Ships, Officers and Crews.*

(a) *No Claim for Loss or Damage.*

2304. Where salvage services are rendered by any of her Majesty's ships, or by the commander or crew thereof, no claim shall be made or allowed for any loss, damage, or risk thereby caused to the ship, or to her stores, tackle, or furniture, or for the use of any of her Majesty's stores, or other articles, in effecting such services, or for any other expense or loss sustained by her Majesty by reason of such services. See M. S. Act, 1854 (c. 104), s. 484.

(b) *Consent of Lords of Admiralty to Proceedings.*

2305. No claim on account of any salvage services rendered to any ship or cargo, or to the appurtenances of any ship, by the commander or crew or part of the crew of any of her Majesty's ships, shall be finally adjudicated upon unless the consent of the Admiralty has first been obtained. *Ibid.* s. 485.

2305a. Such consent is to be signified by writing under the hand of the secretary to the Admiralty. *Ibid.*

2306. If any person who has originated proceedings in respect of any such claim fails to prove such consent to the

satisfaction of the court, his suit shall stand dismissed with costs. *Ibid.*

2306a. Any document purporting to give such consent, and to be signed by the secretary to the Admiralty, shall be *prima facie* evidence of such consent having been given. *Ibid.*

(c) *Ship's Agents.*

2307. For provisions authorizing the ship's agent appointed to any vessel belonging to her Majesty to take proceedings on behalf of the officers and crew in causes of salvage, see the Naval Agency and Distribution Act, 1864 (c. 24), s. 12.

10. *Agreement to abide Adjudication and pay Salvage.*

2308. As to proceedings where other ships besides those of her Majesty are salvors, and, the salvors waiving their lien, the parties enter into a written agreement to abide the decision of the Court of Admiralty or Vice-Admiralty, and to give security to answer the salvage awarded; as to the agreement binding the parties and the property salvaged; and as to the statements to be made on both sides, and the transmission of the agreement and documents to the court, see M. S. Act, 1854 (c. 104), s. 497, and tit. SALVAGE, c. 5.

11. *Restrictions on Proceedings in Superior Court.*

See tit. Costs, pp. 352—354, and Pt. II. c. 16, p. 1541, and No. 2238, p. 1694.

12. *Leave to proceed in Superior Court.*

See Pt. II. p. 1541.

13. *Detention before Warrant.*

(a) *By Receiver of Wreck.*

2309. For provisions in cases of salvage authorizing receivers of wreck to detain the property salvaged until payment is made, or process for its detention has been issued by some competent court, or security given to the receiver's satisfaction, *Ibid.* s. 468.

14. *Bail.*

(a) *Generally.*

2310. See Pt. II. c. 19, p. 1555.

2310a. The Court of Admiralty has power to enforce any bond given in pursuance of this act in any Vice-Admiralty Court in any part of her Majesty's dominions; and all courts in Scotland,

Ireland, and the islands of Jersey, Guernsey, Alderney, Sark, and Man exercising Admiralty jurisdiction shall, upon application, aid and assist the Court of Admiralty in enforcing such bonds. See M. S. Act, 1854 (c. 104), s. 493.

(b) *Before Receiver of Wreck.*

2311. A receiver of wreck, if (at any time previously to the issue of process from a competent court), security is given to his satisfaction for the amount of salvage due, may release from his custody any ship, cargo, wreck, or other property, detained by him; and where the claim for salvage exceeds £200 in England or Ireland, the Court of Admiralty of England or Ireland (and in Scotland the Court of Session) may determine any question concerning the amount of the security or the sufficiency of the sureties; and the salvor, or the owner of the property salvaged, or their respective agents, may institute proceedings in such respective courts to have the questions between them adjudicated upon, and the court may enforce payment of the bond or security, as if bail had been given in the court. *Ibid.* s. 468.

2312. As to the enforcement of similar bail taken before the M. S. Act, 1854 (c. 104), by a receiver of Admiralty droits, see *The Bagnall*, 3 W. Rob. 118; 12 Jur. 1008; 6 Notes of Cases, 542.

15. *Value of Property salvaged.*

(a) *Generally.*

2313. See tit. SALVAGE, c. 8.

2313a. Where in a salvage action the defendants had given affidavits of value, which value had been accepted by the plaintiffs, the defendants were not allowed to give any evidence to reduce that value. *The Hanna*, 3 Asp. N.S. 503. But see No. 1817, p. 1645.

(b) *Proof of—before Release.**

See Pt. II. c. 20, p. 1559.

16. *Valuation of Property salvaged.*

(a) *By Agreement.†*

(b) *By Appraisalment.‡*

(aa) *Generally.*

See Pt. II. c. 44, p. 1671.

(bb) *By Receiver of Wreck.§*

2314. *Ibid.* p. 1672.

17. *Release.*

2315. In a suit for salvage of a derelict the court, on motion, allowed a portion of the cargo to be released on a moiety of the value, and a sum to answer costs being paid in. *R. M. Mills*, No. 243; July 19, 1860.

2316. As to release generally, see Pt. II. p. 1556.

18. *Estoppel.*

Ibid. p. 1584.

19. *Tender.*

Ibid. p. 1587.

20. *Pleadings.*

2317. In salvage actions the plaintiffs in their statement of claim should state fully the material facts of the service, and if such facts are admitted by the defendants, the court will not allow the plaintiffs at the hearing to amplify them by evidence except on special grounds. *The Hardwick*, 5 Asp. 199.

See also Pt. II. c. 34, p. 1614.

21. *Proofs.*

2318. But they are entitled to discovery and inspection of documents, though at their own risk and cost if ultimately proved unnecessary. *The Maria*, 4 Asp. 94.

See also No. 2320, *infra*.

See also tit. EVIDENCE, p. 458.

* (705) The owners, before they are entitled to a release of their property arrested in a salvage action, must file an affidavit of the values thereof. If these values are accepted, the release may issue. See as to the practice thereon, Pt. II. c. 20, p. 1559.

† (706) Or the values may be agreed on in a solicitor's agreement. See as to such agreements, Pt. II. c. 24, p. 1572.

‡ (707) If the plaintiff is dissatisfied with

the values as set forth in the owner's affidavit of values, he may take out a commission for the appraisalment of the property; but he does so at the risk of costs, if the appraisalment is not largely in excess of the values stated in the affidavit. See tit. COSTS, p. 411.

§ (708) A commission of appraisalment may be taken out as of course, even after a valuation by the receiver of wreck.

(a) *Losses and Damages to Salvaging Property.*

2319. In a salvage action evidence of the specific injuries sustained by the salvaging ship and the cost of repairs thereof and of demurrage during repairs, was tendered in the Court of Admiralty, and rejected. *Held*, on appeal (by L.JJ. Baggallay and Lindley), that the judge is bound to receive such evidence, and to include the loss shown in his award, except in cases where such evidence is immaterial by reason of the property saved being too small in value to satisfy such loss, or by reason of the services being so trifling as to render it unjust that the loss sustained by the salvors should be borne by the owners of the salvaged property, or where from other circumstances it is obvious that the court cannot give an amount sufficient to cover the loss. But (per Brett, M. R.) that the admission of such evidence is entirely in the discretion of the judge, subject to his award being reviewed by the Court of Appeal in the event of its being shown that the rejection of the evidence improperly affected the amount of the award. *City of Chester*, 9 P. D. C. A. 182; 5 Asp. 311; 53 L. J. Adm. 90. See also *The De Bay*, 8 App. Cas. 559; *The Gladiator*, No. 1594, 29 April, 1864; and tit. REGISTRAR AND MERCHANTS, Pt. I. c. 14.

(b) *Protests.*

2320. See tit. EVIDENCE, pp. 438, 461, and same tit. in Addenda.

(c) *After Admission of Statement of Claim.*

2321. See Nos. 2317, 2318, *supra*.

22. *Trial.*(a) *Generally.*

2322. In a cause of salvage the owners appeared, but did not plead. *Held*, that they could not be heard by counsel at the hearing in depreciation of the services. *The Emerald* (2300), 13th Dec. 1864; and see Ord. XXVII. r. 11, No. 304.

2322a. As to trial generally, see Pt. II. c. 38, p. 1459.

(b) *Right to begin.*

See Pt. II. c. 38, p. 1641.

(c) *Consolidated Actions.*

2323. Where the interests of the plaintiffs in a consolidated salvage suit are adverse separate counsel will be heard on their behalf at the hearing. *The Scout*, L. R. 3 A. & E. 512; 41 L. J. Adm. 42; 1 Asp. N.S. 258.

(d) *Rival Salvors.*

2324. Rival salvors allowed to cross-examine each other's witnesses on the questions upon which the salvors were at issue, but upon those only. *The Morocco*, 1 Asp. N.S. 46.

23. *Writs of Execution.*

2325. A cause of salvage was brought by the owners, master, and crew of a vessel, and the salvors were condemned in costs. On application for an order against all the salvors the court granted it against the owners only. *The Wilhelmine*, 2 Notes of Cases, 218.

24. *Payment out of Court.*

See Pt. I. c. 10, p. 1486.

25. *Apportionment of Salvage.**

2326. The court will not, as a matter of course, apportion the salvage awarded, but will leave it to the salvors to divide it amongst themselves amicably. It will, however, if applied to, proceed to a distribution. *The John Bryant*, 5 Jur. 233. [IRISH.]

2326a. See further as to apportionment of salvage, tit. SALVAGE, c. 17, and tit. APPORTIONMENT OF SALVAGE AWARDS.

2327. As to the practice in actions of distribution of salvage, see c. 16, *infra*.

26. *On Appeal.*(a) *From Admiralty Division to Court of Appeal.*

2328. As to the practice in appeals in salvage actions from the Admiralty Division to the Court of Appeal, see tit. APPEALS, pp. 51—55.

* (709) In salvage actions the salvage award will, on the application of any of the salvors, be apportioned by the court among them, but the application should be made at or shortly after the hearing of the cause, or

any of the salvors may subsequently bring an action for the apportionment of the salvage awarded. See as to such actions, c. 16, *infra*.

(b) *From Vice-Admiralty Courts to Privy Council.*

2329. As to the practice on such appeals, see tit. APPEALS, p. 51.

(c) *From Admiralty County Courts, Magistrates, and others, to the Probate, Divorce and Admiralty Division.*

2330. As to the practice on such appeals in salvage actions from the Admiralty County Courts, the Liverpool Court of Passage, Commissioners of Cinque Ports, and Magistrates, to the Probate, Divorce and Admiralty Division, see tit. APPEALS, pp. 56—59.

27. Costs.

2331. See tit. COSTS, p. 406.

2331a. And as to costs when cargo owners were made parties after decree against ship and freight, see *The Peace*, No. 2302, p. 1691.

16. Actions of Distribution of Salvage.

1. Generally.

2332. As to the apportionment and distribution of salvage generally, see tit. SALVAGE.

2333. As to particular cases of apportionment, see tit. APPORTIONMENT OF SALVAGE AWARDS.

2334. The 498th section of the M. S. Act, 1854 (c. 104), imposes a duty on the Court of Admiralty on application made to decree an equitable apportionment of salvage, unless barred by an equitable agreement between the parties or an equitable tender. *The Enchantress*, 1 Lushington, 95; 2 L. T. N.S. 575; 30 L. J. Adm. 16.

2335. When an owner thinks that a proper share of the salvage award has not been paid to him, his proper course is to bring the share so paid to him into court, to pray for a monition to the master to do the same, and to apply for an order of distribution, under section 498 of the M. S. Act, 1854 (c. 104). *The Princess Helena*, 1 Lushington, 190; 30 L. J. Adm.

137; 4 L. T. N.S. 869. But see now Pt. II. p. 1517.

2336. Applications for apportionment should be made at the time of or shortly after the award, while the circumstances are fresh in the mind of the court. *The Spirit of the Age*, Swabey, 287.

2337. In an action by crew for distribution of salvage, the defendant's owners pleaded that after the gross amount of salvage had been determined the plaintiffs agreed to accept a particular sum. *Held*, that the defence was not demurrable under the 182nd section of the M. S. Act, 1854 (c. 104), but that the court must determine at the hearing whether the agreement was an equitable one. At the hearing the court refused to disturb the agreement. *The Africa*, 5 P. D. 192; 49 L. J. P. D. 63; 4 Asp. 266.

2. Costs.*

2338. A steamer towed into port another steamer disabled by the breaking of her crank-shaft. Both steamers belonged to the same owners. The service consisted in towing a distance of about thirty miles without danger or risk. The salvaged steamer and cargo were of the value of £105,500. Fifteen of the crew of the salvaging steamer brought an action for salvage in the sum of £5,000, and arrested the ship, cargo, and freight. The court expressed its disapprobation at the institution of the action in the High Court and at the arrest of the property. It awarded the salvors £1 each and condemned them in costs. *The Agamemnon*, 5 Asp. 92.

17. Claims of Officers and Crews of Queen's Ships for Distribution of Salvage.

2339. Whenever any salvage or other award to officers and crews of her Majesty's ships shall have been paid into the account of her Majesty's paymaster-general at the Bank of England, or a government accountant as therein mentioned, the Court of Admiralty of Eng-

* (710) Salvage is usually apportioned by the court on the hearing and judgment of the action for salvage, or on application to it for the purpose a few days afterwards. When a separate action is brought for apportionment

or distribution of salvage, the question of costs will depend on the merits, e.g., whether the owners offered a proper distribution in the first instance.

land, or the court which may have awarded the salvage or monies, may direct the payment thereof of all costs, charges and expenses chargeable against it or incurred by the captor, his attorney or agent after such costs, charges and expenses have been allowed by the registrar of such court or his deputy. See the Naval Pay and Prize Act, 1854 (c. 19), s. 6.

2340. As to such costs, charges and expenses being taxed and allowed by the registrar of the Court of Admiralty before they are deducted therefrom, see the Naval Agency and Distribution Act, 1864 (c. 24), s. 13.

2341. The Lords of the Admiralty, or any party claiming any interest in the proceeds of any such salvage or monies may, prior to the distribution thereof, resort to the Court of Admiralty to obtain the judgment of the court in that behalf, and the judge shall proceed to hear and determine the same, and any question of joint capture arising thereon; and such court shall have jurisdiction throughout her Majesty's dominions, and may enforce any decree or sentence of any Vice-Admiralty Court; and all Vice-Admiralty Courts in her Majesty's dominions are empowered and required to enforce within their respective jurisdictions all orders of the Court of Admiralty relating thereto. See the Naval Pay and Prize Act, 1854 (c. 19), s. 7.

2342. The judge of the Court of Admiralty may, on the application of the Lords of the Admiralty, or any person interested in any such salvage or monies, and on an affidavit that the proceeds of any such salvage or monies, distributable under the provisions of this act, or any papers or books relating thereto, are in the possession of any person, compel by process of the court, and by monition and attachment, the production thereof, and the paying and transferring of such proceeds into the naval prize account, and the answering to such interrogatories touching the same as the court may approve, and may make such order in the premises concerning the same, and the costs of such proceedings, as to it shall seem meet. *Ibid.* s. 8.

2343. For provisions for apportionment of the agent's percentage when the agent is charged, or more than one ship is concerned, to be settled, in cases of difference by the registrar of the Court of Admiralty, subject to an appeal to the

judge, see the Naval Agency and Distribution Act, 1864 (c. 24), s. 20.

2344. Where any question arises concerning the distribution of any money so distributable, or concerning any investment thereof, actual or intended, the Court of Admiralty shall have exclusive jurisdiction to determine the same; and any person claiming an interest in such money, or the Lords of the Admiralty, may apply to that court for a judgment on that question, and such decision shall be final. *Ibid.* s. 22.

2345. For provisions subjecting ships' agents to the authority of the High Court of Admiralty, *Ibid.* s. 11; and rendering solicitors incompetent to be ships' agents, *Ibid.* ss. 7, 23.

2346. For provisions for the registration in the High Court of Admiralty of the appointment of every agent, see the Navy Prize Agents Act, 1863 (c. 116), s. 11; and for his removal, *Ibid.* ss. 8, 9.

18. In Wages Actions.

1. Generally.

2347. Mariners are the favourites of the law, and placed particularly under its protection; *The Minerva*, 1 Hagg. 358; *The Elizabeth*, 2 Dodson, 407; *The Juliana*, *ibid.* 504; *The Jane*, Stuart's Vice-Adm. Rep. 258 [LOWER CANADA]; *The Jupiter*, 2 Hagg. 221; *The Hoghton*, 3 Hagg. 112: especially foreign mariners, *The Madonna d'Idra*, 1 Dodson, 39.

2348. Questions of wages should be speedily settled. *The Prince George*, 3 Hagg. 377.

2349. In an action for wages by a British subject against a foreign ship, the nationality of the vessel and not the nationality of the person suing for wages regulates the course of procedure. *The Nina*, L. R. 2 A. & E. 44; 2 P. C. 38.

2350. As to wages generally, see tit. WAGES. As to the jurisdiction of the Admiralty Division and Admiralty Court in reference thereto, and the statutory limitation to cases over £50 and special contracts, *Ibid.* c. 2. As to the orders of naval courts as to wages and the conclusiveness thereof, see tit. JURISDICTION, Pt. II. c. 2, p. 690, and *ibid.* same part and chapter in Addenda. As to awards by superintendents of mercantile marine offices, the proceedings thereon, and the conclusiveness thereof, see tit. WAGES, c. 2.

2351. As to desertion by seamen, see tit. SEAMEN, Pt. V.

2352. For provisions for the protection of seamen, see tit. SEAMEN, Pt. IV.

2353. For the maintenance of discipline over seamen, *Ibid.* Pt. V.

2. By Foreigners.

(a) Generally.

2354. The Crown, on being memorialized by certain Greek mariners of a foreign ship sold under the authority of the Court of Admiralty, directed the king's proctor to take proceedings to recover their wages; and provided them with the means of subsistence and to return to their own country. *The Madonna d'Idra*, 1 Dodson, 37.

2355. Where the plaintiffs are foreign sailors, and charges are made for the expenses of their return home, a certificate of their consul thereon, and that they are returning at their own expense, must be produced. *The Raffaeluccia*, 3 Asp. N.S. 505; 37 L. T. N.S. 365.

2355a. See also as to wages of foreign masters and seamen generally, tit. WAGES, c. 2.

(b) Notice to Consul.

See tit. WAGES, c. 2.

3. By Masters.

(a) Generally.

2356. A master of a vessel is not debarred from suing for his wages by the fact that he is a joint mortgagee of the ship. *The Repulse*, 2 W. Rob. 399.

2357. The master of a vessel has the same right to sue for and recover wages due to him as an ordinary seaman, but no more, and therefore he is not entitled to recover in an action for wages until he has been discharged, or the service has been otherwise terminated. *The Hemisphere Borealis*, 5 Jur. N.S. 180. [IRISH.]

2358. In a suit for his wages a master has, under the M. S. Act, 1854 (c. 104), the same rights and privileges as ordinary seamen, and is in such a suit *prima facie* a necessary witness, and entitled to com-

pensation for board and loss of time. *The Olive*, Swabey, 292.

2359. Neither error nor want of seamanship, nor improper refusal to sign a bottomry bond, can, in an action at law or in the Court of Admiralty by the master for his wages, be admitted as evidence in reduction of his claim if he continued in command of his ship. *The Camilla*, Swabey, 315.

2360. If in proceedings in the Court of Admiralty in any claim by the master of any ship for wages, and for disbursements made by him on account of the ship, the plaintiff does not recover fifty pounds, he is not entitled to any costs, charges, or expenses incurred by him therein, unless the judge certifies that the cause was a fit one to be tried in that court. See the Admiralty Court Act, 1861 (c. 10), s. 10.

2361. As to actions for master's wages, see tit. WAGES, cc. 2, 3.

(b) Accounts.*

2362. As to the jurisdiction of the Court of Admiralty over master's accounts and cases thereon, see M. S. Act, 1854 (c. 104), s. 191, the Admiralty Court Act, 1861 (c. 10), s. 10, and tit. MASTERS, pp. 1123—1128.

2362a. The master is bound to furnish accounts before bringing his action for wages and accounts, or he will be deprived of costs. *The Fleur de Lys*, L. R. 1 A. & E. 39.

2363. See also as to costs, No. 2360, *supra*; and tit. COSTS, p. 414.

2363a. As to references of such accounts to the registrar and merchants, see Pt. II. c. 40, p. 1652.

2364. As to the allowance of such accounts, see tit. REGISTRAR AND MERCHANTS, Pt. I. c. 10.

4. Agreements.

(a) Generally.

2365. As to shipping agreements, see tit. SEAMEN, Pt. II.

* (711) In a cause of wages when the defendant does not deny wages to be due, but claims a set-off, the usual practice is for the defendant's solicitor, upon appearing, to give notice to the plaintiff's solicitor to the effect that he admits wages to have been earned, but will set up a counterclaim, and require the accounts to be referred to the registrar and merchants. Thereupon an agreement is usually entered into between the solicitors on both sides, that the matters of account rela-

tive to the plaintiff's claim and the defendant's counterclaim be referred to the registrar and merchants, and the reference proceeds according to the practice in other cases of reference.

(711a) If the plaintiff's solicitor will not enter into such an agreement, the defendant's solicitor must apply to the judge to order a reference of the claim and counterclaim to the registrar and merchants.

(b) *Powers of Court to annul*—.

See tit. SEAMEN, Pt. II.

5. *Gradation of Wages on Promotion.*

2366. A claim for a gradation of wages, first as mariner, afterwards as second mate, and then as chief mate, preferred by a person originally taken on board as supernumerary, and without any fixed rate of wages, pronounced for, with costs. *The Porcupine*, 1 Hag. 381.

See also tit. WAGES, c. 13.

6. *Recovery of Wages of Seamen entering the Navy.*

2367. For provisions in cases of a seaman leaving his vessel to enter the Royal Navy and being paid his wages by bill not duly paid when presented, that the accountant-general or the seaman may sue thereon and recover the amount thereon in the same manner as wages, see the M. S. Act, 1854 (c. 104), s. 215.

7. *Recovery of Expenses of Seamen left Abroad.*

2368. For provisions, in case of any master of any British vessel leaving abroad any seamen unable to proceed, for the delivery by the master to the functionaries therein mentioned of a certificate thereon, and an account of wages, and the payment of the same by money or bill, and for the endorsement of such account on the ship's articles or agreement, *Ibid.* s. 209, and tit. SEAMEN, Pt. IV.

2369. For further provisions for the payment of such wages in money where practicable, and not by bill, and in cases of bill rendering the owner liable for payment thereof, that it shall not be necessary in proceeding against the owner thereon to prove that the master had authority to draw the bill, and that any bill so drawn and its endorsement, if produced out of the proper custody, shall be received in evidence, see the M. S. Act Amendment Act, 1862 (c. 63), s. 19.

8. *Recovery of Wages and Expenses of Distressed Seamen left Abroad.*

2370. For provisions in cases of any seaman or apprentice belonging to any British ship, or of any British subject serving in any foreign vessel, being left abroad, becoming distressed, and being relieved, that the Board of Trade may sue for and recover his wages and expenses

from the master, owner, or hirer, in the same manner as wages due to seamen, and as to the evidence in such cases, see the M. S. Act, 1854 (c. 104), s. 213, and the M. S. Act Amendment Act, 1862 (c. 63), s. 22. As to the extension of such provisions to foreign governments and vessels, see the M. S. Act Amendment Act, 1855 (c. 91), s. 16.

2371. For provisions on discharge of any seaman abroad through sale of the ship or otherwise, that a certificate of discharge is to be given to the seaman, and funds are to be provided sufficient to defray the expenses of his subsistence and passage home; and if the master refuses or neglects to comply with these requirements, that such expenses, if defrayed by the consular officer at that place, or any other person (unless such seaman or apprentice has been guilty of barratry), shall be a charge upon the ship and the owners, and may be recovered against them with costs, at the suit of the consular officer or other person defraying such expenses, or, in case the same has been allowed to the consular officer out of the public monies, as a debt due to her Majesty either by ordinary process of law, or in the manner in which seamen are enabled to recover wages; and that such expenses, if defrayed by the seaman or apprentice, shall be recoverable as wages due to him, *Ibid.* s. 205.

See also tit. SEAMEN, Pt. IV.

9. *Recovery of Expenses of Seaman's Illness or Injury.*

2372. For provisions in case the expenses to be borne by the owner in respect of the illness, injury, or hurt of any seaman or apprentice, are paid by any consular officer or other person on behalf of her Majesty, that such expenses and costs shall be a charge upon the ship, and be recoverable against the master or owner in the same manner as wages due, and as to the evidence thereon, see the M. S. Act, 1854 (c. 104), s. 229.

See also tit. WAGES, c. 12.

10. *Recovery of Wages of Deceased Seaman.*

2373. As to the recovery of wages of deceased seaman, see tit. WAGES, c. 19.

11. *Compensation for Ill-usage.*

2374. For provisions that if any seaman on his return to the United Kingdom proves that the master or owner has been

guilty of any conduct or default which, but for this enactment, would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover in addition to his wages such compensation, not exceeding twenty pounds, as the court hearing the case thinks reasonable, see the M. S. Act, 1854 (c. 104), s. 190.

See also tit. SEAMEN, Pt. IV.

12. Compensation for improper Discharge.

2375. For provisions that any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, shall be entitled to receive from the master or owner, in addition to his wages earned, compensation for the damage thereby caused to him, not exceeding one month's wages, and to recover such compensation as wages, see M. S. Act, 1854 (c. 104), s. 167.

See also tit. WAGES, c. 14.

13. Compensation for bad or short Provisions.

2376. For provisions that in case the seamen's stipulated allowance of provisions is reduced during the voyage, or is of bad quality, compensation is to be given for the same, and to be recoverable as wages, see *ibid.* s. 223.

2377. And as to the vessels and crews to which such enactments apply, *ibid.* s. 109.

See also tit. SEAMEN, Pt. IV.

14. Waiver of Rights to Wages.

2378. For provisions that no seaman shall by any agreement forfeit his lien on the ship, or be deprived of his remedies for recovery of his wages; and that every stipulation in any agreement inconsistent with any provision of this act, and every stipulation by which any seaman consents to abandon his right to wages on the loss of the ship shall be inoperative, see M. S. Act, 1854 (c. 104), s. 182.

2379. For provisions that no wages of any seaman or apprentice shall be subject to attachment or arrestment from any court, and that every payment of wages shall be valid, notwithstanding any previous sale or assignment thereof, or of any attachment, incumbrance, or arrestment thereon; and that no assignment or sale

of such wages made prior to their accruing shall bind the party making it; and that no power of attorney or authority for the receipt of any such wages shall be irrevocable, *Ibid.* s. 233.

2380. For provisions that, on the completion before a superintendent of a mercantile marine office, of any discharge and settlement, the master or owner and each seaman shall, in the presence of the superintendent, sign in a form sanctioned by the Board of Trade a mutual release of all claims, and that the superintendent shall attest it; and that such release shall operate as a settlement of all demands between the parties; and that a copy of such release, certified by the superintendent, shall be receivable in evidence on any question touching such claims, and have the effect of the original, *Ibid.* s. 175.

See also tit. WAGES, c. 15.

15. Deductions or Forfeitures.

2381. For provisions that whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has, in the course of the voyage, been convicted of any offense by any competent tribunal, and rightfully punished therefor by imprisonment or otherwise, the court hearing the case may direct a part of the wages due to such seaman, not exceeding £3, to be applied in reimbursing any costs properly incurred by the master in procuring such conviction and punishment, *Ibid.* s. 251.

2382. As to deductions from and forfeitures of wages, as to acts of misconduct entailing such penalties, and as to wages earned on illegal voyages, see tit. WAGES, cc. 16, 17.

2383. As to the entry of offences in log, see tit. EVIDENCE, pp. 434—437.

16. Who may sue.

2384. Infancy is no answer to a claim for wages accruing due after majority has been attained, although on a contract of hiring originally made under age. *Thomas v. Waldo*, 1 F. & F. 173.

2385. As to the parties who may sue in the Court of Admiralty as mariners for wages, see tit. WAGES, c. 3.

17. Who may defend.

2386. The result of a suit for wages mainly affected the owners of the cargo bottomried, as the more numerous the claims on the ship the less would be avail-

able from that source towards the satisfaction of the bond, and therefore the more would be payable towards the bond by the owners of cargo. The court allowed them to have a *persona standi*, as through the bondholder, to oppose the seamen's claims. *The Union*, 1 Lushington, 128; 30 L. J. Adm. 17; 3 L. T. N.S. 280.

2386a. See also as to parties and property liable, ss. 18 and 19, *infra*.

18. Parties liable.

(a) Owners.

2387. Part owners may be sued in the Admiralty by the mariners of their vessels for their wages. *Alleson v. March* (1689), 2 Vent. 181; *Rawlinson v. Pagan*, anno 1693, Marsden, p. 269; *Wheeler v. Thompson* (1738), 1 Stra. 707; *Ragg v. King* (1729), 2 Stra. 858; *The Jack Park*, 4 C. Rob. 311; *The Stephen Wright*, 12 Jur. 732; *The St. Johan*, 1 Hagg. 334.

See also tit. WAGES, c. 6.

(b) Masters.

2388. The master may be sued in the Admiralty by his mariners for their wages. *Bayly v. Grant*, 1 Salk. 33; 12 Mod. 444; 1 Ld. Raym. 632; Holt, 48; *Anon.* 2 Show. 86; *Hook v. Moreton*, 1 Ld. Raym. 397; *The Jack Park*, 4 C. Rob. 311; *The Salacia*, 7 L. T. N.S. 440; *Ball v. Bright*, anno 1713, Marsden, 303.

2389. And has his remedy against the owners. *Buck v. Rawlinson*, 1 Bro. P. C. 137.

See also tit. WAGES, c. 6.

(c) Other Parties.*

2390. *Quære*, whether, the ship having been sold, the proceeds being insufficient to pay the mortgagees thereon, and the owner being a bankrupt, a principal mortgagee has a sufficient interest to oppose a mariner's claim for wages? *The Prince George*, 3 Hagg. 377, 380.†

2391. Mortgagees in possession of a ship are in no better position than the owners with regard to the claims of the

master. *The Caledonia*, Swabey, 17; 20 Jur. 48; 26 L. T. 177; 4 W. R. 183. See also *The Union*, No. 2386, *supra*; and as to mortgagee's right to defend such actions, Pt. II. p. 1503.

19. Property liable.

(a) Generally.

2392. An insured ship was lost, and the insurance recovered by the assignees of the owner, who had become bankrupt. *Held*, that the seamen were entitled to be paid in full out of the insurance money. *In re Dawson*, 1 Foub. N. R. 229; 17 L. T. 100.

(b) Ship.

2393. The Court of Admiralty has no authority to restrain seamen from proceeding against the ship for their wages, and to drive them to a personal action against the owners, even though the court may be satisfied that the owners are solvent. *The Arab*, 5 Jur. N.S. 417.

2393a. See also tit. WAGES, c. 5.

2394. No right to wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to recover wages if the ship in which he served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores, shall bar his claim. See M. S. Act, 1854 (c. 104), s. 183.

2395. As to proceedings against British or foreign government vessels, see tit. JURISDICTION, Pt. I. pp. 668, 669. †

2396. A master had recovered judgment in an action at common law for his wages, which judgment remained unsatisfied in consequence of the defendant's bankruptcy. He had also proved his debt under the defendant's bankruptcy. *Held*, entitled to sue the ship in the Admiralty Court, notwithstanding the ship had been sold. *The Bengal*, Swabey, 468; see also

* (712) After an abandonment has been accepted by the underwriters, they become owners for the voyage, and are liable for the seamen's wages from the time they become owners. *Hammond v. The Essex Fire and Marine Ins. Co.*, 4 Mason, 196. [AMERICAN.]

† (713) This case occurred before the court

was authorized by statute to take cognizance of the claims of mortgagees.

† (713a) Mariners enlisting on board a ship of war or vessel belonging to a sovereign state cannot libel against the ship for wages due. *Moitez v. The South Carolina*, Bee, 422. [AMERICAN.]

The Tecumseh, 3 W. Rob. 111; 12 Jur. 985; 6 Notes of Cases, 533.

2397. See further, as to the mariner's lien on the ship for his wages, tit. WAGES, c. 15.

(c) *Freight*.

2398. Seamen may arrest the freight as well as the ship for their wages, and if the latter only is in the first instance arrested by them, and it appears that there are bottomry claims thereon, they may afterwards apply to have the freight arrested, and the court would be bound, *ex debito justitia*, to grant such a motion. *The Mary Ann*, 9 Jur. 94; *The Juliana*, 2 Dodson, 510, 516.

See also tit. WAGES, c. 15.

(d) *Cargo*.

2399. A mariner has no lien for wages on the cargo as cargo; his lien is upon the ship to the last plank, and upon the freight as appurtenant thereto; and so far as the cargo is subject to freight, he may attach it as security for the freight that may be due. *Quære*, whether on the loss of a ship, if any cargo were saved, it could be held to represent the freight? *The Lady Durham*, 3 Hagg. 200, 201.

2400. Against the cargo, *quæd* cargo, the seaman can have no claim for his wages, but *quære*, as to his claim against cargo, where freight has been earned, though not paid, and where the owner of the ship is the owner of the cargo, and the ship is lost, but the cargo saved. *The Riby Grove*, 2 Rob. 59.

See also tit. WAGES, c. 15.

20. *Commencement of Right of Action*.

2401. As to the termination of the contract or voyage, and the discharge of the seaman, see tit. SEAMEN, Pt. III.

2401a. As to what shall be deemed the commencement of the earning of wages and of the right of action for wages, see tit. WAGES, cc. 10, 11.

21. *Warrant*.

See Pt. II. c. 11, p. 1524.

22. *Consolidation*.

2402. All or any one of the mariners of a ship may sue in the Court of Admiralty for their wages, and they may proceed jointly, notwithstanding their

contracts are separate. *Hook v. Moreton* (1697), Ld. Raym. 398.

2402a. Wages actions may be consolidated. *The Adventure*, 3 Hagg. 153.

2403. And see as to consolidation of actions generally, Pt. II. c. 17, p. 1543.

23. *Bail*.

2404. As to bail and juratory caution, see Pt. II. c. 19, p. 1555.

24. *Proceedings by Default*.

2405. Where there are funds in court from the sale of a ship in an action in which the proceedings were by default, all preliminary proceedings may, in a subsequent action of wages, be waived, and the wages due paid out of the funds in court. *The Juliana*, 35 L. T. N.S. 410.

2406. As to proceedings by default generally, see Pt. II. c. 22, p. 1561.

25. *Abatement and Revival*.

See c. 2, p. 1581.

26. *Estoppel*.

Ibid. p. 1585.

27. *Tender*.

Ibid. p. 1588.

28. *Pleadings*.

Ibid. p. 1614.

29. *Proofs*.

2407. For provisions that any seaman may bring forward evidence to prove the contents of any agreement, or otherwise to support his case, without producing or giving notice to produce the agreement, or any copy thereof, see the M. S. Act, 1854 (c. 104), s. 165.

2408. An abandonment of a ship which is relied upon as operating as a dissolution of the seamen's contract must be clearly proved. *The Warrior*, 1 Lushington, 476.

2409. It is not necessary for a mariner to prove his own discharge; the *onus* of proof of that is thrown on the other party. *The Baltic Merchant*, Edwards, 89.

2410. See further, as to the discharge generally of seamen, and the termination of the voyage, tit. SEAMEN, Pt. III.; and as to the commencement of their right to sue, tit. WAGES, c. 11.

2411. In a cause of wages in which the evidence was deficient the court ordered the suppletory oath to be ad-

ministered to the plaintiff. *The Josepha*, Stuart's Vice-Adm. Rep. 212 [LOWER CANADA]; 2 Brown's Civil and Adm. Law (2nd ed.), 385.*

2412. See also as to proofs in wages actions, and as to seamen, tit. EVIDENCE, cc. 27, 28, pp. 461—463.

30. Writs of Execution.

2413. For provisions that in all cases where any court, justice of the peace, or other magistrate, has power to order payment of any seaman's wages, penalties, or sums of money, then, if the party directed to pay the same is the master or owner of the ship, and the same is not paid as prescribed, any such functionary who made the order may, in addition to powers of compelling payment, direct the amount to be levied by distress or pointing and sale of the ship, her tackle, furniture, and apparel, see the M. S. Act, 1854 (c. 104), s. 523.

2414. See Pt. II. c. 44, p. 1460.

31. Payments into and out of Court.

2415. See Pt. I. c. 9, p. 1479, and c. 10, p. 1486.

32. Payment.

(a) Generally.

See also tit. WAGES, c. 19.

(b) To Consul of Foreign Seamen.

2416. In an action for wages by foreign seamen, if their consul intervenes and asks that payment of the wages due to them be made to him on their behalf, the court usually grants the application. *The Timor*, 9 L. T. N.S. 397; 12 W. R. 219. But see No. 2417.

2416a. When foreign seamen sue for their wages in the Court of Admiralty, the consul of their country residing here may, if he has paid their wages and the seamen have left this country, receive the wages on behalf of the seamen without any power of attorney from them for that purpose. *The Charles*, No. 1847, 20th October, 1863. But see No. 2417.

2417. When a ship has been sold in a cause in which no appearance has been

entered and the proceeds remain in the registry, all preliminary proceedings in a cause of wages may be waived and the money due paid out of court. *The Julina*, 35 L. T. N.S. 410.

(c) Up to Judgment.

2418. A sailor whose claim for wages is pronounced for is entitled, under the M. S. Act, 1880 (c. 16), s. 4, to wages up to the date of the verdict. *Delarogue v. S.S. Oxenholme & Co.*, 22nd December, 1883.

33. Repayment.

2419. The master who has paid the seamen their wages cannot recover them by action against the owners for such wages in the Court of Admiralty. *Anon.* Fort. 230; *Woodward v. Bontham*, 1 Ld. Raym. 3; *The Duna*, 6 Irish Jur. N.S. 358.

2420. But he may include them in his accounts against the owners, and recover them in an action for his wages and disbursements. *The Duna*, *supra*.

2421. As to the transfer of such liens with the sanction of the court, see tit. LIENS, p. 811.

2421a. As to their generally not being transferable without such sanction, *Ibid*.

34. Double Pay.

2422. For provisions that every master or owner who neglects or refuses to pay the seaman's wages in manner therein mentioned without sufficient cause, shall pay to him a sum not exceeding the amount of two days' pay for each day, not exceeding ten days, during which payment is delayed, and that such sum shall be recoverable as wages, see the M. S. Act, 1854 (c. 104), s. 187.

2422a. See also tit. WAGES, c. 14.

2423. As to the master being similarly entitled, see *The Princess Helena*, 1 Lushington, 190; 30 L. T. Adm. N.S. 138.

2424. As to the cases in which the master or seaman is, and is not, entitled to the statutory ten days' double pay for default in payment of his wages, see tit. WAGES, c. 14.

* (714) According to the old practice in the civil law courts, if the plaintiff had not made out his case, but had made half proof or more, the court might order the suppletory oath (which is to the effect that the contents of his

pleadings are true) to be administered to him by way of further proof. See Dunlap's Adm. Prac. (2nd ed.), 247 *et seq.*, and the subject considered there. [AMERICAN.]

35. *Liens.*

See tit. WAGES, c. 15.

36. *Priority of Wages over other Liens.*

2425. As to the priority of master's wages and disbursements over other liens, see tit. LIENS, p. 831.

2426. And as to the priority of seamen's wages over other liens, *Ibid.* p. 832.

37. *Laches.*

2427. As to laches in actions of wages, see tit. LACHES, p. 805.

38. *Costs.*

See tit. COSTS, p. 412.

39. *Security for Costs.*

See tit. COSTS, p. 365, also Pt. II. p. 1555.

19. **Claims in respect of Volunteers into the Navy.**

2428. For provisions that any seaman may leave his ship to enter the Royal Navy, and that such leaving shall not be deemed a desertion, and that all stipulations as to forfeiture for so doing shall be void, and the parties inserting them being liable to penalties, see the M. S. Act, 1854 (c. 104), s. 214.

2428a. If, in consequence of any seaman leaving his ship without the consent of the master or owner to enter the Royal Navy, it becomes necessary for the safety and proper navigation of the ship to engage a substitute, and if the remuneration paid to such substitute or substitutes exceeds that of the seaman under his agreement, the master or owner of the ship may apply to the registrar of the Court of Admiralty in England for a certificate authorizing the repayment of such excess; and such application is to be in such form, and accompanied by such documents, and on oath or otherwise, as the judge of the court directs. *Ibid.* s. 217.

2429. The registrar, upon receiving any such application, is to give notice thereof in writing, and of the sum claimed, to the secretary to the Admiralty, and proceed to examine the application, and may call upon the registrar-general of seamen to produce any papers in his possession relating thereto, and may call for further evidence: and if the whole of the claim appears to him to be just, he is to give a certificate accordingly. *Ibid.* s. 218.

2429a. If the registrar considers that such claim, or any part thereof, is not just, he is to give notice of such his opinion in writing to the person making the application, or his attorney or agent; and if within sixteen days from the notice such person does not leave, or cause to be left, at the office of the registrar a written notice demanding that the application shall be referred to the judge, then the registrar is finally to decide thereon, and certify accordingly. *Ibid.*

2430. If, however, such notice is so left, then the application stands referred to the judge in chambers, and his decision thereon is final, and the registrar shall certify accordingly. *Ibid.*

2430a. The registrar and judge have in every proceeding under this act full power to administer oaths, and to exercise all the ordinary powers of the court. *Ibid.*

2431. The registrar or judge (as the case may be) may, if he thinks fit, allow for the costs of any proceeding under this act any sum not exceeding five pounds for each seaman so quitting his ship; and such sum shall be added to the sum allowed, and be certified by the registrar accordingly. *Ibid.*

2431a. Every certificate so given shall be sent by post or otherwise to the person making the application, his attorney or agent, and a copy thereof sent to the accountant-general of the navy, who, upon delivery to him of the original certificate, with a receipt in writing from the master or owner making the application, shall pay the amount to the applicant. *Ibid.* s. 219.

2432. Such certificate and receipt absolutely discharges the accountant-general and her Majesty from all liability in respect to the monies so paid, or of the application. *Ibid.*

2432a. So much of the third part of this act as relates to seamen volunteering into the Royal Navy applies to all sea-going British ships, wherever registered, and their owners, masters, and crews, wherever they may be. *Ibid.* s. 109.

2433. For provisions that every person who, in making or supporting any such application, fraudulently alters or forges, or assists or procures to be forged, or fraudulently altered, any document, or presents or makes use of any such forged or altered document, or gives, or procures to be given, any false evidence or representation, knowing the same to be false, shall be deemed guilty of a misdemeanor, *Ibid.* s. 220.

2433a. As to the fees payable on filing

such claims and on the registrar's certificate objecting thereto or ordering payment, see *S. C. Fees*, 1884, p. 19, Nos. 138—140.

See also No. 2367, p. 1697.

Part IV.—INFERIOR COURTS.

1. The Court of Admiralty of the Cinque Ports.

1. Generally.*

2434. As to the names of the Cinque Ports and the boundaries of the Lord Warden of the Cinque Ports jurisdiction, see tit. JURISDICTION, p. 676, n.

2435. All causes in the court shall be instituted as prescribed by the Rules and Orders for the High Court of Admiralty in England in force for the time being, and shall be carried on by petition and answer, and in all respects to termination conformably to those rules, as far as they can be or are applicable, to the jurisdiction of the Admiralty of the Cinque Ports, and are not hereby varied. See Rules for the Court of Admiralty of the Cinque Ports, made June, 1875, No. 1.

2436. The interpretation clause of those rules of the High Court of Admiralty is to be read by substituting the Court of Admiralty of the Cinque Ports for the High Court of Admiralty. *Ibid.* No. 9.

2437. The ancient practice of the court continues in force where the Admiralty Court Rules and Orders are inoperative or inapplicable. *Ibid.* No. 2.

2438. The judge or his surrogate in all cases of doubt from time to time determines the practice of the court, on application at chambers, through the registrar. *Ibid.* No. 5.

2439. Including the direction within what time any pleadings or proofs are to be brought in or filed. *Ibid.* No. 6.

2440. The registrar is the examiner of the court. *Ibid.* No. 7.

2. Jurisdiction.

(a) Generally.

2441. As to the jurisdiction of the Lord Warden of the Cinque Ports, and their boundaries, see tit. JURISDICTION, p. 676, n.

(b) Concurrent Jurisdiction of Admiralty Division.

2442. As to the concurrent jurisdiction within the Cinque Ports of the Admiralty Division and the Cinque Ports Court of Admiralty, see tit. JURISDICTION, p. 676.

3. Practitioners.

2443. All serjeants and barristers-at-law, and all solicitors, are entitled to practise in the court. See Rules for the Court of Admiralty of the Cinque Ports, made June, 1875, No. 10.

4. Pleadings, Proofs, and Printing.

2444. The pleadings and proofs are printed, unless the judge or his surrogate otherwise orders. *Ibid.* No. 3.

See also Nos. 2435, 2439, 2440, *supra*.

5. Fees.

2445. The registrar has the power to determine from time to time the fees and expenses to be paid or allowed to the serjeant of Admiralty. *Ibid.* No. 8.

2446. The fees are paid in money and not in stamps. *Ibid.* No. 4.

6. Appeal as to Salvage from Cinque Ports Commissioners.

2447. In all cases arising within the jurisdiction of the Cinque Ports, as defined by the act 1 & 2 Geo. 4, c. 76, s. 18, certain appeals may be made to the Court of Admiralty of the Cinque Ports in lieu of the Court of Admiralty; and the instruments of appeal are to be lodged in the registry of the Cinque Ports, and the same discretion vested in the judge of the Cinque Ports Court as is by this act vested in the judge of the Court of Admiralty. See the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 33.

2448. As to the practice in the Admiralty Division on such appeals, see tit. APPEALS, p. 57.

2449. As to costs of such appeals, see tit. COSTS, p. 397.

2450. As to commissioners of Cinque Ports, see next chapter.

2. Commissioners of Cinque Ports.

2451. The Lord Warden of the Cinque

* (715) *Seemle*, the Rules and Orders of November, 1859, of the Court of Admiralty, though annulled as to the Admiralty Division by R. S. C. 1883, App. O., are therefore still

in force. See, as to the same, *Pritchards' Adm. Digest*, 2nd ed. vol. 2, App. p. 233, and *Roscoe's Adm. Practice*, 2nd ed. App. III., p. 389.

Ports may nominate three or more substantial persons in each of the Cinque Ports, two ancient towns and their members, to determine any differences relative to salvage between the master of any vessel and the person or persons bringing her cables and anchors ashore from any roadstead or other place within their jurisdiction. The salvage is to be awarded within the space of twenty-four hours after such difference shall be referred to them for determination. Such commissioners shall, immediately after their nomination, proceed to elect a proper person, who shall be a notary or master extraordinary in Chancery, as their secretary or registrar, except as to the port of Dover, where the registrar of the Court of Admiralty of the Cinque Ports shall be the registrar; and the secretary, or registrar, shall enter in a book all the proceedings of the commissioners and a copy of the awards they shall make. See 1 & 2 Geo. 4, c. 76, s. 1.

2452. The deputy warden of the Cinque Ports, and lieutenant of Dover Castle for the time being, may also appoint such commissioners. See 9 Geo. 4, c. 37, s. 1.

2453. The commissioners may decide on all claims and demands whatever, by pilots, hovellers, boatmen, and other persons, for services of any description rendered to any vessel, within such jurisdiction, or for the saving within the jurisdiction of any goods or merchandise wrecked, stranded, or cast away from any vessel, the master or owners thereof, or their agents, being present at the place where the commissioners shall be sitting. The commissioners may examine the parties or their witnesses upon oath, which oaths may be administered by the secretary or registrar. See 1 & 2 Geo. 4, c. 76, s. 2.

2454. No person appointed a commissioner has power to act in any other port or place than that from which his residence is not distant more than a mile. *Ibid.* s. 3.

2455. For provisions as to the fees to be payable to such commissioners, and the oath to be taken by them before acting, *Ibid.*

2456. The Lord Warden of the Cinque Ports and the lieutenant of Dover Castle, the deputy wardens of the Cinque Ports and the judge of the Court of Admiralty of the Cinque Ports, two ancient towns, and their members, and any other officer specially appointed by the lord warden, and every of them, may perform within the jurisdiction all matters contained in this act, like any magistrate or commis-

sioner appointed under this act. *Ibid.* s. 15.

2457. *Quære*, whether the requisites of the stat. 1 & 2 Geo. 4, c. 76, providing that in proceedings for salvage before the commissioners of Cinque Ports a person should be present to represent the owners is a condition precedent, the non-compliance with which renders the judgment of the commissioners of no avail, or a condition subsequent, the absence of which would not render the award null and void. *The David Luckie* (1840), 9 Monthly Law Mag. (Notes of Cases), 211.

2458. As to appeals from Cinque Port Commissioners to the P., D. and A. Div., see tit. APPEALS, pp. 15, 57, and *Ibid.* in Addenda; and to the Court of Admiralty of the Cinque Ports, see No. 2447, *supra*.

2459. As to the costs of such appeals, see tit. CoSRS, p. 397.

3. Admiralty County Courts.

1. Generally.

2460. For provisions for the appointment of Admiralty County Courts and their districts, the jurisdiction thereof, and the procedure therein, see the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), ss. 2 and 5; the Amendment Act of 1869 (c. 51); and the County Courts Act, 1875 (c. 50).

2461. As to the powers of inferior courts having Admiralty jurisdiction to grant such relief or remedy, and give such effect to every ground of defence or counterclaim, equitable or legal (subject as therein mentioned), as fully as the High Court, see the Judicature Act, 1873 (c. 66), ss. 88—90, and tit. JURISDICTION, p. 675.

2462. Admiralty causes in a county court are heard and determined in like manner as ordinary civil causes there (except as regards the assistance of nautical assessors as therein mentioned). See the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 10.

2463. For provisions as to the appointment and removal of assessors, the remuneration of registrars, scale of costs, and power to registrars to administer oaths and take evidence, *Ibid.* ss. 14—19.

2464. The jurisdiction conferred by this act, and by the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), may be exercised by proceedings *in rem* or *in personam*. See the County Courts Admiralty Jurisdiction Amendment Act, 1869 (c. 51), s. 3.

2465. The judge shall hear and de-

termine Admiralty causes at the usual courts held within his jurisdiction, or at special courts to be held by him, and which he is required to hold as soon as may be, after having had notice of an Admiralty cause within the jurisdiction. See the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 13.

2465*a*. As to the powers by general orders for regulating the practice and procedure of the Admiralty jurisdiction of the county courts, the forms of processses and proceedings, the days and places of sittings for Admiralty causes, the duties of the judges and officers, and the fees to be taken, *Ibid.* ss. 35, 36.

2466. For the rules as to Admiralty actions in Admiralty County Courts, viz.: the sittings of the court, the institution of the action, summons, arrest, appearance, and release of property, transfer of action, second or cross-action, enforcement of orders, execution against vessel, transfer of sale, notice of defence in collision, tender, payment out of court, appraisal, records of court, copies, and assessors, see County Court Rules of 1886, pp. 154—162.

2467. As to forms of Admiralty proceedings in Admiralty County Courts, viz.: *Præcipe* on entering plaint, *præcipe* for permission for suit to be heard at a special place, summons, warrant, bail bond, order of release, *præcipe* to enter appearance, notice of hearing, order of transfer to High Court, order of transfer to county court, judgment, *præcipe* for and warrant of execution, order of transfer of sale to High Court, *præcipe* for paying in money, solicitor's acceptance of service and undertaking for bail, summons to assessors, order fining assessor for non-attendance, Admiralty actions book, *Ibid.* Nos. 317—337, pp. 362—371.

2. List of—

2468. For a list of the Admiralty County Courts, see Order in Council of Dec. 9, 1868; *ibid.* of Jan. 14, 1869; March 31, 1870; May 16, 1871; May 16, 1878; and June 29, 1882.

3. Assessors.

2469. In an Admiralty cause in a county court the cause shall be heard and determined like ordinary civil causes there; except that in any Admiralty cause of salvage, towage or collision, the judge may be assisted by two nautical assessors like the judge of the Court of Admiralty

is assisted by assessors. See the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 10.

2470. In such causes the judge may, if he thinks fit, and shall, on request of either party, summon as general orders direct two nautical assessors, and such nautical assessors shall attend and assist accordingly. *Ibid.* s. 11.

2471. The registrar of each county court having Admiralty jurisdiction shall from time to time frame a list, to be approved by the judge of the Court of Admiralty before whom the same shall be laid by the county court judge, and without whose approval it shall have no validity, of persons of nautical skill and experience residing or having places of business within the district of the county court, to act as assessors in that court, and shall cause the list to be published in the London Gazette. *Ibid.* s. 14.

2472. Every person named in the list so framed and approved shall attend the county court under such circumstances, and in such rotation, and subject to such regulations, and receive such fees for his attendance, as general orders direct, and for every wilful non-attendance shall be liable, at the discretion of the court, to a penalty not exceeding £5. *Ibid.* s. 15.

2473. In any Admiralty or maritime cause the judge may, if he think fit, or on the request of either party, be assisted by two mercantile assessors; and all the provisions of the County Courts Admiralty Jurisdiction Act, 1868, with reference to nautical assessors, shall apply to the appointment, approval, summoning, and remuneration of such mercantile assessors. The County Courts Admiralty Jurisdiction Amendment Act, 1869 (c. 51), s. 5.

2474. The judge of the county court is not bound by the opinion of his nautical assessors, but ought to give his judgment in accordance with his own opinion. *The Aid.*, 6 P. D. 84; 50 L. J. P. D. 40; 4 Asp. 410, 432.

2475. See also, as to the appointment and removal of assessors, the County Court Rules, 1886, Ord. XXI. pp. 106—108.

4. Jurisdiction.

(a) Generally.

2476. As to the jurisdiction of Admiralty County Courts generally, and in actions of collision, damage to ships,

damage to cargo, use or hire of ship, necessaries, salvage, and towage, and wages, see tit. JURISDICTION, pp. 677—680; and as to necessaries, repairs, and supplies, that tit. p. 1156.

2477. These courts have no jurisdiction in actions of bottomry. *The Elpis*, L. R. 4 A. & E. 1; 42 L. J. Adm. 43; 1 Asp. N.S. 472.

2478. As to prohibition to such courts, see tit. JURISDICTION, p. 680.

(b) *Concurrent Jurisdiction of Admiralty Division in Salvage Actions in certain Cases.*

2479. The effect of the 9th section of the County Courts Admiralty Jurisdiction Act, 1868, is to give the Court of Admiralty jurisdiction in cases of salvage, where the amount claimed exceeds £300, although the value of the property saved does not exceed £1,000. *The Empress*, L. R. 3 A. & E. 502; 41 L. J. Adm. 32; 1 Asp. N.S. 183.

5. *Commencement of Proceedings.*

(a) *In which Court.*

2480. Proceedings in an Admiralty cause shall be commenced—(1) In the county court having Admiralty jurisdiction within the district of which the vessel or property to which the cause relates is at the commencement of the proceedings. (2) If the foregoing rule be not applicable, then in the county court having Admiralty jurisdiction in the district of which the owner of the vessel or property to which the cause relates, or his agent in England, resides; or if such owner or agent does not reside within any such district, then in the county court having Admiralty jurisdiction the district whereof is nearest to the place where such owner or agent resides. (3) If for any reason the last foregoing rule is not applicable or cannot be acted on, then in such county court having Admiralty jurisdiction as general orders direct. (4) In any case in the county court or one of the county courts having Admiralty jurisdiction in which the parties by a memorandum, signed by them or by their attorneys or agents, agree shall have jurisdiction in the cause. The County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 21.

6. *Restrictions on Proceedings in Superior Courts.*

(a) *Generally.*

2481. For the restrictions by way of costs on actions in the superior court proper to be tried in an inferior court, see tit. COSTS, pp. 350—354, and Pt. II. c. 16, p. 1541.

(b) *Costs and Damages.*

See tit. COSTS, p. 371.

7. *Transfer to or from Admiralty Division.*

(a) *Generally.*

See Pt. II. c. 15, p. 1536.

(b) *Costs.*

2482. If a cause be removed from an inferior court, having jurisdiction in the cause, the costs in the court below shall be costs in the cause. Ord. LXV. r. 3, No. 978.

8. *Leave to proceed in Admiralty Division.*

See Pt. II. c. 16, p. 1541.

9. *Arrest.*

2483. In an Admiralty cause in a county court, if evidence be given to the satisfaction of the judge, or in his absence the registrar of the court, that it is probable that the vessel or property to which the cause relates will be removed out of the jurisdiction of the court before the plaintiff's claim is satisfied, it shall be lawful for the said judge, or in his absence for the registrar, to issue a warrant for the arrest and detention of the said vessel or property, unless or until bail to the amount of the claim made in such cause, and to the reasonable costs of the plaintiff in such cause, be entered into and perfected, according to general orders, by or on behalf of the owner of the vessel or property or his agent, or other the defendant in such cause; and, except as in this section expressly provided, there shall be no arrest or detention of a vessel or property in an Admiralty cause in a county court otherwise than in execution. See the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 22.

2483a. *Semble*, where a vessel is already under the arrest of the High Court of Admiralty, it is not necessary to arrest her in actions instituted in an Admiralty

County Court. *The Turliani*, 2 Asp. N.S. 603.

2484. A vessel under arrest of the Court of Admiralty having been arrested in an Admiralty County Court, the possession fees of the officer of that court were allowed on taxation. *The Rio Lima*, L. R. 4 A. & E. 157; 43 L. J. Adm. 4; 2 Asp. N.S. 143.

See also as to proper service of warrant, *The Palomares*, No. 641a, p. 1528.

10. Evidence.

(a) Generally.

2485. Evidence taken in any Admiralty cause before the registrar of a county court, as the judge of a county court or general orders shall direct, shall be received as evidence in any other county court, saving all just exceptions; and the registrar of any county court shall, for the purpose of the examination of any witnesses within the district of that court, have all and the like powers and authorities of an examiner of the High Court of Admiralty of England, and evidence taken by him in that capacity shall be received as evidence in the High Court of Admiralty of England, saving all just exceptions. The County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 20.

(b) In Shorthand.

2486. In every Admiralty cause, where there is any prospect of an appeal, notes of the evidence in the county court should be taken by some reporter duly appointed. *The Busy Bee*, L. R. 3 A. & E. 527.

11. Sale.

2487. For the execution of any decree or order of a county court in an Admiralty cause the court may order, and the registrar on such order may seal and issue, and any officer of the court may execute, process according to general orders; provided that where under such process a vessel or property would or might be sold, then, if the owner desires the sale to be conducted in the High Court of Admiralty instead of the county court, he shall be entitled, on security for costs being first given, and subject to other provisions in general orders, to obtain an order of the county court for transfer of the proceedings for sale, with or without (as the judge of the county court thinks fit) the transfer of the subsequent pro-

ceedings in the cause, to the High Court of Admiralty, which court shall have jurisdiction accordingly, see the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 23.

2488. A solicitor desiring that the sale of any vessel or property should be conducted in the High Court of Justice, may at any time after judgment give security to the amount of £10, and deliver to the registrar an application for an order for the transfer of the proceedings for sale to the said court. The County Court Rules, 1875, Ord. XXXIII. r. 30.

2489. The registrar shall transmit such application to the judge for his order thereon, if the court be not sitting, and shall in any case certify on the application that the security for costs has been given. *Ibid.* r. 31.

12. Decrees and Orders.

2490. Such decrees and orders of county courts in Admiralty causes as general orders direct shall be registered with the registrar of county court judgments in London as general orders direct. See the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 24.

13. Process.

2491. The decree of the court in an Admiralty cause shall be enforced against the person summoned as defendant like decrees of the court in ordinary civil causes, except as therein otherwise provided. *Ibid.* s. 12.

14. Costs.

2492. As to a scale of costs in proceedings in Admiralty County Courts being prescribed by general orders, *Ibid.* s. 18.

2493. As to the court fees in Admiralty actions, see the Treasury Order; as to court fees, of October, 1875, Sched. B. Pt. IV.

2493a. As to costs in Admiralty actions; see County Court Rules of 1876, Ord. XXXVI.

15. Appeals.

(a) Generally.

See tit. APPEALS, pp. 13, 56, and *ibid.* in Addenda; as to practice in such appeals, *Ibid.* p. 56, and *ibid.* in Addenda.

(b) Evidence.

Ibid. c. 14, p. 56, and *ibid.* in Addenda.

(c) *Salv.*

See tit. APPEALS, p. 56.

(d) *Security for Costs.*

See tit. COSTS, p. 369.

(e) *Costs.**Ibid.* p. 397.

4. Sheriff's Court of City of London.*

2494. The City of London Court has the same jurisdiction as an Admiralty County Court. See the County Courts Admiralty Jurisdiction Acts, 1868 (c. 71), s. 2; Order in Council of 14 January, 1869; *Allen v. Garbutt*, 6 Q. B. D. 165; 50 L. J. C. L. 141; and Roscoe's Adm. Practice, 2nd ed. p. 113.

2495. As to appeals from the City of London Court to the Probate, Divorce and Admiralty Division, and the practice on such appeals, see tit. APPEALS, pp. 13, 56

5. The Liverpool Court of Passage.

2496. As to the Liverpool Court of Passage having the same jurisdiction as the Liverpool Admiralty County Court, see tit. JURISDICTION, p. 681.

2497. As to its practice, procedure and forms being the same as those of the High Court, *Ibid.*

2498. As to appeals from the Liverpool Court of Passage to the P. D. & A. Div., see Ord. LIX. r. 4, No. 887, and tit. APPEALS, pp. 15, 57, and *Ibid.* in Addenda.

2499. As to the necessity for security for costs being given before lodging the instrument of appeal, in order to the appeal being entertained, see *The Ganges*, 5 P. D. 247; *The Forest Queen*, L. R. 3 A. & E. 299.

2499a. As to the jurisdiction of county courts generally and in claims for salvage, see tit. JURISDICTION, p. 682.

2499b. As to restrictions on actions in superior courts, see Pt. II. p. 1541; as to the transfer of actions to and from superior

and inferior courts, *Ibid.* p. 1536; and as to leave to proceed in the superior court, *Ibid.* p. 1541.

2499c. As to costs in this court, see Rules of 8th February, 1869.

6. County Courts.

1. Generally.†

2500. For provisions relating to the general procedure and practice in county courts, see the County Courts Act, 1846 (c. 95); 19 & 20 Vict. c. 108; 29 & 30 Vict. c. 44; 30 & 31 Vict. c. 142; and the County Courts Act, 1875 (c. 50); and for further powers to make rules of practice for county courts (extending sect. 91 of Judicature Act, 1873, see the Supreme Court of Judicature Act, 1881 (c. 68), s. 27.

2500a. For the rules and orders made under such powers, see the County Court Rules, 1886, with forms and scales of costs and fees.

2. Jurisdiction.

See tit. JURISDICTION, Pt. I. p. 682.

3. Assessors.

2501. In any action or proceeding the judge may, if he thinks fit, on the application of either party, summon to his assistance, in manner prescribed by rules of court, one or more persons of skill and experience in the matter, who may be willing to act as assessors, and their remuneration shall be prescribed by rules of court, and shall be costs in the cause unless otherwise ordered; but where any person is proposed to be summoned as assessor, objection to him, either personally or in respect of his qualification, may be taken by either party in manner prescribed by rules of court. See the County Courts Act, 1875 (c. 50), s. 5; and as to their appointment and removal, see County Court Rules, 1886, Ord. XXI. p. 106.

4. Costs in Proceedings remitted from Superior Court.

See tit. COSTS, p. 353.

* (717) As to the boundaries of the court's Admiralty jurisdiction, see Order in Council of 14 January, 1869.

(718) The practice of the court in the Admiralty branch of its jurisdiction is the same as in other Admiralty County Courts.

† (719) As to county courts, their jurisdiction generally and concurrently with the Queen's Bench Division over cases of tort and contract embracing cases of collision, necessities, repairs, supplies, and salvage, see tit. JURISDICTION, p. 682.

7. Magistrates.

1. Generally.

2502. When any district within which any court or magistrate has jurisdiction, is situate on the coast of any sea, or abutting on or projecting into any bay, channol, lake, river, or other navigable water, every such court or functionary has jurisdiction over any ship or boat being on, lying or passing off such coast, or in or near such bay, channel, lake, river, or navigable water, and over all persons on board belonging thereto, as if such ship, boat, or persons were within the limits of the original jurisdiction of such court or functionary. See the M. S. Act, 1854 (c. 104), s. 521.

2. Collision.

2503. As to the powers and jurisdiction of magistrates in respect of damage not exceeding £50, by any vessel or float of timber, to any harbour, dock, pier, quay, or works connected therewith, and in dockyard ports, and also in the Mersey, see tit. COLLISION, p. 199.

3. Salvage.

(a) Generally.*

2504. As to the powers and jurisdiction of magistrates in reference to salvage disputes where the amount claimed does not exceed £200, and where the value of the property salvaged does not exceed £1,000, see tit. JURISDICTION, p. 682, and *Ibid.* in Addenda.

2505. One of her Majesty's principal secretaries of state, or in Ireland the lord lieutenant or other chief governor, may appoint a rota of justices for any borough or county to have jurisdiction in salvage cases. When no such rota is appointed the salvors by writing addressed to the justice's clerk may name one justice, and the owner of the property saved may name the other. If either party fails to name a justice in a reasonable time, the case may be tried by two or more justices at petty sessions. See M. S. Act Amendment Act, 1862 (c. 63), s. 49.

2505a. Any stipendiary magistrate and any county court judge in England, the

sheriff or sheriff substitute of any county in Scotland, and in Ireland the recorder of any borough or chairman of quarter sessions, may exercise the same jurisdiction as is given to two justices. *Ibid.*

2506. One of her Majesty's secretaries of state may determine a scale of costs to be awarded in salvage cases by such justices or court. All the other provisions of the principal act as to summary proceedings in salvage cases and the prevention of unnecessary appeals thereon extend to all such proceedings, whether under the principal act, this act, or both acts. *Ibid.*, and M. S. Act, 1854 (c. 104), s. 519.

2507. Every dispute with respect to salvage may be heard on the application of either the salvor or the owner of the property salvaged, or their respective agents. See M. S. Act, 1854 (c. 104), s. 460.

2508. When any dispute as to salvage is referred to the arbitration of two justices, they may determine the same, with the assistance of a person conversant with maritime affairs as assessor, or appoint some such person to decide as umpire; and such justices or their umpire shall make an award as to the salvage payable, within the following times, viz.:—the justices within forty-eight hours after such dispute has been referred to them, and the umpire within forty-eight hours after his appointment, but with power to both justices or umpire by writing under their hands to extend the time. *Ibid.* s. 461. See also *The Adolphe*, 2 (Irish) Jur. N.S. 285.

2509. Every assessor and umpire so appointed is to be paid such sum not exceeding £5 as the Board of Trade may direct; and all costs of such arbitration, including such payments, shall be paid by the parties as the justices or umpire may direct. See the M. S. Act, 1854 (c. 104), s. 462.

2510. The justices or umpire may call for the production of documents in the power of either party, and examine the parties or their witnesses on oath, and administer the necessary oaths. *Ibid.* s. 463.

2510a. As to the mode of obtaining a valuation of the salvaged property by a

* (720) It is the duty of the magistrates or their clerk to cause a correct copy of the evidence to be taken down at the time it is given, in case of appeal, and it is the duty of the receiver of wreck to call the attention of

the magistrates to this requirement. See Board of Trade Instructions to Receivers and Officers of Customs and Coastguard, as to Wreck and Salvage, anno 1886, p. 34.

receiver of wreck for the purpose of such proceedings, see Part II. c. 44, p. 1672.

2511. In an original proceeding in the Admiralty Court for salvage, in which an award has been made by a magistrate, *quare*, is not the owner, not appealing from the award, though refusing to pay the sum awarded, bound by the award? *The Hector*, 3 Hagg. 93.

2511a. £60 was awarded by magistrates. The owners did not appeal, but refused to pay, and tendered £35 10s. in lieu thereof. On an original proceeding for salvage in the Admiralty Court, £60 awarded, with costs of salvors. *Ibid.*

2512. £120 and expenses awarded. The owner refused to pay the amount, and the salvors instituted an action in the Court of Admiralty. The same amount of salvage and expenses decreed, with costs. *The Industry*, 3 Hagg. 203.

2512a. As to the payment of the salvage awarded to the receiver of wreck for distribution, see M. S. Act, 1854 (c. 104), ss. 466, 467.

2513. A first set of salvors who, while in possession, were assisted in the service by a second set of salvors, *held*, nevertheless, to have a primary interest, and therefore a right to choose their own jurisdiction (*viz.* whether to proceed for an award by magistrates or by an action in the Court of Admiralty). They having elected to proceed before magistrates, the second salvors, who instituted proceedings in the Admiralty Court, *held* to have acted improperly in so doing, and in not intervening in the proceedings before the magistrates as their proper course. *Quare*, if parties have equal rights, would a resort to the subordinate jurisdiction, when objected to, be proper? *The Eugene*, 3 Hagg. 159, 160.

(b) Costs and Damages.

2514. A salvage service took place on the high seas, and the case was heard by consent before two justices of the peace, who awarded £53. The salvors subsequently entered an action in the High Court of Admiralty, and arrested the vessel. The owners tendered the £53, which, after the vessel had been for some time under arrest, was accepted. *Held*, that the owners were entitled to costs and damages. *The Nautilus*, Swabey, 105; and see also *tit. Costs*, p. 371.

2514a. On appeal, prior to the M. S. Act, 1854 (c. 104), from an award of a magistrate in a suit for wages, objections to the jurisdiction of the magistrate over-

ruled as urged too late. *Held*, that they should have been urged under protest before the magistrate. *The Minerva*, 1 Hagg. 58.

2514b. The award of magistrates in cases of seamen's wages not exceeding £50 is final. See M. S. Act, 1854 (c. 104), s. 188.

4. Seamen's Wages.

See *tit. WAGES*, c. 2.

5. Wreck.

See *tit. JURISDICTION*, p. 683, and *tit. WRECK*.

6. Powers for enforcing Payment.

2515. In all cases where any court, justices, or magistrate, have power to make an order for payment of any seamen's wages, penalties, or other monies, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid as prescribed in the order, such functionary may, in addition to his other powers of compelling payment, direct the amount to be levied by distress or pointing and sale of the ship, her tackle, furniture, and apparel. See M. S. Act, 1854 (c. 104), s. 523.

2516. Service of any summons or other matter in any legal proceeding under this act shall be good service, if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any ship to which he may belong, with the person being or appearing to be in command or charge of such ship. *Ibid.* s. 522.

2517. No order for the payment of money shall be made under this act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the cause of complaint arises; or, if both or either of the parties happen during such time to be out of the United Kingdom, unless the same is commenced within six months after they both first happen to arrive or to be at one time within the same. *Ibid.* s. 525.

2518. And no such order for payment of money shall be made in any summary proceeding instituted in any British possession, unless such proceeding is commenced within the same time with, however, a similar qualification. *Ibid.*

2519. And no provision contained in

any other act or ordinance for limiting the time for summary proceedings shall affect any summary proceeding under this act *Ibid.*

2520. A distress for seamen's wages cannot be levied while the ship is under arrest of the Court of Admiralty. *The Westmoreland*, 4 Notes of Cases, 173.

7. Punishment of Offenders and Recovery of Penalties.

See tit. OWNERS, Pt. II. p. 1254, and tit. SEAMEN, Pt. V.

8. Fees.

2521. As to the fees in salvage cases to assessors and umpires, to clerks of justices, to witnesses and to practitioners, see Maude & Pollock on Merc. Ship. (4th ed. by Pollock & Bruce), vol. 2, p. ccccxxvi.; Roscoe's Adm. Practice, 2nd ed. p. 387; and Board of Trade Instructions as to Wreck and Salvage, anno 1886, p. 35.

See also Nos. 2506 and 2509, *supra*.

9. Appeals.

2522. As to appeals from awards of magistrates to the Probate, Divorce and Admiralty Division, see Ord. LIX. r. 4, No. 887, and tit. APPEALS, p. 58, and *Ibid.* in Addenda.

8. Vice-Admiralty Courts.

1. Generally.*

2523. As to Vice-Admiralty Courts generally, their jurisdiction and powers, see tit. JURISDICTION, pp. 686—689.

2523a. As to the concurrent jurisdiction with such courts of the Admiralty division or High Court of Admiralty, *Ibid.* p. 689.

2524. As to how far the decree of a Vice-Admiralty Court is conclusive, and as to the enforcing of the decrees of such court in the Court of Admiralty, *Ibid.* p. 662.

2525. As to prohibition to such courts, *Ibid.* p. 689.

2526. As to the power of appointment

of the judges and officers of Vice-Admiralty Courts, *Ibid.* p. 686.

2527. As to the practitioners in such courts, *Ibid.* p. 688.

2528. For the rules of practice now in force in Vice-Admiralty Courts, see Rules as to same established by Order in Council of Aug. 23, 1883.

2529. For forms of the different writs, warrants, pleadings, orders, decrees, and other instruments and minutes to be used in the Vice-Admiralty Courts, see Appendix I. to *Ibid.* Nos. 1—71.

2530. In all cases not provided for in the Vice-Admiralty Court Rules of 1883, the practice of the Admiralty Division of the High Court is to be followed. *Ibid.* 207.

2531. When a proctor in a Vice-Admiralty Court is called upon to produce a proxy under sect. 40 of the rules and regulations (now annulled) made pursuant to 2 Will. 4, c. 51, s. 1, and Order in Council of June 27, 1832, and produces a proxy on the face of it duly signed and sealed, the *onus probandi* lies upon the party impeaching its authenticity. *The Eugene*, L. R. 4 P. C. 8; 41 L. J. Adm. P. C. 17; 1 Asp. P. C. N.S. 155.

2. Assessors.

2532. See Rules of Practice for Vice-Admiralty Courts under Order in Council of 23 August, 1883, Nos. 106, 107.

3. Registrars and Officers.

2533. The registrar of a Vice-Admiralty Court held not responsible for money transmitted to England on an appeal, it having been sent under proper precautions, and in the usual course of business, to be deposited in the Bank of England, and afterwards lost by the failure of the consignee. *The Prima Vera*, Edwards, 23.

4. Caveats.†

2534. See Rules of Practice for Vice-Admiralty Courts under Order in Council of 23 August, 1883, Nos. 159—167.

5. Payments into and out of Court.

2535. *Ibid.* Nos. 156, 157, 158, and 171.

* (721) The regulations as to Vice-Admiralty Courts under Order in Council of 27th June, 1832; the 25th section of rules under Order in Council of 25th June, 1851; additional rules under Order in Council of 6th July, 1859; and those rules as extended to other Vice-Admiralty Courts by subsequent Orders in Council, are annulled by Rules of Practice for

Vice-Admiralty Courts made under Order in Council of August, 1883; and see note to *The Albion*, 1 Asp. N.S. 481.

† (722) These relate to caveat payments, caveat warrants, and caveat releases; and are similar to the practice in regard thereto in the High Court.

6. *Actions.*

2536. As to actions being of two kinds, *in rem* and *in personam*; as to actions for condemnation of property or for forfeiture being instituted in the name of the Crown; and as to the title and numbering of actions, see Rules of Practice for Vice-Admiralty Courts under Order in Council of 23 August, 1883, Nos. 2—4.

7. *Parties.*

2537. As to any number of parties interested being joined in the same action; as to the power of the judge to direct persons to be made parties and give directions thereon; and as to underwriters or insurers being deemed interested parties, *Ibid.* Nos. 23—25.

8. *Writs of Summons and Warrants.**

2538. See, as to practice and forms, *Ibid.* Nos. 5—18, and Nos. 28—38.

9. *Appearance, Bail, and Release.†*

2539. See, as to practice and forms, *Ibid.* Nos. 19—22, and 39—53.

10. *Consolidation of Actions.*

2540. *Ibid.* Nos. 27, 28.

11. *Interlocutory Proceedings.*(a) *Motions.*

2541. *Ibid.* Nos. 74—78.

(b) *Special Case.*

2542. *Ibid.* Nos. 70—73.

12. *Discontinuance.*

2543. *Ibid.* No. 148.

13. *Tenders.*

2544. *Ibid.* Nos. 79, 81.

14. *Preliminary Acts.*

2545. Vice-Admiralty Courts should use the form of Preliminary Acts in use in the Admiralty Division of the High Court of Justice. *The Norma*, 3 Asp. N.S. 272; 35 L. J. P. C. 418. For rules as to, and forms of, Preliminary Act, *Ibid.* No. 54.

* (723) The rules on this head are very similar to those now in force in the High Court.

† (724) The rules on this head are similar to those in force in the High Court; but the judge has power to accept one surety as sufficient, and one or more bonds may be filed.

15. *Pleadings.*

2546. Actions are to be heard without pleadings unless the judge shall otherwise order. The statement of claim is called the petition, and the statement of defence the answer. Each pleading is to be filed, the petition within one week from the order for pleadings, and the other pleadings within one week from the filing of the previous pleadings. Sets-off or counterclaims may be pleaded, and powers of amendment are given. *Ibid.* Nos. 55—61.

16. *Proofs.*(a) *Generally.*

2547. *Ibid.* Nos. 82—86.

(b) *Examination of Witnesses in Court.*

2547a. In collision cases in the Vice-Admiralty Courts witnesses should as far as possible be examined *vidæ voce* before the court, and not upon written interrogatories before an officer of the court prior to the hearing. *The Norma*, 35 L. J. P. C. 418.

(c) *Examination of Witnesses before Trial.‡*

2548. See Rules of Practice of 1883, Nos. 96—103.

(d) *Interrogatories, Discovery, and Inspection.*

2549. The judge may order interrogatories to be answered, or discovery as to documents, and notices to admit documents or facts, may be filed. *Ibid.* Nos. 62—67.

(e) *Affidavits.§*

2550. *Ibid.* Nos. 89—95.

(f) *Subpœnas.*

2551. *Ibid.* Nos. 168—170.

(g) *Oaths.*

2552. *Ibid.* No. 87, 88.

17. *Printing.*

2553. The judge may order the whole or part of the pleadings or written proofs to be printed. *Ibid.* Nos. 104, 105.

‡ (725) These rules are similar to those in the High Court, but the only parties to take the evidence are a judge, registrar or commissioner. The judge may order the evidence to be taken in shorthand.

§ (726) These are similar formal regulations to those in the High Court.

18. *Trial.**

2554. *Ibid.* Nos. 108—117.

19. *Judgments and Orders.*

2555. For forms, *Ibid.* App. I. Nos. 52, 53, 63, 65, 68, 70.

20. *References.†*

2556. *Ibid.* rules, Nos. 118—125.

21. *Writs of Execution.*

2557. As to writs of attachment and execution, *Ibid.* Nos. 172—174.

22. *Appraisement and Sale.‡*

2558. *Ibid.* Nos. 138—147.

23. *Actions of Salvage.*(a) *Generally.*

2559. As to the jurisdiction of Vice-Admiralty Courts in actions of salvage, see tit. JURISDICTION, p. 688.

(b) *By H.M.'s Ships.*

2560. As to no claim being allowed in respect of loss or damage to H.M.'s ships, their tackle or stores, or for the use thereof in rendering salvage services, see M. S. Act, 1854 (c. 104), s. 498, and tit. SALVAGE, c. 5.

(c) *By Officers and Crews of H.M.'s Ships Abroad.*

2561. As to proceedings in Vice-Admiralty Courts in cases of salvage rendered by H.M.'s ships out of the United Kingdom, and for seas adjoining, see M. S. Act, 1854 (c. 104), ss. 486—497, and tit. SALVAGE, c. 5.

2562. As to the delivery in such cases to the judge of the Vice-Admiralty Courts by the salvors, and also by the master or officer in charge of the salvaged property of a statement on oath relating to the salvage service, and containing the particulars therein mentioned, *Ibid.*

2563. As to the power of the judge if either of such statements are not delivered to him within the time required to proceed *ex parte*, *Ibid.*

2564. As to the judge not being at

liberty to require the cargo to be unladen, *Ibid.*

2565. As to the bond to be thereupon executed to answer the claim for salvage, and the fixing of the amount thereof by the judge, *Ibid.*

2566. As to the notice of the sum so fixed being sent by the judge to the salvor and master respectively, *Ibid.*

2567. As to the execution of the bond before the judge, and the attestation thereof by him, *Ibid.*

2568. As to the right of detention of the property salvaged ceasing on the delivery of the bond to the master, unless the property is owned by persons domiciled out of her Majesty's dominions, in which case before such right ceases the master must procure sufficient security to the satisfaction of the judge for the performance of the conditions of the bond, and place the bond in the custody of the judge, or, if the salvor desires it, with some other appointee of his jointly with the judge, *Ibid.*

2569. As to the transmission by the judge of such statements and documents to the Court of Admiralty of England, if the case is to be adjudicated upon there, or to the Vice-Admiralty Court of the place if it is to be adjudicated upon there, *Ibid.*

2570. As to the bond binding the owners of ship, freight and cargo, and their representatives, for the amount of salvage adjudged, *Ibid.*

2571. As to the enforcement of the bond and other security, and the powers of the Vice-Admiralty Court in reference thereto, *Ibid.*

2572. As to the exercise of similar powers by consular officers, *Ibid.*

(d) *Agreement to abide Adjudication and pay Salvage.*

2573. As to proceedings where other ships besides those of her Majesty are salvors, and, the salvors waiving their lien, the parties enter into a written agreement to abide the decision of a Vice-Admiralty Court, or the Court of Admiralty, and to give security to answer the salvage awarded; as to the agreement binding the parties and the property salvaged;

* (727) Only one counsel is heard on each side except by permission of the court.

† (728) The rules on this head are similar to those of the High Court. Notice of objection

must be filed within two weeks, otherwise the report stands confirmed.

‡ (729) The rules on this head are similar to those in the High Court.

as to the statements to be made on both sides, and the transmission of the agreement and documents to the Vice-Admiralty Court, see M. S. Act, 1854 (c. 104), s. 497, and tit. SALVAGE, c. 5.

24. *Actions of Apportionment of Salvage.*

2574. As to the jurisdiction of Vice-Admiralty Courts as to apportionment of salvage, *Ibid.* s. 498.

2575. As to the powers of such courts to appoint any person to carry the apportionment into effect, and to compel the person in control of the salvage awarded to distribute it or bring it into court, and issue process accordingly, *Ibid.*

25. *Other Actions.*

2576. As to the jurisdiction of Vice-Admiralty Courts in other actions, see tit. JURISDICTION, p. 688.

26. *Costs and Fees.*

(a) *Generally.*

2577. See Rules of Practice of 1883, Nos. 126, 132.

2578. For the court assessors, commissioners, and marshal's fees to be taken in the Vice-Admiralty Courts, *Ibid.* App. II.—VI.

2579. For the counsel's fees in the Vice-Admiralty Courts, *Ibid.* App. VIII.

2580. For the solicitors' costs in the Vice-Admiralty Courts, *Ibid.* App. VII.

2581. The allowance to witnesses are the same as in the High Court. *Ibid.*

(b) *Security.*

2582. *Ibid.* No. 128.

(c) *Taxation.*

2583. *Ibid.* Nos. 133—137.

27. *Appeals.*

(a) *Generally.*

2584. Appeals from Vice-Admiralty Courts lie to her Majesty in Council.

See the Vice-Admiralty Courts Act, 1863 (c. 24), s. 22.

2585. No appeal from a decree or order of a Vice-Admiralty Court is allowed, except by permission of the judge, unless it has the force of a final sentence *Ibid.*

2586.* A party desiring to appeal shall, within one month from the date of the decree or order appealed from, file a notice of appeal (a form of which is therein provided), and give bail in such amount not exceeding £300 as the judge may order to answer the costs of the appeal. See Rules of Practice of 1883, No. 150.

2587. As to such appeals including cases of collision and salvage, see tit. APPEALS, p. 7.

2588. As to the practice in appeals from Admiralty Courts to the Privy Council, see tit. APPEALS, pp. 30—43. But see No. 2586, *supra*.

(b) *From Taxation of Costs and Charges.*

2589. As to appeals from taxation of costs and charges in Vice-Admiralty Courts, see tit. APPEALS, p. 13.

(c) *Stay.*

2590. Notwithstanding the filing of the notice of appeal, the judge may, before service of inhibition, proceed to carry into effect the decree appealed from if the respondent gives bail to abide the appeal and costs. See Rules of Practice of 1883, No. 151.†

2591. The appellant is to cause the registrar to be served with inhibition, citation, and monition for process (as to which, see tit. APPEALS, p. 41), and on service of the inhibition and citation all proceedings are to be stayed. *Ibid.* Nos. 152, 153.†

(d) *Costs.*

2592. See tit. COSTS, p. 391.

* (730) This is an important alteration made subsequently to tit. APPEALS, pp. 32 and 33, passing through the press. Previously the Vice-Admiralty Courts followed the practice in the High Court of Admiralty of England, by which it was required that an appeal *apud acta* or *in scriptis* (as to which see p. 34, n.) should be interposed within fifteen days from the decree (see pp. 32 and 33 above referred to). That is now altered by

the rule in the text requiring a notice of appeal to be given within one month.

† (731) The above rules, Nos. 150—153, relate to the proceedings to be taken in the Vice-Admiralty Courts in reference to appeals, and do not affect the statutory regulations in regard to the commencement and prosecution of the appeal in the Appellate Court (the Privy Council). As to these, see tit. APPEALS, p. 33, Nos. 334, 335.

REGISTRAR AND MERCHANTS.

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Part I.—ACCOUNTS.

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Part I.—ACCOUNTS.

1. Generally.*

1. In Admiralty proceedings, when a ship is arrested on a specific demand before a reference of accounts to the registrar and merchants can be directed, it must be shown to the court that something is due, although the actual amount may properly be the subject of inquiry. The practice differs from a reference by a court of equity on an unsettled account, where the court directs an account to be taken, leaving it to be shown by the result on which side the balance lies. *The West Friesland*, otherwise *Twentje*, 13 Moore, P. C. C. 185; *Swabey*, 459.

2. When the evidence on a question of damages is nicely balanced, neither the court nor the registrar and merchants are justified in dividing the loss between each party, but judgment must be given according to the balance of evidence, bearing in mind on whose side the burthen of proof lies. *The Agnes*, No. 948, April 16, 1862; *The Egyptian*, No. 1321, July 15, 1864.

2a. A claim by the owners of a damaged

vessel for loss sustained, estimated moderately to avoid litigation, having been rejected, and the matter afterwards referred to the registrar and merchants, the owners held not bound by their original estimate, nor barred of their right to prove an actual loss greater than that estimate. *The Two Sisters*, 1 Spinks' Eccl. and Adm. Rep. 99.

3. As to the practice in regard to references to the registrar and merchants, see tit. PRACTICE, Pt. II. c. 40, p. 1648.

2. Interest.†

4. It is not the practice of the Court of Admiralty, as it is of the Court of Chancery, to order the money of suitors to be put out at interest, except upon their joint application and consent. *The Princessa Zavala and La Reine Elizabeth*, 2 C. Rob. 31, 49.

4a. The amount of damages having been paid by order of the court into the registry, the party finally adjudged to receive the same was not allowed interest from the date of such payment into court,

from the 10th of Aug. 1854. See 17 & 18 Vict. c. 90.

(4) As to interest due for the non-performance or delay in the performance of a contract, and as to the law of the place of contract, or of payment as governing the rules as to interest, see 4 Phillimore's International Law, 513.

(4a) Interest at the rate of 6 per cent. is in collision actions allowed in the American Admiralty Courts. *Dwyer v. The National Steamship Co.*, 4 Asp. 28; *The Belgenland*, 13 April, 1885, Supreme Court; *The Rhode Island*, 2 Blatch. Circ. Ct. 113. [AMERICAN.]

* (1) The cases in the notes to this title, and to which the initials R. & M. are added, are cases determined by the registrar and merchants, but not reviewed by the court.

† (2) The usual rate of interest allowed is four per cent.

(2a) The court on being applied to will direct money paid into the registry to be invested in the purchase of Exchequer bills.

(3) Interest on money paid into court in lieu of bail in a cross action not allowed to the defendant in the cross action. *The Chieftain*, 30 Dec. 1854. R. & M.

(3a) All acts relating to usury are repealed

as he might have applied to the court to have the money invested. *The North American*, 1 Lushington, 79; 5 Jur. N.S. 659.

5. In consideration of a stay of execution the amount due was ordered to be paid into court, and invested in exchequer bills, pending an appeal. *The Cybele*, 3 Asp. N.S. 478; 37 L. T. N.S. 165.

5a. On an account settled, interest forming part of that account, becomes principal, and bears interest as part of the principal, though ordinarily interest upon interest is not allowable. *The Dundee*, 2 Hagg. 143.

6. Interest on costs runs from the date of the registrar's allocatur of taxation. See *Shroeder v. Clough*, 46 L. J. C. P. 365; *The Jones Brothers*, 3 Asp. N.S. 478; 37 L. T. N.S. 164.

6a. The rate of interest allowed in New South Wales in the absence of any special contract is 8 per cent. *Gordon v. Scott*, 12 Moore, P. C. C. 1.

7. Interest upon interest decreed where the decree had been made up, but payment delayed by appeal. Registrar's report thereon confirmed, deducting two months for convenience of payment, and confirmation of former report on first decree. *The Driver*, 5 C. Rob. 145.

7a. Prize agents are subject to the order of the Prize Court for interest of money detained in their hands. Interest decreed against them accordingly, and expenses. *The Brig Louis*, 5 C. Rob. 146.

8. See, as to interest in bottomry actions, c. 3, s. 4, p. 1720; in actions of masters' accounts, c. 6, s. 2, p. 1729; in

actions of limitation of liability, c. 8, s. 2, p. 1726; in actions of mortgage, c. 11, s. 2, p. 1730; in actions of necessities, repairs, and supplies, c. 12, s. 2, p. 1731; in actions of salvage, c. 14, s. 3, p. 1734; in actions of damage to cargo, p. 1742; in actions of damage by collision, Pt. II. c. 3, s. 8, p. 1752; and on costs and damages, *ibid.* c. 8, s. 5, p. 1776.

3. In Actions of Bottomry.*

1. Generally.

9. A decree pronouncing for the validity of a bottomry bond is conclusive as to the validity of the bond, and unless it is appealed from the bond must be considered as valid. At the same time it determines nothing with respect to the amount of money the bondholder is entitled to recover from the owners of the vessel. That is to be ascertained by the subsequent reference to the registrar and merchants. By this mode of proceeding the party promoting the suit obtains at once the realization of his security, whether it be ship, cargo, and freight, or the value of these as represented in the bail, and the party proceeded against is no less benefited in having the real extent of his liability ascertained by persons competent to the investigation, and that at a comparatively small expense. *The Catherine*, 3 W. Rob. 3.

9a. In a suit on a bottomry bond, the court, before deciding upon the validity or invalidity of the bond, referred the case to the registrar and merchants, to report, on the whole accounts, whether

* (5) The S. left England on a voyage to S. Whilst on her voyage her owner entered into a charter to the effect that, after the discharge of her cargo, the S. should proceed to M., and there load a return cargo, and that the charterer's agents at M. should advance to the master what money he required "for the necessary ordinary disbursements" of the ship there, with interest and cost of insurance to be deducted on settlement of freight. The vessel discharged her cargo at S., where the master, being in want of funds, raised money on bottomry of the ship and freight. Upon the S. arriving at M. it was found she required extensive repairs to be done to her, including a new mast, and to pay for these disbursements the master obtained money of the charterer's agents at M. On the S. arriving in this country with the return cargo she was proceeded against, and sold to pay prior claims, and the bondholder was

held entitled, in part discharge of his bond, to the freight, less the advances at M. for necessary ordinary disbursements and insurance, and the accounts of such advances were referred to the registrar and merchants to examine and report thereon accordingly. Held by them that the advances to be allowed must be both necessary and ordinary. *The Salacia*, No. 1251, Nov. 16, 1863. R. & M.

(5a) Repairs to the vessel, including a new mast, approved of by the master at the time, held to be necessary and ordinary disbursements within the meaning of the charter. *Ibid.*

(6) Cash advanced to the master (about £45), provisions for the ship (about £150), and charges of hire of coolies (about £12), and of "gharries" or conveyances (about £12), held to be necessary ordinary disbursements within the meaning of the charter. *Ibid.*

any and what balance was due to the bondholder upon which a bottomry bond could be taken, and any other special matter which might occur to them. *The Ocean*, 10 Jur. 505; 4 Notes of Cases, 410.*

10. In questions of accounts in cases of bottomry the *onus probandi* lies, in the first instance, on the bondholder, and he is bound to show what he has expended in the service of the ship. He ought to keep regular accounts, and to take regular receipts. *The Catherine*, 3 W. Rob. 4; 5 Notes of Cases, 402.

10a. The court, in making a decree in favour of a bottomry bond, will carefully scrutinize all the accounts, and will reduce any charge which appears to be unreasonable or exorbitant. *The Fortuna*, 4 Irish L. T. N.S. 840; 1 Asp. 123.

11. A proper necessity for a bottomry bond being shown, the court will not look narrowly into the charges, or investigate the accounts too rigidly, lest voyages should be defeated by ships being in want of credit in foreign ports. *The Calypso*, 3 Hagg. 164.

11a. The court having pronounced for a bottomry bond, and referred the accounts to the registrar and merchants to examine and report, objection by the bondholder that it was not usual so to refer accounts that had not been exhibited in the cause overruled, the court observing that it was proper the accounts should be audited, and that it was open to the bondholder, if affected by it, to make application to the court at a future time. *The Nelson*, 1 Hagg. 181.

12. When the legal effect of a bottomry bond is intended to be questioned before the registrar and merchants, it is more convenient that the reference to them should be made under the directions of the court. *The Cognac*, 2 Hagg. 384.

13. A lender on bottomry is in no case liable to average losses, but is entitled to the whole sum advanced, provided ship and cargo arrive at the port of destination, *Walpole v. Ever*, cited in 2 Park on Ins. 565, 898; unless a different rule prevails by the usage of trade in a foreign state, see *Newman v. Cazalet*, therein cited, and tit. AVERAGE, p. 95.

14. The value of a hypothecated vessel

is her value at the moment of her arrival at her destined port, deteriorated as she may then be from the effects of the voyage, and not her increased value after a considerable sum of money has been expended in repairs. *The Hendrica Gazina*, 15 Irish Jur. (N.S.) 81.

15. A bottomry bond is *prima facie* evidence of a debt, but where any imputation is cast upon the *bona fides* of the transaction the burden of proof rests on the bottomry holder, and he must produce proper accounts to show the sums he claims to be actually due. *The Wakefield*, 5 S. C. Jur. 69.

16. Where a bottomry bond is admitted to be drawn in legal form, and entitled to payment, the parties are bound by the terms of the agreement therein, and the court will not refer the matter to the registrar and merchants to make such a deduction on account of the rate of exchange as is usually made in ordinary cases of mercantile negotiation. Application for such reference made by the owner rejected, with costs. *The Jane Vilet*, 2 Hagg. 92.†

17. The validity of a *respondentia* bond was admitted, and a reference ordered, to the registrar and merchants to decide what amount was payable under it. The registrar and merchants reduced the amount of the bond by lessening the charges in respect of certain metal and felt supplied to the ship, commissions payable to the agents, and the premium on the bond. On objection to the report, *held*, that it was within the jurisdiction of the registrar and merchants to reduce the amount, since the defendants were not bound to pay more than was sufficient to pay for things actually necessary for the ship and at a reasonable rate. *The Pontida*, 9 P. D. 102, 177; 5 Asp. 330.

18. *Held*, also, that the premium on the bond was excessive, and had been rightly reduced, and report confirmed. *Ibid*.

2. The Voyage.

19. Repairs and necessaries became necessary in consequence of an accident antecedent to a particular voyage; but the bond given to meet these expenses was not dated until after the completion of that voyage. *Held*, that this objection was not fatal, and that the bond was not

* (7) The court will order a reference to ascertain and report the actual constituents of a bottomry lien, the validity of which is contested. *Furniss v. Brig Magoun*, Olcott,

Adm. 55. [AMERICAN.]

† (8) By the modern practice such a reference would be ordered as of course.

invalidated on that account. *The Mary Ann*, 10 Jur. 256; 4 Notes of Cases, 390.

20. Advances which may become the subject of bottomry must be advances made for the service of the ship during the particular voyage in which she is engaged. A bottomry bond given in a foreign port for payment of advances made for the release of the vessel from arrest, on account of debts and liabilities of the owner incurred anterior to the voyage in which the vessel was then engaged, or for debts arising from supplies and necessaries furnished to other ships though belonging to the same owner, would be held invalid, even though, according to the law of the country where the vessel lay at the time of bottomry, she might have been arrested and sold to discharge those former debts and liabilities. *The Osmanli*, 3 W. Rob. 211; 14 Jur. 93; 7 Notes of Cases, 322.

21. A ship arrived at Malta and was there arrested, under the warrant of a competent court in that island, for debts of the owner incurred, as well on account of the ship herself in former voyages, as for debts incurred on account of other ships engaged in the same trade, and the property of the same owner. In order to obtain her release, and to obtain coals and other necessaries, the master borrowed money on bottomry. *Held*, that the bond was invalid as to the money borrowed to release the ship, but valid as to the remainder. *Ibid*.

22. Charges upon the unloading of the outward cargo, *i. e.*, damage done to cargo and short delivery of part, are not subjects of bottomry by the master (unless the owner consent thereto), even though the outward freight was withdrawn by the owner from the disposal of the master so as not to admit of his paying such charges therefrom, though the debts were just debts, and the ship was under charter to proceed on another voyage. *Scoble*, however, such charges would have been allowable if by the law of the port the ship could have been arrested for them. *The Edmond*, 1 Lushington, 57; 2 L. T. N.S. 194; 30 L. J. Adm. 128; *The Prince George*, 4 Moore, P. C. C. 21.

23. The rule derived from *The Prince George* (4 Moore, P. C. C. 21) with respect to items to be allowed in a bottomry bond is, that all expenses incurred in the port where the bond is given relating to the ship or crew, being expenses for which the master or owner of the ship is liable, and being necessary to enable the ship to proceed on her voyage, may be allowed, though including charges connected with the outward voyage. *The Edmond*, 1 Lushington, 211.

24. See further as to the expenses for which bottomry may be resorted to by the master in reference to the voyage, tit. BOTTOMRY, p. 123.

3. Premium.*

25. The lender on bottomry takes the risk of the vessel hypothecated effecting her voyage in safety. If she is lost on such voyage, the bond is forfeited thereby. On this account a higher rate of premium than legal interest, called maritime interest, is allowed, as a sort of *pretium periculi*. *The Atlas*, 2 Hagg. 52; *The Boddingtons'*, *Ibid*. 425.

26. Three bottomry bonds of the same tenor having been put in suit and their validity admitted, reference ordered to the registrar and merchants to examine the charges, rate of exchange and currency. *The Albion*, 1 Hagg. 333.

27. The high rate of premium at which money may be lent on bottomry will not affect the validity of a bottomry bond, but is a proper subject for reference to the registrar and merchants. *La Ysabel*, 1 Dodson, 277; *The Alexander*, *Ibid*. 279; *The Nelson*, 1 Hagg. 179; *The Heart of Oak*, 1 W. Rob. 215; 1 Notes of Cases, 114; *The Lord Cochrane*, 2 W. Rob. 336; 8 Jur. 716; 3 Notes of Cases, 172; *The Huntley*, 1 Lushington, 24.

28. The court has the power, and has in some few instances exercised it, of reducing the amount of maritime premium stipulated for under a bottomry bond; but it will lean to support the rate of premium agreed for unless excessive. Maritime interest at 14 per cent. on a bond, reduced by the registrar and merchants (on refer-

* (9) £30 per cent. allowed for bottomry premium from Singapore to London. *The General Sale*, Jan. 1854. R. & M.

(10) Premium on bottomry bond given for money to pay for repairs not allowed against defendants in a cause of damage. *The Hope*,

Nov. 13, 1854; *The Diana*, July, 1861. R. & M.

(11) The court will moderate the premium on a bottomry bond, where the premium is extortionate. *The Packet*, 3 Mason, 253; *The Virgin*, 8 Pet. 538. [AMERICAN.]

ence to them) to 10 per cent., increased afterwards by the court to its original rate of 14 per cent. *The Zodiac*, 1 Hagg. 326.

29. The court has authority to reduce the premium on a bottomry bond if excessive or fraudulent; but it will only exercise this authority on clear and indisputable cause shown, and with great caution. £20 per cent. charged in a bottomry bond, and disallowed on reference to registrar and merchants, who substituted 12½ per cent., allowed by the court, and registrar and merchants' report overruled accordingly. *The Cognac*, 2 Hagg. 386.

30. In a bottomry bond taken at Calcutta, blanks had been left where the rate of premium ought to have been expressed. An affidavit was given in from the notary who drew the bond, and such affidavit stated that the omissions arose from his carelessness, and that £30 per cent. was the rate agreed upon. The court pronounced for the bond, with such premium as the registrar should find to have been usual on such risks at the time and place the bond was taken. *The Change*, Swabey, 240; 5 W. R. 547; 29 L. T. 147.

31. A premium of 12½ per cent. on bills of exchange, disallowed. Objections to the report thereon, on the ground of such disallowances, overruled, but without costs. *The Tartar*, 1 Hagg. 14.

32. A bottomry premium of 20 per cent. on a voyage from St. Michael's, in the Azores, to the United Kingdom, was reduced to 12½ per cent. on the ground that it was considered very extravagant for so short a passage, with the security of a cargo of considerable value. July, 1883. R. & M. Their report was confirmed by the President and afterwards by the Court of Appeal. *The Pontida*, 9 P. D. 102, 177; 5 Asp. 331.

33. Bottomry bond given at Shields payable at New York. Vessel was compelled to put into Plymouth, where the voyage was abandoned. *Held*, that part of the risk having been incurred the premium could not be severed. Premium at the full rate pronounced for accordingly. *The Dante*, 4 Notes of Cases, 408.

34. But *semble*, that in the case of a ship not leaving the port in which the bond had been given, or being seized there

under an embargo, or of the master while there changing her destination to a better market, the bondholder would be similarly entitled to payment of his bond, but no risk having been then incurred, no maritime premium would be due. *Ibid.*

35. A., intending to go a voyage, entered into a bottomry bond, but the ship not going the voyage, but lying all along safe in the port of London, the court decreed the defendant should lose the premium, and accept of his principal with usual interest. *Deguilder v. Depiester*, 1 Vern. 263.

4. Interest.*

36. Interest is legally due on a bottomry bond from the time stipulated for the payment of the bond; but when the bondholders are resident abroad and have no agent in this country, interest on the bond will not be decreed prior to the arrival of a power of attorney, authorizing the receipt of the principal. *The New Brunswick*, 1 W. Rob. 28.

37. Interest on a bottomry bond after decree refused, the court observing that interest after judgment was not usually allowed, unless the party who was to pay occasioned unnecessary delay. *The Exeter*, 1 C. Rob. 173. *Semble*, overruled by the cases below.

38. A bottomry bond pronounced for, with 4 per cent. interest from the time it became due. *The St. Catherine*, 3 Hagg. 250.

39. A bottomry bond having been disputed and afterwards admitted, but subject to a reference to the registrar and merchants as to accounts, disbursements, and rate of premium, objections to their report as to which had been partially admitted and partially overruled; interest on the bond at 4 per cent. from the time it became payable, pronounced for, with costs. *The Cognac*, 2 Hagg. 393.

40. The defendants in a bottomry action paid into the registry, by order of the court, a sum of money which proved larger than the amount finally pronounced to be due to the bondholder. The bondholder *held*, nevertheless, entitled to the full ordinary interest upon the latter sum from the date of the bond becoming due. *The Edmond*, 1 Lushington, 211; 2 L. T. N.S. 194; 30 L. J. Adm. 128.

* (12) In making up the decree, the sum lent and the bottomry interest are to be considered as the principal, and common interest upon this amount is to be added from the

time the bond became due to the time of the decree. *The Packet*, 3 Mason's Rep. 255. [AMERICAN.]

41. The rate of interest allowed on a bottomry loan, and on the premium thereon after safe arrival, is 4 per cent. per annum; and a master has no authority in making a bond to bind the ship-owners or the cargo-owners to the payment of interest beyond such amount. *The D. H. Bills*, 4 Asp. 20.

42. As to interest generally, see p. 1716.

43. In causes of limitation of liability of owners, see p. 1726.

44. In causes of mortgage, see p. 1730.

45. In causes of salvage, see p. 1734.

45a. In causes of damage by collision, see p. 1752.

46. On costs and damages, see p. 1776.

5. Commission.*

47. The largeness of commissions will not invalidate a bottomry bond altogether unless the bond is successfully impeached on the ground of fraud. *The Laurel*, B. & L. 317; 1 Asp. 405; 9 L. T. N.S. 457.

48. The custom of a foreign port as to the allowance of a charge like commission deserves attention from the court, but when the custom is established by persons having the greatest interest in making such charges, and especially by a small

community, the court will not be exclusively guided thereby. *The Glennanna*, 1 Lushington, 123.

49. *Semble*, on such a question as commission, clear proof of the charges generally allowed by the great mercantile firms in London, graduated according to the circumstances of the case and the locality, would be the best guide to the court. *Ibid.*

50. Two per cent. commission was charged on the value of ship and cargo, and ten per cent. interest charged on the whole bond extending to such commission, the bondholders having had the whole care and management of ship and cargo during the time the repairs to the ship were in progress, during which time a part of the cargo was unladen and reloaded. This commission was sworn to be a usual charge in the Baltic trade, but the evidence was conflicting. On objection to such commission and interest, the court, inclining to uphold the commission, held it was unnecessary for the bondholder to show the existence of such custom in all cases of bottomry, and referred the accounts to the registrar and merchants, who disallowed the commission, and substituted in lieu thereof £55, as a remuneration

* (13) It seems that in estimating the proper remuneration to be allowed in bottomry accounts to the ship's agent, the registrar and merchants take into consideration the amount of the bottomry premium. *The Laurel*, No. 1702, Feb. 28, 1865. R. & M.

(14) The disbursements were £513, and the vessel was in the agent's hands at Fayal for three months. The merchant claimed £600, but was allowed £200 in lieu of all commissions. (The bottomry premium was 15 per cent.) *The Wansfell*, July, 1858. R. & M.

(15) The disbursements were about £6,000, and the vessel had been for more than five months in the hands of the agent at Havana. The merchant claimed a commission of 2½ per cent., amounting to 1,811 dollars, on the value of the cargo, but was allowed 1,500 dollars, or about £300, besides a commission of 2½ per cent. on the disbursements. (The bottomry premium was 20 per cent.) *The Kepler*, Dec. 1860. R. & M.

(16) The disbursements were about £950, and the vessel remained in the hands of the agent at Copenhagen for about ten weeks. He was allowed a sum of about 200 guineas. (The bottomry premium was 8¾ per cent.) *The Jenny Lind*, June, 1863. R. & M.

(17) The disbursements amounted to about £2,500, and the vessel was in the agent's hands at the Bahamas for over two months. He claimed 5 per cent. on his disbursements,

and 2½ per cent. on the values, amounting together to £226 : 6s. 9d. He was allowed £150. (The bottomry premium was 15 per cent.) *The Charles*, May, 1864. R. & M.

(18) A ship's disbursements amounted to £1,350, the property was in the hands of the agents at Batavia about six weeks. They charged 5 per cent. on the disbursements and 2½ per cent. on the value of the cargo, amounting together to nearly £2,800, but no bottomry premium. They were allowed 7,500 guilders, or upwards of £700, to cover all commissions and bottomry risk. *The Laurel*, Feb. 1865. R. & M.

(19) A commission of 5 per cent. on advances at Batavia, under a bottomry bond, allowed under the circumstances of the locality, the climate, and the rate of interest ruling there. *Ibid.*

(20) The rule of the registrar and merchants, to allow only 2½ per cent. commission on advances, relates to advances in this country, or in any port where the means of obtaining money are not exceptionally difficult. *Ibid.*

(21) It appears from the accounts on several references in causes of bottomry, that the bondholders have been satisfied with the bottomry premium, and a commission on their disbursements, without charging a commission on the value of the cargo. *Ibid.*; and see the cases there cited.

ration for care and superintendence. *The Calypso*, 3 Hagg. 163.

51. Five per cent. commission on the balance of account on a bottomry bond on ship and freight disallowed by the registrar and merchants, and objection to such disallowance overruled by the court. *The Tartar*, 1 Hagg. 14.

52. On reference to the registrar and merchants of the accounts of a bottomry bond, a charge of five per cent. commission (about £230) of the British consul for managing the affairs of the ship, the master having died, disallowed, and £37 awarded as a remuneration to the consul for his services. On objection to the report, disallowance of five per cent. commission affirmed, but £100 instead of £37 awarded to the consul. *The Zodiac*, 1 Hagg. 323.

53. Commission of five per cent. on the value of the cargo charged for care thereof (it having been necessary to unlade it), depositing it in warehouses, and re-shipping it according to the custom of the foreign port, and certified to be correct by the court there, and which was paid, *inter alia*, out of money raised on bottomry, disallowed by the registrar and merchants, and a commission of five per cent. on the actual disbursements for the cargo substituted. Objections to such report overruled. *The Cognac*, 2 Hagg. 377, 392.

54. Commissions charged at St. Thomas of two per cent. on the value of cargo for storage, and of two and a half per cent. for landing and re-shipping, disallowed, though proved to be in accordance with the custom at that port, but opposed to the custom of Lloyds. In lieu thereof reasonable sums, upon the principle of *quantum meruit*, allowed. *The Glenmanna*, 1 Lushington, 115.

55. Commissions on freight in respect of the vessels chartered to tranship disallowed. *Ibid.*

56. Commission charged of five per cent. on cash advances reduced to two and a half per cent., according to the practice observed in the registry. *Ibid.*

57. An item of £100 (paid to the master for his extra trouble in relation to cargo), in the accounts on a *respondentia* bond objected to and disallowed in registrar's report. Such disallowance confirmed by the court. *Ibid.*

58. Item in a bottomry bond for ship's agent's commission at four per cent. upon the entire value of the ship and cargo for his general superintendence, and also for commission upon advances, without stating to what amount or at what rate of interest such advances were made, the whole amounting to £90, disallowed, and a specific sum of £50, *pro opere et labore*, allowed in lieu thereof, and the amount of the bond reduced accordingly. *The Fortuna*, 6 Irish Jur. N.S. 272; 4 L. T. N.S. 840; 1 Asp. 123.

59. On taking the ship's accounts in a cause of bottomry, it was ascertained that save as to the agent's commission, no money was due as against the ship, and the registrar and merchants reported that the commission was so excessive, that on the balance of accounts, after reducing the commission to a proper amount, the owners of the ship were creditors and not debtors. Bond pronounced against, with costs. *The Rhoderick Dhu*, Swabey, 177; 5 W. R. 168; 28 L. T. 238.

60. The disbursements were above £6,200, and the property had been for a very considerable time in the agent's hands, but sufficient money had been remitted to pay all the disbursements. The court allowed the agent, in lieu of his claim of 5 per cent. on disbursements and 5 per cent. on the value of the cargo, estimated at £54,000, a commission of 2½ per cent. on the disbursements, and 1,000 dollars, or about £200, for his services. *Ibid.*

61. With respect to commissions for superintending the repairs of a vessel, the registrar and merchants are not bound to allow such commissions, according to what may be alleged to be the custom in any particular place, but are justified in forming their own opinion, giving due consideration to all the circumstances of the case and to local usage. *Ibid.* Swabey, 182; *The Laurel*, B. & L. 317; 1 Asp. 405; 9 L. T. N.S. 457; *The Cognac*, 2 Hagg. 392.

62. As to commission in causes of damage by collision, see p. 1753.

6. Disbursements.

(a) Generally.*

63. Every disbursement at a foreign

* (22) On the reference of accounts to the registrar and merchants in a cause of bot-

tomry, certain items for landing, storing, and re-shipping the cargo were objected to. The

port necessary to enable a ship to prosecute her voyage, made in or about the ship herself, or her crew, is a proper subject for bottomry. *The Edmond*, 30 L. J. Adm. 128; 1 Lushington, 63; 2 L. T. N.S. 194.

64. Such disbursements must be for charges for which the owner or master of the ship is liable; those for which the consignee of the cargo is liable are not the subject of bottomry. *Ibid.*

65. The agent of a ship advanced money on a bottomry bond. The bond was admitted, and on reference of the accounts it appeared that one large item was on account of re-landing damaged flour, which had accidentally heated on board the ship, and that this flour was the property of the agent. Another large item was on account of money advanced to the master, without inquiry as to the necessity of such advance, or seeing to the application of the money. The report of the registrar disallowing these items was confirmed. *The Royal Stuart*, 2 Spinks' Eccl. and Adm. Rep. 258; 1 Jur. N.S. 1116.

66. The owners are not bound to repay to the bondholder more than is sufficient to pay for things actually necessary for the ship, and at a reasonable rate, and it is for the registrar and merchants in the first instance to allow or reduce the amounts accordingly. *The Pontida*, 9 P. D. 102, 177; 5 Asp. 330.

67. See further as to the expenses for which bottomry may be resorted to by the master, tit. *BOTTOMRY*, p. 123; and by owners, *Ibid.* p. 114.

(b) *Repairs.*

68. If charges for repairs are excessive, and contrary to the custom of merchants,

the amount will be reduced by the registrar and merchants. *The Lord Cochrane*, 8 Jur. 716; 3 Notes of Cases, 172.

69. A sum of £800 was paid for new masts, and allowed by the registrar and merchants. Objection thereto on the ground that they were unnecessary, supported by the evidence of scientific persons not present on the spot, as opposed to direct testimony of surveyors, overruled by the court. *The Edmond*, 1 Lushington, 68; 2 L. T. N.S. 194; 30 L. J. Adm. 128.

70. It is not incumbent upon a foreign merchant advancing money on bottomry for the repairs of a vessel to consider whether the expense of the repairs necessary to enable the vessel to come home, would be so enormous that no repairs ought to have been done, but that the vessel should be abandoned. *The Vibilia*, 1 W. Rob. 10.*

(c) *Wages and Victualling.*

71. A master, under pressing necessity of ill-health, left the ship in the port of a British colony. *Held*, that the amount of his wages paid under such circumstances was a proper item in a bottomry bond. The owner disputing the amount of the wages is bound to show such amount to be improper. *The Rajah of Cochin*, Swabey, 473.

72. Disbursements for victualling the crew, to discharge which, *inter alia*, money was raised on bottomry, allowed on reference of accounts to the registrar and merchants, and confirmed by the court. *The Cognac*, 2 Hagg. 385.

73. Disbursement on account of wages made to crew while in a foreign port, money to pay which, *inter alia*, was raised on bottomry, disallowed on reference of

bondholders relied on the bond; and on proof that they handed all the bills and receipts to the master, the owners produced a bundle of receipts, and averred that they were the receipts so handed over, but that the receipts required were not among them. The master made an affidavit on behalf of the owners, but made no allusion to these items therein, and no proof was adduced that the charges were unreasonable or excessive. The registrar and merchants allowed the items to the bondholders. *The Laurel*, No. 1702, Feb. 28, 1865.

(23) The registrar, in investigating items constituting the amounts secured by a bottomry bond, rejected the contention that he was bound to recognize that general average principles should govern him, there having been no general average, and he allowed only

such items of expenditure as were incurred for the benefit of the cargo, and acting upon the principles laid down in *The Glenmanna*, 1 Lushington, 115, allowed a *quantum meruit* in lieu of the commission charged upon the cargo. *The Ymer*, Nov. 1883. R. & M.

* (24) It would seem, therefore, *à fortiori* that it is not incumbent upon him to look to the expediency of specific repairs; but see *The Pontida*, *supra*.

(24a) In investigating the accounts on a bottomry bond, surveys of the repairs the ship required were produced, but the accounts showed repairs beyond the surveys. The accounts were signed by the master. Objections to the accounts for the repairs beyond the surveys overruled. *The Glenburn*, April, 1855. R. & M.

accounts of such bond to registrar and merchants. Objection to such report overruled, on the ground that it was a premature payment that might never become due, and, if so paid, might (as in this case it did) fall on the owners of cargo, who were not properly liable for it. *Ibid.* 393.

(d) *Insurance.**

74. A charge for insurance, not being properly a subject of bottomry, cannot be made so by the mere agreement of the master, though the case might be different where the owner himself, in a foreign country, gave the bond. *Boddingtons'*, 2 Hagg. 426.

75. A charge for insurance (though a low rate of insurance, and in consideration of which the premium on the bond was unusually moderate), disallowed by the registrar and merchants as irregular and unusual, maritime interest being only allowed in consideration of maritime risk. Objection to report overruled, and report confirmed. *Ibid.* 422.

76. Bond given to defray expenses of insuring vessel held invalid. *The Serafina*, No. 2098, June 28, 1864.

(e) *General Average.*

77. A debt for general average contribution arising in respect of an outward voyage being a personal debt only is not a sufficient foundation for a bottomry bond on the ship for the homeward voyage. *Quare*, if a lien on the ship for general average contribution, according to the law of the foreign port where the bond is given, could support such a bond. *The North Star*, 1 Lushington, 45.

77a. A bond given at Buenos Ayres on ship and freight for the voyage to England to pay a general average contribution due upon adjustment from the ship to the outward cargo, held invalid. *Ibid.*

(f) *Costs Abroad.*

78. A charge in a bottomry bond for costs said to be incurred in upholding the bond in a foreign court disallowed, as costs incurred within a foreign jurisdiction, and such as the court had no authority to deal with. *The Gauntlett*, 3 W. Rob. 98; 13 Jur. 413; 7 Notes of Cases, 41.

7. *Exchange.†*

4. *In Actions for Freight.‡*

79. As to payment of freight under charter-parties, bills of lading, and the computation thereof and deductions therefrom, and the assignment thereof generally, and as between rival claimants, see tit. GOODS, CARRIAGE OF—, Pts. VII. and VIII. pp. 467, 468.

5. *In Actions for Demurrage.*

80. As to the computation of demurrage generally, and under charter-parties and bills of lading, see tit. GOODS, CARRIAGE OF—, p. 469.

6. *In Actions of Account between Part Owners.§*

81. All sums of money paid for or on account of any loss or damage, in respect

* (25) On a reference in a cause of bottomry items for insurance of cargo landed allowed, though the insurance for the voyage covered the land risk, it not being sufficiently proved that the parties were aware of such insurance. *The Laurel*, No. 1702, Feb. 28, 1865. R. & M.

† (26) Bond was given payable in five days after the ship's arrival at B., and a bill on London was drawn at the same time for the amount loaned, and it was agreed that, if the bill should be paid, the bond should be void at the borrower's option. The borrower did not elect to pay the bill. The lender in a suit on the bond was held not entitled to the exchange between B. and London. *The Hunter*, Ware, 249; *The Zephyr*, 3 Mason, 341. [AMERICAN.]

‡ (27) As to damages arising in actions for

freight, see Mayne on Damages, 4th ed. c. 10, p. 268.

§ (28) The sloop O. was sailed upon thirds. The last settlement of accounts between the parties took place in the beginning of 1862. The plaintiff, the owner of 16-64ths, in the spring of 1863 applied for a statement of accounts. The defendant omitted to furnish them, on the ground that the O. was in debt. The plaintiff subsequently caused the vessel to be arrested, and objected to accounts amounting to £19 7s., his interest in which was reducible to £1 12s. 3d. Held, that the plaintiff had failed to establish his objections, and that the defendant had improperly withheld a statement of accounts, and had not kept them satisfactorily. Each party to pay his own costs. *The Oak*, Dec. 17, 1864. R. & M.

whereof the liability of the owners of any ship is limited by the ninth part of this act, and all costs incurred in relation thereto, may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof. The M. S. Act, 1854 (c. 104), s. 515.

81a. Wages for ship and insurance are proper deductions before dividing freight. *Lindsay v. Gibbs*, 22 Beav. 522.

82. A vessel was chartered for twelve months; the charterers made default in payment, and the charter lapsed. The vessel was then re-chartered for another voyage, during which the defendant purchased a share in the vessel. *Held*, on objection to the report of the registrar in a co-ownership action, that the defendant was not liable to bear any of the losses occasioned by the time charter. *White v. Ditchfield, The Meredith*, 10 P. D. 69; 52 L. T. 520; 5 Asp. 400.

82a. A part-owner claimed in his accounts certain items in respect of materials supplied to the ship, and not repaid to him, but for which the defendant was being sued in the Queen's Bench Division. The registrar allowed the items, and the report was confirmed by the court, but payment of the amount was stayed until the defendant was sufficiently protected against the claim made against him in the action in the Queen's Bench Division. *The Charles Jackson*, 52 L. T. 631; 5 Asp. 399.

83. A co-owner cannot make a profit on goods supplied. *Ritchie v. Couper*, 28 Beav. 344.

84. A part-owner acting as ship's husband allowed commission. *Salter v. Adey*, 1 Jur. N.S. 930.

84a. But a director so acting was not. *Benson v. Heathom*, 1 Y. & C. C. 326.

85. A part-owner, manager of a vessel, is entitled to remuneration for his services, but there is no fixed rate applicable. *Ibid.*; *White v. Ditchfield, The Meredith*, 10 P. D. 69; 52 L. T. N.S. 520; 5 Asp. 400.

85a. A managing owner may collect and distribute freight, but as to his commission, if any, inquiry directed. See *Smith v. Lays*, 3 K. & J. 105.

86. *Semble*, in the absence of any agreement, express or implied, a part owner or partner in ships, who acts as ship's husband, is not entitled to charge the usual commission. In a case in which no express agreement appeared, and the books showing the usual course of dealing were not produced at the hearing, an inquiry was directed. *Miller v. Mackay*, 31 Beav. 77.

87. There appearing to be no usage the court awarded the highest sum named by the defendant's witness. S. C. April 22, 1858.

7. In Actions of Restraint.*

88. After security has been given in the Court of Admiralty by the majority of

(29) In the absence of any express understanding with his co-owners, a managing owner has no right to retain for his own benefit sums allowed by underwriters off insurance premiums by way of discount for prompt payment. Such sums must be placed to the general credit. *The Kate Cleather*, No. 5007, Feb. 1876. R. & M.

(30) Managing owners who themselves insured a portion of the vessel *held* not entitled, in the absence of a special agreement, to charge such insurance against their co-owners. *Cundy v. Thomson*, 1876, C. No. 356. *Ibid.*

(31) A managing owner is not entitled to retain for his own use sums allowed as brokerage by brokers or charterers. *Craven v. Gates (The Ensign)*, 1876, C. No. 459. *Ibid.*

(32) On a reference as to ships' accounts the managing owner had debited his co-owners with the proportion of the loss sustained by him in connection with a line of steamers running in his name. It was not proved that the vessel in question was liable under the charter which inaugurated the line of steamers. She was not named as one

of the ships composing the fleet, and she had been employed in other directions when she might have been employed in the fleet. The registrar considered, therefore, that the proportion of the loss on the line was not a charge against the ship, and disallowed it accordingly. *The Lord Nelson*, Nov. 1883. R. & M.

(32a) A managing owner having chartered a vessel to a syndicate of which he was a member, at a lower rate of freight than that which the syndicate was to receive, was, on a reference to adjust the ship's accounts, ordered to credit the ship's accounts with his proportion of the profits made by the syndicate. *Ibid.*

* (33) The owner of a minor part of a vessel having refused to consent to a proposed voyage, his share was appraised, and a bond given to him by the other owners, conditioned that, at the end of the voyage, which was to the West Indies and back, they would restore him his share in the vessel unimpaired, or, if she should be lost, would pay him the appraised value. Instead of her returning

owners of a ship for the share of an owner dissenting from the proposed voyage, the dissentient part owner is not entitled to any share of the freight earned on that voyage. *Anon.* (32 Car. 2), 2 Chan. Cas. 36; 6 Vin. Abr. 514; *Boyon v. Sandforth*, Carth. 63; *Wynne's Life of Jenkins*, vol. ii. p. 792; *Davis v. Johnston*, 4 Sim. 539; *Horn v. Gilpin*, Amb. 255.

89. See also tit. OWNERS, Pt. VIII. p. 1419.

8. In Actions of Limitation of Liability of Owners.

1. Generally.*

90. For provisions limiting the responsibility of owners in certain cases of loss or damage without their fault or privity to an amount not exceeding £8 per ton in cases of loss or damage only, and to £15 per ton in cases of loss or damage and loss of life or personal injury, see the M. S. Act Amendment Act, 1862 (c. 63), s. 54; and tit. OWNERS, Pt. VI. p. 1336.

91. As to the limitation of liability of owners generally, see tit. OWNERS, Pt. VI. pp. 1336—1347.

92. As to the mode of procedure in such actions, see tit. PRACTICE, Pt. III. p. 1683.

2. Interest.

93. The owners of a ship claiming limitation of liability are liable to pay interest on the statutory amount from the date of the collision, *semble*, until payment of

the money into court, or to the parties. *The Northumbria*, L. R. 3 A. & E. 6; 39 L. J. Adm. 3; *The Anatolia*, 27th Oct. 1885.

94. Claim for damages for the loss of a cargo of maize lost in a collision whilst being carried on board the defendant's ship. Verdict was found for the plaintiff subject to a reference as to damages, which was duly had. In the damages interest was awarded *plus* the limitation of statutory liability. Objection that interest should not have been allowed *plus* that liability overruled. *Smith v. Kirby*, per Blackburn, Quain and Archibald, JJ., 1 Q. B. D. 131; 8 Asp. N.S. 516, n.

94a. As to the calculation of tonnage in such actions, see tit. OWNERS, Pt. VI. p. 1346.

95. As to a part owner being in fault, or privy to the damage, *Ibid.*

96. See also, in regard to interest and costs *ultra* the limitation, tit. COSTS, p. 403.

9. In Actions of Marine Insurance.

See tit. MARINE INSURANCE, p. 841.

10. In Actions of Master's Accounts.†

1. Generally.

97. The registrar and merchants cannot allow in a master's accounts items for

directly from the West Indies, they employed her several months in trade from thence to southern ports and back, and thence home. *Held*, in an action on the bond for the detention of the vessel, that the rate for which she might have been chartered was a reasonable rule for the estimate of damages. *Rodick v. Hinckley*, 8 Greene, 274. [AMERICAN.]

* (34) The accounts taken by the chief clerk, when the action is in the Chancery Division, are taken by the registrar and merchants when the action is in the Admiralty Division.

† (35) In proceedings by a master under the M. S. Act, 1854 (c. 104), s. 191, an owner having refused to accept a bill drawn by the master, was charged with the costs of proceedings taken against the master in consequence of the bill having been dishonoured, and the charge was allowed by the registrar and merchants. *The Coronet*, May, 1858. R. & M.

(36) An extortionate claim in a foreign

port for meat, amounting, with costs of suit, to £12, paid by the master under the pressure of law proceedings, and to avoid the expenses of detention of his vessel, estimated at £20 a day, *held* to have been paid in the exercise of a sound discretion, and the item allowed in master's accounts. *The Strathallan*, No. 349, 12 March, 1861. R. & M.

(37) In a master's accounts, expenses of cab hire at a foreign port in the hot season, the shippers living at a considerable distance from one another and from the ship, and it being necessary to call upon them, allowed for a day or two before the vessel sailed. *Ibid.*

(38) Items in a master's accounts for wine and beer in a foreign port, if appearing to be excessive, will be reduced. *Ibid.*

(39) The master supplying the crew with tobacco from the ship's stores must render an account thereof to the owner, or the amount will be charged against him. *The British Empire*, Feb. 1859; *The James Hay*, No. 1981, 7 May, 1864. R. & M.

which no vouchers are produced, or which are not substantiated by proper evidence. The affidavit of the master thereon is not

sufficient. *The Julindur*, 1 Spinks' Eccl. and Adm. Rep. 72.

98. A master who, being bound under

(40) Interest on the sum found due to the master allowed from the commencement of his suit. *The British Empire*, Feb. 1859. R. & M.

(41) Interest allowed from the date of the report. *The Strathallan*, No. 349, 11 March, 1861; *The James Hay*, No. 1981, 7 May, 1864. R. & M.

(42) In an action for wages by a master who was also a part-owner a counter-claim was put forward at the reference for an amount paid by the ship for short delivery of cargo. As it did not appear that any fault on the part of the master had occasioned the short delivery the registrar refused to hold him responsible therefor in his capacity of master, but as a part-owner he was debited with a contribution to the amount paid by the ship. *The Fleur de Lis*, No. 2842, Dec. 1865. R. & M.

(43) A master being in command of a fever-stricken vessel lying in a foreign port, and being himself incapacitated from duty by the fever, went ashore for medical advice, and remained there until a certain date, when, he being too ill to command the vessel, another master, who was sent from England, took charge, with the knowledge of the sick master. Subsequently the second master took the fever, the vessel still being in the same port, and thereupon requested the former master to resume command. The latter, for whom a passage home had been engaged, was convalescent, but not well enough to rejoin the vessel without incurring great risk. He therefore refused to resume command, and returned to England, whither the vessel was afterwards brought in safety. In an action for wages instituted by him he claimed that he continued in the ship's service until after her arrival in England, and was therefore entitled to maintenance whilst ill ashore, and to his passage home. This claim being disputed on the ground that by leaving the vessel he had discharged himself, or that, being in fair health, it was misconduct to refuse to resume command, the registrar held, that the master was not bound to resume command at the risk of his health, but that by assenting to the change of masters he had virtually discharged himself. *The Cornelia Henrietta*, No. 2881, Jan. 1866. R. & M.

(44) His wages were therefore allowed until the date when the new master assumed command, and, under general considerations of equity, his passage home was also allowed. *Ibid.*

(45) But *quære*, whether, under the ruling in *The Petunia*, No. 101a (*post*), the allowance of the passage home would have been sustained by the court. *Ibid.*

(46) The equities between owners and a

sick master who has been replaced abroad elaborately considered. *Ibid.*

(47) A master having paid a certain sum to surveyors as a bribe to procure a clean certificate was not allowed to charge the amount against the owner. *The Ocean Belle*, No. 3314, August, 1866. R. & M.

(48) Although he swore that the owner suggested and approved of the payment. *Ibid.*

(49) *Semble*, the registrar and merchants, in investigating a master's claim for disbursements, will not recognize payments for improper purposes, even if the owners agreed that the payments should be made. *Ibid.*

(50) Where material men had, in the first instance, applied to the owners for payment of their accounts, held, that, notwithstanding subsequent application for payment to the master, he could not be made liable. *The Feronica*, No. 3649, Aug. 1867. R. & M.

(51) The amount of the accounts which, although unpaid, were charged in the master's claim as impending disbursements, was therefore disallowed. *Ibid.*

(52) A master being in a foreign port and without funds, drew upon his owner at home. The owner being embarrassed, failed to meet the bill, and the master had therefore to find funds elsewhere, and had to pay certain legal expenses occasioned by the dishonouring of the bill. These expenses were allowed by the registrar on the equitable ground that a right in a master to draw upon his owner and a promise to pay on the part of the latter are implied by the relations existing between them. *The Thorwaldsen*, Nos. 3308, 3330, 3628, March, 1867. R. & M.

(53) A master who gives bills for moneys advanced to and disbursed by him on the ship's accounts is entitled to treat the amounts of the bills as disbursements, even though they are not matured. *The Red Rose*, L. R. 2 A. & E. 8, n.; Nos. 2800, 2848, July, 1866. R. & M.

(54) But where the fund out of which the master claims to be reimbursed is in court, the bills must be paid and lodged in the registry before the amount is paid to him. *Ibid.*

(55) A master's claim for wages and disbursements included certain payments made by him on account of the expenses of the directors of the company who owned the vessel, whilst he and they were travelling on business connected with her employment. The registrar held (the merchants dissenting), that these payments were proper items in the master's claim. *The Victoria*, No. 7268, June, 1876. R. & M.

(56) A master who institutes on action for his wages and disbursements is taken to have

a penalty to appear and prosecute certain of his crew in respect of matters pertaining to the ship, fails so to appear, is entitled to recover the amount of the forfeited penalty from his owner if he can show that it was for the ship's benefit that the penalty was so forfeited. *The James Seddon*, L. R. 1 A. & E. 62.

99. A master is entitled to recover from his owners all expenses properly incurred in successfully defending himself from criminal charges preferred against him under circumstances arising from matters pertaining to the control of the crew or the navigation of the vessel. *Ibid.*

99a. If the master be a debtor on other accounts to the owner of the vessel, or have funds of the ship in his possession, the court will only award to him the balance due on a settlement of the accounts, which it will refer to the registrar and merchants for investigation. *The Repulse*, 9 Jur. 740; 11 Jur. 716; 5 Notes of Cases, 362.

100. As there is no provision in the Merchant Shipping Acts for payment of the expenses home of a master discharged through illness in a foreign port, held (reversing the registrar's decision), that such expenses cannot be allowed. *The Petunia*, 1879, H. No. 2, June, 1880.

100a. On a reference to assess the amount of wages and disbursements due to a master who admitted having received between £50 and £100 in presents, a portion of which he stated was on paying ships' bills and another portion in respect of his services as supercargo, the registrar and merchants disallowed a sum of £30 from his claim, viewing the presents in the light of gratuities which he was not entitled to retain for his own benefit. Report objected to, but confirmed by the court. *The Peggie Day*, May, 1883.

101. In a claim for wages a master

may be allowed the balance of an account for a former voyage in the same, but not in a different ship. A balance due to the master for services in another ship disallowed. *The Julindur*, 1 Spinks' Ecl. and Adm. Rep. 77.

102. In a suit by master, under 7 & 8 Vict. c. 112, he cannot be allowed to include in his accounts the amount of bills of exchange (*semble*, for purchase of a cargo) drawn by him upon his owner, and dishonoured, the bills not having been actually paid by him, though his liability for them still attached. *Ibid.*

103. Liabilities incurred by a master for articles expended for the benefit of the ship are to be considered as disbursements. *The Feronia*, L. R. 2 A. & E. 65; 3 Asp. 54; 37 L. J. Adm. 60; *The Red Rose*, L. R. 2 A. & E. 80, 99; *The Fairport*, 8 P. D. 48; 52 L. J. P. D. 21; 5 Asp. 62; *The Limerick*, 34 L. T. 708; *Huntley v. Sanderson*, 1 C. & M. 467; and see *In re The Rio Grande do Sul Steamship Co.*, 5 Ch. D. 282; 46 L. J. Ch. 277; 36 L. T. 603; 25 W. R. 328. And when there is a fund in court that has been earned by freight, the master will receive payment therefrom upon producing vouchers for the actual payments by him. *The Feronia* and *The Red Rose*, *supra*.

104. The master had, in his accounts, given credit for a large sum received for ship's disbursements abroad, and for which he had given a bill on the owners, with a bottomry bond as security. On proof of declarations of the owners that they should not honour the bill, and of the holders that they should not enforce the bond, but should hold the master liable under the bill, the registrar and merchants allowed the amount of the bill as a charge against the owners in the master's accounts. Their report was objected to by the owners, but confirmed by the court. *The British Empire*, 1 August, 1859.

105. A bill drawn by the master on

thereby indicated that he considers his connection with the ship determined. *The Carolina*, No. 7383, April, 1876, R. & M.; *The Ernst Merck*, No. 2663, Dec. 1865, R. & M.

(57) A master of a ship being in want of money for the use of the ship, drew a bill upon the shippers of his cargo. The cargo was afterwards delivered on payment of the freight less the amount of the bill. In the ship's accounts the whole freight had been credited and the disbursements debited. Subsequently the acceptor of the

bill failed. On a reference to settle the ship's accounts, the defendant objected to contribute towards the loss and to that portion of the ship's accounts being re-opened. Having regard to the fact that at the time when the voyage account was rendered the bill had not been dishonoured, and that it was drawn on account of the ship so as to render the owners liable, the registrar held, that the amount of the bill less the dividend recovered from the bankrupt was a proper charge upon the ship. *The Lord Nelson*, Nov. 1883. R. & M.

the owners and dishonoured by them, for which judgment had been recovered against the master, but execution not levied, is a liability from the owners to the master in respect of the ship. *The Glentanner*, Swabey, 415.

106. Amounts advanced by a master to seamen for slops, tobacco, &c., allowed by the registrar and merchants, and confirmed by the court, although the seamen had deserted; the gain to the owners by the forfeiture of the wages earned by the deserters largely exceeding such amounts. *The Feronia*, L. R. 2 A. & E. 65.

107. The accounts spoken of in the 191st section of the M. S. Act, 1854, mean the accounts between the master and the ship, exclusive of any private account between the master and the owners for merely extraneous purposes. *The Glentanner*, Swabey, 422.

108. The law will presume that the terms of a master's engagement for one voyage extend to a succeeding voyage, performed without any express or clearly implied new agreement. *The Gananoque*, 1 Lushington, 448.

109. The master's liability in respect of wages due to the crew and of necessaries furnished at his order to the ship is not included in the term "disbursements" in the Admiralty Court Act, 1861 (c. 10), s. 10, and he cannot, therefore, under that section, sue in the Court of Admiralty in respect of such liabilities. *The Chieftain*, 8 L. T. N.S. 120.

109a. The plaintiff, a master mariner, bought a small share of a ship, and became master, on the terms of receiving £15 a month, and half cabin-passage profits. The ship went to Melbourne with cargo only, and returned home. The defendant, the managing owner, then chartered the ship to carry goods and emigrants to New Zealand, at a lump sum; and if freight and passage-money should exceed that sum, the surplus to be divided between the charterers and owners; the master to keep account of the issue of all stores, and account for surplus stores. Plaintiff expressed his general satisfaction with the charter, but no communication passed as to the terms on which the plaintiff should serve on the new voyage, except as to his gratuity from the charterers. The ship took to New Zealand emigrants and cabin passengers, and plaintiff received his gra-

tuity from the charterers. *Held*, that the original agreement continued, and that the master was entitled to a share of cabin-passage money profits. *The Gananoque*, *supra*.

110. In a suit for wages the master's claim was allowed, but various deductions being alleged to be due from him by the mortgagee in possession, the accounts were referred to the registrar and merchants. On the reference, it appeared that the master had agreed with the mortgagee in possession to advance £1,500 towards the whole sum for which the ship was mortgaged, upon which he was to receive a certain amount of interest and to bear his proportion of loss, if any. The master, instead of £1,500, advanced a smaller sum, and the mortgage transaction was attended with loss. The registrar and merchants, considering the agreement to advance the £1,500 binding, calculated the proportion due from the master upon the £1,500, and reported in accordance with such estimates. *Held*, that such loss was not a matter of account, but of unliquidated damages, the amount of which must be assessed by a jury and could not be ascertained by the registrar and merchants. *The Repulse*, 11 Jur. 716; 5 Notes of Cases, 362.

111. Costs of objection to the report allowed to the master. *Ibid*.

112. A master of a ship having, in obedience to orders received from the agent of the owner, paid off a portion of the crew after his vessel was arrested by the Court of Admiralty in a collision suit, is entitled as against his owner to credit for such payments upon a settlement of his accounts. *The Duna*, 5 L. T. N.S. 217; 6 Jur. N.S. (Irish), 358.

112a. As to double pay, see tit. WAGES, c. 19.

113. As to actions for masters' accounts generally, and the jurisdiction of the Admiralty Division thereon, see tit. MASTERS, p. 1123.

113a. As to the practice in such actions, see tit. PRACTICE, p. 1682.

2. Interest.*

11. In Actions of Mortgage.

1. Generally.

114. In assessing damages due to a mortgagee (the ship being an insufficient

* (58) See notes (40), (41), *supra*.

security) for wrongfully depriving him of the vessel, the principle upon which the damages are to be measured is, that the mortgagee is entitled to have the ship delivered to him in the exact condition in which it was on the day when he claimed possession, with every expense reimbursed to him and interest in the meantime. *De Mattos v. Gibson*, 1 Johns. & H. 86; 3 L. T. N.S. 121; 30 L. J. Ch. 145; 7 Jur. N.S. 282.

115. In estimating such damages the mortgagee is not entitled to any benefit which may have accrued during such time, owing to the increased value of the ship by reason of any rise in the current rates of freight. *Ibid.*

116. He is not, if he has announced no intention of using the ship, but a determination to sell, entitled to be reimbursed the probable profits arising from a charterparty, which he could otherwise have concluded. *Ibid.*

117. When on granting an injunction against the use of a ship by an owner, an undertaking for damages is given, the measure of damages would include the loss of profit by the detention of the ship. *Ibid.*

118. But when an injunction was against a mortgagee of a ship (which was an insufficient security) and he had declared his intention to sell, but had not suggested the loss of possible profit as part of the damage anticipated, *held*, that the measure of damages was the expense involved in the custody of the ship, and the deterioration which she had suffered, together with interest in the meantime. *Ibid.*

119. A ship was mortgaged for a nominal sum, to secure an unascertained balance, with power to sell by auction, and in case of not being sold, the mortgagee to have the control and benefit of the ship until his claims were satisfied. A sale by private contract before balance ascertained, and while an investigation before arbitrators as to the amount was pending, *held*, an unauthorized and wrongful sale (reversing the judgment below), and an account of the value of the ship at the time of such sale ordered to be taken, and the respondent made liable to the appellant for such value. *Brouard v. Dumaresque*, 3 Moore, P. C. C. 457.

120. A mortgagee who on entering

into possession uses a mortgaged vessel in an adventure or speculation which turns out to be a losing one, is not only not entitled to charge the loss against the mortgagor, but must himself be charged with the value of the property at the time of his taking possession. *Mariott v. The Anchor Reversionary Company, Limited*, 2 Giff. 457; 3 L. T. N.S. 538; 7 Jur. N.S. 155; 30 L. J. Ch. 571; 9 W. R. 726; 4 L. T. N.S. 590.

121. A mortgagor of a ship being allowed to remain in possession and to use her, placed her, on her being condemned as unseaworthy, in the hands of a shipwright to be repaired, who, not being able to obtain his money for the repairs which he had done, retained possession of her, claiming a right of lien upon her. In trover brought against him by the mortgagee, *held*, that the mortgagee's having allowed the mortgagor to remain in possession and use the vessel, amounted, in the absence of an express authority, to an implied one that he was to use the vessel in the ordinary way, and have repairs done when necessary. *Williams v. Allsup*, 10 C. B. N.S. 417; 4 L. T. N.S. 550, C. P.; 8 Jur. N.S. 57; 30 L. J. C. P. 353.

122. *Held*, also, that the shipwright having such authority to repair, was entitled to hold the ship as against the mortgagee until his debt was paid. *Ibid.*

123. *Held*, also, that the Merchant Shipping Act, 1854 (c. 104), s. 70, which enacts "that the mortgagor shall not be deemed to have ceased to be owner of the mortgaged ship, except in so far as may be necessary for making such ship available as a security for the mortgage debt," did not conflict with this view. *Ibid.*

See also No. 110, *supra*.

2. Interest.*

124. A ship was mortgaged for payment of a sum, with interest at £10 per cent., in six months; the principal not having been paid at that time, *held* that interest continued payable at the same rate. *Morgan v. Jones*, 8 Exch. 621; 22 L. J. Exch. 232. See *Price v. Great Western Rail. Co.*, 16 M. & W. 244.

125. A mortgage deed made no provision for interest, and the mortgagee thereby agreed, upon payment of the

* (59) A tender of the debt was made to the mortgagee in pursuance of an agreement. *Held*, that no interest was due after the

tender. *McNeil v. Call*, N. H. 403. [AMERICAN.]

principal sum, to re-convey; *held*, that the mortgage carried no interest. *Thompson v. Drew*, 20 Beav. 49.

126. Mortgage action improperly instituted; defendant paid £500 into court in lieu of bail, and the plaintiff subsequently abandoned his action; interest at £4 per cent. allowed to the defendant on the amount paid in. *The Western Ocean*, L. R. 3 A. & E. 38.

126a. As to interest in other actions, see the other chapters.

12. In Actions for Necessaries, Repairs or Supplies.*

1. Generally.

127. Agents and brokers in London furnished coals to a foreign steamer for several voyages made by the steamer in 1856. As agents of the ship they received the freights payable in London, and out of the proceeds furnished supplies and paid the expenses incurred by the steamer in England, making out a debit and credit account upon each voyage, which accounts they forwarded to the owners. *Held*, that the agents having appropriated in their accounts moneys actually received in payment of specific items, including the coals supplied on each voyage, were estopped by the accounts they had furnished from appropriating the receipts to a previous agency account for the ship,

and from suing for the coals as necessaries supplied and unpaid for. *The Twentje*, 13 Moore, P. C. C. 185. And see as to the appropriation of payments, *Devaynes v. Noble* (Clayton's Case), *Tudor's Leading Cases in Maritime Law* (3rd ed.), p. 1.

127a. See also as to such actions generally, tit. NECESSARIES, REPAIRS AND SUPPLIES, p. 1148.

2. Interest.

128. In Admiralty actions, interest at the rate of 4 per cent. runs on the amount awarded from the date of entering the judgment, and such amount is a judgment debt within Ord. XLII. r. 14 (now r. 16, No. 594); since by s. 76 of the Jud. Act, 1873 (c. 66), the statute 1 & 2 Vict. c. 110, s. 17, applies to Admiralty actions. *The Jones Brothers*, 3 Asp. N.S. 478; 37 L. T. N.S. 164.

13. In Actions of Possession.

1. Generally.†

129. A party entitled to possession, wrongfully transferred, of a vessel, is entitled also to demurrage as compensation, and virtually part of the interest in dispute, not as vindictive damages. *The John*, 2 Hagg. 317.

130. Fraudulent sale of a vessel by B. to C. set aside in favour of A. The parties having agreed that the amount of

* (60) A shipwright repaired a vessel whose owners resided in England, and detained her in his yard until she was sold by order of the court in a mortgagee's action. The shipwright having brought an action against the vessel, claimed payment out of the fund in priority to the mortgagees. His claim to priority was resisted by the mortgagees on the ground that until their action was instituted the shipwright had no power to enforce his claim in the Admiralty Court. The objection was disallowed. *The Polymede*, No. 108, May, 1876. R. & M.

(61) A claim for necessaries supplied to enable the ship to earn freight, which had been hypothecated to bottomry bondholders, given precedence over the bottomry debt. *The Bridgewater*, 1877, No. 314, April, 1879. R. & M.

† (62) Where personal property is wrongfully taken or detained by force, fraud, or process of law, the measure of damages is the value of the property at the time the owner is dispossessed, increased by the da-

mages which the owner is proved to have sustained from the loss of possession. *Suydum v. Jenkins*, 3 Sandf. Sup. Ct. 614. [AMERICAN.]

(63) This case contains an elaborate review of the cases as to the rules of damages. *Ibid.*

(64) In an action against the master of a vessel for breaking up the voyage and disposing of the vessel, the expense of bringing home the vessel from a port to which the master has wrongfully navigated her, is a legal element of damages. *Brown v. Smith*, 12 Cush. (Mass.) 366. [AMERICAN.]

(65) So are reasonable damages for breaking up the voyage. *Ibid.*

(66) But conjectural or possible profits of a whaling voyage cannot be taken into consideration in estimating the damages. *Ibid.*

(67) Upon the sale and delivery of a ship, the vendor agreed to deliver a good title and register, within a time certain, under a penalty of 2,000 dollars. *Held*, that the 2,000 dollars were liquidated damages. *Fisk v. Fowler*, 10 Cal. 512. [AMERICAN.]

damages should be assessed by an average stater, the court suggested, and the parties assented, that the measure of damages should be the value of the ship and all her stores, &c., on the day when C. took possession of her; and that, as a mode of ascertaining such value, the referee should consider what would have been the value of the ship if she had been completed by B. according to his contract with A., and deduct therefrom the money necessarily laid out by B. after that date, in order to complete her. *Reid v. Fairbanks*, 13 C. B. 692, 729; 21 L. T. 166; 17 Jur. 918; 22 L. J. C. P. 206.

131. As to value of ship in causes of damage by collision, see p. 1744; and in cases of costs and damages, see p. 1775.

2. Ameliorations.*

132. See tit. OWNERS, Pt. I. p. 1226.

14. In Actions of Salvage.

1. Generally.†

133. W. B., having acted as agent for rendering service to a foreign ship in distress on the English coast, afterwards entered an action against the ship, &c., as a salvor. The court held that he was entitled to sue in that character, but referred all the accounts between him and the owners to the registrar and merchants before decreeing any sum as salvage. *La Purissima Concepcion*, 13 Jur. 967.

134. The court will refer a claim, if objected to, of agent's expenses, as a deduction from a salvage award, to the consideration of the registrar and merchants. *The Louisa*, 2 W. Rob. 24.

135. Reference decreed to the registrar and merchants of the accounts of a party appointed agent by the master, and claiming also as salvor in that capacity. *The Happy Return*, 2 Hagg. 207.

136. On salvage of a fishing smack, frozen up in Davis's Straits, effected by three other whaling vessels, £700 awarded in addition to the bounties given by the

treasury. Such bounties, however, held to be a sufficient recompense and bar to all claim for demurrage and payment of stores, and for early sailing. *The Swan*, 1 W. Rob. 68.

137. In estimating the value of recaptured property for the purpose of a salvage apportionment, the true rule is to take the value, not at the time of capture, but at the place of restitution, which is to be considered with reference to the moment of the arrival of the property in port. *The Progress*, Edwards, 222.

137a. Commission paid for bail in a salvage action will not be allowed as part of the damages recoverable by the salvaged vessel in an action of damage by collision. *The British Commerce*, 9 P. D. 128; 53 L. J. Adm. 72; 5 Asp. 335; 51 L. T. 604; 33 W. R. 200.

138. The Board of Trade is entitled to a percentage of five pounds in the hundred on all salvage in respect of any ship, boat, or cargo, or apparel of any ship or boat, or any wreck or other property brought into Ramsgate harbour. See the Harbours and Passing Tolls, &c. Act, 1861 (c. 47), s. 28.

139. Such percentage shall be deducted from the salvage, and paid to the Board of Trade, before the remainder of the salvage is paid over to the salvors, and shall be recoverable like salvage. *Ibid.*

140. Salvage of derelict cargo brought into Ramsgate Harbour. £3,500 awarded, from which the salvors were directed to pay the damage to their boats, and 5 per cent. dues to Ramsgate Harbour. *The Cargo ex Regina*, No. 1024, 27 May, 1862.

141. As to claims for loss of freight generally, see p. 1724; and in collision actions, p. 1761.

142. As to claims for demurrage generally, see tit. GOODS, CARRIAGE OF—, p. 603; and in collision actions, p. 1763; and on costs and damages, p. 1776.

2. Losses or Damage in rendering Salvage Assistance.‡

143. Loss and damage of salvors attend-

* (68) Repairs made upon a vessel by the owner after he became the purchaser cannot be set off against her earnings before the purchase. *Richardson v. Kimball*, 28 Maine (15 Shep.) 463. [AMERICAN.]

† (69) As to the effect of certificates of valuation by magistrates in salvage cases, under 1 & 2 Geo. 4, c. 75 (since repealed), see *The Brothers*, 2 Hagg. 197.

(69a) The plaintiffs, besides the expenses of repairs, demurrage, &c., claimed for loss of freight, £934. Held, that the burthen of proof of this claim rested with the plaintiffs. *The Gladiator*, No. 1594, April 29, 1864. R. & M.

‡ (70) A vessel, being ignorant of her whereabouts, struck a shoal, but got off and came to anchor, and a steamer coming by gave

ing a salvage service referred to the registrar and merchants to examine and report upon. *The Oscar*, 2 Hagg. 261; *The Salacia*, *Ibid.* 269. See also *The Watt*, 2 W. Rob. 72.

143a. Where a vessel in rendering salvage services sustains damage without negligence on the part of her master and crew, her owners are entitled to be repaid by the owners of the salvaged vessel for such damage, and for demurrage during the repairs thereof. *The Mud Hopper* (No. 4), 4 Asp. 103, 136; 40 L. T. N.S. 462.

144. To entitle owners of a salvaging vessel to a primary lien on the property salvaged for compensation for losses, such losses must be actual. If speculative merely and consequential, they are only ingredients in estimating the salvage remuneration, of which they receive an allotment. *The Martha*, 3 Hagg. 436.

145. Whenever property of the salvor is damaged in effecting the salvage service, the damage is to be repaired, or paid for to the full extent of its actual value or at the cost price, and not at the trade profit price. *The Augusta Jesse*, 4 (Irish) Jur. N.S. 227.

146. The court will decline entertaining a claim as against the owners of the vessel salvaged for repairing damage done to the salvaging vessel, if that damage was not necessarily incurred in the salvage service, but resulted from a struggle with

another vessel seeking to assist in the salvage. *The Eliza*, 4 (Irish) Jur. N.S. 58.

147. The Court of Admiralty cannot, in a salvage suit, allow charges for repairs of vessel salvaged, though asserted to be so mixed up with the salvage as to be inseparable. *The Ranger*, 2 Hagg. 42.

148. When the salvors' vessel is injured or lost whilst engaged in the salvage service, the presumption is that the injury or loss was caused by the necessities of the service and not by the default of the salvors, and the burthen of proof lies upon the defendants alleging that the loss was caused by the salvors' own acts. Compensation to the salvaging vessel awarded accordingly. *The Thomas Blyth*, 1 Lushington, 16.

148a. The A. S., a large and valuable steamer, rendered salvage services to the G., another large steamer, in Smyrna Bay, and in doing so damaged her machinery, which was repaired on her return to Liverpool shortly before Christmas. The court, besides awarding salvage, pronounced for the damages, and for the detention and losses of the A. S. during the repair of the damages, and referred the accounts to the registrar and merchants to examine and report thereon. *The Gladiator*, No. 1594, April 29, 1864.

her information of her position, and attempted to tow her to a place of safety. On the hawser, however, breaking no further attempt to tow was made, but the steamer guided the vessel out to sea, clear of all shoals, being with her about five hours. *Held*, that the steamer was entitled to salvage. The steamer having been thus delayed, arrived in the subsequent prosecution of her voyage, about low water, at a dangerous place, which, but for that delay, she would properly have reached at about high water, and have passed in safety, but it being low water she struck a rock, and was very seriously injured. *Held*, that such damage was too remote. United States District Court of Admiralty, 2 Asp. 140. [AMERICAN.]

(71) The V. got aground. The M. came to her assistance, and they were lashed together, the V. being much the more powerful vessel. The V. got off, but the M. ran upon a snag and made a hole in her bottom, and was lost. The V. had been there more than a day, and had ample opportunity of knowing the locality. *Held*, that the V. having failed to make the necessary investigations as to the dangers of the place, and being the chief and controlling motive power, was liable for the damages and loss of the M.

The Missionary v. The Virginia, 1 Asp. N.S. 107. [AMERICAN.]

(71a) This case is calculated to mislead, as it would almost induce us to suppose that a salvor is not entitled to recover compensation for loss of his vessel, except in case of negligence of the salvaged vessel. We fail to see the necessity for dividing the case on the question of evidence. It is a well-recognized practice in Courts of Admiralty to award compensation for loss and damage sustained in rendering salvage services, quite independently of any negligence on the part of the salvaged vessel. See *The Saratoga*, Lush. 318; Editor's note to 1 Asp. N.S. 107.

(72) It is quite clear that if there was negligence on the part of the V. she was liable as in an ordinary case of damage, but where she is liable to pay for the damage in another way it is dangerous to introduce a doctrine capable of misconstruction. The question asked, as to "whose duty it was to foresee and guard against the possible consequences of success?" has nothing to do with the real question of whether the vessel was injured whilst performing a salvage service, and would imply that negligence alone created liability. *Ibid.* See also note 251, p. 1761.

149. Where the property saved is ample, losses voluntarily incurred by the salvor should be transferred to the owner of the property saved, and in addition the salvor should receive a compensation for his exertions and for the risk he runs of not receiving any compensation in the event of his services proving ineffectual. *The De Bay*, 8 App. Cas. 559; 52 L. J. P. C. 57; 5 Asp. 156; 49 L. T. 414.

150. The losses should be ascertained with precision where practicable, but in that case the salvage remuneration added thereto should be fixed on a more moderate scale than where the losses cannot be fixed with precision. *Ibid.*

151. In an action of salvage of property of large value (£179,000), the court awarded £6,000 as salvage, but refused to receive evidence of particular injuries to the salving vessel caused by the performance of the services, and of the costs of the repairs, and of the loss caused by detention during such repairs. (*The De Bay*, 8 App. Cas. 559, considered.) *The City of Chester*, 9 P. D. C. A. 182.

152. On appeal, held, per Brett, M. R., that the judge of the Admiralty Court was not bound, *ex debito justitiae*, to admit such evidence, or to decree in terms that a specific amount should be paid to the salvors in respect of damages so caused, though he might, in his discretion, receive such evidence, and include an amount in respect of damages in his award. Decree varied by awarding £1,000 as salvage, and referring the damages and detention to the registrar and merchants, unless the

appellants accepted the amount awarded by the court below. *Ibid.*

153. Per Baggallay and Lindley, L.JJ.: Where salvage services have occasioned damages and losses to the salvors, and the value of the property saved is ample, the salvor should be awarded salvage, and also a sum sufficient to cover the damages and expenses in rendering the service, and evidence of such damages and expenses ought to be received so that they may be ascertained with precision. *Ibid.*

3. Interest.*

154. On an appeal from an award of salvage by Cinque Port Commissioners when the award is of long standing the court will decree interest thereon. *The Hector*, 3 Hagg. 95; *The Experiment*, 18 April, 1837.

155. Salvors held entitled, under the 76th sect. of the Judicature Act, 1873 (c. 66), to interest at four per cent. on the amount awarded from the date of the judgment. *The Jones Brothers*, 46 L. J. P. D. & A. 75.

156. Interest on the amount of loss and damage is not recoverable by salvors. *The De Bay*, 8 App. Cas. 559; 52 L. J. P. C. 57; 5 Asp. 156; 49 L. T. 414.

156a. As to interest in other actions, see the respective chapters.

15. In Actions of Wages.†

157. Where the amount of wages due to a seaman was greatly reduced by a de-

* (73) Ordinarily interest is not allowed on salvage from the date of earning to the date of the award.

(73a) Interest at the rate of 4 per cent. given to salvors from the time they were kept out of their money by objections, not sustained, to registrar's report. *The Samuel*, July 28, 1852.

† (74) In a cause of wages proceeding by default, but with bottomry bondholders and cargo owners intervening, the master's claim was opposed on the ground that the bondholders were entitled to priority. The registrar, however, held that, as the bond was recoverable from ship, freight, and cargo, and the master's wages from ship and freight only, the assets must be marshalled, so that both claims might be paid in full. He therefore directed payment of the master's claim out of the proceeds of ship and freight, in priority to the bondholders' claim. *The El Salvador* (alias *Maravilla*), No. 6894, Dec. 1874. R. & M.

(74a) By the American law certain special payments have to be made by American owners who discharge American seamen abroad, but as the English Court of Admiralty applies the general maritime law it cannot take cognizance of the municipal laws of foreign countries. The registrar and merchants will not, therefore, allow such payments as items of wages. *The Cultivator*, June, 1878, B, No. 64. R. & M.

(75) Claims made by the crew of a vessel for wages from the time of their vessel being run down to the time of their arrival in the United Kingdom are seldom made and never allowed. *The Thyatira*, July, 1882. R. & M.

(76) The fact that an owner had ceased to have any interest in the proceeds of the sale of a vessel, or in opposing a master's claim for wages on the fund, will deprive his evidence of the weight which would generally attach to admissions made by the owner of a vessel of his liability to the master. *The Sherbro*, January, 1883. R. & M.

preciation of the currency at the date of his claim, and it did not appear at what rate such wages were to be calculated, the court construed the uncertain contract most strongly in favour of the seaman, and allowed him wages at the fullest rate. *The Nonpareil*, 33 L. J. Adm. 201.

158. A charge of crimpage referred to the registrar and merchants to report if there was any custom in the merchant service under which such a charge was usually paid as a part of wages. *The Jack Park*, 4 C. Rob. 314.

158a. Neither error of seamanship in a master nor neglect to communicate to a Lloyd's agent the fact of the stranding of the vessel, nor neglect to sign a bot-tomry bond, works a forfeiture of wages. *The Camilla*, Swabey, 312.

159. *Semble*, the owner's remedy, prior to the Judicature Acts, was by cross-action in a court of common law. *Ibid.*

159a. A master engaged for a voyage out and home, if wrongfully discharged abroad, is entitled to wages until he can obtain other employment; and *semble*, until the determination of the entire voyage. *Ibid.*

160. As to compensation to seamen for improper discharge, see tit. WAGES, c. 14.

160a. For discharge from foreign ships in this country, *Ibid.*

161. For being left behind abroad, *Ibid.*

161a. For deprivation of right to sue abroad, *Ibid.*

162. As to calculation of wages, *Ibid.* c. 17.

162a. As to compensation of ten days' double pay for delay in payment, *Ibid.* c. 19.

16. Claims in respect of Volunteers into the Navy.

163. See tit. PRACTICE, Pt. III. c. 19, p. 1702.

17. Claims of Officers and Crews of H.M. Ships for Distribution of Salvage.

164. *Ibid.* c. 17, p. 1694.

18. Practice on References and Objections to Reports.

165. *Ibid.* Pt. II. c. 40, pp. 1648—1655.

19. Registrar and Assistant Registrar.

166. *Ibid.* Pt. I. p. 1470.

20. Evidence on References.

167. See tit. EVIDENCE, p. 430.

21. Costs of References.

168. See tit. COSTS, p. 358.

22. Special Referees and Arbitrations.

169. See tit. PRACTICE, Pt. II. pp. 1658, 1659.

Part II.—MEASURE OF DAMAGES.

1. Generally.*

1. *In Contract.*

(a) *Generally.*

170. To ascertain what are the damages payable on a breach of contract, it is to

* (77) The leading case on the subject of damages arising from a breach of contract is that of *Hadley v. Baxendale*. That case has been supposed to lay down three rules: (1) that damages which may fairly and reasonably be considered as naturally arising from a breach of contract, according to the usual course of things, are always recoverable; (2) that damages which would not arise in the usual course of things from a breach of contract, but arise from special

circumstances peculiar to the case, are not recoverable unless such special circumstances are known at the time of contract to the person breaking the contract; in which case (3) such damages are recoverable if the damages complained of flow naturally from the breach of the contract contemplated by the parties. See *Mayne on Damages*, 4th ed. pp. 10, 11, 12; and see further as to such 3rd rule, *Ibid.* p. 38.

(78) Where personal property is wrongfully

be ascertained what is the object of the contract contemplated by the parties. *Duckworth v. Ewart*, 9 L. T. N.S. 297.

171. The party who breaks a contract is liable for the natural and reasonable consequences of his breach of contract. *Swan v. The Whitehaven Junction Railway Co.*, 20th April, 1864. (Cockburn, C. J.)

172. Where two parties have made a contract, which one of them has broken, the damages for breach should be such as may fairly and reasonably be considered as arising naturally, *i. e.*, according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. (See *Alder v. Keighley*, 15 M. & W. 117.) *Hadley v. Baxendale*, 9 Exch. 341; 23 L. J. Exch. 179, 182;

23 L. T. 69; 18 Jur. 358; 23 L. J. 179. And see *Fletcher v. Tayleur*, 17 C. B. 27.

173. The measure of damages for breach of a contract to repair and deliver a vessel by a stipulated day will be the net profit which the owners might have obtained by chartering the vessel, if she had been delivered at the stipulated time instead of the time when she actually was delivered. *In re Trent and Humber Co., Ex parte Cambrian Steam Packet Co.*, L. R. 4 Eq. 112; *Ibid.* 6 Eq. 396; 37 L. J. Ch. 686; 38 L. J. Ch. App. 38; 3 Asp. 119. *Quere*, in estimating the net profits ought the wear and tear and depreciation which the ship would undergo in earning those profits to be taken into account? Per Cairns, L. C. *Ibid.*

174. K. sued B. for breach of contract in not accepting five tons of hops contracted by B. to be bought and by K. to

taken or detained by force, fraud, or process of law, the measure of damages is the value of the property at the time the owner is dispossessed, increased by the damages which the owner is proved to have sustained from the loss of possession. (This case contains an elaborate review of the cases as to the rules of damages.) *Suydam v. Jenkins*, 3 Sand. Sup. Ct. 614. [AMERICAN.]

(79) The measure of damages is in general that which will compensate the plaintiff as nearly as may be for the actual injury sustained by the breach of contract. *Robinson v. Varnell*, 16 Texas, 382. [AMERICAN.]

(80) Where from the nature of the contract it is not practicable to ascertain the amount of damages sustained by a breach of it, the measure is the price agreed on. *Coffee v. Meiggs*, 8 Cal. 363. [AMERICAN.]

(81) The rule of damages in an action on a contract of sale, when the vendor neglects or refuses to deliver the personal property sold, and when nothing was paid by the purchaser, is the difference between the contract price and the market value of the property on the day when it should have been delivered. *Belden v. Nicolay*, 4 E. D. Smith (N. Y.), 14. [AMERICAN.]

(82) Where goods are paid for before delivery and are not delivered at the day, the measure of damages is the highest market price between the day of delivery and the institution of the suit, provided the suit is not unreasonably delayed. *Cannon v. Folsorn*, 2 Clarke (Iowa), 101. [AMERICAN.]

(83) Where the property converted has a fixed value the measure of damages is that value with legal interest from the time of the conversion; where the value is fluctuating the plaintiff may recover the highest value at the time of the conversion, or at any time afterwards. *Douglass v. Kraft*, 9 Cal. 562.

[AMERICAN.]

(84) In trover, the measure of damages is the value of the property at the time of the conversion. *Selkirk v. Cobb*, 13 Gray (Mass.), 313. [AMERICAN.]

(85) In detinue, as in trover, the value of the property at any time between the demand and the trial is the measure of damages. *Johnson v. Marshall*, 34 Ala. 522. [AMERICAN.]

(86) To an action on a due bill to pay a certain amount of flour on a certain day, a tender on that day of the market price of the flour at that time is a defence, that being the measure of damages. *Davenport v. Wells*, 1 Clarke (Iowa), 598. [AMERICAN.]

(87) In an action for breach of a contract to deliver goods at a particular place and within a definite time, no payment having been made, the rule of damages is well settled to be the difference between the contract price, and that which goods of a similar description and quality bore at the time and place designated. *Berry v. Dwinel*, 44 Maine, 255. [AMERICAN.]

(88) If the specified goods had no market value at that time and place recourse must be had to the sales which were made nearest the time and in the nearest market to the place. *Ibid.*

(89) A possible profit which the plaintiff might have made if the goods had been delivered according to the agreement, cannot be considered in estimating damages. *Ibid.*

(90) And not though he had made payments in advance. *Sherman v. Roberts*, 1 Grant's Cases (Penn.) 261. [AMERICAN.]

(91) The prime cost or value of the property lost at the time of the loss with all charges, and the premium of insurance where it has been paid, constitute the true measure of damages. 1 Conkling's Adm. Prac. (2nd ed.) 460. [AMERICAN.]

be sold and delivered. *Held*, that the measure of damages is the difference between the contract price and the market price at the time of the refusal to perform the contract. *Boswell v. Kilborn*, 8 Jur. N.S. 443; 10 W. R. 517; 6 L. T. N.S. 79, P. C.

175. The measure of damages for breach of contract in the sale of goods is not merely the amount of the difference between the contract price and the price at which such goods could be bought at the moment when the contract was broken; but likewise a compensation for such profit as might have been made by the purchaser had the contract been duly performed. *Dunlop v. Higgins*, 1 H. L. C. 381. [SCOTCH.]

176. *Quere*, whether the plaintiff was entitled to recover for deterioration of, and damage done to, his goods while detained by the company, or for loss of profits arising from his being deprived of the use of them during that time. *Davis v. North Western Railway Co.*, 4 H. & N. 855.

177. A delivered goods to a railway company, to carry to B., paying the carriage. Part of the transit was effected by another railway company, which refused to deliver up the goods to the consignee without payment of an additional sum; but (an action having been threatened against the contracting company) subsequently offered to deliver them up without that payment. The action was, however, brought, and subsequently the goods were given up in a damaged state. *Held*, that the additional sum demanded for the goods was not the measure of damage. *Ibid*.

178. A prize had been offered for the best plan and model of a machine for loading colliers from barges, and plans and models intended for the competition were to be sent by a certain day; the plaintiff sent a plan and model accordingly by a railway, but through negligence it did not arrive at its destination until after the appointed day: *semble*, the proper measure of damages in such case is the value of the labour and materials expended in making the plan and model, and not the chance of obtaining the prize, as the latter is too remote a ground for damages. *Watson v. The Ambergate, Nottingham, and Boston Railway Co.*, 15 Jur. Q. B. 448.

179. In an action against a carrier for damage to goods, the fact that the damage was partly caused by bad packing goes

only to the amount of damage. *Higginbotham v. Great Northern Railway Co.*, 2 F. & F. 796; 10 W. R. 358.

180. *Quere*, if in the course of performance of a contract one party gives to the other notice of any particular consequences which will result from a breach of the contract, the latter would not be held responsible for the consequences of the breach of contract, though they are not such as would naturally arise, and were not in contemplation of the parties at the time of the contract. *Gee v. Lancashire and Yorkshire Railway Co.*, 6 H. & N. 218.

181. In consequence of four days' delay in the delivery of cotton by the defendants the plaintiff's mills were at a standstill for that period. *Held*, that the loss of profits and the amount of wages paid for the four days would only constitute the legal damages, if the stoppage arose entirely from the non-delivery of the cotton, but not if it arose partly from that cause and partly from the plaintiff's having no cotton to go on with. *Ibid*. 211.

182. The loss of profit and the amount of wages might prove to be the legal damages, if the jury found as a fact that the stoppage of the mill was such a consequence of the non-delivery as, either from express notice or the course of business in the district, might have been anticipated by the parties at the time of making the contract. *Ibid*.

183. The value of a cargo for the purpose of insurance is to be taken with reference to the port of shipment, not that of discharge. *Tamvaco v. Lucas*, 1 El. B. & S. 185; 7 Jur. N.S. 1100; 30 L. J. Q. B. 234; 4 L. T. N.S. 400.

184. Defendants, warranting themselves as agents of L. & Co., sold the plaintiff, on their behalf, certain wool. L. & Co. having repudiated the contract, the plaintiff filed a bill in chancery against them for specific performance, which was dismissed with costs. He afterwards brought an action against the defendants for their breach of warranty. *Held*, that the measure of damages should include the difference between the contract price of the wool and the value of similar quality at the time and place where the wool would have been delivered had the contract been binding, and the costs of the chancery suit taxed as between attorney and client. *Hughes v. Graeme*, 33 L. J. Q. B. 335; 12 W. R. 857.

185. As to the measure of damages in

cases of warranty, see *Randall v. Raper*, E. B. & E. 84; *Dingle v. Hare*, 7 C. B. N.S. 145; *Spark v. Heslop*, 1 E. & E. 563. In cases of detinue, *Williams v. Archer*, 5 C. B. 318; and in other cases of breach of contract, *Reid v. Fairbanks*, 13 C. B. 692, 729; *Chinery v. Violl*, 5 H. & N. 288; *Loder v. Kekulé*, 3 C. B. N.S. 128; *Portman v. Middleton*, 4 C. B. N.S. 322; *Smeed v. Foord*, 1 E. & E. 602; *Smith v. McGuire*, 3 H. & N. 554.

2. In Tort.*

186. In collision actions in the Admiralty Division the measure of damages is *restitutio in integrum*. See *The Gazelle*, *The Ironmaster*, and other cases in Nos. 207—210, p. 1742.

3. Remoteness of Damages.†

187. The rule with regard to remoteness of damage is precisely the same, whether the damages are claimed in actions of

contract, or of tort; *per Brett, M. R. The Notting Hill*, 9 P. D. 105; 53 L. J. Adm. 56; 5 Asp. 241.

188. For cases illustrating the rule that damages must not be too remote, but must be the natural and proximate consequence of the wrongful act complained of, see the cases cited in the notes to *Vicars v. Wilcocks*, 2 Smith's Leading Cases (8th ed.), p. 553.

189. See also No. 178, *supra*, and No. 205a, *infra*.

189a. As to remoteness of damage or consequential loss in actions of collision generally, see p. 1753; as to losses or damage after collision, *Ibid.* p. 1757; and as to loss of market, *Ibid.* p. 1767.

2. In Actions of Damage to Cargo.‡

1. Generally.

190. In an action under the Admiralty

* (92) As to the measure of damages in cases of tort, see Mayne on Damages, 4th ed. p. 41.

† (93) Damage is said to be too remote where, although arising out of the cause of action, it does not so immediately and necessarily flow from it as that the offending party can be made responsible for it. *Ibid.* p. 44.

(93a) See also notes 78, 88, and 89, *supra*.

‡ (94) The measure of damages for the breach of a contract for the carriage of goods is their value at the place of delivery. *Laurent v. Vaughn*, 30 Vt. (1 Shaw) 90; *Ingledeu v. Northern Railroad Co.*, 7 Gray (Mass.) 86; *Michigan, &c. R. R. Co. v. Caster*, 13 Ind. 164; *Dean v. Vaccaro*, 2 Head. (Term) 488; *Worthen v. Willmott*, 30 Vt. (1 Shaw) 555; *Taylor v. Collier*, 26 Geo. 122; *Davis v. New York, &c. R. R. Co.*, 1 Hilton (N. Y. C. P.) 543. [AMERICAN.]

(95) *Quære*, as to the rule when the place of destination is beyond the terminus of the defendants' route. *Michigan, &c. R. R. Co. v. Caster*, 13 Ind. 164. [AMERICAN.]

(96) And with interest thereon from the day when they should have been delivered. *Sherman v. Wells*, 28 Bart. (N. Y.) 403. [AMERICAN.]

(97) Deducting freight and other expenses of transportation. *Atkinson v. Steamboat Castle Garden*, 28 Mies. (7 Jones), 124; *Michigan, &c. R. R. Co. v. Caster*, 13 Ind. 164; *Taylor v. Collier*, 26 Geo. 122; *Davis v. New York, &c. R. R. Co.*, 1 Hilton, (N. Y. C. P.) 543. [AMERICAN.]

(98) In cases of breach of contract of affreightment the measure of damages is, in case of loss, the value of the goods at the time and place of shipment, and in case of

damage, the diminution of value by reason of the injury, with interest thereon to the time of judgment, including all proper charges, and the premium of insurance where it has been paid. 1 Conkling's Adm. Prac. (2nd ed.) 242; *Smith v. Richardson*, 3 Caines, 219. [AMERICAN.]

(99) In a case of breach of contract of affreightment by damage to goods, no interest allowed. *Dusar v. Mungatroyd*, 1 Wash. C. C. R. 13; *Gilpins v. Consequa*, 1 Peters, C. C. R. 86; *Willings v. Consequa*, *ibid.* 172; *Youqua v. Nixon*, *ibid.* 221; *Wilkinson v. Laughton*, 8 Johnson, 213. *Sed contra*, *King v. Shephard*, 3 Story, 349; 1 Conkling's Adm. Prac. 242. [AMERICAN.]

(100) The vessel was wrecked and the goods stolen at an intermediate port. *Held*, that the measure of damages was the value of the goods at that port with interest. *King v. Shephard*, 3 Story, 349. [AMERICAN.]

(101) Where the goods had been carried to the place of destination and there lost, *held*, that the measure of damages was the value at the place of destination, less freight and duties. *The Cassius*, 2 Story, 81. [AMERICAN.]

(102) *Held*, that the net value of the goods at the place of their destination was the measure of damages. *Wilkinson v. Laughton*, 8 Johnson, 213; *Amory v. McGregor*, 15 Johnson, 21. [AMERICAN.]

(103) The measure of a carrier's liability for property destroyed by his negligence, which has not been the subject of traffic, is the fair value of the property at or near the place of its destruction. *Harris v. Panama R. R. Co.*, 3 Bosw. (N. Y.) 7. [AMERICAN.]

(104) The same measure of damages is not applicable to all cases of short delivery.

Court Act, 1861, for damage to goods, before the court will make a decree the amount must have been ascertained by a reference to the registrar and merchants. *The St. Cloud*, Br. & Lush. 4; 8 L. T. N.S. 55; 1 N. R. 244.

191. In estimating the damages due to an assignee of a bill of lading for injury to his goods, a resale by him of the goods before delivery cannot be taken into account. *Ibid.*

192. On reference of accounts to the registrar and merchants in a cause of damage to cargo, the court directed them to be guided in the estimate of the measure of damages by the cases of *Josling v. Irvine*, 4 L. T. N.S. 251, and *Peterson v. Ayre*, 13 C. B. 353; *The St. Cloud*, Br. & Lush. 4; 8 L. T. N.S. 55; 1 N. R. 244; but see No. 203, *infra*.

193. In an action on contract, *held*, on motion to reduce damages, that the measure of damages was the difference between the contract price and the market price at the time of the breach. *Josling v. Irvine*, 4 L. T. N.S. 251; *Boswell v. Kilborn*, 8 Jur. N.S. 443; 6 L. T. N.S. 79, P. C.; 10 W. R. 517.

194. The measure of damages in the case of a breach of contract to deliver goods at a specified time is the difference between the contract price and the market price at the time of the breach of contract,

or the price for which the vendee had sold; but the latter cannot recover, as special damage, the loss of anticipated profits to be made by his vendees. *Peterson v. Ayre*, 13 C. B. 353.

195. Where goods are delivered to a carrier to be carried from A. to B. and are lost, the owner is entitled to recover the value of the goods at B., and that value is the price at which they can be got to, not at, B. *Rice v. Baxendale*, 7 H. & N. 96.

196. A vessel got aground in the course of the voyage, and part of the cargo (rice) was thereby damaged, and it became necessary to throw other parts of it overboard. The vessel subsequently put into the Mauritius for repairs, where the damaged portion was sold. *Held*, that in the absence of affirmative proof that the grounding was owing to the negligence of the pilot (not compulsorily taken), or to want of prudence of the master, there ought to be no deduction from the lump freight on account of non-delivery, as it must be taken to have arisen from perils of the sea. *The Norway*, 3 Moore, P. C. C. N.S. 245; 2 Asp. 17, 56, 168; 5 N. R. 140, 147; 11 Jur. N.S. 892; 13 W. R. 296; 12 L. T. N.S. Adm. 57; 13 *Ibid.* 50, 1085.

197. In an action to recover damages resulting from unreasonable delay in the

Whenever the deficiency has arisen from the negligence of the master or owners the measure of their liability seems to be the sound value of the goods at the time and port of delivery. But if the damage and necessary disposal occur through perils of the sea, and not in consequence of any fault of the master or owners, the proprietor of the goods is entitled to what they sold for, and no more. Maclachlan on Merchant Shipping, 3rd ed., p. 439.

(105) When goods shipped on freight are damaged by water, so as to be valueless and unsaleable, the shipper is not bound to send them to auction to be sold, as a prerequisite to his right of action. But where the goods are of value, either party has a right to require a sale by auction, and the expenses will form part of the costs. *Elkin v. New York, &c. Co.*, 14 La. An. 647. [AMERICAN.]

(106) In a case where no invoice of the cargo existed and where a bill of lading weight was shown, the registrar and merchants will be guided as to the quantity of cargo by their experience in former cases. *The Era*, April, 1882. R. & M.

(107) As to whether the goods so sold are to be paid for should the vessel not reach her port

of delivery, see *ibid.* and the authorities there cited.

(108) In a cause of damage to cargo the plaintiff claimed the difference between the price at which the cargo (wheat) was sold in its damaged state and the price at which it would have sold had it arrived in good order, and the interest thereon. The defendant objected that the claim should be reduced to the difference between the price at which the wheat was sold, and the price at which, prior to its arrival, the plaintiffs had sold it to a third party. Objection overruled; and interest allowed as claimed. *The St. Cloud*, April, 1865. R. & M.

(109) A perishable cargo was not sold when it appeared possible that the delay necessary for repairing the vessel would cause further depreciation. The registrar allowed the difference between the price the cargo would have realized if sold at the port of repair and the price it would have realized if the voyage had been uninterrupted. *H. L. Routh*, June, 1882. R. & M.

(110) An average statement, if not objected to, will be received by the registrar and merchants as evidence, and will be used in adjusting cargo claims. *The Upupa*, May, 1882. R. & M.

carriage of goods by sea, compensation allowed for deterioration in the quality of the goods and for loss of interest on the invoice value of the goods during the period of delay. *The Parana*, 1 P. D. 452; 2 P. D. (C. A.) 118; 45 L. J. Adm. 108; 3 Asp. N.S. 220; *Ibid.* (C. A.) 399; 36 L. T. N.S. 388.

197a. The defendant, under a bill of lading, agreed to carry goods which he knew generally consisted of machinery intended for a mill to be erected in British Columbia. The defendant having failed to deliver the goods, *held*, that the measure of damage was the cost of replacing the lost goods at British Columbia, and the freight and interest on the amount for the time the plaintiffs were delayed. *British Columbia Saw Mill Co. v. Nettle-ship*, L. R. 3 C. P. 499; 37 L. J. C. P. 235.

198. *Held*, also, that the defendant was not liable for the loss sustained through the stoppage of the mills until the machinery was replaced. *Ibid.*

198a. The general knowledge of the defendant that the machinery was going to be employed in the mill was not sufficient to render him liable for the loss sustained by the stoppage of the mills. Knowledge must be brought home to the party sought to be charged under such circumstances, so that he must know that the person he contracts with reasonably believes that he accepts the contract with the special condition attached to it. Per Willes, J., *Ibid.*

199. The measure of damages for the non-delivery of goods, paid for at the time of purchase, is the difference between that price and the highest price the goods have attained up to the time of trial. *Elliot v. Hughes*, 3 F. & F. 387. (Byles.)

199a. The measure of damages as to goods injured by the neglect or default of the master or owners, *i. e.* bad stowage, the unseaworthiness of the ship, &c., and sold at an intermediate port, is the value of the goods in a sound state at the port

of delivery, and at the time when in ordinary course they would have arrived there. *Blythe v. Smith*, 5 M. & G. 405; *Worms v. Storey*, 11 Exch. 427; 25 L. J. Exch. 1; *Atkinson v. Stephens*, 7 Exch. 567; *Hallett v. Wigram*, 19 L. J. C. P. 281; *Alers v. Tobin*, cited in MacLachlan on Merchant Shipping (3rd ed.), p. 440, n.

200. Or, at the election of the owner of the goods, the price they sold for at the intermediate port. *Richardson v. Nourse*, 3 B. & A. 237.

200a. Shipowners were held liable for short delivery of wheat, but there had been delay on the part of the consignees in making their claims. The wheat actually delivered had been damaged on the voyage by causes for which the shipowners were not responsible. *Held*, that under the circumstances the measure of damages for the quantity undelivered must be arrived at by taking the average of the prices realized by the sale of the damaged quantity delivered. *Shankland, &c. v. Othya & Co.*, 3rd Series, vol. 3, p. 810. [SCOTCH.]

201. In estimating the value of a perishable cargo, such as potatoes, the court will value it at the highest market price which the evidence proves could have been obtained, on the principle that the defendant should make good, at the highest market price, any loss sustained. *The Scotia*, 4 Jur. N.S. 156. [IRISH.]

201a. On a reference to the registrar and merchants in an action of damage to cargo, *held*, that the defendants were entitled to better evidence of the value of the cargo than the bills of lading and invoices. *The John Bellamy*, L. R. 3 A. & E. 129; 3 Asp. 360.

202. As to the value of cargo in causes of damage by collision, see p. 1750.

202a. In cases of costs and damages, see p. 1776.

2. Loss of Market.*

203. The difference between carriage

* (111) In cases of carriage by land, a fall in the market value of goods between the date at which they should have been, and that at which they were, delivered has been held recoverable, according to the difference in the market values at those two periods, but this principle does not apply to carriage by sea. *Mayne on Damages*, 4th ed. pp. 14, 15.

(112) The market price at the time of the breach of the contract, and not exceptional

sales, is the proper criterion for the estimate of damages. *Thompson v. Howes*, 14 La. Au. 45. [AMERICAN.]

(113) But in determining such value it would seem that the jury may consider the fact that the property has a market value, at a place other than that where it was destroyed, and to which it was destined, and towards which the carrier, in the course of the usual and regular communication with such place, was then taking it, in connection with the hazards

of goods by sea and land is obvious. In order that damages may be recovered two conclusions must be come to; first, that it was reasonably certain the goods would not be sold until they arrived; and, secondly, that it was reasonably certain they would be sold immediately after they arrived, and that these were known to the carriers, but the practice in regard to goods sent by sea is opposed to both these conclusions. *The Parana*, 2 P. D. 118, reversing the decision of the court below, and confirming the report of the registrar and merchants in 1 P. D. 452; 45 L. J. Adm. 108; 3 Asp. N.S. 220, 399.

203a. *Held*, by the Court of Appeal, reversing the decision of the Admiralty Court, that no damages could be recovered for loss of market. *Ibid*.

204. Hops were sent to a railway station to be carried by the company to London; during the journey the hops became wet, the consignee refused to take them in that condition, and it required seven or eight days to dry them; in that interval, the market price had fallen. In an action against the company for not taking due care, *held*, that the plaintiff was entitled to recover for the damage the hops had sustained, and also for the difference in the fall of the market price, from the time when they should have been delivered to

the time when they were afterwards delivered, dried. *Collard v. South Eastern Railway Co.*, 7 Jur. N.S. 950; 30 L. J. Exch. 393; 9 W. R. 697; 4 L. T. N.S. 410; 7 H. & N. 79.

204a. If goods are delivered too late by a carrier, the owner ought instantly to sell at market price and realize his loss; and the difference between the price he obtains by the sale at that time, and that which he would have obtained, is the measure of damages. *Simmons v. South Eastern Railway Co.*, 7 Jur. N.S. Exch. 849.

205. Damages allowed for loss of market through delay in delivering a cargo of barley. *Gifford & Co. v. Dishington & Co.*, 3rd Series, vol. 9, p. 1045. [SCOTCH.]

205a. The measure of damages payable by railway carriers who have received goods, ordered by the plaintiff from his correspondent living at a distance, and delivered to the company directed to the plaintiff, but not delivered to the plaintiff until the season for them was past, is the difference between the exchangeable or marketable values of the goods at the time when they ought to have arrived, and that value when they actually arrived. The loss of profits which the plaintiff would have derived from making up these goods into articles of sale, and dis-

and expenses attendant upon the residue of the intended voyage. *Harris v. Panama R. R. Co.*, 3 Bosw. (N. Y.) 7. [AMERICAN.]

(114) When goods are destroyed or materially injured on board a vessel in the port where they are shipped, the damages must be ascertained by the difference between the prime cost and charges and the sales at the port of shipment, and not by the probable profits if the goods had gone safe to the port of destination. *Dusar v. Mungatroyd*, 1 Wash. C. C. 13. [AMERICAN.]

(115) Where delivery of the goods has been delayed, but they have not been converted by the carrier, the measure of damages is not the value of the goods, but the loss occasioned to the plaintiff by the delay in the delivery. (Wells, J., dissenting), *Briggs v. New York Central Railroad Co.*, 28 Barb. (N. Y.) 515. [AMERICAN.]

(116) It is a settled rule that no damages are to be awarded on account of the possible or probable profits which might have accrued to the shipper if the goods had gone safe to the port of delivery. 1 Conkling's Adm. Prac. 2nd ed. 241, 460; see also *The Tribune*, 3 Sumner, 144, 151. [AMERICAN.]

(117) A vessel, having on board a cargo of flour for transportation, capsized at her wharf before sailing, and the cargo was much damaged. The carriers might easily have

communicated with the owners of the cargo, and sought instructions as to the disposal of it, but they neglected to do so, and sold the cargo upon their own authority at auction, after which the vessel sailed, and in due time arrived at the port of delivery. *Held* (1), that the sale of the flour under these circumstances was an unlawful conversion by the carrier; (2), that the owners of the cargo were entitled to recover the value of the cargo at the port of delivery, deducting freight and charges, and adding interest on the balance; (3), that the value of the cargo should be computed by the market price at the port of delivery at the time of the arrival of the vessel, it appearing that, except for the accident, the cargo would at that time, in the ordinary course of things, have been delivered, with a privilege, however, to the owner to claim the amount realized upon the sale of the goods at auction. *The Joshua Barker*, 1 Abb. Adm. 215. [AMERICAN.]

(118) When a railroad company is sued for negligence in respect to the non-delivery of goods within a reasonable time, the measure of damages is not the decline in the price between the day when they should have been delivered and the day they were delivered. *Jones v. New York, &c. R. R. Co.*, 29 Barb. (N. Y.) 633. [AMERICAN.]

(119) See also notes 81, 82, 86, 87, *supra*.

posing of them, cannot be taken into account. *Wilson v. Lancashire and Yorkshire Railway Co.*, 9 C. B. N.S. 632; 7 Jur. N.S. 862; 30 L. J. C. P. 232; 9 W. R. 635; 3 L. T. N.S. 859.

206. In an action against a carrier for the loss of a parcel of goods, the measure of damages is, in general, the market value of the goods at the place and time at which they ought to have been delivered. If there is no market for the sale of such goods at the place, then the jury must ascertain their value, by taking the price at the place of manufacture, together with the cost of carriage, and allowing a reasonable sum for importer's profit. *O'Hanlan v. G. W. Rail. Co.*, 34 L. J. Q. B. 154; 6 B. & S. 434.

206a. The plaintiff, a manufacturer accustomed to attend agricultural shows, and make a profit out of exhibiting his goods, delivered them upon a show ground where he had been exhibiting them to the defendants, to be carried by a certain day to a show ground at another place, where he intended to exhibit them, but nothing was expressly said about his intention to do so. The goods did not arrive until after the show was over, and after the time stipulated for. The plaintiff lost some days in going to meet, and waiting for, his goods. In an action for breach of covenant, *held*, the court drawing the inference of fact that the purpose of the plaintiff to exhibit was within the contemplation of the parties to the covenant, that the plaintiff was entitled to damages, on the ground that loss of profit

was a natural and probable result of the breach. *Held*, also, that no evidence was necessary of his prospect of making profit at the particular show in question. *Simpson v. London and N. W. Rail. Co.*, 1 Q. B. D. 274; 45 L. J. Q. B. 182.

See also Nos. 174—184, 192—195, and 201, *supra*.

3. Interest.*

See Nos. 197, 197a, *supra*.

3. In Actions of Damage by Collision.

1. Generally.†

207. In cases of damage the general principle is, that a person who is damaged by the fault of another is entitled to a full compensation for such damage and loss. *The Matchless*, 10 Jur. 1017.

207a. The general rule is, that a vessel doing damage to another is liable to make full compensation. *The Girolamo*, 3 Hagg. 186; *The Dundee*, 1 Hagg. 109; *The Clara*, Swabey, 1; 2 Jur. N.S. 46; 26 L. T. 165; *The Wild Ranger*, 1 Lushington, 553; 7 L. T. N.S. 725; 32 L. J. N.S. Adm. 56; 1 N. R. 32; 11 W. R. 255.

208. The party to blame is considered a wrong-doer, and the party injured is entitled to *restitutio in integrum*—full and complete indemnity for the losses sustained. *The Ironmaster*, Swabey, 443; *The Clyde*, *Ibid.* 24.

209. Cases of insurance are cases of contract, cases of damage by collision are cases of tort. The two classes of cases

* (120) See notes 96, 98—100, 108, *supra*.

† (121) In proceedings *in rem* in a cause of damage by collision, the plaintiff cannot ordinarily recover more damages than the amount in which the action has been entered and bail given. But see *tit. PRACTICE*, p. 1492.

(122) Or than the value of the ship, if left under arrest. But see *Ibid.*, p. 1495.

(123) In the Court of Admiralty, when there has been misconduct on the part of both vessels in a collision, the sum total of the joint damage is payable by the two in equal shares. See *tit. COLLISION*, p. 204.

(124) But where one vessel is in charge of a pilot, taken by compulsion of law, her owners receive half, but pay nothing. See No. 221 in text.

(125) Matter of a merely collateral nature cannot be given in reduction of damages. For instance, the action being as for injury caused by collision at sea, the defendant was not allowed to deduct from the amount of loss proved any money paid to the plaintiff by his insurers in respect of the same

damage. This would be to make the wrong-doer pay nothing and take all the benefit of the insurance without the burthen of the premium. *Mayne on Damages* (4th ed.), p. 396.

(126) Claim for damage by a barge fouling the stern of a steamer lying moored. It was improbable that the barge would have inflicted the whole of the damage claimed for, but in the absence of proof that the damage had been otherwise inflicted the claim was allowed. *The Dodo*, Feb. 1882. R. & M.

(127) Exemplary damages may be given for a wilful collision. *Smyrna, &c. Steamboat Co. v. Whilldin*, 4 Harring. 228; *Ralston v. The State Rights*, Crabbe, 22. [AMERICAN.]

(128) In a case of collision, if exemplary damages are claimed, evidence may be given of acts prior to the injuries complained of, but must be confined to such acts. *Ralston v. The State Rights*, Crabbe, 22. [AMERICAN.]

(129) Allowance made for deterioration in the value of a vessel from collision. *The James of Rye*, March, 1854. R. & M.

therefore stand upon totally different grounds. In the former the claimant recovers pursuant to his contract, including the custom of merchants, of which he is to be presumed to be cognizant. In the latter the claim arises *ex delicto*, and the indemnification ought to be co-extensive with the damage—*restitutio in integrum*. If the settlement of the indemnification is attended with any difficulty the wrongdoer must bear the inconvenience. If the claimant derives incidentally a greater benefit than mere indemnification, that arises only from the impossibility of effecting indemnification without exposing him to some loss or burden which the law will not place upon him. *The Gazelle*, 2 W. Rob. 281; 8 Jur. 429; 3 Notes of Cases, 75.

210. An action for damage is an action to recover the loss actually suffered in consequence of the collision, and the party aggrieved is entitled to be put, as far as practicable, in the same condition as if the wrong had not been suffered. The amount of damage may be direct, as the cost of the repairs, or consequential, as where a fishing voyage is lost, or the vessel might have been beneficially employed, but in all these cases the plaintiff must allege and prove that he has sustained an actual loss, and he must also offer the means of ascertaining the amount. *The Clarence*, 14 Jur. 557; 3 W. Rob. 283; 7 Notes of Cases, 579.

211. The rules and principles which guide other courts on the question of abandonment in insurance cases, do not apply to the Court of Admiralty in cases of collision. *The Columbus*, 3 W. Rob. 165; 13 Jur. 285; 6 Notes of Cases, 671.

212. When the evidence on a question of damages is nicely balanced, neither the court nor the registrar and merchants are justified in dividing the loss between each party, but judgment must be given according to the balance of evidence, bearing in mind on whose side the burthen of proof lies. *The Agnes*, No. 948, April 16, 1862; *The Egyptian*, 10 L. T. N.S. 910.

213. If a vessel is strained in consequence of encountering tempestuous weather, and owing to such straining she, in a collision, receives greater damage than she would under ordinary circumstances have suffered, the defendant is liable for the whole damage. *The Egyptian*, 10 L. T. N.S. 910.

214. A successful plaintiff in a cause of damage is entitled to be reimbursed

by the defendant to the extent, but only to the full extent, of the damage occasioned. *Ibid.*

215. It was sworn that certain articles were lost or destroyed by the collision. The registrar and merchants were of opinion that the collision could not have occasioned their loss or destruction, and disallowed the item. On objection to such disallowance the court referred the item back for reconsideration, with directions that the amount should be allowed if the registrar and merchants could not come to the conclusion that such a loss by the collision was impossible. *H. M. S. Inflexible*, Swabey, 202; but see *Anderson v. Hoen (The Flying Fish)*, No. 284, p. 1755.

216. The burden of proving the damage done lies in the first instance upon the plaintiff; and it is then for the defendant to show that, notwithstanding *prima facie* evidence to the contrary, there was another and concurrent cause to which the damage may be attributed. *Ibid.*

217. When a collision has taken place, the general inference is that the damage accruing was caused by the collision, and the burden of proof is on those alleging that any part of the damage arose from subsequent want of skill in the crew of the damaged vessel. *The Linda*, Swabey, 307; 30 L. T. 234; 4 Jur. N.S. 146; 6 W. R. 196; *The Pensher*, Swabey, 211, 215; 29 L. T. 12; but see *Anderson v. Hoen, The Flying Fish*, No. 284, p. 1755.

218. When a wrong has been committed, the wrongdoer must suffer from the impossibility of accurately ascertaining the amount of damage. *Leeds (Duke) v. Amherst*, 20 Beav. 239; *The Egyptian*, 10 L. T. N.S. 910.

219. Even though the injured vessel may have been, at the time of collision, in such a condition that the collision occasioned an unusual amount of damage, a wrongdoer is nevertheless responsible for all the consequences. *The Egyptian*, 10 L. T. N.S. 910.

220. If a portion only of the damage is clearly attributable to the wrongdoer, and that portion cannot be distinguished from the rest, the wrongdoer is responsible for the whole damage. *Ibid.*; but see *Anderson v. Hoen, The Flying Fish*, No. 284, p. 1755.

221. Where in an action of collision it is held that it was occasioned by the fault of both vessels, but one of such vessels is exempt from liability on the ground of compulsory pilotage, the latter vessel is entitled, by the Admiralty Court rule, to recover half the damages sus-

tained by her in the collision, and is not limited to the difference between half her damage and half the damage of the other ship. *The Hector*, 8 P. D. (C. A.) 218; 52 L. J. P. D. 51; 5 Asp. 101.

222. A claim by the owners of a damaged vessel made at a low estimate, and for the purpose of avoiding litigation and of obtaining prompt and immediate payment, does not bind the party after its rejection, or bar him from proving that such estimate was far below the amount of damage actually sustained. The report of the registrar and merchants, adopting the original estimate as conclusive evidence of the damage, sent back for further consideration. *The Two*

Sisters, 1 Spinks' Eccl. & Adm. Rep. 102.

223. In an action for damages by collision, held, that the defendants were not entitled to deduct the amount of damage received by the plaintiff from insurers. *Yates v. White*, 4 Bing. N.S. 272; 5 Scott, 640; *Jones v. White*, 2 Jur. 363; 1 Arn. 85; and see *Mason v. Sainsbury*, 3 Dougl. 60.

224. As to the division of damages when both vessels are to blame for a collision, see tit. COLLISION, p. 204.

2. Vessel lost.*

225. In case of total loss, the plaintiff is entitled to the market value of the ship

* (130) A ship's sails and stores are considered to be included in her value, and no separate allowance will be made for them. *The Fidelia*, April, 1858; *The Tuscarora*, July, 1858; *The Newport*, Swabey, 344. R. & M.

(131) An owner claiming for a total loss is entitled to more than the mere selling value of his vessel before the collision. *The Helvetia*, No. 4072, Feb. 1869. R. & M.

(132) In the assessment of damage by collision, the diminished value of the vessel after being repaired is to be taken into account. *Halderman v. Beckwith*, 4 McLean, 286; *Barratt v. Williamson*, *ibid.* 589. [AMERICAN.]

(133) In estimating the value of nearly new vessels, it is usual to make a deduction of 12 per cent. per annum from their cost price.

(134) In dealing with claims for the loss of tug boats, the registrar remarked upon the cost of keeping a London tug in a state of efficiency, and instanced the fact that £2,448 had been, in the course of eight years, expended in the repairs of such a vessel. *The Cricket*, February, 1882. R. & M.

(135) A vessel seriously damaged by collision was treated as a constructive total loss, and sold by her owners. The propriety of this step was not questioned by the wrong-doer, but as there had been unnecessary delay in arriving at a determination to sell the vessel, the extra expenses occasioned by the delay were disallowed. *The Queen of the East*, Jan. 1882. R. & M.

(136) In causes of damage by collision, when the ship is lost, the usual proofs of her value filed are *inter alia* her register; if she was a comparatively new vessel, affidavits of her classification at Lloyds, if she had a good class; affidavits of the different occasions of her having been repaired, and the amounts spent in the repairs, particularly on the last occasion; affidavits as to her value from persons experienced in shipping, and who had seen her shortly before she was lost.

(137) Affidavits of shipwrights of standing and experience, setting forth the amount for

which they would build a new vessel of the same class, size, and equipment, are useful in proof of the value of nearly new vessels.

(138) Scientific evidence of a ship's value is received when the ship is registered at Lloyds, but is not relied on when the ship is not so registered, and is of a special build for a special trade.

(139) Affidavits of shipwrights and others experienced in shipping, deposing to her value from the particulars contained in her register and classification at Lloyds, are often filed for want of better proofs, but do not carry much weight with them.

(140) The owners of the vessel held to blame cannot diminish the allowance of her market value by proving her actual worth to be less because of her age, imperfect build, or the state of her timbers. *The New Jersey*, Olcott, Adm. 444. [AMERICAN.]

(141) The *H.*, a steamer two years old at the time of her loss, had been built in 1879 at a cost of £20,500. The registrar and merchants, recognizing the enhanced cost of labour and materials after the date of building, allowed £20,000 as her value at the time of her loss. *The Leon*, April, 1882. R. & M.

(142) £14,000 were claimed for the loss of a steamer of 577 tons net register, 901 gross, and 99 nominal horse-power, seven years old, and classed at Lloyds 90 A1. The sum of £10,000 was awarded. *The Andalusia*, April, 1882. R. & M.

(143) A schooner, between seven and eight years of age, classed for thirteen years, had passed her half-time survey, at a nominal expense, nine months before her loss. She was built in excess of Lloyds' requirements, and had originally cost £2,280. Plaintiffs claimed £1,830, and defendants valued her at about £1,000. The registrar awarded £1,400. *The Blanche*, May, 1882. R. & M.

(144) A vessel of 340 tons, built at New Brunswick in 1864 at a cost of £3,185, repaired in 1879 at a cost of £600, and thereupon classed black diphthong at Lloyds, was valued by her owners in 1881 at £1,650. The defendants filed affidavits valuing her at

just prior to the collision. *The Ironmaster*, Swabey, 443; *The Clyde*, Swabey, 23; *The Columbus*, 3 W. Rob. 164; 6 Notes of Cases, 671; 13 Jur. 285.

226. The C. S. was damaged by collision in Hobson's Bay, Victoria. Her master sold her there instead of repairing her. Her owner claimed the value of the vessel previous to the collision, less the nett proceeds of her sale. *Held*, that the master in selling the vessel had acted as a prudent owner, if on the spot and uninsured, would under the circumstances have done, and the claim allowed accordingly. *The South Sea*, Swa. 141. R. & M.

227. In a cause of collision, the defendants' vessel was sold by the court, and the proceeds were insufficient to pay the plaintiff's claim. *Held*, that the expenses of sale and possession fees formed a proper deduction from the gross proceeds, and that the defendants could not, therefore, be called upon to repay them. *The Europa*, 9 L. T. N.S. 781.

228. In estimating the value of a ship lost by collision, the best evidence is the opinion of competent persons who knew the ship shortly previous to the time it was lost. *The Ironmaster*, Swabey, 443.

229. The second best evidence is the opinion of persons conversant with shipping, and the transfers thereof. *Ibid*.

230. Many other circumstances may be called in aid,—as the original price of the vessel, the amount of repairs done to her, the sum at which she was insured, and the like; but these facts have a slighter bearing upon the case. *Ibid*.

231. The evidence, as to value, of men of experience who have seen the vessel is to be preferred to that of persons who have not seen her. *The Clyde*, Swabey, 32.

232. The owner's affidavit of prime cost, unsupported by documentary proofs, is not sufficient evidence to produce legal conviction. *Ibid*.

233. In a case of total loss from collision, it is the duty of the court to award the full value of the ship, as she lay at the moment before the collision occurred. In doing so the court will estimate her true market value, considering her age, the several repairs she had undergone from time to time, and the amount for which she was insured, at the date of the accident. *The Cumberland*, 5 Jur. N.S. 399. [IRISH.]

234. Claim of £2,800, as the value of the ship reduced by the registrar and merchants to £1,830. On objection to their report, the evidence for the claimant being his own affidavit of prime cost unsupported by documentary proof, and affidavits of experienced persons in his neighbourhood who had not seen the vessel; and against the claim, affidavits of experienced persons in London who had also not seen her, the court confirmed the report without costs. *The Clyde*, Swabey, 23.

235. Three shipwrights who had inspected the vessel deposed to her value as £540. On the other side the affidavit of a shipwright was produced deposing to her value as from £750 to £800. *Held*, that the value of the vessel was £540. *The Mellona*, 3 W. Rob. 24; 6 Notes of Cases, 69.

236. In valuing a ship in order to fix the limit of her liability under 53 Geo. 3, c. 150, *held*, that the value of the ship is the price at which she could be sold, which price must be ascertained, not by making deductions from her cost price proportioned to her age, but by a valuation and appraisalment. *Dobree v. Schroeder*, 6 Sim. 291; 2 Mylne & C. 489.

237. And that her value, under ordinary circumstances, under the M. S. Act, 1854, Pt. IX., will be taken to be what the ship would have fetched if sold immediately before her loss. *African Steamship Co. v. Swanzy*, 2 K. & J. 660; 25

£800 or £900, but the registrar and merchants allowed £1,370, on the ground that she must have been a good vessel to have been reclassified so late as 1879. *The Rothesay*, April, 1882. R. & M.

(145) A Cornish schooner of 133 tons, built in 1864, and classed A1 for twelve years, passed her half-time survey in 1871 at a cost of £279. In 1876 her class was continued for eight years at a cost of £496, and she passed her half-time survey in 1880—81, when £332 were expended upon her. She was lost in March, 1881, and a claim of £1,200 made. Defendants valued her at £650. £1,000 awarded. *The Lady Ruthven*,

April, 1882. R. & M.

(146) Evidence as to the market value, in an English port, of a foreign vessel, which had been lost by collision, rejected by the registrar and merchants, who declined to adopt her estimated value in an English port. *The Cyanus*, January, 1884. R. & M.

(147) In assessing the value of a vessel lost through collision, the registrar took into consideration the fact that her insurance had been prepaid, as the insurance was an element in the value of the ship if she had been put up for sale by auction with the benefit of such insurance. *The India*, February, 1885. R. & M.

L. J. Chanc. 870; *Leycester v. Logan*, 4 K. & J. 725.

238. A vessel was purchased in Dec. 1852, for £12,900. The collision occurred in October, 1854, at which time she was insured for £10,000. Valuations were brought in, some to the amount of £6,000, others to £4,000, and Mr. Bailey, a valuer appointed by both parties, valued her at £5,900. *Held*, that the value of the vessel was £5,900. *African Steamship Co. v. Swanzy*, *supra*.

239. As to what are appurtenances to a ship, see tit. OWNERS, p. 1216.

240. As to value of ship in causes of possession, see No. 130, p. 1731.

241. In cases of costs and damages, see p. 1775.

3. Vessel repaired.*

242. The owners of a ship damaged by collision are entitled to the full expenses

* (148) When the value of the vessel injured is only impaired, the measure of damages will be the sum required to reinstate her to the condition she was in at the time of collision; if she is a total loss her market price or value at the time will be the criterion. *The New Jersey*, Olcott, Adm. 444. [AMERICAN.]

(148a) The registrar and merchants will not hold themselves bound by a contract which, in their opinion, is improvident, and in such a case, having ascertained by an inspection of the shipwright's books the actual costs of the repairs, with materials and labour, they added dock dues, an allowance for use of machinery and other general charges, and a profit of 25 per cent. on the whole. *The Elephant*, Feb. 1884. R. & M.

(149) The value of old materials should be allowed for in the bills for repairs, or a deduction for them will be made by the registrar and merchants.

(150) Insurance of ship during repairs not allowed. *The Elizabeth Moore*, 1854. R. & M.

(150a) The charge for caulking ought never to be more than 4s. per ton. *The Hadding*, June, 1859. R. & M.

(151) Bottomry premium on money required for repairs occasioned by collision not allowed as against defendants in a cause of damage. *The Aberfoyle*, June, 1861; *The Diana*, July, 1861; *The Hope*, Nov. 1854. R. & M.

(152) Surveys should not be drawn up by the surveyor's solicitors. Charges for preparation thereof disallowed. *The Joseph Somes*, 1857; *The Christiana*, *ibid.*; *The Albert*, April, 1859. R. & M.

(153) A vessel which had been damaged by collision was dry-docked for repairs, and certain damage previously unknown to the owner and not consequent upon the collision was thereby revealed. Although the vessel was necessarily dry-docked in order to repair the collision damage the registrar and merchants, being of opinion that a prudent owner cognizant of the other damage would have dry-docked his vessel for repairs irrespective of the collision, disallowed a portion of the dock charges. *The Minnie*, No. 5783, January, 1872. R. & M.

(154) It being admitted on a reference that a steamer, in consequence of touching the

ground at the commencement of her voyage, would have been dry-docked at the end of her voyage, the labour and expense of docking were disallowed as against a steamer which had damaged her during the voyage. *The Seaham Harbour*, March, 1882. R. & M.

(155) A wooden vessel which had had her false stem started over to port was placed in dry dock in order that the injured portion might be removed for the purpose of inspecting the main stem. This proceeding was objected to on the ground that the work might have been performed afloat by tilting the ship. *Held*, that the plaintiffs were justified in docking. *The Bradley*, March, 1882. R. & M.

(155a) The dry docks of a port being unavailable for a lengthened period, *held*, that the owners of a damaged vessel were wrong in detaining their vessel at such port until one of the dry docks was available, and that she ought to have been removed to a neighbouring port. *The Elgin*, May, 1884. R. & M.

(156) In a somewhat similar case the expense of constructing a temporary gridiron was allowed. *The Levenvale*, *ibid.*

(156a) The G. E., in the prosecution of her voyage, ran aground in the Elbe, but got off again, and, whilst lying athwart, was run into and damaged above the water-line. She was repaired in dry dock, but the charges for docking and undocking, scraping and painting were disallowed, on the ground that they were solely necessary in consequence of the grounding. A moiety of the dock-rent, however, was allowed, as it was considered right and proper when she was in dock to keep her there for collision repairs. *The Edward Eccles*, June, 1883. R. & M.

(157) A dredger belonging to a dock board was placed in a dry dock belonging to the board to execute collision repairs. Claim for dock dues objected to on the ground that the board were not entitled to charge such dues on a vessel of their own. Seeing that the dredger occupied space which might have been profitably filled by other vessels paying dock dues, the registrar and merchants considered that the objection could not be sustained. *The Clarence*, Nov. 1883. R. & M.

(158) Where it was necessary to place a vessel on a slip to execute collision repairs, the registrar allowed the slip dues, notwithstanding the fact that the owners had embraced

of repairing her and fitting her for sea, though such repairs may make her more valuable than she was before the collision. If the charges are extravagant they must

the opportunity to paint the ship's bottom, that operation not being rendered necessary by the collision. *The Rieher*, August, 1883. R. & M.

(159) Where a vessel was repaired under a contract which contained a penalty for delay in the completion of the repairs, and the time was exceeded, the registrar allowed, as against the defendant, the difference between the penalties recovered and the full demurrage. *The Charles Howard*, June, 1882. R. & M.

(159a) The propeller of a steamer was damaged by collision, but there being no spare one on board she was allowed to make several voyages, her speed, however, being considerably reduced. Meantime a new propeller was prepared, and ultimately sent to her at Swansea. On arrival it was discovered that no means existed for fixing it at that port, and it was ultimately placed in position in the Tyne. The cost of carriage from the Tyne to Swansea was disallowed, on the ground that the plaintiffs should have inquired as to the facilities existing at Swansea before sending the propeller there. *The Cuduceus*, June, 1883. R. & M.

(160) The damages occasioned by the collision were only partially repaired, the vessel being thereby put in a serviceable condition, but not restored to her market value before the collision. A sum was therefore allowed (one of the merchants dissenting) as compensation for the damages not repaired. *The Falcon*, July, 1878, C. No. 15. R. & M.

(161) The registrar will assess the amount of damages sustained by a vessel which has not been permanently repaired, and will take estimates into account for this purpose. *The Plover*, August, 1882. R. & M.

(162) If there are no reasonable means of repairing a vessel at the port to which she is brought, and she can be safely navigated to another port where the repairs would be cheaper, the expense of repairing is to be estimated according to the cost at the latter port. *Hall v. Franklin Ins. Co.*, 9 Pick. 466. See *Parker, C. J.*, in *Gordon v. Mass. Ins. Co.*, 2 Pick. 249, 261. [AMERICAN.]

(162a) A vessel bound to Glasgow was damaged in the river Clyde. After discharging her cargo she was temporarily repaired and taken to Liverpool for permanent repairs. The registrar, holding that the repairs might very well have been done at Glasgow, disallowed the expenses of removal. *Ardcer*, July, 1883. R. & M.

(163) The expense of towing the vessel to her place of repair, and wharfage while repairing, are items of damage. *Fitch v. Livingston*, 4 Sandf. Sup. Ct. 492. [AMERICAN.]

(163a) In the assessment of damages by

collision the expenses and delay of taking the injured vessel from the place of collision to her port of destination and thence to the most suitable place for repair are, amongst other things, to be allowed. *Holderman v. Beckwith*, 4 M'Lean, 286; *Barrett v. Williamson*, *ibid.* 589. [AMERICAN.]

(164) The owners of a ship damaged by collision, and, amongst other things, re-metalled, are not entitled, in that respect, to recover against a wrong-doer more than the value of the old metal removed. *The Elgin*, May, 1884. R. & M.

(165) The usual method of dealing with claims for re-metalling is to allow weight for weight, new for old, with a fair allowance for what might have been torn away and totally lost by collision. *The County of Cardigan*, June, 1885. R. & M.

(166) In estimating the measure of damages by collision, the vessel injured having been repaired, the evidence of experts as to their opinion of the nature and extent of the injury is not admissible, though it may be where a vessel has been run down and abandoned. *Schooner Catharine v. Dickinson*, 17 How. 170. [U. S.]

(167) Under the New York statutes giving a lien upon ships and vessels for damages occasioned by collisions, and an attachment of such ships and vessels therefor, the remedy is confined to the actual damage to the vessel injured, *i.e.*, to the amount necessary to repair and put her in as good condition as when the accident happened. *Fitch v. Livingston*, 4 Sandf. Sup. Ct. 492. [AMERICAN.]

(168) For mere negligence or want of skill the damages are compensatory only;—such as will restore the injured vessel to her former condition, but not for detention, loss of profits, &c. *Smyrna, &c. Steamboat Co. v. Whilldin*, 4 Harring. 228; *Ralston v. The State Rights*, Crabbe, 22. [AMERICAN.] But see next case.

(169) The general rule of damages applicable to collisions which are not wilful is, that the owner of the injured vessel is to receive a remuneration which will place him in the situation in which he would have been but for the collision. *The Rhode Island*, 1 Abb. Adm. 100; *The New Jersey*, Olcott, Adm. 444; *The Blossom*, *ibid.* 188. [AMERICAN.]

(169a) In estimating the measure of damages by collision, the vessel injured having been repaired, the evidence of experts as to their opinion of the nature and extent of the injury is not admissible, though it may be where a vessel has been run down and abandoned. *Schooner Catharine v. Dickinson*, 17 How. (U. S.) 170. [AMERICAN.]

be reduced, but for necessary repairs the owners have a right to be reimbursed. *The Pactolus*, Swabey, 173; 28 L. T. 220; 5 W. R. 167; *The Clyde*, Swabey, 23.

243. The evidence of skilful persons who saw the ship after the collision is the best proof of the repairs necessary. *Ibid.*

243a. A yacht belonging to the plaintiff having been sunk in a collision, and evidence having been given that her marketable value was depreciated, *held*, that in addition to the claims made for repairs the plaintiff was entitled to be paid such sum as would compensate for the impaired value. *The Georgiana v. The Anglican*, 21 W. R. 280.

244. The rule which prevails in insurance cases, of deducting one-third of the cost price when new articles are supplied in lieu of old, is not applicable to cases of collision; the claim for indemnity in the former being *ex contractu*, but in the latter *ex delicto*, and therefore entitling the party to *restitutio in integrum*. In a cause of collision, report of registrar and merchants as to the amount of damage, objected to on the ground of such deduction, referred back for alteration on the principle above stated. *The Gazelle*, 2 W. Rob. 279; 8 Jur. 429; 3 Notes of Cases, 75; *The Pactolus*, Swabey, 174; 28 L. T. 220; 5 W. R. 167.

245. When a man runs down a vessel he cannot claim an abatement of one-third for old materials. It is different in insurance cases, because there it is an understood part of the contract. *Hare v. Beckington* (Cresswell, J.), cited with approval in *The Gazelle*, 2 W. Rob. 283; 8 Jur. 429; 3 Notes of Cases, 75.

246. When a ship partially damaged has been repaired by the owners, the insurers, as between assurer and assured, are only liable to the amount of two-thirds of the cost of repair, unless circumstances be shown to take the case out of that ordinary rule of deduction. *Poingdestre v. Royal Exchange Assurance Company*, R. & M. 378; *Da Costa v. Newnham*, 2 T. R. 407.

246a. The estimated cost of repairs in an action to recover on a policy of marine insurance, though rejected as a direct measure of loss, may be the measure of the difference between the ship's sound and damaged values if no other measure can be found for arriving at the loss

really sustained, but if more reliable evidence of the amount of such loss exists, the estimated cost of repairs ought not to be adopted for the purpose of arriving, even indirectly, at the measure of the loss sustained. *Pitman v. The Universal Marine Insurance Co. Limited*, 4 Asp. 444.

247. In estimating damages arising from a collision, an outlay merely probable and discretionary had there been no collision, cannot be deducted from a charge made indispensable by the collision. *H. M. S. Inflexible*, Swabey, 200; 28 L. T. 374; 5 W. R. 517.

248. In every case of collision the owners of a damaged vessel may avail themselves of the opportunity of repairs being required in respect of the collision, to do also other repairs, provided that no injury is caused thereby to the persons who pay for the repairs consequent on the collision. *The Alfred*, 3 W. Rob. 239; 7 Notes of Cases, 352.

248a. On opening up, for the purpose of repairing a ship damaged by collision, certain timber heads not affected by the collision were found to be rotten, and to require renewing before the Board of Trade surveyor would allow her to proceed to sea, though but for such opening up these would not have been discovered, and she might have sailed for some years without their renewal. *Held*, by the Divisional Court, overruling the judgment of the County Court judge, that the expenses for such renewal could not be charged to the collision. *The Princess*, 5 Asp. 451.

249. It does not necessarily follow that surveys include all the repairs that ought to be done. *The Alfred*, 7 Notes of Cases, 357; 3 W. Rob. 232.*

250. Shipwrights or persons accustomed to shipbuilding and, *semble*, who saw the vessel under repair, would be better judges than the merchants assisting the registrar of the repairs necessary in consequence of a collision. *Ibid.* 7 Notes of Cases, 355; 3 W. Rob. 232.

251. The report of the registrar and merchants reduced the amounts of shipwrights' and blacksmiths' accounts on the ground that the repairs exceeded the damage. On objection to the report, evidence of shipwrights and others engaged in the repairs was given on one side

* (170) But the registrar would require clear proof of repairs, not included in the

survey, having been rendered necessary by the collision.

to the effect that all those repairs were caused by the collision; and on the other side, besides the protest and surveys, evidence was given by shipbuilders and others who had not seen the vessel, but had perused the protest, surveys, and bills, of the sufficiency of the amounts allowed by the report. The court disallowed the reductions. *Ibid.* 7 Notes of Cases, 352; 3 W. Rob. 222.

252. Expenses for repairs were incurred shortly after the collision and before judgment, and were paid, and sworn to be correct, and there was no contradictory evidence. The registrar and merchants disallowed part of those expenses, but on objection to the report the full amount was allowed by the court. *The Black Prince*, 1 Lushington, 576.

253. A claim of £242 was made for cordage; the registrar and merchants allowed £186. On objection thereto positive evidence was given by the plaintiff that all the cordage charged for was required in consequence of the collision. Opposed to this was the opinion of the registrar and merchants that the quantity was excessive, but without any explanation of fact, or any proof furnished by the defendant. The court referred back the items for further consideration. Ultimately £232 was allowed. *H. M. S. Inflexible*, Swabey, 203.

254. Claim of £80 for painting the whole ship averred to be necessary in consequence of her having been shaken by the collision and requiring to be caulked all over. £60 only allowed by the registrar and merchants, and such allowance confirmed by the court. *Ibid.* 200.

255. Ship was repaired at Portsmouth and afterwards proceeded to her home port, Yarmouth, where some slight further repairs were done. Such further repairs disallowed by the registrar and merchants, and the disallowance confirmed by the court. *The Hebe*, 5 Notes of Cases, 181; 3 W. Rob. 535.

256. In the accounts for the repairs of a damaged vessel large deductions were made by the registrar and merchants from the bills of the carpenter and the painter,

and also from the bill for copper, on the grounds, 1st, that the charges were too high and a greater discount ought to have been allowed; and 2nd, that all the work done was not rendered necessary by the collision. On objection to their report, *held*, as to the first ground of reduction, that the registrar and merchants were peculiarly competent to form a correct opinion on such matters, and that the evidence had not satisfied the court they had miscarried; but as to the 2nd ground, that the evidence established that all the work done was for repairs caused by the collision, and the report directed to be altered accordingly. *The Pactolus*, Swabey, 173; 28 L. T. 220; 5 W. R. 167.

257. In a case of damage to an American vessel, *quære* as to the admissibility of evidence as to the general state of vessels built in America, and that they were generally insufficiently supplied with iron fastenings. Even if admissible, it is not to be put in competition with direct evidence as to the actual state and condition of the vessel and of the repairs necessary to be done in consequence of the collision. *Ibid.* Swabey, 176; *Ibid.*

258. The burthen of proof that the claimants for damage went into an improper port for repair is on those averring that misconduct. *The Pensher*, Swabey, 213; 29 L. T. 12.

See also Nos. 212—214, p. 1743.

4. Expenses superintending Repairs.*

259. Vessel damaged, put into Portsmouth for repair, her master on board was sick, and agents of the ship were appointed there. Her owner, who resided at Yarmouth, sent C., a man of experience, from Yarmouth to Portsmouth to superintend the repairs. Charge of £33 for C.'s expenses and loss of time, disallowed by the registrar and merchants, and by the court. *The Hebe*, 5 Notes of Cases, 180; 2 W. Rob. 533.

260. Expenses of journeys of master and mate to and from Portsmouth, where the ship was repaired, and Yarmouth, where her owner resided, disallowed by

* (171) Damages amounting to about £400 were repaired in the port in which the owners resided. A charge of £10 : 10s. made by the owners for agency and superintending the repairs allowed. *The Polonaise*, No. 1800, April 23, 1864. R. & M.

(171a) The collision was between two steamships and occurred in Gothenburg Harbour.

The expenses of a journey there undertaken on behalf of the claimants by a London shipwright and an assistant were allowed, the step being deemed a prudent one. *The Carl XV.*, No. 6011, July, 1872. R. & M.

(172) The survey fees of a shipwright who afterwards repaired a vessel's damages were disallowed. *The Neera*, April, 1884. R. & M.

the registrar and merchants, and by the court. *The Hebe*, 5 Notes of Cases, 181.

5. *Repairs where justifiable.**

261. *Semble*, in a cause of damage by collision, if the costs of repairs exceed the value of the vessel immediately before the

collision, the excess will not be allowed. *The Empress Eugenie*, 1 Lushington, 138. See also No. 227, p. 1745.

6. *Cargo lost.†*

262. Owing to a collision between the K. and the B. the cargo of coals on the K. was damaged, and had to be unladen

* (173) The S., the value of which was variously estimated at from £684 to £1,000, suffered damage by collision, and received salvage assistance. The salvage expenses amounted to £174, and the repairs and demurrage to £1,011. *Held*, that it was the owners' duty to have sold the wreck, and claimed for a total loss, instead of repairing her. *The Earl of Leicester*, Dec. 29, 1864. R. & M.

(174) The plaintiff's vessel, laden with cargo, was sunk in a collision, and afterwards raised and repaired, and the cost of repairs exceeded the value of the ship, which might have been ascertained before the repairs were commenced. *Held*, that the plaintiff could not recover upon a principle of partial loss, but that the measure of damages was the value of the ship before the collision, with interest from the date when the cargo would, in ordinary course, have been delivered, together with the costs of raising and of placing the ship in dock for inspection, less the value of the wreck as raised. *The Empress Eugenie*, 1 Lushington, 138. R. & M.

(175) Unless there has been a degree of imprudence amounting almost to culpable negligence shown by an owner who has repaired a vessel which, as events prove, should have been abandoned as a total loss, the registrar and merchants will not reject his claim for the repairs effected. *The Magellanes*, No. 3815, Dec. 1867. R. & M.

(176) A vessel having an inferior class was damaged by collision. For the purposes of repair she was extensively opened out, and after a very large sum had been spent upon her, it was discovered that her beams were so decayed as to render it unwise either to complete the repairs or to restore her to her damaged condition after the collision; at which time her market value would have been considerably greater than after she had been opened out. On reference of the claim, the defendants contended that the vessel should have been treated as a total loss immediately after the collision. The registrar and merchants, however, were of opinion, on the balance of evidence, that the owners had intended to repair the vessel so as to entitle her to a higher class than she had before the collision, and that if she had been opened out only so far as was necessary to repair the actual damage, it would then have been thought prudent by an uninsured owner to restore her to her old class by effecting such

repairs. They accordingly rejected the defendants' contention, and allowed a sum which, in their opinion, would have covered the cost of opening out the vessel so far as would have been necessary to effect the collision repairs, and also allowed the estimated cost of such repairs. *Ibid.*

(177) Although, upon reference of a claim for damage by collision, the figures finally arrived at proved that the vessel should have been abandoned and not repaired, the registrar and merchants, considering that the owners had acted *bonâ fide* and as a prudent uninsured owner might have been expected to act, allowed the repairs in principle, but dealt strictly with the figures. *The N. Mosher*, No. 3274, April, 1867. R. & M.

(178) A steamer, whose value at the time when she was sunk was found by the registrar and merchants to have been about £9,300, was raised and repaired by her owners at a cost (including demurrage) of £10,909. In reducing the claim to £8,973, the registrar and merchants did not accept the contention that she should have been treated as a constructive total loss. *The Mary*, March, 1882. R. & M.

† (179) The value of cargo lost by collision is allowed less charges for freight and of realizing the cargo. *The Tuscarora*, July, 1858. R. & M.

(180) Cost price of cargo and £10 per cent. profit were allowed where no objection to it was taken. *The Britannia*, August, 1858. R. & M.

(181) In estimating the value of cargo lost by collision the registrar and merchants will allow a fair profit in addition to the cost price. *The Ironmaster*, Sept. 1858. R. & M.

(182) A cargo of coals was shipped on owner's account. The vessel having been run down and sunk, the owner claimed and had allowed to him the invoice price of the coals, plus the necessary disbursements in sending the vessel to sea, and the wages paid to the master and crew up to the date of the loss. *The Thyatira*, July, 1882. R. & M.

(183) A third party having established a claim in respect of advanced freight, the report was, by agreement, referred back to the registrar, and an amended claim filed, claiming the estimated arrival value of the cargo at its destination, less the expenses that would have been incurred in realizing that value. *Ibid.* Feb. 1884. R. & M.

(184) An item for insurance premium on cargo lost by collision was objected to, but as

at C., the port of loading. The owners of the coal desired to sell it at C., and to load a fresh cargo, but this the owners of the K. refused to do, except upon "fresh terms." These the coal owners did not ascertain, but re-shipped the coal in the K. to its destination at Bombay, and there used it for smithy purposes, as it was unfit for its original purposes. Against the owners of the B. the registrar allowed only the difference between the value of the damaged and sound coal at C. *Held*, by the court, that the owners of the K. were entitled to insist on the original cargo being re-shipped, that the cargo owners should have inquired as to the "fresh terms," so as to be able to form a judgment as to the best way of diminishing the loss, and that it must be ascertained what increased freight would have been payable in respect of a fresh cargo before comparing the loss which resulted at Bombay with the loss which would have arisen on a sale at C., and shipping a fresh cargo. *The Blenheim*, 10 P. D. 167; 54 L. J. P. D. 81.

262a. *Held*, further, that because the damaged coal was used for smithy pur-

poses at Bombay its value was not necessarily that of ordinary smithy coal at Bombay. *Ibid*.

263. In estimating the value of a perishable cargo, such as potatoes, the court will value it at the highest market price which the evidence proves could have been obtained, on the principle that the defendant should make good, at the highest market price, any loss sustained. *The Scotia*, 4 Jur. N.S. 156. [IRISH.]

263a. On a reference to the registrar and merchants in a cause of collision the plaintiffs, who were underwriters of cargo and had paid for a total loss, produced in support of their claim the policies of insurance, the bills of lading, the invoice and a copy of the manifest. *Held*, that the plaintiffs must also give evidence of a discharge from the original owners of the cargo, and some further evidence as to the value of the goods. *The John Bellamy*, 39 L. J. Adm. 28.

264. As to the market value of cargo at its place of delivery not being allowed, see *The Parana*, No. 203, p. 1741.

264a. As to the loss of cargo in causes of damage to cargo, see pp. 1738—1742.

the plaintiffs claimed no profit on the cargo the registrar did not disturb the claim. *The Aberfoyle*, August, 1883. R. & M.

(185) Claims for insurance, in addition to the cost of cargo lost by collision, were disallowed, and an allowance substituted for the trouble of shipping the goods. *The Warkworth*, Feb. 1885. R. & M.

(186) The measure of damages for goods lost in a collision (as held in the United States) is the value of the cargo at the port of shipment, together with the expense of lading it on board, and transporting it to the place of collision, and interest at 6 per cent. per annum; all beyond is expected earnings or profits, and the loss of them is not a proper measure of damages. (U. S. Circ. Ct. East Dist. of N. Y.) *Joseph W. Dyer v. The National Steamship Co.*, 4 Asp. 30. [AMERICAN.]

(187) Where the value at the port of shipment cannot be ascertained, the measure is the market value at the port of destination, less expenses which would have attended the sale, and less the estimated mercantile profit, but plus interest. *Ibid*.

(188) A cargo of guano, shipped at the Chincha Islands, while being taken to New York was lost by collision. The guano belonged to the Peruvian Government, which, though it had a monopoly of the guano at the Chincha Islands, did not sell the guano there, but carried it to various parts of the world. *Held*, that the damages for the loss of the guano were to be ascertained

by taking the market value in the port of New York, and deducting therefrom the costs and charges which would have been incurred from the time of the loss to its sale and a reasonable mercantile profit. *Dyer v. The National Steamship Co.*, 4 Asp. 26. [AMERICAN.]

(189) Where cargo was lost by a collision and the owners brought suit to recover its value, *held*, that the damages must be computed by taking the price paid at the port of shipment, and adding the expense of lading it on board, and of navigating the vessel to the place of collision, and that the libellant was entitled to interest on that account from the time of the collision. *The Ocean Queen*, 2 Asp. 419. [AMERICAN.]

(190) Where a ship at Melbourne bound for New York received on freight a quantity of sovereigns, and gave a usual bill of lading therefor, but failed on her arrival to deliver them to the indorsee of the bill of lading, *held*, that in fixing the amount of damages, the bill of lading was to be treated, not as a contract to pay money, but to carry and deliver goods. *The Patrick Henry*, 2 Asp. 566. [AMERICAN.]

(191) *Held*, also, that the value of the sovereigns was not to be fixed by a statute which fixed its computation for ordinary transactions, but by their actual value in the currency of the country. *Ibid*.

(192) *Held*, further, that the clause in the bill of lading fixing the freight at so many pounds sterling was a promise to pay money,

265. In cases of costs and damages, see p. 1776.

7. *Cargo damaged.**

See No. 262, *supra*.

8. *Interest. †*

266. *Held*, that the party damaged and obtaining judgment was entitled to interest upon the amount paid for the repairs from the date of payment, and not from the date of the decree only, and the report upon that item amended. *The Hebe*, 5 Notes of Cases, 176; 2 W. Rob. 533.

267. In a case of total loss interest on the value of ship and amount of freight is allowed from the probable termination of the voyage. *The Canada*, 1 Lushington, 586.

268. In a cause of collision *in rem* the ship was sold by the court, and the proceeds were insufficient to pay the plaintiff's claim. *Held*, that the plaintiffs were entitled to interest, *ultra* the net proceeds and costs. *The Europa*, 9 L. T. N.S. 781.

269. See, further, as to the allowance of interest *ultra* the statutory limitation of liability, tit. Costs, p. 403.

270. As to interest in causes of bottomry, see p. 1720.

271. In causes of mortgage, see c. 6, s. 2, p. 1730.

272. In causes of salvage, see c. 9, s. 2, p. 1734.

273. In costs and damages, see p. 1776.

9. *Clothes. †*

274. In estimating the value of clothes, not worn, lost by seamen in a collision,

and in calculating the freight the pound sterling must be taken at its legal value. *The Patrick Henry*, 2 Asp. 566. [AMERICAN.]

(192a) The owners of a ship trading as a common carrier are liable to make good any losses sustained by the cargo through collision. *The Horatio Harris*, No. 4214, June, 1868. R. & M.

* (193) A cargo of grain having received sea damage was afterwards detained on board the vessel at an intermediate port by reason of a collision. *Held*, that such detention must have increased the damage which was going on at an increasing ratio the longer the vessel was detained, and the registrar allowed a sum representing about one-fifth of the total sea damage. *The Lima*, November, 1883. R. & M.

(193a) When goods are destroyed or materially injured on board a vessel in the port where they are shipped, the damages must be ascertained by the difference between the prime cost and charges, and the sales at the port of shipment, and not by the probable profits if the goods had gone safe to the port of destination. *Dusar v. Mungatroyd*, 1 Wash. C. C. 13. [AMERICAN.]

(194) The actual damages sustained by a collision at sea are to be paid by the faulty vessel, both in respect to ship and cargo. *The Narragansett*, Olcott, Adm. 246. [AMERICAN.]

(194a) In cases of tort the measure of damages is, in the event of loss, the value of the goods at the time and place of shipment, and in the event of damage the diminution of value by reason of the injury, with interest thereon to the time of judgment, including all proper charges, and the premium of insurance where it has been paid. 1 Conkling's Adm. Prac. (2nd ed.), 242. [AMERICAN.]

(195) The vessel doing damage is not exonerated from full damages, because after

the wreck a portion of the cargo was injured or lost through the efforts of a third vessel to save it. *The Narragansett*, *supra*. [AMERICAN.]

† (196) Interest on the value of the ship properly sold in consequence of a collision allowed from the day of collision. *The South Sea*, Swabey, 145. R. & M.

(197) Interest on the amount of the value of a ship lost by collision allowed from the time when the cargo on board her would, but for the collision, have in ordinary course been delivered. *The Empress Eugenie*, 1 Lushington, 140. R. & M.

(198) In cases of repairs the ordinary practice is to allow interest from the date of payment of the bills.

(199) A cargo was lost by collision near its port of destination. The registrar and merchants allowed interest from the day when the cargo would in due course have been discharged, and the money due and payable. *The Tuscarora*, July, 1858. R. & M.

(200) Interest on money paid into the registry in lieu of bail in a cross action not allowed. *The Chieftain*, 30th Dec. 1854. R. & M.

(201) Laches of parties in putting forward their claims is considered by the registrar and merchants in allowing interest. *The Miranda*, No. 3914, Feb. 1869; *The Florence Danvers*, No. 4232, April, 1869; *The Wood Hall*, No. 5819, July, 1872. R. & M.

(201a) The owners are entitled to recover interest on the amount of damages from the time of the injury. *Fitch v. Livingston*, 4 Sandf. Sup. Ct. 492. [AMERICAN.]

(202) In the American Admiralty Courts interest in collision actions is allowed at the rate of 6 per cent. from the time of the collision. *Dyer and others v. The National Steamship Co.*, 4 Asp. 28.

(202a) See also notes 186, 187, 189, *supra*.

‡ (203) In the Admiralty Division the prac-

the court will adopt the principle acted upon by insurance companies and deduct one-third from the original cost price, as the nearest possible approximation to the market value upon the day of the loss. *The Cumberland*, 6 Ir. Jur. N.S. 325; 1 Asp. 170; 5 L. T. N.S. 496; but see *The Gazelle*, 2 W. Rob. 279; 8 Jur. 429; 3 Notes of Cases, 75.

275. In a suit brought by seamen against the owners of a steamer, to recover the value of their clothes, &c., lost in a collision, a defence that the impugnants, in a case of collision by owners of the lost vessel, had been adjudged to pay a total loss, overruled. *The Cumberland*, 1 Asp. 170.

10. *Commission.**

276. See as to commission in causes of bottomry, p. 1721.

11. *Discount.†*

277. Discount ought to be deducted if it has been, or might have been, received.

tice is to allow the fair value of the seamen's clothes, according to the best judgment the registrar and merchants can form thereon. They do not consider themselves bound by the values sworn to by the claimants.

(203a) The claims of a crew for the loss of their effects in a vessel which they had abandoned after a collision, but which was afterwards picked up, having meantime been plundered, disallowed, no adequate proof being given that the effects, if really lost, might not have been saved, considering the time the colliding vessel stood by. *The Carlisle Castle*, Dec. 1882. R. & M.

(204) In an action for damage the master claimed for loss of his effects. These included certain valuables for the recovery of which an opportunity had presented itself, but had not been taken advantage of by the master. The claim was reduced accordingly. *The Evangeline*, No. 2642, April, 1866. R. & M.

(204a) In considering the claim of officers and seamen for their private effects, the registrar exercises a large discretion, and is not disposed to allow unless, under very special circumstances, more than from £10 to £15, according to what may have been the employment of the ship and the length of the voyage performed or contemplated.

* (205) Where repairs were done in the owner's port no allowance was made for commission on advances. *The Venezuela*, May, 1858. R. & M.

(206) The usual rate allowed by the registrar and merchants for commission on advances is two and a-half per cent. upon the amount allowed by the report.

† (207) Discount is deducted because in-

H.M.S. Inflexible, Swabey, 200; 5 W. R. 517; 28 L. T. 374.

278. If the charges are very high, that circumstance favours a supposition that discount has been or would have been allowed, but is not conclusive. *Ibid.*

279. In such a case the proper course is to reduce the charge to a proper rate, though not on account of discount being proved or admitted. *Ibid.*

280. The registrar and merchants deducted from the bills for the repairs the discount allowed by the shipwright. The deduction approved of by the court. *The Gazelle*, 2 W. Rob. 279; 8 Jur. 429; 3 Notes of Cases, 75.

12. *Agency.‡*

See s. 4, p. 1749.

13. *Consequential Loss.*

(a) *Generally.§*

281. By the law of the Court of Admiralty in cases of collision the owners of

terest at 4 per cent. is allowed on all payments from the date of payment.

(207a) When discount is allowed upon bills for repairs the amount of discount must be deducted from the claim. *The Pomona*, 1857. R. & M.

(208) Where a bill for repairs was not paid until three months after the completion of the repairs, and then only by an acceptance, the period of which was not shown, the registrar deducted a discount of 10 per cent. *The Aberfoyle*, August, 1883. R. & M.

(208a) Where a shipwright's account for repairs had been paid by a bill due ten months after the collision, the registrar disallowed a large amount by way of discount. *The Castleford*, August, 1884. See also *The Harvest Queen*, December, 1884. R. & M.

(209) When freight is payable, less discount, the discount will be deducted from the gross freight. *H.M.S. Pembroke*, May, 1858. R. & M.

(209a) It having been shown that a shipwright was giving long credit to the plaintiffs, the registrar and merchants deducted a discount of five per cent. when assessing the claim as against a wrong-doer. *The Africa*, February, 1884. R. & M.

‡ (210) A charge of agency for superintending the repairs, and collecting and paying the accounts, is generally allowed, graduated according to the amount of repairs and the labour and trouble in reference to the accounts.

§ (211) Cases of great difficulty often arise when the question is up to what time, subsequent to the cause of action, damages may be assessed, Whether they must be limited

the wrong-doing vessel are responsible, not only for the immediate damage, but for consequential damage, that is, all damage which may subsequently take

by the commencement of the action, or may be calculated up to the time of verdict, or to an indefinite period afterwards. The result of these decisions seems to be, that damages arising subsequent to action brought, or even to the date of verdict, may be taken into consideration where they are the natural and necessary result of the act complained of, and where they do not themselves constitute a new cause of action. Mayne on Damages, 4th ed. p. 93.

(212) The first, and in fact the only, inquiry is whether the damage complained of is the natural and reasonable result of the defendant's act. It will assume this character if it can be shown to be such a consequence, as in the ordinary course of things would flow from the act. Otherwise the damage is said to be too remote. *Ibid.* 45.

(213) Damage will obviously be too remote, when it is caused wholly or principally by the act of the plaintiff himself; it cannot then be regarded as the necessary result of the defendant's misconduct. *Ibid.* 69.

(214) In general it will be found that where damage is too remote to form the ground of an action the reason of the decision would equally exclude it from consideration, though the suit were maintainable on other grounds. *Ibid.* 44.

(215) On the question of remoteness of damage, and as to cases where profits would have been made but for the damage, see *Ibid.* p. 44 *et seq.*, and the cases there cited and considered.

(216) The question whether the registrar and merchants are not precluded under the rulings in *The Columbus*, 2 W. Rob. 158; *The Lively*, 1 Gallion, 315; and *The Amiable Nancy*, 3 Wheaton, 346, from entertaining speculative claims for damages, such as probable profit on a voyage contracted for but not in progress at the time of the collision, fully considered. *The Copefield*, No. 6973, June, 1875. R. & M.

(217) Even where damages consequent upon the collision would probably have been avoided, or mitigated, by special precautions on the part of the master of the injured vessel, the defendants will not be exonerated from liability unless they can prove that the master was grossly and culpably negligent. *The Earl of Jersey*, 1881, G. No. 9, Fo. 27, Dec. 1881. R. & M.

(218) A vessel returning to port for repairs was deserted by some of her crew, who had received advances on sailing. The claim for such advances as against the wrong-doing vessel was disallowed. *The Stag*, May, 1882. R. & M.

(219) The actual damage sustained at the time and place of the injury, and not the profits which might probably have been realized if the collision had not incurred, consti-

tutes the just measure of damages to be awarded to the injured party. 1 Conkling's (U. S.) Adm. Prac. 384. [AMERICAN.]

(220) The probable profits of a voyage are not a fit mode for the ascertainment of damages in cases of marine torts. *The Amiable Nancy*, 3 Wheat. 546; *La Ainstad de Rues*, 5 Wheat. 385. [AMERICAN.]

(221) In estimating damages by collision, held, that remote or consequential damages growing out of the supposed loss of profits should not be considered. *Minor v. Steamer Picayune*, 13 La. An. 564. [AMERICAN.]

(222) By the American law certain special payments have to be made by American owners who discharge American seamen abroad, but as the English Court of Admiralty applies the General Maritime Law it cannot take cognizance of the municipal laws of foreign countries. *The Cultivator*, 1878, B. No. 64, June. R. & M.

(223) *Seem*, therefore, that such payments could not be allowed as items of damage. *Ibid.*

(224) The voyage of a passenger steamship having been interrupted by the collision, the passage-money of certain of the passengers was returned to them, and claimed against the defendants. The entire delay occasioned to the vessel was under a fortnight. There being no legal obligation upon the owners to return the passage-money, the specific item was struck out of the claim, but certain allowances were made in lieu thereof. *The Delmira*, No. 3080, January, 1867. R. & M.

(225) A vessel carrying emigrants, who had each paid £5 towards his passage, the balance of £10 to be paid by the Queensland Government on arrival, returned to Gravesend to repair collision damages. There some of the emigrants left her and did not join her when she again sailed. The claim for the loss of £10 per head was disallowed. *The Ella*, May, 1884.

(226) Brokerage paid in respect of the uncompleted portion of a period covered by a charter-party is a loss too remote to be treated as an item of consequential damage. *The Earl of Erne*, No. 4950, November, 1869. R. & M.

(227) Commission charged on a contemplated freight to be earned under another charter is also too remote. *The Hermann*, Nos. 5010 and 5012, May, 1870. R. & M.

(228) A reward paid for the identification of a vessel which deserted the vessel she had damaged without giving her name or destination, is not an item of damage. *The Hilda*, No. 5018, November, 1869. R. & M.

(229) There being no obligation upon the master of a foreign vessel to make a deposition before the receiver of wreck, the fee paid in respect thereof will not be allowed. *The Charlton*, No. 5578, March, 1871. R. & M.

(230) The owners of a vessel sunk by col-

place that could be fairly attributed exclusively to the act of the original wrong-doer. *The Countess of Durham* (1840), 9 Monthly Law Mag. (Notes of Cases), 279; *The Betsy Caines*, 2 Hagg. 30.

282. Damages for collision may be recovered against the wrong-doing vessel, although subsequently to the collision the damaged vessel may not have taken all the proper measures for her safety. The damaged vessel is not to blame because her crew were seized with panic and did not perform their duty, if such panic can be properly attributed to the collision. *The Lotus*, 2 Asp. 238; *The Lena*, *Ibid.* 345. But see below *The Flying Fish*.

283. All the subsequent damage arising from a collision must be borne by the vessel causing the damage, unless any part of that subsequent damage arose from negligence or want of skill on the part of those on board the vessel damaged. *The Pensher*, Swabey, 213; 29 L. T. 12. Affirmed on appeal, *Ibid.*, Swabey, 215; *The Linda*, Swabey, 307; 30 L. T. 234; 4 Jur. N.S. 146; 6 W. R. 196; *Anderson v. Hoen* (*The Flying Fish*), 3 Moore, P. C. N.S. 86; 2 Asp. 221; B. & L. P. C. 436; 34 L. J. Adm. P. C. 113.

284. *Held*, in the Privy Council, overruling the judgment of the Court of Admiralty, that in considering whether damages to a vessel incurred subsequently to a collision are to be paid by the wrong-doer, it is not necessary for the defendant to prove gross negligence or gross want of skill, nor is any presumption to be raised against the defendant because his ship was the original wrong-doer. *Anderson v. Hoen* (*The Flying Fish*), 3 Moore, P. C. N.S. 86; 2 Asp. P. C. 221; Br. & Lush. P. C. 436; 34 L. J. Adm. P. C. 113.

285. In a cause of damage the defendant will not be liable for any consequential damage which the plaintiff might have averted by ordinary care, courage, and resolution. *Semble*, in the Court of Admiralty it lies upon the defendant to show that such care, courage, and resolution were not exercised. *Semble*, in the

Courts of Common Law it lies upon the plaintiff to show that they were exercised. *The Thuringia*, 4 L. J. Adm. 44; 1 Asp. N.S. 283.

286. The plaintiff claiming for a consequential loss must show an actual loss and reasonable proof of its amount. Proof of a possible or probable loss is not sufficient. *The Clarence*, 3 W. Rob. 286; 7 Notes of Cases, 579; 14 Jur. 557.

287. The vessel C., which was proceeding in ballast to Montreal to load a cargo of grain for the United Kingdom pursuant to charter-party, was injured by collision with another vessel, and compelled to put into port to repair. The repairs necessarily occupied so long a time that it was not reasonably possible for the C. to have arrived at Montreal in time to fulfil her charter before the navigation of the St. Lawrence was stopped by ice for the winter. In these circumstances the owners of the C. abandoned the charter, and it was found that they had acted prudently in so doing. *Held*, that the loss arising from the abandonment of the charter was a loss caused by the collision. *The Consett*, 5 P. D. 229.

288. In a suit to recover damages caused by collision, the promovent, although entitled to recover their actual losses, subject to the statutory limitations, were held not entitled to certain consequential damages. *The Cumberland*, 1 Asp. 170.

288a. Commission paid for bail in a salvage action will not be allowed as part of the damages recoverable by the salvaged vessel in an action of damage by collision. *The British Commerce*, 9 P. D. 128; 53 L. J. P. D. 72. Although in certain circumstances they may be recovered as consequential damages in other actions. *The Numida*, *The Collingrove*, 10 P. D. 158; 54 L. J. Adm. 78; 5 Asp. 335; 34 W. R. 156.

See also c. 1, p. 1738.

(b) *Abandonment of Vessel after Collision.**

289. When a vessel is sunk at sea by collision it is not incumbent upon the

lisson sought to recover a sum alleged to have been paid by them to the consignees as an indemnity for loss sustained by the non-delivery of the cargo. The registrar and merchants rejected the claim. *The Bulgarian*, No. 6467, February, 1874. R. & M.

(231) The charges of noting a protest disallowed on reference in a damage action, the

protest being purely formal and not noted within a reasonable time after the collision. *The Xanthe*, No. 3266, July, 1866. R. & M.

(232) Bail fees were claimed as against a wrong-doer, but were disallowed by the registrar and merchants. *The Elephant*, 1884. R. & M.

* (233) In an action of damage the plaintiff

owner to go to any expense whatever for the purpose of raising her. *The Columbus*, 3 W. Rob. 165; 13 Jur. 285; 6 Notes of Cases, 671.

290. This principle would not apply when the vessel is not actually sunk but only partially damaged. *Ibid.*

291. The principle of abandonment as applied to insurance cases does not apply to cases of damage by collision. *Ibid.*

291a. The true rule, in a case of total loss by collision, is to calculate the value of the property destroyed at the time of the loss, and to pay it to the owners as a full indemnity. *Ibid.*

292. The ship C. came into collision with the smack T., and the T. in consequence sunk. The owner of the C. weighed the smack and conveyed her into port. *Held*, that he did it at his own risk and expense, and that her owner was not bound to take her, but was entitled to recover as for a total loss. *Ibid.*

293. A vessel to which the blame of a collision is attributed is liable not only for the immediate damage, but for the consequential loss arising from the abandonment of the injured vessel by her crew, under reasonable apprehension of danger. *The Blenheim*, 1 Spinks' Eccl. & Adm. Rep. 285.

294. It is impossible for any court of justice to say with certainty what are the precise circumstances that would justify the abandonment of a vessel damaged by collision. If there be any reasonable prospect that the crew's lives are in danger they are justified in abandoning her, and the consequences must fall on the vessel occasioning the damage. *Ibid.*

295. The propriety of such abandonment is a question for the judge and not for the Trinity Masters. *Ibid.*

296. The master and crew of a vessel in a case of collision are not bound to incur extraordinary risk of life by staying by the vessel. *The Linda*, Swabey, 306; 6 W. R. 196; 30 L. T. 234; 4 Jur. N.S. 146.

297. The ships G. and L. came into collision, after which the G. was abandoned by her master and crew, and picked up by another vessel and carried to Madeira, by which a large salvage expense was incurred. In a cause of collision both vessels were *held* to be in fault. On a further question whether the expense of salvage was to form part of the damage which would be divided between the vessels, *held*, that under the circumstances the G. was improperly abandoned, through want of ordinary skill and resolution in her master and crew, and that the salvage expense incurred was chargeable to such misconduct, and should, therefore, form no part of the damage arising from the collision. *Ibid.*

298. After a collision has occurred, if the vessel *held* not to blame for the collision is abandoned by her master and crew, the court will require to be satisfied that the master wilfully abandoned his vessel when he might have saved her, or that he abandoned her through a want of ordinary nautical skill and resolution, before it will oust the plaintiff's claim in respect of such abandonment. If there were extraordinary risk of life in remaining by her, or if it turned out to be a question of want of judgment in the master as to whether it were expedient to act in this or that way, the court will consider the collision to be the cause of the whole damage and expense incurred. *Ibid.*; but see *Anderson v. Hoen (The Flying Fish)*, *infra*.

299. In consequence of a collision the plaintiff's vessel, W. E., was run on shore, and she subsequently broke up and was lost. On a claim for the loss of the vessel, opposed on the ground that the master was advised to lay out an anchor and so work the vessel off before the tide rose, and that he was guilty of gross nautical ignorance and negligence in not doing so; *held*, on the balance of evidence, that there was such reasonable doubt as to the success of such measures that the owners ought not to be prejudiced by the judgment of the master thereon under.

claimed for a total loss of his vessel, which had been abandoned by her master and crew. The registrar and merchants were of opinion that a master possessing more than ordinary resolution would probably have stayed by and saved the vessel, but as it could not be said that the abandonment was unjustifiable, the claim was therefore allowed. *The Pallas*, Nos. 5946 and 6109, July, 1872. R. & M.

(234) In a case of collision the crew of the injured vessel are not bound to remain on board, unless it is plain that they can do so with safety, and there is good reason to suppose the vessel can be saved. *Sherman v. Fream*, 30 Barb. (N. Y.) 478. [AMERICAN.]

(235) If such circumstances exist, however, leaving the vessel is gross negligence. *Ibid.*

circumstances of great difficulty, and claim allowed. *Anderson v. Hoen (The Flying Fish)*, Aug. 2, 1864.

300. But on appeal, *held*, that the vessel was not in such a state that all attempts to save her were hopeless, and that the master had been guilty of want of ordinary nautical skill and neglect of duty in exercising no judgment at all in the matter, in attempting nothing because he persuaded himself that nothing could be done, in at once abandoning her in despair and regarding all efforts to save her as hopeless, and in rejecting all offers of assistance without weighing all the measures proposed because he had hastily determined that the state of his vessel would make every effort to save her unavailable. The amount of damages, therefore, directed to be limited to those to which the plaintiffs were entitled down to the time when the master first refused the assistance offered him. *Ibid.*; 3 Moore, P. C. C. N.S. 77; 34 L. J. Adm. P. C. 113; 2 Asp. 221; B. & L. P. C. 436.

301. *Held*, that it was not necessary to prove that the master of the W. E. had been guilty of gross negligence or gross want of skill; nor was any presumption to be raised against the defendant because the F. F. was the original wrongdoer, but that the proper question was whether the master of the W. E. did what a reasonable man would do under similar circumstances, *i. e.*, acted with ordinary nautical skill and resolution. If it was reasonably doubtful whether any measure proposed would be successful, he would be justified in declining to run the risk. *Ibid.* 3 Moore, P. C. C. N.S. 113.

302. A collision occurred in the Lough of Belfast about midnight between a steamer and a brigantine; the steamer continued her course immediately after the collision, which it was admitted occurred solely through her default. The crew of the brigantine, under what appeared to the court a well-grounded apprehension of danger to their lives, abandoned her, and she in consequence went ashore and became a total loss. *Held*, that the steamer was liable for the

loss, though it was probable that if the crew of the brigantine had remained on board the loss might not have occurred. *The Lindsay*, L. R. 1 Eq. 259. [IRISH.]

303. In a cause of damage by collision the defendants condemned in the damage, except so much of it as was the result of improper abandonment. (Affirmed by the Court of Delegates, but without costs.) *The Swan*, 9 Irish Jur. 278; 2 Asp. 133.

303a. The master and crew of a vessel injured by collision are bound to show ordinary courage and nautical skill in endeavouring to save their vessel from total loss, and the defendants will not, on a reference to the registrar and merchants to assess the damages, be held liable for any loss which might have been avoided by the exercise of such ordinary courage and skill. *The Thuringia*, 41 L. J. Adm. 44; 1 Asp. N.S. 283.

304. The T., a North German steamer, ran into the W., a British steamer, eighteen miles off the coast of Heligoland. The crew of the W. immediately got on board the T., but some of them returned and found the W. injured and making water. The W. was built in watertight compartments, and the water did not reach her engines or fires. The T. lay by her for an hour, when a French man-of-war approaching, and France being then at war with Germany, she hailed those on board the W., who at once abandoned her, and the T. steamed away. The W. was seen afloat by the French ship for three or four hours afterwards. The plaintiffs, the owners of the W., claimed for a total loss. *Held*, affirming the decision of the registrar and merchants, that the abandonment of their vessel by the plaintiffs was not justifiable, and that they were only entitled to such a sum as would have repaired the vessel and compensated them for its detention whilst being repaired. *Ibid.*

(c) *Losses or Damages after Collision.**

305. *Held*, in the Privy Council, overruling the judgment of the Court of

* (236) The S. came into collision in Yarmouth Roads with the E. L., which was found to blame for the collision. The S. lost her bowsprit and foremast, besides suffering other damage. She accordingly engaged the assistance of a tug to take her into Lowestoff. On entering the harbour the tug struck the

South Pier, and the brig passed round outside the pier head, drifted on to the beach, and sustained further damage. *Held*, that the owners of the E. L. were responsible for the further damage. *The Earl of Leicester*, 29 December, 1864. R. & M.

(237) The W. W., whilst at anchor in the

Admiralty, that in considering whether damages to a vessel incurred subsequently to a collision are to be paid by the wrongdoer, it is not necessary for the defendant to prove gross negligence or gross want of skill, nor is any presumption to be raised against the defendant because his ship was the original wrongdoer. *Anderson v. Hoen (The Flying Fish)*, 3 Moore, P. C. N.S. 86; 2 Asp. 221; B. & L. P. C. 436; 34 L. J. Adm. P. C. 113.

306. When a collision has taken place the burden of proof lies on those who assert that subsequent damage and expenses are not chargeable to the collision. *The Linda*, Swabey, 306; 30 L. T. 234; 4 Jur. N.S. 146; 6 W. R. 196; but see *The Flying Fish*, *supra*.

306a. A vessel was seriously damaged by collision, and subsequently became unmanageable, got on a sandbank, and was lost. *Held*, that her eventual loss was attributable to the effect of the collision, and not to the subsequent mismanagement of those on board her. Damage pronounced for accordingly. *The Mellona*, 3 W. Rob. 7; 11 Jur. 783; 5 Notes of Cases, 450.

307. *Prima facie* the presumption of law is that a vessel, which has been damaged by collision and subsequently lost, was lost in consequence of the collision. *Ibid.*; but see *The Flying Fish*, *supra*.

308. A schooner having previously encountered severe weather, put into Gibraltar, and, while at anchor there, was injured by a steamer. The steamer being to blame for the collision, the registrar and merchants, considering it probable that the subsequent condition of the vessel was caused partly by the previous severe weather and partly by the collision, divided the damage. On appeal to the court, *held*, that there was *prima facie* proof, on behalf of the schooner,

that all the damage was caused by the collision, and that the owners of the steamer having failed to rebut by conclusive evidence such proof, they were responsible for all the damage. Report directed to be amended accordingly with costs. *The Egyptian*, 10 L. T. N.S. 91; but see *The Flying Fish*, *supra*.

309. In a cause of collision it was contended on behalf of the vessel to blame that the master of the other vessel had contributed to the ultimate sinking of his ship by neglecting, after the collision, to take proper measures to secure her safety. *Held*, that although it was possible measures might have been adopted to avert total loss, yet it was not to be expected that persons under the circumstances attending the collision would be very acute in their judgment or very prompt in their action. *The Lena*, 2 Asp. 345.

309a. The D. came into collision with the J., rent her mainsail, and did other damage; the J. was ultimately stranded, in consequence, as it was contended on her behalf, of her being so deprived of the use of her mainsail. In an action for damage the D. admitted she was to blame in causing the collision, and tendered £10 to cover the damage thereby occasioned, contending that the stranding of the vessel was occasioned, not by the damage arising from the collision, but by the want of skill of the master of the J. The Trinity Masters were of opinion that the master of the J. had not exercised such a sound judgment in the proceedings subsequent to the collision as a master of ordinary skill and experience should have done. The court pronounced for the damage happening immediately on the collision, but not for the consequential damage claimed (*i. e.*, that occasioned by the vessel stranding). *Seem*, however, that the J. being merely a small schooner, her owners would have been entitled to the consequential damage

Mersey, was run into and damaged by the steamship T. In consequence of the damage the pilot considered it unsafe for the W. W. to remain in the river, and she was accordingly taken into the St. George's Dock Basin, where at low water she took the ground, and strained and wrinkled her metal. Before the collision she made no water, subsequently she made a very little, but after the grounding she made three or four inches an hour. *Held*, that the grounding was a result of the collision, and that the plaintiffs were entitled to recover for the repair of the damages caused by the grounding. *The Tynwald*,

Dec. 1864. R. & M.

(238) A vessel which had been damaged by collision engaged a tug to tow her to a place of safety. During the towage she sustained further damage in attempting to navigate a dangerous channel at an unfavourable state of the tide, although a better channel was available, and more water could have been found by consulting the tides. It also appeared that the master of the vessel had directed the movements of the tug. *Held*, that the further damage was not consequent upon the collision. *The John Olemans*, No. 4792, August, 1869. R. & M.

claimed had the master exercised only ordinary skill and experience. *The Countess of Durham* (1840), 9 Monthly Law Mag. (Notes of Cases), 279; *The Pensher*, Swabey, 214.

310. Collision with defendant's vessel held to have been the cause of plaintiff's vessel having gone on the rocks, and sustained further damage. *The Despatch*, 1 Lushington, 98.

311. After a collision, in which the hulls of the two vessels never came in contact, but the R.'s main boom was struck, and rail, bulwarks, and companion carried away. The R. was thirty-five years old, and 135 tons gross register, laden with 225 tons of cement, made considerably more water than before the collision, and her owners, while ignorant of the name of the other vessel, had been placed on the hard at Dover. The registrar of the county court allowed for the repairs, docking the ship, and discharging and reloading cargo, £97, which the judge, on objection to the report, increased to £174. On appeal to the Admiralty Division, it was contended that the greater part of the repairs were caused by the vessel being put on the hard. Held, that although all the damage was not caused by the collision, yet a considerable amount was caused by straining consequent upon the collision; that it was proper and prudent, under the circumstances, to take the vessel into Dover, and place her upon the hard; that the owners acted *bond fide* in doing so; and that though some straining was caused by the vessel being placed on the hard, yet as the plaintiffs were justified in placing her there, the defendants were liable; that, on the same ground, the unloading of the cargo was justifiable; and that with regard to the caulking and other charges, such as demurrage, the judge of the court below had discriminated, allowing what he considered should be borne by the defendants, and disallowing the rest; and it was proved that the judge was not right in the discretion he had exercised. Appeal dismissed with costs. *The Colombo Carolina*, January 26, 1886.

312. The stem of the S. struck the C. in the engine-room compartment in the after-part of the ship, cutting eight feet into her deck, and making a hole ten feet wide, which extended below the water-line. The compartment immediately filled

with water, which extinguished the fires, and caused the C. to settle so much by the stern that she drew twenty-one feet aft and only three feet forward. About an hour and a-half after the collision, the C. being still afloat, the S. took her in tow, and proceeded in a north-westerly direction towards Sunderland. About 9 a.m., the two vessels being off Hartlepool, the C. was taken in tow by the steam-tug R., and the S. proceeded on her voyage to the southward. The R. continued to tow towards Sunderland with the assistance of two other tugs; but about 4 p.m., when only about half a mile from the south entrance to Sunderland Dock, the C. suddenly sank, and became a total loss, and the captain of the C. should have beached his vessel instead of trying to take her to Sunderland, or should have waited off Hartlepool, being held by the steam-tug, until there was sufficient water for her to have crossed the bar there; this would have been about five o'clock in the afternoon. The registrar and merchants considered that though the master acted *bond fide* in the course he took, yet he should have asked the S. to tow her in shore, to beach her on the sands north of Whitby, and that he was not justified in attempting to proceed to Sunderland; and that the owners of the C. were not entitled to claim as for a total loss. Held, on objection to the report, that the master of the C. had done the best for the safety of the ship, as if he had attempted to beach her in the trim she was in she would have grounded aft, while forward she would have been waterborne, and with the sea there was she would in all probability have been broken in half; that she would have been in no better position held by the tug off Hartlepool, and waiting to get over the bar, than she was towing towards Sunderland; that the proximate cause of the loss was the collision, and not negligence of the master; and that even if that, because a man in an emergency did not do the best that could be done, his owners were not to be barred from recovery. The owners of the C. were therefore allowed to claim as for a total loss. *The Stanmore*, 12 Nov. 1885.

(d) *Raising Vessel.**

313. The owners of the vessel doing the

* (239) Such expenses when incurred will be allowed to the owner as part of his da-

mages.

(240) Persons were engaged to right a

damage, raised, at their own expense, the vessel sunk, and offered her to her owner, who claimed as for a total loss; he refused to take her. *Held*, that the owner of the sunken vessel was not bound to take her, and might proceed and recover as for a total loss. *The Columbus*, 13 Jur. 285; 6 Notes of Cases, 671; 3 W. Rob. 165.

314. The vessel, after having been raised, and brought into port, was deteriorating for want of repairs. *Held*, that the proper course would have been to apply to the court, stating the circumstances, and asking for a decree of sale, and that the proceeds might be brought into the registry to abide the event of the suit. *Ibid*.

315. For provisions empowering harbour master to remove wreck or other obstruction to the harbour, dock, or pier, or to the approaches thereto, and to charge the owner with the expenses, see *The Harbours, Docks, and Piers Clauses Act*, 1847 (c. xxvii.), s. 56.

316. For similar provisions as to wreck in the Thames, see *The Thames Conservancy Act*, 1857 (c. cxlvii.), s. 86.

317. For similar provisions in the harbour of Belfast, see *The Belfast Port and Conservancy Act*, 1852 (c. cxxi.), s. 17.

318. The 56th section of the *Harbours Act*, 1847, enables a harbour-master to remove any obstruction from a harbour, and recover the expenses of such removal

from the "owner." A vessel belonging to W. was wrecked at the mouth of, and obstructed, a harbour. The harbour-master removed it, and brought an action to recover the costs of such removal against W., and also against E., with whom the vessel had been insured, and who had paid as on a total loss. No notice of abandonment was given to E. *Held*, by the Court of Appeal (affirming the decision of the Queen's Bench Division), that W. was liable under the statute, and that he was not entitled to recover over against E. *The Earl of Eglinton v. Norman*, 46 L. J. C. A. 557; 3 Asp. N.S. 471.

319. As to the removal of wreck in the Mersey, see the *Mersey Docks Act*, 1874 (c. xxx.), s. 11.

320. As to the powers of the harbour master in the Clyde for the removal of wrecks, and the recovery of the expenses thereof against the master or owner, see the *Clyde Navigation Amendment Act*, 1868 (c. cxxiv.), s. 33.

321. As to the removal of wreck in the Humber, see the *Humber Conservancy Act* (c. 130).

322. Whilst an obstruction in the Humber was being removed, a part-owner died, leaving two executors. The attempts to raise the vessel failed, and she was blown up. *Held*, that it was for the justices to decide whether the ex-

vessel which had capsized, and having done so, negligently removed the supports, in consequence of which she again fell over. *Held*, not entitled to charge for raising her the second time. *The Fromina*, April, 1858. R. & M.

(241) The plaintiffs' vessel was sunk by the collision. A *bonâ fide* but unsuccessful attempt to raise her was voluntarily made by the owners. The registrar *held*, that as the defendants had to pay for a total loss they were not liable for the expenses of the attempt to raise. *The Princess Elizabeth*, 1879, C. No. 409, May, 1880. R. & M.

(242) *Held* (Chief Justice Taney and Justices Catron and Daniel dissenting), that the plaintiffs were entitled to recover a sum sufficient, not only to defray the expenses of raising and repairing their vessel, without any deduction of new materials in place of old, as in cases of insurance, but to compensate them also for the loss of her probable earnings in the meantime. *Williamson v. Barrett*, 13 How. 101. [AMERICAN.]

(243) A vessel, raised a few days after being sunk and treated as a total loss, was not promptly sold. The expenses occasioned by the unnecessary delay were disallowed.

The Era, April, 1882. R. & M.

(244) The owners of a vessel sunk in Cork harbour by collision, were served by the harbour commissioners with notice to raise and remove the wreck. It being found useless to attempt to raise her, the owners, at considerable expense, destroyed her by means of explosives, and claimed the cost of such operations. Claim objected to on the ground that if the owner had not acted the harbour commissioners, under 10 Vict. c. 27, s. 56, must have destroyed the wreck free of expense to the owner, there being no proof of negligence. Having regard to the decision in *The Earl of Eglinton v. Norman*, 3 Asp. N.S. 471, and to the fact that at the trial a special decree, by consent, was taken by the owner for a moiety of his damages, less a sum in respect of the plaintiffs' damages, the registrar, considering that the decree amounted to an admission of negligence which would render the owner liable for the expenses of removing the wreck had the operation been conducted by the commissioners, allowed the agreed percentage of such expenses to the owner. *The Catalonia*, Oct. 1882. R. & M.

penses of attempting to raise the ship were properly incurred, but that they had no power to include the executors in their order. *Wilson v. Carter*, 1 Asp. 287; L. R. 1 Ex. 177.

323. See, further, as to the removal of wreck, tit. WRECK.

(e) Freight.*

324. In causes of damage by collision

* (245) Deduction from freight in consequence of cargo being landed at Lowestoft instead of London, by reason of the collision, not allowed. *The Elizabeth Moore*, 1854. R. & M.

(246) Vessel damaged on outward voyage. Claim made for loss of homeward freight disallowed as being problematical. *The Undine*, May 22, 1857. R. & M.

(247) Charges for brokerage, light dues, &c., will be deducted from the gross freight due. *H. M. S. Pembroke*, May, 1858. R. & M.

(248) Freight claimed by owner on goods belonging to the master, and stowed in his cabin, not allowed. *The William and Jane*, Sept. 1858. R. & M.

(249) In cases of total loss the freight is allowed, less deduction for harbour dues, light dues, discharging fees, &c., in fact, the net freight which would have been received by the owner if the vessel had arrived safely. *The Tuscarora*, July, 1858; *The Canada*, 1 Lush. 586. R. & M.

(250) A deduction is made for discharging fees. *The Fidelia*, April, 1858. R. & M.

(251) On a question of repairs of damages sustained in rendering salvage assistance, plaintiffs proved that they were large shippers of goods from L. to M.; that the A. S., the vessel damaged, was one of a regular line of steamers trading thither; that there was a rival line; that in the usual course of trade plaintiffs generally had a full cargo by their vessels sailing shortly before Christmas; that on this occasion they had received about 1,000 tons of goods for transmission by the A. S.; that a full cargo would be from 1,750 to 1,790 tons; that ordinarily large quantities of goods are received for shipment during the last two days of loading; that when it became known the A. S. had gone into dock for repairs all further consignments of goods to be taken by her ceased, and applications were made, and some of them acceded to, for return of goods sent; that goods which would have gone by the A. S. probably went by the steamer of the opposition line advertised to sail when the A. S. should have sailed; that the A. S., when she sailed, had about half a cargo only; and that the gross outward freight on that voyage was £1,754, but was on the next preceding voyage £2,689, the difference between the two voyages being the sum claimed, the rates of freight for those voyages being the same. It was elicited that on other voyages the amount of freight had ranged between £1,150 and £2,250, but with different rates of freight; but it was not proved what freight the A. S., or any similar vessel engaged in the same trade, had earned on voyages at the

same period in preceding years. *Held*, that the evidence established a probable loss of freight in consequence of the detention, but no specific amount, and £500 allowed for such loss of freight accordingly. *The Gladiator*, No. 1594, April 29, 1864. R. & M.

(252) Damage by collision to the C. S. in the Australian seas. A charter-party had previously to the collision been sent out from England to the master of the C. S., for the conveyance of a cargo from Moulmein to England. Claim of £3,000 for loss of charter. It was not proved that the charter-party ever reached the master, and it appeared uncertain whether, independently of the collision, the master could have carried out the charter-party. Claim disallowed. *The South Sea*, Swabey, 141. R. & M.

(253) The C. was run down and totally lost in the English Channel. She was at the time on a voyage from Newcastle, and laden with a cargo of coals for Cadiz, whence she was to carry a cargo of salt to South America, pursuant to a charter-party entered into before she left Newcastle. *Held*, that the plaintiffs were entitled to the net freight on both the coal and salt cargoes. *H. M. S. Forke*, Oct. 1864. R. & M.

(254) The plaintiffs in an action of damage claiming for the total loss of their vessel on her outward voyage, were allowed the homeward freight which would in all probability have been earned under the charter-party if the collision had not occurred. *The Appendix*, Nos. 5853, 5856, 5876, Feb. 1872. R. & M.

(255) At the time of the collision the vessel was prosecuting the last of three voyages provided for by the charter-party; but whereas the previous voyages had been in strict accordance with the charter, the voyage in question had, under another charter entered upon by the parties, been slightly varied by the carriage of cargo to an intermediate port. Evidence having been adduced that the vessel had started equipped for the whole voyages out and home, the registrar *held*, that the legal inference was that she had sailed in pursuance of the earlier charter, and that the call at the intermediate port was in pursuance of a subsidiary and consistent charter. The claim for the homeward freight was therefore allowed. *Ibid*.

(256) Where a cargo shipped on owner's account was lost by collision, the registrar and merchants in assessing the loss united the claim for cargo and freight, and allowed the sum realized by similar cargoes belonging to the same owner. *The Rothesay*, April, 1882. R. & M.

the gross freight is not to be allowed, but deductions must be made therefrom for the expenses incident to the earning and receipt of freight, such as wages, pilotage, tonnage, and other dues, and lighterage and other expenses of discharge and delivery of cargo. *The Gazette*, 2 W. Rob. 279; 8 Jur. 429; 3 Notes of Cases, 75.

325. There is a material distinction between insurance cases which are cases arising *ex contractu* and cases of damage by collision which are *ex delicto*. *Ibid.*; 2 W. Rob. 283.

326. The rule in insurance cases as to the allowance of gross freight will not therefore be followed in damage cases. *Ibid.*

327. In insurance cases the gross freight is allowed without any deduction for the necessary expenses of earning it. *Palmer v. Blackburn*, 1 Bing. 6.

328. The court will order payment of the amount of freight in the master's hands and lost in the collision. *The Cumberland*, 5 L. T. N.S. 496; 6 Irish Jur. N.S. 325.

329. As the master has, in some circumstances, the duty cast upon him of acting as agent for the cargo as well as the ship, the making of a protest, and the obtaining of the necessary official documents, in a foreign port relating to the damage to both ship and cargo, are business directly connected with the collision. *The City of Buenos Ayres*, 1 Asp. N.S. 169.

330. Delay in their preparation caused by the dilatoriness of the foreign authorities, and by no default of the master, is chargeable to the collision. *Ibid.*

331. *Quare*, whether transhipment and forwarding of cargo can be said to be business connected with the collision. *Ibid.*

332. The vessel C., which was proceeding in ballast to Montreal to load a cargo of grain for the United Kingdom, pursuant to charter-party, was injured by collision with another vessel, and compelled to put into port to repair. The repairs necessarily occupied so long that it was not reasonably possible for the C. to have arrived at Montreal in time to fulfil her charter-party before the navigation of the St. Lawrence was stopped by ice for the winter. The owners of the C. therefore abandoned the charter, and it was found that they acted prudently in so doing. *Held*, that the loss arising from the abandonment of the charter was a loss caused by the collision. *The Consett*, 5 P. D. 229.

333. V. & Co. shipped their own coal on board their own ship, the A., from Liverpool to Valparaiso, and the master signed a bill of lading deliverable to V. & Co., or assigns, paying freight at twenty-three shillings per ton, and indorsed on it a receipt for £1,000 on account of freight. An insurance was effected on advanced freight valued at £1,000, and the plaintiffs became assignees of the bill of lading and policy on making an advance of £1,650 to V. & Co. The difference in value between the coal at Liverpool and Valparaiso would have greatly exceeded £1,000. The A. was wholly lost through a collision with the

(257) In assessing a claim for freight lost by reason of a ship being run down, the registrar deducted the freight which had been advanced before sailing, and also the amount which would have been expended in completing the voyage and earning the freight, such as coals, stores, provisions, wages, &c. *The Aberfoyle*, August, 1883. R. & M.

(258) A steamer on her way to Middlesbrough in ballast, and chartered to carry a cargo of pig-iron thence to Dantzic, and return with a cargo of oak staves to London, was run down and sunk. The freight for the above two voyages was allowed less the probable cost of earning it. *The Breeze*, March, 1884. R. & M.

(259) Whilst loading a cargo of wood at Uleaborg for Penarth Roads for orders a vessel was further chartered to load a cargo of timber at Pensacola for the United Kingdom, with liberty to carry an outward cargo to Pensacola for owners' benefit. On her passage from Uleaborg to Penarth Roads she was in collision in the English Channel,

and was towed into Cowes in a waterlogged condition, condemned and sold. Her owners claimed not only the freight for the voyage she was prosecuting, but for the Pensacola freight. The second freight was disallowed, on the ground that she had not completed her first voyage, or was at the disposal of the charterers, or directly bound for her loading port, or that any preparations had even been made for the outward voyage. *The Kaikoura*, August, 1885. R. & M.

(260) A vessel, under charter, owing to a collision and delay in repairs, arrived at the port of loading thirty days after the time specified in the charter-party, and the charterers elected to cancel the charter. The vessel afterwards obtained less profitable employment, and her owners sought to recover the difference from the other vessel. *Held*, on the reference that the loss sustained by the cancelling of the charter-party was not occasioned by the collision. *The Rallus*, No. 6314, January, 1874. R. & M.

See also note 192, p. 1751.

T., for which the T. was alone to blame. *Held*, that the plaintiffs, who were suing for the underwriters on the policy, were entitled to recover against the T. the £1,000, as a portion of the coal's enhanced value at Valparaiso, which enhanced value had been insured and transferred to the plaintiffs under the name of advanced freight. *The Thyatira*, 8 P. D. 155; 52 L. J. P. D. 85; 5 Asp. 147, 178.

334. In another action against the T. Messrs. V. & Co. had been awarded by the registrar and merchants the amount of disbursements made, in order to earn the so-called freight, but the judge referred the matter back to the registrar to reconsider his report. *Ibid*.

335. The delay occasioned by the necessity of repairing the plaintiff's vessel, enabled the charterers of the vessel at the time of the collision to cancel the charter-party, and the plaintiffs were obliged to enter into another charter-party at a lower freight. *Held*, that compensation ought to have been awarded for the difference between the freight actually earned and the freight under the cancelled charter-party, after deducting the difference between the voyage to be performed under the cancelled charter and the shorter voyage actually made, the saving of wear and tear to the vessel, and for the uncertainties and perils incident to sea voyages, and report directed to be amended accordingly. *The Star of India*, 1 P. D. 466; 45 L. J. Adm. 102; 3 Asp. N.S. 261.

336. The amount payable in respect of compensation for dead freight where it is unliquidated, is such reasonable amount as the shipowner would have earned, after

deducting such expenses as he would have incurred, if a full cargo had been supplied. *McLean v. Fleming*, 1 Asp. N.S. 160.

337. The vessel run down being a fishing smack on a voyage to receive a cargo of lobsters, and so damaged that it became necessary to hire another smack for the purpose, a reference directed to the registrar and merchants, to report the amount of freight paid to the vessel substituted for the smack, in order to its being allowed as consequential damages. *The Yorkshireman*, 2 Hagg. 30, n.

338. A charter-party stipulated for certain payments to the owners of cargo as commission and penalties in case of non-fulfilment of charter-party. These payments became due. *Held*, that they were, together with the costs of paying the freight into court, proper deductions from the gross freight due to the owners of the damaging vessel. *The Leo*, 1 Asp. 200.

339. It will not be sufficient to aver that the vessel, if she had not been detained in dock, might have earned certain probable freight. The opportunity of earning, and the loss of that opportunity, must be established. *The Clarence*, 3 W. Rob. 283; 14 Jur. 557; 7 Notes of Cases. 579.

340. As to freight generally, dead freight, advance freight, &c., see tit. GOODS, CARRIAGE OF—, Pt. VII. p. 467.

341. As to the allowance of freight in cases of costs and damages, see c. 8, p. 1776.

(f) *Demurrage*.*

342. When a ship has been damaged

* (261) See also notes 159, 242, *supra*.

(262) In estimating demurrage the registrar and merchants will consider not only the time which was occupied in effecting the repairs, but the time in which they might with due expedition have been completed. *The Bernhardina*, June, 1858. R. & M.

(263) The usual allowance for detention made by the registrar and merchants in cases of coasters and small vessels is 4*d.* per ton per day. *The Christiana*, April, 1857. R. & M.

(264) This allowance presumes the crew to have been justifiably detained on board. A proportionate reduction is made when the crew are not or ought not to have been retained.

(264*a*) Some members of the crew having been unnecessarily kept by the vessel, the terms of the articles allowing of their discharge, the cost of such members of the crew was disallowed from the demurrage. *The James Harris*, Jan. 1882. R. & M.

(265) During the repairs to a fishing smack her crew were kept on pay when they could have been discharged at a week's notice. The claim for demurrage after such week was reduced. *The Regent*, April, 1882. R. & M.

(265*a*) Demurrage per ton is calculated upon the registered tonnage of vessels and not upon their burthen. *The James*, May, 1859. R. & M.

(266) Steam coasting vessel damaged by collision. *Held*, that the officers and engineers might properly be retained in the ship's service during the repairs, but the seamen should have been discharged. *The Venezuela*, May, 1858. R. & M.

(267) Wages paid during repairs to a crew hired for the voyage, allowed. *The Vanguard*, July, 1857. R. & M.

(268) It was proved that the amount paid for insurance of the vessel—a large and valuable steamer—was from £5 to £6 a day;

by collision the *restitutio in integrum* to which her owners are entitled, consists

of the expenses of repairs and a just compensation for the non-employment of

that the owner's regular expenses for her were about the same amount, and that the estimated profits were from £15 to £20 a day. Claim for demurrage at the rate of £30 a day allowed. *The Gladiator*, No. 1594, April 29, 1864. R. & M.

(269) A large and valuable steamer damaged in rendering salvage services was compelled to go into dock to repair damages and be painted, and claimed in consequence for nine days' detention. It was proved that the vessel was usually docked and painted every third voyage, that this occupied from two to three days, and that on this occasion it was her turn to be docked and painted, but that, for special reasons, this would, but for the damages, have been postponed until after her next voyage. *Held*, that the expense and loss of time in docking and painting the vessel on this occasion, as it must otherwise have been incurred after her next voyage, should be deducted from the claim, and six days' detention only allowed. *Ibid.* R. & M.

(270) A vessel which had been damaged by collision and by grounding previous to the collision, was thirty-two days under repair. The registrar and merchants disallowed four days' demurrage as being necessitated by the damage sustained before the collision, and allowed twenty-eight days' demurrage in respect of the collision. *The Rallus*, No. 6314, January, 1874. R. & M.

(271) Indemnity claimed by master for loss of time and earnings in consequence of loss of vessel disallowed, as interest is intended to cover those items. *The Britannia*, August, 1858. R. & M.

(272) In dealing with a claim for demurrage preferred by the owners of a vessel which had been windbound at the time of collision, the registrar and merchants refused to enter upon speculations as to the probable delay in the ship's progress, even if no collision had occurred. *The Dovercourt*, No. 3099, January, 1867. R. & M.

(273) Although as a general rule demurrage is calculated at a rate per ton on the vessel's tonnage, yet where the vessel is of a peculiar description and employed in a special manner during certain months only, the registrar and merchants will allow an equitable sum as compensation for the loss of such special employment. *The Gleaner*, 1877, N. No. 328, May, 1878. R. & M.

(274) Demurrage is allowed as compensation for expenses actually incurred, such as crew's wages, &c., and for the temporary loss of the use of the vessel, which represents capital. *The Tiryah*, 1878, L. No. 267, May, 1879. R. & M.

(275) The fact that the vessel has been, for some time previous to the collision, worked at a loss will not be adopted as a guide to the allowance of demurrage. *Ibid.*

(276) A steamship was damaged by collision

at a time when, although no charter had been entered into, very profitable employment was obtainable. Before she was ready to resume trading freights had materially declined. In allowing demurrage, the registrar, considering the facts fully proved, allowed a special and liberal sum for demurrage upon the ground that according to the decision in *The Star of India* (1 P. D. 466, and No. 335, *supra*) the plaintiff's claim for loss of an immediate profitable employment was not so remote as to justify him in rejecting it. *The Wimbledon*, 1878, Q. No. 145, Feb. 1879. R. & M.

(277) Demurrage will not be allowed pending the repair of damage occasioned by the collision if the vessel is necessarily under repair from other causes throughout the period for which the demurrage is claimed. *The Loyds*, 1881, G. No. 401, Fo. 114, Dec. 1881. R. & M.

(278) The measure of damages for a collision whereby a vessel is sunk includes, in addition to the expenses incurred in raising and repairing the vessel, the market value of the use of the vessel during the time necessary to make the repairs and fit her for use (Taney, C. J., Cathron and Daniel, T. J., dissenting). *Williamson v. Barrett*, 13 How. (U. S.) 101. [AMERICAN.]

(279) The loss of the use of the injured vessel whilst undergoing repairs is so directly consequential to the collision as to be entitled to compensation. *The Narragansett*, Olcott, Adm. 388; *Vantine v. The Lake*, 2 Wallace, jun. 52. [AMERICAN.]

(280) The value of the services of a vessel while she is undergoing necessary repairs for the injuries received, is to be allowed. The maritime law is less stringent in this respect than the common law. *The Narragansett*, 1 Blatch. Ct. Ct. 211; Olcott, Adm. 388; *The Rhode Island*, 1 Abb. Adm. 100; *Williamson v. Barrett*, 13 How. 101; *Catherine v. Dickinson*, 17 How. (U. S.) 170; *Atcheson v. Steamboat Dr. Franklin*, 14 Miss. 63; *Walderman v. Beckwith*, 4 McLean, 286; *Barrett v. Wilkinson*, *Ibid.* 589. [AMERICAN.]

(281) The vessel's expenses while undergoing repairs allowed. *Minor v. The Steamer Picayune*, La. An. 564. [AMERICAN.]

(282) Reasonable demurrage for a period necessary to reinstate the injured vessel will be charged upon the vessel in fault. *The Rhode Island*, Olcott, Adm. 505. [AMERICAN.]

(282a) When the property is restored after a detention, demurrage is allowed for detention of the ship and interest on the value of the cargo. *The Appollon*, 9 Wheat. 377. [AMERICAN.]

(283) The registrar and merchants in dealing with a claim for demurrage in respect of a very small vessel, took into account the fact that the cost of crew's wages, provisions, &c. would be proportionately larger than

the ship during the repairs, that compensation being the expenses of detention and the amount of profit lost. *H. M. S. Inflexible*, Swabey, 204; 28 L. T. 374; 5 W. R. 517.

343. The compensation should be reckoned from the period when the vessel, in the ordinary course, would have been ready for sea if there had been no collision up to the time when with due diligence the repairs ought to have been completed. *Ibid.* Swabey, 205; *The Hebe*, 5 Notes of Cases, 182; 2 W. Rob. 530.

344. The measure of damages for detention is not what another vessel earned, but what, according to reasonable probability, all contingencies being taken into consideration, the vessel damaged would have earned. *The Hebe*, *Ibid.*

345. The owner's books are the best evidence of probable earnings, and should be produced. *Ibid.*

346. The custom and responsibilities of a ship engaged in the East India trade as regards the retention of Lascars and European officers to take care of them while the ship is in an English port are to be considered, and such expenses viewed as necessary, and allowed for accordingly. *H. M. S. Inflexible*, Swabey, 204; 28 L. T. 374; 5 W. R. 517.

347. The true measure of the length of demurrage caused by a collision is the length of time which, by reason of the collision, the vessel has been thrown out of her usual employment. *The Black Prince*, 1 Lush. 568; 5 L. T. N.S. 39.

348. The A. was one of a line of

those in a bigger vessel. *Eileandubh*, August, 1883. R. & M.

(283a) Interest at the rate of 6 per cent. per annum allowed upon the value of the vessel before the collision, for the interval after the collision, until she was repaired and fitted to resume her trips on appeal. *Held*, that the allowance was right in the particular case, no vessel having been hired to supply her place. *The Rhode Island*, 2 Blatch. Ct. Ct. 113. [AMERICAN.]

(284) A steamer trading between the Bristol Channel and the river Seine was damaged by collision in that river. She was taken to Middlesbrough and repaired, and then resumed her employment. Her owner's claim of fifteen days' loss of time for such removal disallowed, on the ground that the vessel could and might have been repaired in the Bristol Channel. *The Ernest*, July, 1882. R. & M.

(284a) A yacht was damaged by collision, and not repaired until three months after arrival in port. No demurrage or interest was allowed, the owner having shown no anxiety to refit her for sea. A sum in respect of the crew's wages during the temporary repairs was allowed. *The Stephenson*, May, 1883. R. & M.

(285) Two large hopper barges had been specially constructed to work with a dredger. The dredger was disabled by a collision, and as the hoppers were rendered useless during the time the dredger was under repair, the plaintiffs (a dock board) claimed by way of demurrage interest on the cost of the three vessels. Assuming the case to have been one in which demurrage was allowable, the registrar and merchants were of opinion that the method of computation was not an unfair one. *The Clarence*, Nov. 1883. R. & M.

(286) In assessing the demurrage of a tug, the registrar and merchants allowed a sum which, in their opinion, fairly represented her net earnings. *The Mary Anning*, Nov.

1883. R. & M.

(287) A large steamer on her way to dry dock to undergo extensive structural alterations and repairs was damaged by collision. The registrar and merchants being of opinion that the comparatively small damages arising from the collision could have been repaired in a few days, and without interfering with the progress of the owners' repairs, disallowed the claim for demurrage. *The Mammoth*, Jan. 1884. R. & M.

(288) A vessel while at anchor drifted upon and injured the E., also at anchor. The E. was repaired where she lay, but on proceeding to weigh anchor it was found that the chains of the D. were foul of her anchors, and further delay and expense were caused before the E. could clear her anchors and sail. Demurrage in respect of this detention was objected to; but the objection was overruled on the ground that the E. was not bound to lift her anchors until she was ready to sail. *The Eugenie*, March, 1884. R. & M.

(289) A French steamer was damaged by collision, and it was contended on the reference that an exceptionally high rate of demurrage should be allowed, on the ground that the French Government subsidizes the owners by paying a certain sum per ton for every thousand miles run under steam. The contention was rejected, on the ground that without such subsidy it would appear the ship would not be employed at an adequate remuneration, and not that with such subsidy her earnings were exceptionally large. The demurrage was therefore allowed on the scale usual in the case of English steamers of a similar class. *The Glencoe*, May, 1885. R. & M.

(290) The fact that a subsequent necessity arose for more extensive repairs does not relieve the wrong-doer from his liability for the detention of a vessel for repairs in consequence of a collision. *The Redewater*, June, 1885. R. & M.

steamers belonging to different owners, which took turns for sailing at fixed intervals. In the ordinary course of business each vessel on returning home was a certain time idle in port. The A., in consequence of a collision, was obliged to undergo repairs, and lost her turn, which was taken by another steamer on the line. The A., as soon as repaired, took the next turn. *Held*, that the measure of demurrage was not the length of time the A. was undergoing repairs, nor the difference between the usual time of her being in port and the actual time she was in port on this occasion, but the number of days she was detained beyond the date on which, but for the collision, she would have sailed in her regular turn. *The Black Prince*, 1 Lushington, 568; 5 L. T. N. S. 39.

349. It was proved that the value of the steamer A. was £25,000, and that she had cost six years previously £30,000, and was kept in good repair. Demurrage allowed at the rate of £25 per diem. *Ibid.* 576.

349a. The M., whilst awaiting her turn to enter a dry dock, which had been engaged to enable her to repair damages sustained by stranding, was fouled by another vessel during a gale, her propeller and shaft being damaged by the collision. The same gale caused another vessel to sink just off the dry dock, which was thereby rendered inaccessible, and remained so during fifteen days, when the wreck was removed. The M., which had renewed her engagement with the dry dock, no other being available, then entered it, and in six days repaired all her damage. Of the six days, three were occupied in making good the stranding damage, and three in repairing the collision damage. Whilst the M. was waiting to enter the dry dock, a spare propeller which she had on board had been got ready, and a new shaft prepared, all the preliminary work being completed before the dock was ready to receive her. Demurrage was claimed for eighteen days, viz., three days occupied in repairs, and the fifteen days during which the preliminary work was completed. The registrar only allowed three days' demurrage, on the ground that, as her dock was blocked, she must have waited during the fifteen days, even had no collision happened. On appeal to the judge, and afterwards to the Court of Appeal, it was held that, until the necessary preliminary work was completed, the fact that the dock was blocked was

immaterial. Further demurrage was therefore allowed. *The Kepler*, 1877, Q. No. 281, May, 1877.

350. With respect to the propriety of a charge for loss of employment of a vessel occasioned by her detention to undergo repairs consequent on a collision, the court considered the registrar and merchants more peculiarly competent to form a proper estimate of the propriety of such charge, and accordingly refused to alter the report in that respect. *The Alfred*, 3 W. Rob. 243; 7 Notes of Cases, 579.

351. It does not follow that anything is due for the detention of a vessel whilst under repair, though under some circumstances such a consequence will follow, as where a fishing voyage is lost, or where the vessel would have been beneficially employed. *The Clarence*, 3 W. Rob. 285; 14 Jur. 557; 7 Notes of Cases, 579.

352. It will not be sufficient to prove the general rate of the ship's earnings, and that if she had not been detained in dock she might have earned freight. The opportunity of earning, and the actual loss of that opportunity, must be established. *Ibid.*

352a. £800 allowed to a fishing brig as demurrage or compensation for loss sustained by the interruption of her fishings, such sum being arrived at from evidence as to the value of the takes of other vessels during such interruption. *The Risoluto*, 8 P. D. 109; 52 L. J. P. D. 46; 5 Asp. 93.

353. Claim of a steam company for demurrage, at the rate of £20 per diem during the repairs, as being the amount at which the vessel might have been hired, not allowed by the registrar and merchants, on the ground that there was no sufficient proof that an actual loss had been sustained. Objection to their report overruled. *Ibid.*

354. A fishing vessel was sunk in a collision, and the full value awarded by the court, as for a total loss. *Held*, that nothing in the nature of demurrage could be recovered by the owner, who was also the master, for loss of employment of his vessel or his own earnings. *The Columbus*, 3 W. Rob. 159; 13 Jur. 285; 6 Notes of Cases, 671.

355. Demurrage is allowed to the owners of a ship during the time she is necessarily delayed for repairs rendered requisite by the collision, for the transacting of business directly connected with the collision. *The City of Buenos Ayres*, 1 Asp. N. S. 169.

355a. The rate of demurrage allowed to steam vessels of the ordinary class carrying cargo is 6*d.* per ton on the gross tonnage, or 9*d.* per ton on the net tonnage per day. This estimate is arrived at by doubling the amount of the wages of the crew and of the cost of their provisions, so as to include both expenditure and loss of trade. *Ibid.*

356. A ship, G., insured by a policy containing the usual collision clause, came into collision with the plaintiff's ship, W. H. The G. was arrested in the Admiralty Court, and an agreement, the parties to which were the owners of the two ships and the managers of the insurance company, was entered into, by which the G. was to be released on the payment by her owner or the insurance company of "the amount of damage which the W. H. had received from the collision," and the costs of the proceedings in the Admiralty Court; and in case of dispute as to the "amount of damages claimed by the plaintiffs by reason of the collision," the amount was to be settled by an arbitrator. The G. was released under the agreement, and the amount of damages was referred to an arbitrator, who awarded a certain sum for the damages, and also a separate sum for detention while the damage sustained was being repaired. *Held*, that the plaintiffs were entitled to recover for the detention, as well as for the damages received. *Heard v. Holman*, 11 Jur. N.S. 544; 13 W. R. 745; 12 L. T. N.S. 455.

356a. In calculating fines for demurrage under a charter-party, the smallest portion of a day will be considered as an entire day. *The Thorny Close*, 5 Jur. 251. [IRISH.]

357. See also, as to the allowance of demurrage, under COSTS AND DAMAGES, c. 8, p. 1776.

(g) *Cargo.*

(aa) *Generally.**

(bb) *Loss of Market.†*

358. By reason of a collision, the goods on board the innocent vessel did not arrive until the market price had fallen. In an action by the goods owner against the wrong-doing vessel, *held*, that damages for loss of market were too remote, and could not be recovered. Affirmed on appeal. *The Notting Hill*, 9 P. D. 105; 53 L. J. P. D. 56; 5 Asp. 241.

359. Claim of consequential damage to cargo, arising from the vessel having been run ashore in consequence of the collision, rejected, as not sufficiently proved to have been caused by the collision. *The Eolides*, 3 Hagg. 367.

360. The P., bound from Gallipoli to St. Petersburg, came into collision in the Channel with the A., and was compelled to put into Newhaven to repair damages. The A. claimed compensation for the injuries sustained, and for the consequential loss caused by her detention at Newhaven beyond the Baltic season. The court pronounced for the damage generally, and referred the claims to the registrar and merchants, observing that before pronouncing for the consequential damage it would require it to be satisfactorily proved that every possible exertion was made by the owners of the P. to arrive at St. Petersburg, get in a cargo, and come back again. *The Aline* (1839), 5 Monthly Law Mag. (Notes of Cases), 302.

360a. See also, as to loss of market in actions of damage to cargo, Nos. 203—206, p. 1741.

(cc) *Fish.‡*

361. A fishing smack was disabled by

* (291) At the time of the collision the plaintiff's vessel was proceeding to a foreign port, where cargo had been engaged for her, and where, by reason of the collision, she arrived one month later. Under an arrangement customary in the trade the purchaser of the cargo had to pay a sum in respect of the month's delay for interest, warehouse rent and insurance. *Held*, that the loss was a direct consequence of the collision, and the item allowed. *The Cyprian*, 1878, S. No. 345, Jan. 1880. R. & M.

(291a) See also notes 228, p. 1754; and 256, p. 1761.

† (292) Claims for loss of market will be rejected, as they involve conjecture and are subject to many contingencies. *The Ægean*,

No. 6009, June, 1873. R. & M.

(293) Estimated profits of a voyage which could have been made while the damage done to the vessel was being repaired, allowed. *The Frederick Warren*, Sept. 26, 1855. R. & M.

(294) In estimating the measure of damages in cases of collision the loss of profits by the voyage is too remote and consequential. *Cummins v. Spruance*, 4 Harring. 315. [AMERICAN.]

(295) See also notes 111—119, pp. 1740, 1741.

‡ (296) The ordinary rule as to the allowance of demurrage, for which see notes 261—290, *supra*, being obviously inequitable in the case of a fishing vessel, the registrar and merchants will consider her probable

collision from pursuing her voyage from London to Norway to receive a cargo of lobsters, in consequence whereof her owners were obliged to hire another smack for that purpose. Damages were decreed for the amount of freight paid for the vessel substituted. *The York-shireman*, 2 Hagg. 30, n.

361a. Claim sustained for damage to smack by collision, and loss of fish caused thereby. *The Konigsberg*, Dec. 3, 1839.

362. The plaintiff, in an action of damage by collision, claimed for demurrage upon the basis of the loss of fishing during repairs, and the registrar and mer-

chants estimated that loss by taking into account the average catch of similar vessels during the period of repairs. The court on objection to the registrar's report confirmed the report with costs. *The Risoluto*, 8 P. D. 109; 5 Asp. 93.

362a. See also No. 354, *supra*.

As to the allowance for loss of fish by salving vessels while effecting salvage, tit. SALVAGE, c. 14.

(h) *Salvage.**

363. In every case of collision between two vessels, it shall be the duty of the

earnings in allowing a sum to her owners as compensation for loss of user during repairs. *The Regent*, 1881, C. No. 6594, Fo. 480, April, 1882. R. & M.

(297) Where, as in the case of a fish cargo, the loss of market constitutes an immediate and inevitable damage, compensation for the delay occasioned by the collision will be allowed. *The Blonde*, 1880, H. No. 43, Nov. 1880. R. & M.

(298) The plaintiffs' vessel, a fishing smack, was sunk by the collision whilst lying to her nets. The fishing season continued for a few weeks longer, and a sum was accordingly claimed and allowed in respect of her probable earnings during such period. *The J. H. Bowers*, 1879, W. No. 352, Feb. 1880. R. & M.

(299) In dealing with a claim for demurrage in respect of a fishing smack, which was sailed by the master and crew on the share principle, the ordinary rule as to demurrage was held to be inapplicable. Her estimated probable earnings *plus* a sum in respect of the crew properly detained were allowed. *The Regent*, April, 1882. R. & M.

(300) It was stated on a reference to ascertain the loss of a smack's fishing, that the custom was to deduct from the gross earnings of the vessel the commission on the sale of the fish and the crew's food, and to divide the balance into shares. The registrar, in addition to the above two items, deducted a further sum for the wear and tear of the nets, &c., and also an item for wages of the crew, which he considered they might and ought to have earned ashore during the repairs. *The Reiker*, July, 1882, R. & M.

* (301) The E., having drifted athwart the bows of the G. which was at anchor, remained in contact for five hours, when a tug removed her. The tug claimed and, without reference to a court of law, received salvage reward from each vessel. The E. having been found to blame for the collision, the G. sought to include in her damages the sum she had paid to the tug. The registrar being of opinion that had the vessels remained longer in collision, the G. would have sustained further damage; held, on the implied authority of the

H. M. Hayes, 1 Lush. 375, that the tug had rendered salvage assistance to the G. *The Elizabeth*, No. 3459, August, 1867. R. & M.

(302) The sum paid by the G. was therefore allowed against the E. *Ibid*.

(303) See also *The Vandyck*, 7 P. D. 42, in support of the registrar's view that the tug's claim against both vessels was sustainable. *Ibid*.

(304) *Semble*, a *bonâ fide* agreement entered into with the salvors of a vessel damaged by collision will under ordinary circumstances be sustained by the registrar and merchants, and the amount stipulated for allowed against the vessel in default. *The Eliza Caroline*, No. 4448, April, 1869. R. & M.

(305) The plaintiffs' claim in an action of damage included an amount paid for salvage assistance rendered necessary by the collision. The registrar considered the amount paid was out of all proportion to the services; but as the payment was made in good faith, and the settlement of the salvors' claim without litigation had saved costs, the item was allowed in full. *The Benwell*, No. 7389, Nov. 1875. R. & M.

(306) An item in the plaintiff's claim was for a sum paid as salvage reward for services rendered necessary by the collision. The amount had been agreed upon and the payment had been made *bonâ fide*, but the registrar considered it excessive and allowed a lesser sum which in his opinion would have covered both salvage and costs if the salvors' claim had been contested. *The Malta*, 1880, F. No. 723, Fo. 224, Feb. 1881. R. & M.

(307) A sum of £300 paid to salvors of the plaintiffs' vessel, which had been damaged by collision, and included in the claim, reduced to £200, the former amount being deemed extravagant remuneration for the services. *The Allerton Packet*, No. 5183, Aug. 1870. R. & M.

(308) Damage suffered by the disabled vessel in the course of reasonable and proper efforts to save her is a consequence of the condition in which she is left by the wrongdoer, and is therefore properly chargeable. *The Narragansett*, 1 Blatch. Ct. Ct. 211. [AMERICAN.]

master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew and passengers (if any) such assistance as may be practicable, and as may be necessary in order to save them from any danger caused by the collision, and also to give to the master or person in charge of the other vessel the name of his own vessel and of her port of registry, and of the port or place to which she belongs, and also the names of the ports or places from which and to which she is bound. The Merchant Shipping Act, 1873 (c. 85), s. 16.

363a. For cases of salvage by one vessel of another vessel with which she has been in collision, see tit. SALVAGE, c. 5, s. 2.

364. It has always been the custom in the Court of Admiralty whenever a cause of damage has been brought and the plaintiff's vessel has received salvage assistance, for the salvage paid, and the costs on both sides in the salvage suit, to form part of the claim for damage. *The Legatus*, Swabey, 138; 5 W. R. 154; *The Betsey Caines*, 2 Hagg. 30.

365. The ships G. and L. came into collision, after which the G. was abandoned by her master and crew, and picked up by another vessel and carried to Madeira, by which a large salvage expense was incurred. In a cause of collision both vessels were held to be in

fault. On a further question whether the expense of salvage was to form part of the damage which would be divided between the vessels; held, that under the circumstances the G. was improperly abandoned through want of ordinary skill and resolution in her master and crew, and that the salvage expense incurred was chargeable to such misconduct, and should therefore form no part of the damages arising from the collision. *The Linda*, Swabey, 306; 4 Jur. N.S. 146; 6 W. R. 196; 30 L. T. 234.

366. Where two vessels are in collision and are entangled together in a position dangerous to both, salvors, who by towing one of the vessels clear, free both vessels from danger, are entitled to recover salvage reward from the owners of both vessels. A screw steamship drifted during a gale of wind across the bows of a ship at anchor in the Mersey, and with her propeller caught the anchor chains of the ship, and the two vessels were held together in a position dangerous to both. A steamship went to the assistance of the ship, and held her whilst her chains were slipped and towed her clear of the steamship. Held, that the tug was entitled to salvage reward from the owners of the steamship. *The Vandyck*, 7 P. D. 42.

367. As to damages from collision while rendering salvage services, see Pt. I. c. 14, p. 1732.

(i) Towage.*

368. When the collision makes the hiring of a steam-tug necessary, the cost

(309) The owners of the injured vessel will be allowed salvage expenses and other charges necessarily paid by them in rescuing the vessel and cargo from perils they were placed in by the collision. *Ibid.* Olcott, Adm. 388. [AMERICAN.]

(310) Also for towage expenses in bringing the disabled vessel into port. *Minor v. Steamer Picayune*, 13 La. An. 564. [AMERICAN.]

(311) Services of a salvage character rendered in saving and restoring the injured vessel and cargo will be compensated by salvage reward. *Ibid.*

(312) They will not be limited to a quantum meruit for mere work and labour. *Ibid.*

(313) A bonā fide adjustment of such claims and charges between parties interested in the vessel and cargo will be accepted by the court as a proper mode of fixing the valuation of the services. *Ibid.*

* (314) A vessel being towed from one port to another under an agreement for £87, was P.

during the voyage damaged by collision. Her tug thereupon rendered salvage services to her, and recovered £200 as salvage. Held, by the registrar and merchants, that the amount to be recovered by the damaged vessel from the wrongdoer was the difference between the two sums. *The Queen of the East*, January, 1882. R. & M.

(315) Surveyors summoned by the master of a vessel damaged by collision recommended towage to a distant port at which to repair. The master of the wrongdoing vessel objected to this course and summoned other surveyors, who reported that the towage was unnecessary. The event proved that the towage was unnecessary, but the registrar acting upon the advice of the merchants and waiving his own opinion, allowed the amount paid for the towage on the ground that the report of the first set of surveyors justified the expense. *The Mahn Buleswar*, No. 6453, March, 1874. R. & M.

of the tug must be allowed, though the vessel would probably have hired a steam-tug had there been no collision. *H. M. S. Inflexible*, Swabey, 200; 5 W. R. Adm. 517; *The Venezuela*, May, 1858.

369. A vessel bound for Cardiff was damaged by collision in the neighbourhood of the Start. She was towed inside Plymouth breakwater, and having been temporarily repaired, she was towed to her destination and there permanently repaired. Having regard to the fact that these proceedings avoided the risk of having to discharge and reload cargo at an intermediate port, the costs of towage was allowed by the registrar and merchants, although the plaintiffs contended that the repairs could have been effected quite as cheaply and more expeditiously at Plymouth. *The Elginshire*, November, 1883. The report was objected to, but confirmed by the court.

(j) *Costs of defending Salvage Actions.*

See *Cosrs*, c. 33, s. 10, p. 402.

4. For Breaches of Charters.*

370. The defendants in a cause of damage by collision admitted their liability. It was proved before the registrar that the delay occasioned by the necessity of repairing the plaintiff's vessel, enabled the charterers of the vessel at the time of the collision to cancel the charter-party, and the plaintiffs were obliged to enter into another charter-party at a lower freight. *Held*, by the court, that the registrar ought to have awarded compensation for the loss of the difference between the freight under the cancelled charter-party (after deducting for the difference between the voyage to be performed under the cancelled charter-party

and the shorter voyage actually made for the saving of wear and tear to the vessel, and for the uncertainties and perils incident to all sea voyages, &c.) and the freight which was actually earned. *The Star of India*, 1 P. D. 466; 45 L. J. P. D. 102; 3 Asp. N.S. 261.

370a. The vessel C., which was proceeding in ballast to Montreal to load a cargo of grain for the United Kingdom pursuant to charter-party, was injured by collision with another vessel, and compelled to put into port to repair. The repairs necessarily occupied so long a time that it was not reasonably possible for the C. to have arrived at Montreal in time to fulfil her charter before the navigation of the St. Lawrence was stopped by ice for the winter. In these circumstances the owners of the C. abandoned the charter, and it was found that they acted prudently in so doing. *Held*, that the loss arising from the abandonment of the charter was a loss caused by the collision. *The Consett*, 5 P. D. 229.

371. A charter-party stipulated for certain payments to the owners of cargo as commission and penalties in case of non-fulfilment of charter-party. These payments became due in a cause of damage. *Held*, that they were, together with the costs of paying the freight into court, proper deductions from the gross freight due to the owners of the damaging vessel. *The Leo*, 1 Asp. 200.

371a. A charter-party provided that a ship should proceed to a port and load cargo from the charterers, unless the charterers by their agent there gave notice that they abandoned the adventure, in which case the charterers were to pay the shipowners £500. The ship proceeded to the port and found no cargo and no charterers' agent, and got no notice, and then made another voyage which turned out more profitable than the chartered

(316) In the assessment of damages by collision the expenses and delay of taking the injured vessel from the place of collision to her port of destination, and thence to the most suitable place for repair, are amongst other things to be allowed. *Holderman v. Beckwith*, 4 M'Lean, 286; *Barrett v. Williamson*, *ibid.* 589. [AMERICAN.]

(317) Towage expenses for bringing the disabled vessel into port will be allowed. *Minor v. Steamer Picayune*, 13 La. An. 564. [AMERICAN.]

(318) The expense of towing the vessel to her place of repair, and wharfage while repairing, are items of damage. *Fitch v. Living-*

ston, 4 Sandf. Sup. Ct. 492. [AMERICAN.]

(319) The master of a barque which had been damaged by a steamer engaged a tug to tow his vessel to port. He agreed to pay £80 if his vessel were found to blame, but £200 in the event of the steamer being held in fault. At the reference (the steamer being in fault) the larger amount was claimed, but £120 disallowed. *The Alfgar*, March, 1882. R. & M.

(319a) See also notes 162a—163a, p. 1747.

* (320) See notes 5, 6, 7, p. 1717; notes 224, 225, p. 1754; and notes 252—255, 257, 258—260, p. 1761.

voyage. *Held*, that the shipowner could not recover the penalty in addition to the profit on the voyage, but only nominal damages. *Staniforth v. Lyall*, 7 Bing. 169.

372. The measure of damages payable by a charterer to a shipowner for non-performance of the contract to load is the amount of freight which would have become payable under the charter-party less the cost of earning it, and less any freight earned during the period the ship would have been employed under the charter-party. *Smith v. M'Guire*, 3 H. & N. 554; 27 L. J. Ex. 465; *Puller v. Staniforth*, 2 Taunt. 285; *Wilson v. Hicks*, 26 L. J. Ex. 242.

373. Where by charter-party it is agreed that the shipowner shall have a ship ready at a certain time to receive a cargo for a foreign port, and the shipowner fails in the performance of his contract, and in consequence thereof the charterer is obliged to charter other vessels at a higher rate, and pay a higher price for his cargo, the price having risen during the delay occasioned by the shipowner's default, the charterer is entitled to recover as damages against the shipowner the loss sustained by the chartering of the other vessels and the difference in the price of the cargo, provided the shipowner does not show that the cargo has by reason of the rise in price become of greater value in the foreign port. *Featherstone v. Wilkinson*, L. R. 8 Ex. 122; 42 L. J. Ex. 78; 28 L. J. N.S. 448; 2 Asp. N.S. 31.

374. In an action by a shipowner against a charterer for breach of contract in not naming a safe port to unload according to charter-party, the master's extra costs of successfully defending an action brought against him by the consignee for not unloading at the port named are not (the taxed costs having been recovered from the consignees) recoverable against the charterer unless he has expressly authorized the shipowner to incur the costs on his behalf. *Evans v. Bullock*, 3 Asp. N.S. 552; 38 L. T. N.S. 34.

375. But in such case the shipowner is entitled to recover as damages the difference between the port dues at the port named and the port dues he actually paid at the port where he discharged the cargo (if they are in excess of the former). *Ibid*.

375a. Where the shipowner has in such a case recovered for demurrage in respect of the delay so occasioned he cannot re-

cover for the cost of insurance from the port named to the port of actual discharge (even if he could in any event), as such insurance, being an ordinary expense of the shipowner, must be taken to be included in the demurrage recovered. *Ibid*.

376. A charter-party provided that a certain freight should be payable for an outward and homeward voyage, and that in the event of non-performance by the charterer through political circumstances there should be a liquidated sum payable to the shipowner. The charterer was prevented from discharging outward cargo or loading homeward cargo by such circumstances, and the shipowner obtained other employment. *Held*, that the shipowner was entitled to the liquidated sum provided by the charter-party in addition to the freight named on such other employment. *Bell v. Puller*, 2 Taunt. 285; 12 East, 496, n.

376a. As to the amount of damages recoverable against the freighter for not duly loading a cargo, where the parties have stipulated for a full and complete cargo of particular kinds of goods, to be carried respectively at specified rates of freight, see *Gether v. Capper*, 24 L. J. C. P. 69; *Cockburn v. Alexander*, 6 C. B. 791.

377. A vessel was chartered to P. C. and home from M. at a fixed freight, the charterer having the option of sending a part of the outward cargo on to M., but every expense the vessel might incur in consequence was to be borne by the charterer. The charterer loaded a cargo, part for P. C. and part for M., and made out two manifests. On arriving at P. C. the custom-house authorities prohibited the discharge of any part of the cargo there, and the cargo was confiscated, and the master fined; but eventually the government agreed to pay the master, but did not pay, a compensation for the detention of the ship, and she proceeded to M. *Held*, that the owner was not entitled to recover from the charterer the expenses in repairing damage to the vessel occasioned by the delay, or the costs of proceedings against the government, such damages not being contemplated by the charter. *Sully v. Duranty*, 33 L. J. Exch. 319.

378. The defendant chartered the plaintiff's ship upon the terms that she should go to a foreign port for a cargo, and "there, in the usual and accustomed manner, load in her regular turn." The

ship went to the port, but owing to the defendant's default was not ready when her turn came, and was consequently detained eleven days. When her turn came round again she was ready, but the wind coming on to blow, and the harbour being crowded, the harbour-master refused to allow the ship to go up to load, and she was consequently detained three days. The plaintiff having sued on the charter-party claiming damages for the detention, *held*, that the detention for the three days was the legal and natural consequence of the defendant's default in not having the ship ready for the first turn, and that the plaintiff was entitled to damages in respect of the three days as well as the eleven days. *Jones v. Adamson*, 1 Ex. D. 60.

5. For Loss of Life from Collision.*

379. As to the statutory limitation of liability in respect of loss of life or per-

sonal injury from collision, see *tit. OWNERS*, Pt. VI. p. 1177.

380. As to the jurisdiction of the Admiralty Division *in personam* and the limitation of its jurisdiction *in rem* in reference thereto and its procedure therein, see *tit. PRACTICE*, p. 1681.

380*a*. When damage is done by a ship both to persons and goods, the liability of the ship is to be estimated at not less than £15 per ton for the purpose of adjusting the compensation to be paid to claimants in respect of loss of life or personal injury. *Nixon v. Roberts*, 1 Johns. & H. 739; 7 Jur. N.S. 820; 30 L. J. Ch. 844; 9 W. R. 890; 4 L. T. N.S. 679.

381. The liability of a shipowner in respect of loss of life to the seamen of a vessel run down by his ship is not limited to £30 for damages, payable in each case of death. *Glaholm v. Barker*, L. R. 2 Eq. 598; 12 Jur. N.S. 764; 35 L. J. Ch. 657; 14 W. R. 1006; 14 L. T. N.S. 880.

381*a*. This rule applies whether the Board of Trade does or does not institute

* (321) The master of a brig was drowned by the collision. He was 44 years of age and left a widow and five children, viz., four sons, aged respectively 17, 15, 13, and 3, and a daughter aged 5. £500 allowed. *The Sheperton*, No. 5725, Aug. 1871. R. & M.

(322) The master, age 49, of a schooner of 51 tons, was drowned by the collision. He left a widow, a consumptive daughter age 22, and a son age 11. The registrar allowed to the widow £250, to the daughter £125, and to the son £75, in all £450. *The Solent*, 1881, R. No. 1005, Fo. 204, Nov. 1881. R. & M.

(323) The second officer of an iron ship of 1,500 tons was drowned by the collision. He had held a second mate's certificate, was 51 years of age, his wages were £6 per month, and he left a widow and five children. £400 allowed. *The Candahar*, No. 7034, June, 1875. R. & M.

(324) The master of a schooner was drowned by the collision. He was 50 years of age, and left a widow in poor health, three daughters aged 16 and 10 years and 16 months respectively, and a son aged 15. £430 allowed. *The J. E. McConnell*, No. 5886, June, 1872. R. & M.

(325) The steward of an American barque of 730 tons register was drowned by the collision. He left a widow and four children aged respectively 13, 12, 11, and 8 years. £300 was awarded. *H. M. S. Crocodile*, No. 4876, Nov. 1869. R. & M.

(326) A ship's carpenter, aged 42, was drowned by the collision. His wages were £5 10s. per month, and he left a widow and a posthumous child. £300 allowed. *The George & Richard*, No. 5638, Jan. 1872. R. & M.

(327) Three North Sea fishermen, earning from sixty to eighty pounds per annum, were drowned by the collision. Each left a wife and children. £300 allowed in each case. *The Osborne*, No. 6753, April, 1874. R. & M.

(328) A North Sea fisherman, age 20, earning £80, and another, age 17, earning £40 per annum, were drowned by the collision. Both were unmarried, but had contributed materially to the support of their parents and families. In the former case £100 was allowed, and in the latter case £75. *Ibid.*

(329) Two ordinary seamen aged respectively 18 and 20, and earning respectively thirty-five and thirty shillings per month were drowned in the collision. £50 allowed to the mother of each. *The George & Richard*, No. 5638, Jan. 1871. R. & M.

(330) An able seaman, aged 22, was drowned by the collision. He left a widow and posthumous child, a daughter. £225 allowed. *The J. E. McConnell*, No. 5926, June, 1872. R. & M.

(331) Three North Sea fishermen, each upwards of 21 and likely to marry and be less able to assist their parents, were drowned by the collision. £50 allowed in each case. *Ibid.*

(332) A young lad on his first voyage was drowned in the collision. His parents were of humble condition, and there was no probability of his being able to assist them for some years. £50 allowed. *The Thetford*, 1880, F. No. 2044, Fo. 430, March, 1881. R. & M.

(333) See also note 335, *infra*.

proceedings in respect of such loss of life. *Ibid.*

382. The owner's statutory liability extends to the crew of the other ship and to other persons carried by her. *Ibid.*

383. The E. and the G. R. came into collision. The E., which was held blameless, was rendered helpless by the collision and driven ashore by a gale of wind, and three of her crew were killed and others injured. *Held*, that the G. R. was liable for the loss of life and injuries as the natural consequences of the collision. *The George and Richard*, 1 Asp. N.S. 50. See also *Smith v. The London & South Western Rail. Co.*, L. R. 6 C. P. Ex. Ch. 14.

384. The crew might have gone on board other vessels before the vessel was wrecked, but the doing so would have been attended with great risk. *Held*, that they were not bound to run such risk, and did not therefore contribute to their own loss or injuries.

385. The defendants were the owners of a ship which came into collision with and sunk a China clipper called the C., of which Captain M. the master, and his wife, the father and mother of the plaintiff, a boy three years of age, suing by his guardian, lost their lives at Shanghai, through collision caused by negligence of the defendants' servants. At the time of his death Captain M. was receiving a salary of £310 a year, and being allowed to trade on his own account made about £250 per annum in addition, out of which he had saved £250 a year. He, at the time of the accident, was thirty-nine, and in good health. It was proved he was a first-class seaman, and that the boy had no means except what came from his father, who had left behind him £2,903, made while captain of the ship. The jury assessed the damages at £1,500. *Mackenzie v. Hardy and others*, Secondary's Court, London, 12th May, 1882.

385a. The plaintiff was the widow of the master of a ship which came into collision with another ship, and the master, forty-five years of age, was killed in the collision. He left four children besides his widow. The jury awarded £1,000, dividing £400 thereof among the four children. *Bairie v. Bucknall and Others*, Liverpool Assizes, August 7, 1881.

386. The plaintiffs were the widow and six children of a navigating lieutenant in the royal navy, who had lost his life in a collision between his vessel and the defendants' steamer. He was forty-seven years of age, and had been thirty-three

years in the service, having entered as second class boy. His pay was £241 : 16s. 8d. per annum; and there were six children, aged respectively six, seven, ten, twelve, fifteen, and eighteen. The Admiralty allowed the widow a pension of £36 during widowhood, and £5 each a year for the four younger children until they attained fifteen. The widow also had an allowance from the compassionate fund, which would now cease. Evidence having been given of the high character of the deceased, and his probable rise in his profession, the jury awarded £1,500, *i. e.* £600 to the widow and £150 to each of the children. *Greet v. The National Steamship Co.*, April 8, 1880.

387. The plaintiffs were the widow and three children of a second mate in the royal navy. The widow had a pension of £25. The jury awarded £750, *i. e.* £300 to the widow and £125 to each child. *Montgomery v. The National Steamship Co.*, *Ibid.*

388. The plaintiffs were the widow and four children of a quartermaster in the royal navy. The jury awarded £675, *i. e.* £300 to the widow and the remainder to the children. *Kitchen v. The National Steamship Co.*, *Ibid.*

389. The plaintiffs were the widow and child of an able seaman in the royal navy. The widow had no pension. The jury awarded £300 to the widow and £50 to the child. *Howe v. The National Steamship Co.*, *Jenkins v. The same*, April 8, 1880.

390. The plaintiffs were the widow and child of a shipwright in the royal navy. The widow had no pension. The jury awarded £300 to the widow and £50 to the child. *Fowell v. The National Steamship Co.*, April 8, 1880.

390a. The plaintiff was the widow of a man employed in loading coals on board the defendants' ship, and met his death while so employed. His earnings averaged not less than £3 per week. Besides his widow, he left seven children. The jury awarded £350, and apportioned £125 to the plaintiff and £225 among the children. *Phillips v. Phillips & Co.*, March 6, 1884.

391. The plaintiff was the widow of a sail maker killed in a collision. He was fifty-two years of age, and was receiving £4 : 10s. per month, and in the habit of allotting half this monthly to his wife. The jury awarded £125. *Nicholl v. Bucknall and Others*, Liverpool Assizes, Aug. 7, 1881.

6. For Personal Injuries from Collision.*

392. The Court of Admiralty has jurisdiction to entertain an action, and to assess the damages in respect of personal injuries done by a ship. *The Sylph*, L. R. 2 A. & E. 24; 37 L. J. Adm. 14; *The Guildfaxe*, L. R. 2 Adm. 325; 38 L. J. Adm. 12; 19 L. T. 748; *The Bernina*, March 2, 1886.

393. A clause in a policy of insurance, that in case the ship shall by accident or negligence of the master and crew run down or damage any other ship, and the assured shall thereby become liable to damages by judgment of any court, the assurers shall pay a proportion thereof, does not extend to damages recovered against the shipowners for personal injury caused to persons on board the ship by collision. *Taylor v. Dewar*, 5 B. & S. 58; 33 L. J. Q. B. 141; 10 Jur. N.S. 361; 10 L. T. 267; 12 W. R. 579.

394. In an action for damages for personal injury a sum received by the plaintiff from an accidental insurance company cannot be taken into account on the question of damages. *Bradburne v. The Great Western Railway Co.*, L. R. 10 Exch. 1.

395. He does not receive that sum because of the accident, but because he made a contract providing for the contingency of that accident; the accident must occur to entitle him to it, but it is not the

accident but the contract which is the cause of his receiving it. *Ibid.*

396. The plaintiff, a civil service writer for some two years, was a passenger, in Aug. 1878, on board the *M.*, a steamer belonging to the defendant company, from London to Boulogne. The weather was very rough, and in one of the lurches of the vessel the plaintiff was thrown down. A number of planks, on which he had been sitting, subsequently fell upon his leg and broke it, and he was laid up for four months; he claimed damages in respect of the injuries he had suffered, also £20 for medical attendance, &c., and £30 for loss of salary. £150 awarded as damages. *Browett (by next Friend) v. General Steam Navigation Co.* Q. B. D. July 2, 1880.

397. The plaintiff was a passenger on board the steamer *H.* In entering the harbour of St. Heliers, Jersey, the vessel, by the negligence of the defendant's servants, struck one of the pier-heads, and the plaintiff by the shock was thrown down. He alleged that the injuries then received were very serious, preventing him for months from attending to his business as a brewer. The defendants alleged the injuries were exaggerated, and the evidence showed he would be quite restored to health in eight or nine months. Damages, £750. *Seymour v. London and South Western Rail. Co.* Q. B. D. August 6, 1880.

398. The plaintiff, who was a master lighterman and barge owner, was walk-

* (334) The mate of a French brig was injured in both legs in the collision. The right leg was amputated, and the knee joint of the left leg became rigid, and the limb was wasted, and there was a sloughing sore. £750 was awarded. *The Beta*, No. 4495, 11 Nov. 1869. R. & M.

(335) The master of a steamer of 626 tons and his wife claimed in respect of personal injury sustained by the latter through prolonged immersion after the collision, and for the deaths of their three children, aged respectively 15, 13, and 10 years. £500 allowed. *H. M. S. Amazon*, No. 3424, Jan. 1868. R. & M.

(336) *Quere*, whether any portion of this sum was allowed in respect of the loss of life. *Ibid.*

(337) A fireman, aged nineteen, was injured by the collision, his life being for some time in danger, although he ultimately recovered and enjoyed fairly good health. He was, however, permanently disabled, and had suffered great pain. £450 allowed. *Hawkins v. Morgan*, 1880, H. No. 137, fo. 186; July, 1881. R. & M.

(338) The master of a ketch of 52 tons register was injured by the collision. He had at the time of the reference been unable to follow his employment for twelve months, and would probably be unable to resume it for another twelve months. £400 allowed. *The Forest Fairy*, No. 195, Oct. 1878. R. & M.

(339) The master of a brigantine was injured by long immersion in the water in consequence of the collision. His nervous system also sustained a considerable shock. At the time of the reference, six months later, he was still ill, and would probably be unable to resume his profession for some time. £200 awarded. *The Earl of Erne*, No. 4950, Nov. 1869. R. & M.

(339a) Two youths, sons of the master of a schooner, were injured by the collision. To the one, whose injuries had kept him out of employ for two months, by which time he had apparently quite recovered, £30 was awarded; to the other, whose injuries were more severe, his right hand being still useless at the time of the reference, £70 was awarded. *The Beverley*, No. 4838, April, 1869. R. & M.

ing along the edge of the quay of the tidal basin of the Victoria Docks, when the steamship S. was being hauled, stern first, out of the tidal basin. When the plaintiff was about to step over a seven-inch Manilla rope, one end of which was made fast to a mooring-post, and the other end to the S., the rope was, owing to the negligence of the defendant's servants, suddenly jerked up. It struck the plaintiff and knocked him down, so severely injuring his elbow that he was unable to use his arm for five months, and had not recovered the perfect use of it. The jury awarded as damages £254. *Arnold v. Black*, February 17, 1885.

7. For Injuries to salving Property in rendering Salvage Assistance.

See Pt. I. c. 14, p. 1732.

8. Costs and Damages.

1. Generally.*

399. On a decree of restitution with costs and damages, the rule is that the party unjustly deprived of his property ought to be put as nearly as possible in the same state as before the deprivation took place. *The Acteon*, 2 Dodson, 51.

400. A party having a decree for costs and damages is to be protected against the expense of poundage. An express decree of costs and damages must go to everything in the way of compensation. *The Driver*, 5 C. Rob. 146, n.

401. A vessel unjustifiably seized was ordered to be restored with costs and damages from the date of the seizure to

the date of the offer of restitution; no claim was made for the cargo till some time after the seizure, the claimant thereto having mistaken his course of proceeding. *Held*, that the owners of the cargo being British merchants, and therefore presumed to know the proper course, were only entitled to costs and damages from the date of their claim to the date of the offer of restitution. *The Elize*, 2 Spinks' Eccl. & Adm. Rep. 41.

402. On a decree of costs and damages for wrongful seizure and destruction of a vessel as engaged in the slave trade, the only losses which will be allowed are those necessarily incident to the destruction of the ship, viz., the value of the ship and nett freight. Damages in consequence of any estimated profit which might or might not have been made had the voyage been completed cannot be allowed. *The Levin Lank*, 10 Moore, P. C. C. 224; Swabey, 45.

403. The owners' claim for damages, amounting to £20,000, was in great part made up of probable or possible profits, which it was asserted they might have made had it not been for the detention of the vessel. *Held* (confirming the report of the registrar and merchants), that the owners could not claim profits which, though possible, might never have been realized. *Ibid*.

404. As to the measure of damages in prize cases, see 3 Phill. International Law, 571, 577.

405. As to the cases in which the court will decree costs and damages, see tit. Costs, p. 369.

2. Value of Ship.†

406. See No. 402, *supra*.

406a. See, as to value of ship in causes of

* (340) Under a decree of restitution with costs and damages of a chartered vessel, seized, condemned, and sold as engaged in the slave trade, the shipowner is not entitled to recover for estimated profits from the employment of the ship, subsequently to the chartered voyage. *The Newport*, Swabey, 335. R. & M.

(341) See, as to the measure of damages in prize causes, the subject fully discussed by Mr. Justice Story in *The Lively*, 1 Gallison, 315. [AMERICAN.]

† (342) Under a decree of restitution with costs and damages of a vessel seized, condemned, and sold, as engaged in the slave trade, the shipowner is entitled to recover *inter alia* the value of the vessel at the period

of capture. Her value estimated at £7 a ton, viz. £882. *The Newport*, Swabey, 337. R. & M.

(343) In the estimated value of a chartered vessel estimated surplus stores after the completion of her charter are included. *Ibid*.

(344) The value of a vessel engaged in the palm oil trade, on the coast of Africa, is to be taken, not at the price at which a similar vessel might have been purchased in England, but at her value on the coast of Africa. *The Levin Lank*, 10 Moore, P. C. C. 217; Swabey, 52. R. & M.

(345) If the vessel and cargo are lost the true measure is their actual value with interest from the time of the trespass. If they have been restored after detention

damage by collision, c. 3, p. 1744; and in causes of possession, Pt. I. c. 13, p. 1731.

3. Cargo.*

407. See No. 403, *supra*.

407a. See as to loss of market of cargo in causes of damage to cargo, c. 2, p. 1740.

408. See as to compensation for lost or damaged cargo in causes of damage by collision, c. 3, pp. 1750—1752, and as to consequential loss of market, &c., p. 1767.

4. Freight.†

409. See No. 402, *supra*.

409a. As to freight in causes of damage by collision, see c. 3, p. 1761.

5. Interest.‡

410. A delay took place of between two and three years from the date of decree for costs and damages, and the bringing in of

the claim. Two years' interest disallowed on the claim. *The Levin Lank*, 10 Moore, P. C. C. 219; Swabey, 54.

411. Interest allowed for a ship and cargo wrongfully taken by the defendant, and this being done in the Indies, Indian interest allowed, deducting the charge of the return: *Elkins v. E. I. Co.*, 1 P. W. 395.

412. As to interest in actions of bottoimy and other actions, see the different chapters, *supra*.

6. Demurrage.

413. Demurrage against captors allowed on a vessel of 180 tons, for three months and twenty days, at £330. *The Corier Maritimo*, 1 C. Rob. 287.

414. See as to demurrage in actions of collision, c. 3, p. 1763.

9. French Law.§

demurrage has generally been allowed for the vessel, and interest on the value of the cargo. If they have been sold, then the gross amount of the sales with interest and, if the sale was under disadvantageous circumstances or not at the place of the destination of the property, sometimes an addition of ten per cent. *The Appollon*, 9 Wheat. 362. [AMERICAN.]

* (346) In trover for the capture and detention on the high seas of a cargo bound to A., it was held that the proper rule of damages was the value of the cargo at the time and place of capture, allowing for the same the prices at A. with such additional damages as would be equal to the interest thereon, deducting a reasonable premium of insurance from the place of capture to A., such part of the cargo or of the avails thereof as had been restored going in mitigation of damages. *Hallet v. Novion*, *The Appollon*, 14 Johns. 273. [AMERICAN.]

† (347) See also note 345, *supra*.

‡ (348) Under a decree of restitution with costs and damages of a chartered vessel seized, condemned, and sold, as engaged in the slave trade, the shipowner is entitled to recover *inter alia* the amount of the chartered freight less the charges which would have been incurred in earning it, and the amount of the liabilities incurred by non-performance of the charter, or the additional expenses incurred in the final performance thereof. *The Newport*, Swabey, 335. R. & M.

(349) The contract of charter having been dissolved by agreement between the owner and charterer on the terms of repayment of the prepaid freight, and this agreement being equitable as regards all parties, *held*, that the freight so repaid was recoverable as part of

the damages. *Ibid.* 343. R. & M.

(350) See also notes 245—260, p. 1761.

‡ (351) Interest on the value of the vessel at the rate of four per cent. per annum is usually allowed. *The Levin Lank*, 10 Moore, P. C. C. 219; Swabey, 54. R. & M.

(352) Under a decree of restitution with costs and damages of a chartered vessel seized, condemned, and sold, as engaged in the slave trade, interest at four per cent. allowed upon the amount recovered from the probable date of the termination of the chartered voyage, supposing there had been no seizure, until payment. *The Newport*, Swabey, 344. R. & M.

(353) In cases of marine tort interest is uniformly allowed upon the value of property lost. *The Anna Maria*, 2 Wheaton, 327; 4 Curtis, D. S. S. 122; *The Amiable Nancy*, 3 Wheaton, 546. [AMERICAN.]

(354) And on the diminution in value of property injured. *Ibid.*

(355) If property ordered by the decree to be restored has been sold, and the money remains in the possession of the court, it does not carry interest, but if it is in the possession of individuals it may bear interest or not as the court shall order. *Himely v. Rose*, 5 Cranch, 313; *Hallet v. Novion*, *The Appollon*, 9 Wheat. 362; *Hallet v. Novion*, 14 Johns. 273; see also notes 345, 346, *supra*. [AMERICAN.]

(356) Unless the court decrees interest none is payable. *Ibid.*

§ (357) Under French law the damages include all loss the direct and necessary consequence of the collision, but not its indirect consequences. D. P. 1876—I. 477.

(358) *Held*, that the responsibility for a collision includes not only the damages suffered immediately from its effect but its con-

sequences; such as damage to the vessel from voluntary stranding to save it from sinking after the collision. Aix, February 18, 1859; J. H. 1859 : 2 : 203.

(359) *Held*, that the damages should include not only the value of the vessel lost therefrom, but the cost of the attempt to save it, if properly made, though fruitlessly, and an indemnity for the loss of the freight, and of the profit resulting from the service in which the vessel was employed. Aix, November 22, 1860; J. H. 1861 : 2 : 142. See also Havre, April 7, 1869; J. H. 1861 : 1 : 94; Marseilles, June 1, 1859; J. H. 1860 : 2 : 96.

(360) *Held*, that where it is uncertain on which of two colliding vessels the fault should be laid, the damages and expenditure of both should be supported in common by both, and that there should be comprehended therein the cost of the repairs, and all the losses which have been the direct and immediate consequence of the collision, such as the necessary interruptions of the voyage, and the delay caused by the repairs, the costs of entering the port and of remaining there for the repairs, of discharging, warehousing and relading the cargo, and of the wages of the crew during the repairs, also the costs of a bottomry loan raised by the master for the purposes of the repairs and the continuation of the voyage if it can be accomplished without difficulty. Caumont, vo. Abordage, Nos. 11, 146, 151, 153. Havre, August 1, 1860; J. H. 1860 : 1 : 180.

(361) *But held*, that in a case where it was not possible to determine which of the two vessels was to blame for the collision, the price of the goods lost by the sinking of one of them was not to be included in the damages. Havre, April 18, 1859; J. H. 1859 : 1 : 93.

(362) *Held*, that a vessel delayed by a collision on a voyage is not entitled to claim damages, because had such collision not taken place it might have been freighted for a return voyage. Havre, April 1, 1865; J. H. 1865 : 1 : 111.

(363) The owners of a ship which has run down another are bound to make good not only the damages originally spoken to in the report of survey, but also any further damages subsequently discovered, especially when the report of survey has made a reservation concerning them. D. P. 1876—II. 24.

(364) Damages include demurrage during repairs. *Ibid*.

(365) Even if the time occupied was prolonged by *force majeure* (such as war), if the war was going on at the time of the collision. *Ibid*.

(366) *Held*, that the demurrage due to a

vessel damaged by a collision is to be 50 centimes per day and per ton of her official tonnage. Havre, 28 June, 1866; J. H. 1866 : 1 : 159. But this does not apply to lighters or barges. Havre, May 16, 1865; J. H. 1865 : 131.

(367) *Held*, that in estimating damages, the wear and tear of old materials, replaced by new, should be taken into account and allowed for accordingly. Havre, Jan. 17, and June 26, 1872; J. H. 1872 : 1 : 94 and 206. Caumont, *Ibid*. No. 147.

(368) *But held*, that the damaged party may be charged with the difference in value between old and new materials, only where his vessel has increased in value by the exchange. Rouen, July 30, 1872; J. H. 1872 : 2 : 196.

(369) *Held*, that the party or parties responsible for the collision are chargeable not only with the damage, but also with all expenses whatsoever which are the consequence thereof: for example, all average, salvage, demurrage, port of refuge, expenses, &c. Rouen, May 3, 1864; J. H. 1864 : 2 : 131; Nantes, Jan. 9, 1864; J. H. 1864 : 2 : 114.

(370) The damage to be made good by the party responsible is not only the material injury to the vessel run into, but also the loss of expected profit immediately resulting to the owner from that injury, such as freight or the results of fishing. The rule is, that every loss and expenditure whatever, of which the collision has been the cause, should be made good by the party to blame for the collision. See D. A. No. 1140 *et seq.*; 1829 *et seq.*; Caumont, vo. Abordage Maritime, Nos. 11, 14, 16, 146, 147, 150, 153 *et seq.*

(371) For the special rules concerning the distinction to be made as to cargo damaged by collision, see D. A. No. 1141; Caumont, *Ibid*. Nos. 11, 91 *et seq.*, 104, 105, 152—154, 157—160.

(372) *Held*, in this case, that the profit made during the previous month might be taken as the measure of damages. *Ibid*.

(373) *Held*, in the case of a barge, that the measure of damages was the interest on the capital represented by the barge. Judgment of Tribunal of Havre of 16 May, 1865; J. H. 1865 : 1 : 131.

(374) *Held*, that the party responsible for the collision is not liable for expenses not caused by the collision such as wear and tear. Rennes, May 19, 1871; J. H. 1873 : 2 : 82.

(375) There is no privilege or preference against a vessel for damages awarded in consequence of a collision. Rouen, May 3, 1864; J. H. 1864 : 2 : 131.

SALVAGE.

PART I.—IN ENGLISH COURTS.

II.—IN BRITISH COLONIAL COURTS.

III.—IN BRITISH COURTS IN FOREIGN COUNTRIES.

Part I.—IN ENGLISH COURTS.

1. Generally P. 1781
2. Jurisdiction.
 1. *The Admiralty Branch of the Probate, Divorce and Admiralty Division of the High Court of Justice.*
 - (a) *Generally.* See tit. "JURISDICTION," Pt. I. c. 5, p. 638.
 - (b) *Where the Salvage awarded does not exceed £200* 1786
 - (c) *Where the salvaged Property does not exceed £1,000* 1786
 - (d) *Within the Cinque Ports* 1786
 - (e) *Leave to proceed in the Superior Court and revocation thereof.* See tit. "PRACTICE," Pt. II. pp. 1541—1543.
 - (f) *Transfer of Action.* Ibid. pp. 1540, 1541.
 - (g) *In cases of Salvage by Officers and Men of H.M. Ships abroad.* See p. 1809.
 2. *The High Court of Admiralty.*
 - (a) *Generally* 1787
 - (b) *Where the Salvage awarded does not exceed £200* 1788
 - (c) *Where the salvaged Property does not exceed £1,000.*
 - (aa) *Before the Judicature Acts and Rules* 1789
 - (bb) *Since the Judicature Acts and Rules* 1789
 - (d) *Within the Cinque Ports* 1789
 - (e) *Towage* 1789
 - (f) *To British Government Ships* .. 1790
 - (g) *To Foreign Government Ships*.. 1790
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 - (i) *On Sea and Land* 1790
 - (j) *Life.*
 - (aa) *British Ships* 1791
 - (bb) *Foreign Ships* 1792
 3. *Courts of Common Law* 1792
 4. *Admiralty Court of the Cinque Ports.* 1793
 5. *Admiralty County Courts* 1794
 6. *Commissioners of Cinque Ports.*
 - (a) *Generally.* See tit. "PRACTICE," p. 1703.
 - (b) *Appeals from their Awards.* See tit. APPEALS, pp. 15, 57.
 7. *Magistrates.*
 - (a) *Generally.* See tit. "PRACTICE," p. 1709.
 - (b) *Appeals from their Awards.* See tit. "APPEALS," p. 58.
 8. *Vice-Admiralty Courts.*
 - (a) *Generally.* See tit. "PRACTICE," p. 1713.
 - (b) *Appeals from their Awards.* See tit. "APPEALS," p. 30.

PART IV.—IN FOREIGN COURTS.

V.—UNDER TREATIES, &C. WITH FOREIGN POWERS.

3. Board of Trade.

1. *Generally* p. 1794
2. *Salvage of Life* 1794
3. *Salvage of Wreck* 1794
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4. Receivers of Wreck.

1. *Generally* 1794
2. *Apportionment* 1797
3. *Fishing Boats and Fishing Gear* 1797
4. *Property of Foreigners* 1797
5. *Valuations by—* 1798
6. *Sale of Property by—* 1798
7. *Fees and Books* 1798
8. *Serjeants of the Admiralty of the Cinque Ports* 1798

5. Salvors.

1. *Generally* 1799
2. *After Collision* 1799
3. *Owners of salvaging Vessels.*
 - (a) *Generally* 1801
 - (b) *Steamers* 1801
 - (c) *Sailing Vessels* 1802
4. *Owners and Charterers* 1802
5. *Associated Vessels* 1803
6. *Seaworthiness* 1804
7. *Crew not actually engaged* 1804
8. *Passengers in salvaging Vessels* 1805
9. *Owners of Vessels salvaged* 1806
10. *Crew of Vessels salvaged* 1806
11. *Passengers in Vessels salvaged* 1808
12. *Officers and Crews of H.M.'s Ships.*
 - (a) *Generally* 1809
 - (b) *No claim in respect of Ship's Stores, &c.* 1811
 - (c) *Consent of Lords of Admiralty to Proceedings* 1811
 - (d) *Abroad* 1812
13. *Officers and Men of the Coastguard* .. 1813
14. *Officers and Men of Foreign Government Ships* 1814
15. *Agents* 1814
16. *Pilots.*
 - (a) *Generally* 1815
 - (b) *Ambiguous Signal* 1819
17. *First and Second Salvors.*
 - (a) *Generally* 1820
 - (b) *After incomplete Assistance of first Salvors* 1824
18. *Underwriters* 1825
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6. The Services.

1. *Generally* p. 1825
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3. *Success* 1828
4. *Risk of Life.*
 - (a) *Generally* 1830
 - (b) *From Infectious Disease* 1830
5. *Risk of Property* 1830
6. *Deviation.* See c. 14, p. 1887.
7. *Incomplete Assistance.* See c. 5, p. 1824.
8. *Information or Advice* 1831
9. *Sending actual Salvors* 1833
10. *Supplying Master or Men.*
 - (a) *Generally* 1834
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11. *Losses or Damages in rendering Salvage Assistance.* See c. 14, p. 1885.
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13. *Fire* 1834
14. *Transshipment* 1835
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 - (a) *Generally* 1835
 - (b) *Subsequent Salvage* 1838
 - (c) *Misconduct* 1842
16. *Pilotage by others than Pilots* 1844
17. *Mutual Benefit* 1844
18. *Mixed (Military and Civil)* 1844
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7. Life.

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2. *By Foreign Ships* 1849
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 - (a) *Generally* 1849
 - (b) *Rocket Apparatus, Life Boats, &c.* 1849
4. *Awards.* See c. 15, p. 1889.
5. *Priority of Lien.* See c. 11, p. 1879.

8. The Property saved.

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2. *Steam Vessels with Passengers* 1849
3. *Fishing Boats' Gear, &c.* 1850
4. *Personal Baggage* 1850
5. *Bullion* 1850
6. *Timber* 1851
7. *Papers* 1851
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9. *Values.*
 - (a) *Generally* 1851
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12. *Right of Possession* 1856
13. *Appraisalment* 1856
14. *Salvage* 1856

9. Diminution or Forfeiture.

1. *Generally* 1856
2. *Wilful Misconduct generally* 1859
3. *Refusal of further Assistance* 1860

9. Diminution or Forfeiture—continued.

4. *Obtruding further Assistance* p. 1860
5. *Non-delivery, &c. of Vessel salvaged* .. 1861
6. *Negligence or want of Skill* 1861
7. *Agents of Salvors* 1864
8. *Associated Services* 1864
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10. *Embezzlement* 1865
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10. Agreements.

1. *Generally* 1867
2. *The Parties* 1870
3. *Queen's Ships* 1871
4. *To render mutual Assistance* 1871
5. *Avoidance.*
 - (a) *Generally* 1872
 - (b) *Fraud* 1876
 - (c) *Subsequent Circumstances* 1876
6. *For Abandonment, Transfer, or Advance of Salvage,* see c. 16, pp. 1891, 1892.

11. Lien.

1. *Generally* 1877
2. *Priority.*
 - (a) *Life* 1879
 - (b) *As against subsequent Salvors.* See c. 5, p. 1820.
 - (c) *As against other Liens.* See tit. "LIENS," p. 830.

12. Payment.

1. *Generally* 1879
2. *Before the M. S. Act, 1854* 1880
3. *Since the M. S. Act, 1854* 1880

13. Derelict.

1. *Generally* 1881
2. *Amount awarded* 1883

14. Consequential Loss.

1. *Losses or Damages in rendering Salvage Assistance* 1855
2. *Fishing Vessels* 1857
3. *Deviation* 1857

15. Awards.

1. *Generally* 1888
2. *Life* 1889
3. *Derelict* 1889
4. *Deviation* 1889

16. Apportionment.

1. *Generally* 1889
2. *Agreements.*
 - (a) *Since the M. S. Act, 1854* 1891
 - (b) *Before the M. S. Act, 1854*... 1892
3. *Officers and Crews of H.M.'s Ships* .. 1893
4. *Officers and Men of the Coastguard* .. 1893
5. *Owners of salvaging Vessels.*
 - (a) *Generally* 1894

16. Apportionment—continued.
 5. *Owners of salving Vessels—continued.*
 (b) *Steam Vessels.*
 (aa) *Generally* p. 1895
 (bb) *Vitiation of Insurance* .. 1896
 (cc) *Consequential Loss* 1897
 (c) *Fishing Vessels* 1897
 6. *Owners of Cargo in salving Vessels* .. 1897
 7. *Personal Salvors.*
 (a) *Master and Crew* 1897
 (b) *Apprentices* 1898
 (c) *Passengers.* See c. 5, s. 8,
 p. 1805.
 8. *Amounts* 1899

17. Evidence. See tit. "EVIDENCE,"
 p. 458.

18. Practice. See tit. "PRACTICE,"
 p. 1462.

19. Costs and Damages. See tit.
 "COSTS," p. 371.

20. Costs. *Ibid.* p. 406.

21. Appeals. See tit. "APPEALS," p. 12.

22. Wreck. See tit. "WRECK."

**Part II.—IN BRITISH COLONIAL
 COURTS.**

1. Generally 1899

2. Isle of Man 1899

3. Heligoland 1899

4. Ceylon..... 1899

5. The Bahama Islands 1899

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7. Canada.
 1. *Generally* 1900
 2. *Of Life* 1900
 3. *Receivers of Wreck* 1900

8. Jamaica.
 1. *Generally* 1901
 2. *British Honduras* 1901
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9. Trinidad..... 1901

**Part III.—IN BRITISH COURTS
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Part IV.—IN FOREIGN COURTS.

1. Generally 1901

2. America (United States) 1901

3. Belgium 1901

4. Denmark 1902

5. France.
 1. *Generally* 1902
 2. *The Services* 1903
 3. *Derelict* 1903
 4. *Agreements* 1904
 5. *Maritime Authorities* 1904
 6. *Tunis* 1905

6. Germany.
 1. *Generally* 1905
 2. *Salvage or Assistance* 1905
 3. *Salvors.*
 (a) *Crew of salvaged Vessel* 1905
 (b) *After Collision* 1905
 (c) *Misconduct* 1906
 4. *Lien* 1906
 5. *Agreements* 1906
 6. *Amount.*
 (a) *Generally* 1906
 (b) *Amount awarded.* See tit.
 "SALVAGE AWARDS."
 7. *Awards.*
 (a) *What including* 1907
 (b) *Amounts awarded* See tit.
 "SALVAGE AWARDS."
 8. *Apportionment* 1907
 9. *Receivers of Wreck: their Powers and
 Duties* 1907
 10. *Wreck Offices* 1908

7. Holland.
 1. *Generally* 1908
 2. *Jurisdiction* 1909
 3. *Bergloon* 1909
 4. *Aulploon* 1909
 5. *Rights and Duties of Salvors.*
 (a) *Generally* 1910
 (b) *Pilots* 1910
 6. *Agreements* 1910
 7. *Value of Property salvaged* 1911
 8. *Lien* 1911
 9. *Awards* 1911
 10. *Receivers of Wreck or Magistrates* .. 1911

8. Italy.
 1. *Generally* 1911
 2. *Jurisdiction* 1912
 3. *Agreements* 1912
 4. *Lien* 1912

8. Italy—continued.

5. *Wreck and Derelict Property.*
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 (b) *Sale* 1912
 6. *Apportionment* 1912

9. Norway.

1. *Generally* 1912
 2. *Derelict* 1913
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 4. *Apportionment* 1913
 5. *Liens.* See tit. "LIENS," p. 839.

10. Portugal.

1. *Generally* 1913
 2. *Jurisdiction* 1914
 3. *The Services* 1914
 4. *Agreements* 1914
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 6. *Derelict* 1914
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 8. *Owners' Claims to Property.*
 (a) *Generally* 1914
 (b) *Limitation* 1914
 9. *Local Functionaries* 1914

11. Russia.

1. *Generally* p. 1915
 2. *Life* 1915
 3. *Derelict* 1915
 4. *Agreements* 1916
 5. *Remuneration* 1916
 6. *Apportionment* 1916

12. Spain 1916

13. Sweden.

1. *Generally* 1917
 2. *Duties of Master and Crew* 1918
 3. *Duties of Master* 1918
 4. *Duties of Public Functionaries* 1918
 5. *Crew of Vessel salvaged* 1918
 6. *Derelict Property* 1918
 7. *Lien* 1919
 8. *Apportionment* 1919

14. Tunis. See c. 5, p. 1905.

Part V.—UNDER TREATIES, &c.,
 WITH FOREIGN POWERS .. 1919

Part I. IN ENGLISH COURTS.

1. Generally.*

1. The foundation of the Admiralty jurisdiction in the awarding of salvage

was the power of enforcing the maritime lien obtained on property saved by the salvors (per Lord Justice Brett. *The Cargo ex Schiller*, 2 P. D. 149.

2. Salvage, in its simple character, is

* (1) The early statutes relating to salvage are, 12 Anne, st. 2, c. 18; 4 Geo. 1, c. 12; 26 Geo. 2, c. 19; 49 Geo. 3, c. 122; 53 Geo. 3, c. 87; 53 Geo. 3, c. 140; 1 & 2 Geo. 4, c. 75. They were all repealed by the 9 & 10 Vict. c. 99, which consolidated and amended the law as to wreck and salvage. Further provisions thereon were made by the M. S. Law Amendment Act, 1853 (c. 131). Both these last-named acts have been repealed by the M. S. Repeal Act, 1854 (c. 120). The principal acts therein now are, the Merchant Shipping Act, 1854 (c. 104), Pt. VIII.; the Merchant Shipping Act Amendment Act, 1855 (c. 91), and the Merchant Shipping Act Amendment Act, 1862 (c. 63).

(2) According to the Laws of Oleron, salvage should be awarded "according to right reason, a good conscience, and as justice shall appoint." Marvin on Wreck and Salvage, 181; Jacobson's Sea Laws, 529—537; Justice's *Ibid.* 231—394. [AMERICAN.]

(3) The Consolato del Mare allowed the salvor of goods found derelict at sea, a half. *Ibid.*

(4) If found on shore, a *quantum meruit*. The Ordonnance of Louis XIV. allows the salvor of derelict goods found on the high sea or fished out of the bottom of it, one

third; but goods proceeding from a ship stranded on the coast are liable only to the reasonable expenses of saving them, whether found on the shore or floating on the sea near the shore. *Ibid.*

(5) The laws of Sweden allow the salvor of property saved from a foreign wreck, not insured in Sweden, one quarter, insured in Sweden, one fifth. *Ibid.*

(6) The laws of Denmark and Portugal allow a *quantum meruit*. *Ibid.*

(7) The laws of Venice allowed a liberal day's wages. *Ibid.*

(8) The ancient Rhodian law allowed a fifth for saving anything at sea or from a wreck, and a third for saving gold or silver by drawing it out of the sea eight cubits deep, and a half if got out of the sea fifteen cubits deep. *Ibid.*

(9) Salvage is an allowance made for saving a ship or goods, or both, from the damages of the seas, fire, pirates, or enemies. 1 Park on Ins. 300.

(10) Wherever service has been rendered in saving property on the sea, or wrecked on the coast of the sea, the service is, in the sense of the maritime law, a salvage service. *The Emulous*, 1 Sumner's Rep. 207. [AMERICAN.]

(11) Salvage service is such service as is

the service which those who recover property from loss or damage at sea render

to the owners, with the responsibility of making restitution, and with a lien for

rendered in rescue or relief of property at sea, in imminent peril of loss or deterioration. *The H. B. Foster*, 1 Abb. Adm. 222. [AMERICAN.]

(12) Salvage is an allowance for saving a ship or goods at sea, or both, from dangers, fire, pirates, or enemies. *Lea v. Ship Alexander*, 2 Paine, C. C. 466. [AMERICAN.]

(13) Salvage is a compensation for maritime services rendered in saving property or rescuing it from impending peril, on the sea or wrecked on the coast of the sea or on a public navigable river or lake where interstate or foreign commerce is carried on. *The Schooner Emulous*, 1 Sumner, 210; *The Henry Ewbank*, *ibid.* 416; *Fretz v. Bull*, 12 How. 466; *The Genesee Chief*, *ibid.* 443; *The A. D. Patchin*, 1 Blatchf. 420; *Marvin on Wreck and Salvage*, 105. [AMERICAN.]

(14) Salvage is a compensation for the rescue of the property from present, pressing, impending perils, and not for the rescue of it from possible future perils. *The Emulous*, 1 Sumner, 216. (Story, J.) [AMERICAN.]

(15) It is a compensation for labour and services, for activity and enterprise, for courage and gallantry actually exerted, and not for the possible exercise of them, which under other circumstances might have been requisite. *Ibid.*

(16) It is allowed because the property is saved, not because it might have been otherwise lost upon future contingencies. *Ibid.*

(17) Subsequent perils and storms may enter as an ingredient into the case, when they were foreseen, to show the promptitude of the assistance, and the activity and sound judgment with which the business was conducted, but they can scarcely avail for any other purpose. *Ibid.*

(18) Ought the salvage to be diminished by a favourable state of the weather after the arrival in port? If not, why should it be increased by an unfavourable state of the weather? *Ibid.*

(19) To introduce such ingredients into the estimate of salvage, which were neither foreseen nor acted upon, would compel the court to deliver itself over to conjectures, resting on loose probabilities, the nature and extent of which could never be measured. *Ibid.*

(20) To entitle a party to salvage, two circumstances must concur; the services rendered must be in a lawful taking of the property, and must be meritorious and useful. *Davison v. Sealskins*, *ibid.* 324. [AMERICAN.]

(21) In all cases where services are rendered in saving property in danger of being lost on the high seas, or when wrecked or stranded on the shore, it is, in the sense of the maritime law, a salvage service. *The Centurion*, Ware, 477. [AMERICAN.]

(22) The relief of property from an impending peril of the sea, by the voluntary exertions

of those who are under no legal obligation to render assistance, and the consequent ultimate safety of the property, constitute a case of salvage. *Williamson v. The Brig Alphonso*, 1 Curtis, 378; *Marvin on Wreck and Salvage*, 118. [AMERICAN.]

(22a) It may be a case of more or less merit according to the degree of peril in which the property was, and the danger and difficulty of relieving it. *Ibid.*

(23) But these circumstances affect the degree of the service, not its nature. *Ibid.*

(23a) As an adequate remuneration is the rule by which to determine the quantum of salvage, rather than a proportion of the value, it is manifest that the number of salvors to share the reward becomes an element of consideration. *Ibid.* 125. [AMERICAN.]

(24) In salvage cases on our rivers, the precedents of courts administering Admiralty law on the ocean, cannot safely be adopted in regard to the amount of compensation. *The Pontiac*, 1 Newb. Adm. 130. [AMERICAN.]

(24a) Consuls and vice-consuls of foreign nations, duly recognized, are admitted, *ex officio*, to interpose a claim for the protection of the rights and interests of their fellow-citizens or subjects without a special procurator from those for whose benefit they act, but they are not admitted to receive the actual restitution of the *res* in controversy, without a special authority from the particular persons who are entitled, unless a treaty exists to that effect, as our treaty with the Two Sicilies of 1855, Art. 17. *Marvin on Wreck and Salvage*, 64. [AMERICAN.]

(25) On sale of property libelled for salvage, a foreign consul has authority to petition the court to order the marshal to pay into the registry the proceeds in which a citizen or subject of his country is interested, such person being absent and having no legal representative in the United States. *Ship Adolph and Cargo*, 1 Curtis, Ct. Ct. 87. [AMERICAN.]

(25a) It is the duty of a British consul to claim and recover all wrecks, cables, and anchors belonging to British subjects, to pay the usual salvage, and report a communication thereof to the Trinity Board. *Fynn's British Consul's Handbook*, 14, 51.

(26) See also, as to the duties of British consuls in reference to wreck and salvage, Board of Trade Instructions to Consuls as to the British Mercantile Marine, anno 1883, pp. 58—61.

(27) Although salvage is often in the nature of a general average, it is not universally true that, in the sense of our law, all salvage charges are to be deemed a general average; they are only so when incurred for the benefit of all concerned. *Peters v. Warren Ins. Co.*, 1 Story, 463. [AMERICAN.]

(27a) The common law "wreck of the sea,"

their reward. *The Thetis*, 3 Hagg. 48, 58, 63.

3. In allotting a salvage reward, the court always endeavours to combine the consideration of what is due to the owners in the protection of property with the liberality due to salvors in remunerating meritorious services. *Ibid.*

4. All claims of specific proportions have been discountenanced in modern practice. *Ibid.*

5. The maritime laws of England (said Sir Edward Simpson in the last century) fix no certain proportion in cases of salvage, but are governed by circumstances of danger, hazard, troubles, and expense of saving. *Ibid.*

6. An eighth or tenth, except in cases of extreme hazard, is as much as is usually allowed. *Ibid.*

7. In some cases of extreme hazard one third, one fourth, one sixth, or one ninth, or a sum of money only on account of salvage, is given. *Ibid.*

8. The rates of simple proportion of salvage graduate at large intervals. The estimate of salvage services, labour, and enterprise, requires to be made as minutely as possible, under an infinite variety of particulars, and may therefore be better done by the allowance of precise sums. *The Oscar*, 2 Hagg. 260.

9. In salvage cases the exact service performed is not the only proper test for estimating the *quantum* of reward. It is for the general security and interest of navigation and commerce that a considerable reward should be held up to encourage salvors to go out to the assistance of vessels in distress. *The Sarah*, 1 C. Rob. 313, n.; *The Fusileer*, Br. & Lush. 341; 2 Asp. 177; 34 L. J. Adm. 25; 4 Jur. 289; 10 L. T. N.S. 699; 12 W. R. 668; 13 *ibid.* 592; *The Cephalonia*, April 16, 1886.

if found within high water-mark on shore, is within the privilege of salvage. *The John Gilpin*, Olcott, Adm. 77. [AMERICAN.]

(28) The considerations which should govern the court in adjusting the amount of salvage compensation and its distribution amongst the salvors, in case of timber found adrift and rescued, stated. *A Raft of Spars*, 1 Abb. Adm. 291. [AMERICAN.]

(28a) It is proper in case of mere civil salvage, though perhaps not indispensable, to allege a distinct claim for salvage. *The Adeline*, 9 Cranch, 284. [AMERICAN.]

(29) A refusal of some of the salvors to join in the suit or to claim salvage, will not enure to the benefit of their co-salvors, for this would be to reward cupidity with the

10. Salvage ranges from the highest point of merit to the lowest, and the ingredients which constitute it are many and diverse. It is not necessary, in order to make a service rendered to a vessel a salvage service, that she should be in absolute or immediate danger, or that there should be a chance of her destruction. Damage, risk, or any misfortune on the high seas would be sufficient to give services rendered to a vessel a salvage character. *The Charlotte*, 6 Notes of Cases, 281; 3 W. Rob. 68.

11. Salvage is not always a mere compensation for work and labour, it is to be estimated on a more enlarged and liberal scale. The ingredients of a salvage service are, first, enterprise in the salvors in rendering assistance in tempestuous weather and at a risk of life; secondly, the degree of danger and distress from which the property is rescued; thirdly, the degree of labour and skill displayed by salvors, and the time they are occupied; fourthly, value of the property saved. Where all these occur a large reward ought to be given; but where none such, or scarcely any, take place, the compensation can hardly be denominated a salvage reward, it is little more than a mere remuneration *pro opere et labore*. *The Clifton*, 3 Hagg. 120.

12. The principles on which the court proceeds lead to a liberal remuneration in salvage cases, for they are not confined merely to the exact *quantum* of service performed in the case itself, but the general interests of navigation and commerce, the fatigue and anxiety, the determination to encounter danger, the spirit of adventure, and the skill and dexterity which are required by the exercise of that spirit, are all to be taken into consideration. *The William Beckford*, 3 C. Rob. 355.

portion which modesty had declined to receive, but it will enure to the benefit of the owners of the property. *Marvin on Wreck and Salvage*, 125; *The Ship Charles*, 1 Newb. Adm. 329; *Williamson v. Brig Aphonso*, 1 Curtis, 376. [AMERICAN.]

(30) By the law of England, a lender on bottomry is not entitled to the benefit of salvage, or liable to contribute to a general average, but the laws of France and Denmark differ from that of England in this respect. 2 Park on Ins. 565, 898.

(31) Of the principles and practice of the American Admiralty Courts, as to salvage, see 1 Conkling's Adm. Practice (2nd ed.), 344—368; *Marvin on Wreck and Salvage*, 105—180; 2 Parsons on Maritime Law, 595—632.

13. The court will be guided above all by the consideration of whether there was danger to human life. *The Thomas Fielden*, 32 L. J. Adm. 61.

14. The court usually has regard not only to the labour and peril incurred by the salvors, but also to the situation in which they may happen to stand with respect to the property saved, to the promptitude and alacrity manifested by them, and to the value of the ship and cargo, as well as to the degree of danger from which these were rescued. *The Spheroid* (1838), 2 Monthly Law Mag. (Notes of Cases), 285.

15. The allotment of salvage is a personal reward bestowed for labour and skill in the performance of the service. *The Two Friends*, 2 W. Rob. 353.

15a. The accident of the amount of salvage awarded exceeding the value of the salvage vessels is wholly immaterial, as the value of such vessels is not an element to detract from the value of the salvage services. *The Fusilier*, Br. & Lushington, 341; 3 Asp. P. C. 177; 10 L. T. N.S. 699; 12 W. R. 968.

16. Salvage is not merely a payment for work and labour. The general interests of commerce and navigation in encouraging exertion, risk and peril in the relief of property in danger, are to be adverted to. On the other hand, the court must guard against exorbitant demands and an undue advantage being taken of distress. But when salvors act honestly and fairly they are to be liberally rewarded, without a minute inquiry into the *quantum* of labour. *The Hector*, 3 Hagg. 95.

17. The amount of remuneration for salvage must depend on all the circumstances of the case; the state of the weather, the degree of damage and danger to the ship and cargo, the risk and peril incurred by the salvors, the time employed, the value of the property; and when these are considered, there is still another principle—to encourage enterprise, reward exertion, and to be liberal in all that is due to the general interests of commerce, and the general benefit of owners and underwriters, even though the reward may fall upon an individual owner with some severity. *The Industry*, 3 Hagg. 204.

18. The distinguishing circumstances of each particular case of salvage must be carefully examined, to protect ship-owners from unjust and unnecessary payments, and to give due encouragement to

the owners of towing vessels to afford that assistance which is so highly beneficial to the general interests of commerce. *The Sphynx*, 4 Jur. N.S. 230. [IRISH.]

19. When no special risk has been incurred by the salvors, salvage reward is allotted upon a calculation of a fair remuneration for time and trouble to the owners of the salving vessel, and to each hand engaged. *The Otto Hermann*, *The Albert*, *The Ella Constance*, 33 L. J. Adm. 189.

20. When there is danger to the salvors, risk of life receives the greatest remuneration. *Ibid.*

21. A lower scale of remuneration is given when the case of the vessel saved is not one of present danger, but of urgency. *Ibid.*

22. The lowest when, a vessel being disabled from proceeding, as in the case of a steam vessel in want of fuel, there is a possible contingency of serious consequences. *Ibid.*

23. It is a mistake to suppose that in all cases of salvage where the property is large, the amount of salvage depends on the value of the property. If possible an adequate reward for the danger and labour should be paid, and for this purpose more must be given in proportion to the value when the property is small, and even then the compensation must often be inadequate. When the property is large, the reward ought to be adequate, not measured strictly according to the value of the property, but chiefly according to the service, and especially with reference to the risk of life. *The James Dixon*, 2 L. T. N.S. 696; see also *The Rendsberg*, 6 C. Rob. 153.

24. The court, in the allotment of salvage, will not recognize the rule of proportion of value of the property saved, but will determine the amount of salvage with reference to the circumstances of each particular case. *The Salacia*, 2 Hagg. 263, 264.

25. Though the actual service performed is not to be measured by the value of the property, yet the value is not to be left out of consideration. It affords the court, where the property is large, an opportunity of doing what it cannot do in many cases—give an adequate remuneration. *The Raikes*, 1 Hagg. 246.

26. The value of the property saved is always an ingredient in the consideration of the amount of salvage. It is a ruling principle in such cases, that the

remuneration is always larger when the property is large, and *vice versa*. *The Hector*, 3 Hagg. 93.

27. The value of the property saved is certainly not an immaterial circumstance, for in proportion to that value is the benefit to the owners, and that is one of the primary principles in settling the amount of remuneration. *The Ewell Grove*, 3 Hagg. 221.

28. The court gives a smaller proportion where the property is large, a larger where it is small, and a moderate proportion where it is of vast extent. *The Blendenhall*, 1 Dodson, 423; *The Waterloo*, 2 Dodson, 442.

29. A larger proportion will be given as salvage where the property saved is of great value, because it is less felt by the owners, and because on many occasions where the property is small, salvors perform great services without adequate remuneration. *The Earl of Eglington*, Swabey, 8.

30. Government should not reward less liberally than private individuals, but on grounds of public policy they should rather give more, having in view the general interest and security of navigation. *The Marquis of Huntley*, 3 Hagg. 248.

31. In cases of salvage of steamboats carrying passengers the salvage reward is not to be estimated by the same considerations of value as with regard to other vessels. Steam vessels are a peculiar species of vessels making large profits, and are not therefore to pay for such services as though only carrying ballast. Humanity requires that every possible encouragement, in the way of liberal reward, should be given, in order to induce a prompt and efficient assistance to them, and the reward must be beyond a mere proportion of the value, as in ordinary cases. *The Ardincaple*, 3 Hagg. 153.

32. In questions of salvage the court must not act on the same liberality of principle that belongs to prize cases. *The Vine*, 2 Hagg. 2.

33. Exclusive of cases of derelict a moiety of the property saved with costs is the maximum of remuneration that can be allowed to salvors. This rule is binding upon Vice-Admiralty Courts abroad. *The Inca*, Swabey, 370; 12 Moore, P. C. C. 189; *L'Esperance*, 1 Dodson, 49; *The Francis Mary*, 2 Hagg. 90. As to derelicts, see c. 13, p. 1883.

34. Promptitude in rendering assistance is a principal ingredient in salvage services. *The City of Edinburgh*, 2 Hagg. 334.

35. Ordinary labour, as applied to questions of salvage, means that labour which may be performed by an individual not possessed of nautical skill, but of mere strength of arm and limb. The value of such labour, when united with nautical skill, must be estimated by a somewhat higher consideration than mere ordinary labour. *The Duke of Clarence*, 1 W. Rob. 346.

36. The mode of administering justice in salvage cases, where the decision must depend very much on the discretion of the judge, where it is impossible without incurring expenses which may be overwhelming to all parties to proceed with great nicety of examination upon each individual point, must be with something of a rough hand, and all that can be done is in each individual case to endeavour to meet the merits as far as possible, so that the general decision shall give satisfaction on the whole. *The Glory*, 14 Jur. 676.

37. A steamer came out from a port at some distance, in consequence of a signal for assistance from a ship supposed to be in distress. In fixing the salvage remuneration, *held* that the distance and time lost in reaching the vessel must be taken into consideration. *The Graces*, 2 W. Rob. 294.

38. When the service rendered by one ship to another in a distant part of the world partakes of the true description of salvage service, the claim for salvage cannot be resisted on the ground that both ships were British. *The Portia*, 9 Jur. 167.

38a. In cases of salvage when the evidence is directly contradictory, the court considers only on whom the onus of proof lies and whether that party has discharged it. The court seldom, if ever, attributes perjury to either side. *The Nymphe*, 5 L. T. N.S. 365.

39. It is the duty of a British consul to preserve and protect the property of British owners. *The Cynthia*, 16 Jur. 749.

40. If a magistrate, acting in his public duty, should go beyond the limits of his official duty in giving extraordinary assistance, he would be entitled to a salvage reward. *The Aquila*, 1 C. Rob. 46.

41. One hundred pounds disbursements and costs awarded to the reeve or deputy of a lord of the manor, for custody of wreck, in lieu of salvage as such deputy, without prejudice to the rights

of the lord of the manor. *The Augusta Lovell*, 1 Hagg. 21.

42. A party is not precluded from claiming as a salvor by his name being mentioned in a warrant for the seizure of the ship and cargo. *The John Bryant*, 5 Jur. 233. [IRISH.]

42a. An agreement out of court between salvors and owners of the ship salvaged affords no certain criterion by which the court can award remuneration between the salvors and the owners of the cargo. *The Emma*, 8 Jur. 651.

43. *Quære*, if a verbal agreement were proved waiving salvage on the part of the crew of the salvaging vessel, would any salvage remuneration be awarded for services included under such an agreement? *The Pride of Canada*, 9 L. T. N.S. 546.

44. By the law of England there is neither average nor salvage on a bottomry bond. *Joyce v. Williamson* (1749), K. B. cited in 2 Park on Ins. 563; *Walpole v. Ewer* (1789), K. B. *Ibid.* 565.

45. A claim for salvage preferred by a king's ship, after a delay of eight months, not *in rem*, but by monitions against owners and consignees, dismissed, the salvors being *held* (the salvage being very slight) to be barred by lapse of time. *The Rapid*, 3 Hagg. 419. But see *The John*, 8 Jur. 276.

46. The court is unwilling to discourage the settlement of questions of salvage on the spot (in a distant port) in a fair and liberal manner, and inclines to support such settlements. *The Sir Francis Burton*, 2 Hagg. 157.

47. An award of salvage made by a foreign court on a foreign vessel derelict, and rescued from pirates by the commanders and crews of two British vessels, though far exceeding the rate of salvage usually allowed by this court, adopted here. *The Calypso*, 2 Hagg. 213.

48. In an original proceeding in the Admiralty Court for salvage, in which an award had been made by magistrates, *quære*, is not the owner not appealing from the award, though refusing to pay the sum awarded, bound by the award? *The Hector*, 3 Hagg. 93.

49. £60 was awarded by magistrates. The owners did not appeal, but refused to pay, and tendered £35 10s. in lieu thereof. On an original proceeding for salvage in the Admiralty Court, £60 awarded, with costs of salvors. *Ibid.*

50. £120 and expenses awarded. The owner refused to pay the amount, and the

salvors instituted a suit in the Court of Admiralty. The same amount of salvage and expenses decreed, with costs. *The Industry*, 3 Hagg. 203.

51. There is no distinction between river salvage and sea salvage; the danger and the meritoriousness of the services in either case being the ground on which the amount of remuneration is determined. *The Carrier Dove*, 2 Moore, P. C. C. N.S. 243.

52. Salvage services were rendered to a vessel carrying cargo as a common carrier. The peril had been caused by the negligence of the master. *Held*, that the salvors could maintain a personal action against the owners of the vessel for salvage of the cargo as well as of the ship. *Duncan v. Dundee, Perth and London Shipping Co.*, 4th Series, vol. 5, p. 742. [SCOTCH.]

53. See also c. 5, s. 1, p. 1799, and c. 6, s. 1, p. 1825.

2. Jurisdiction.

1. Admiralty Branch of Probate, Divorce and Admiralty Division of High Court of Justice.

(a) Generally.

See tit. JURISDICTION, Pt. I. c. 5, p. 638.

(b) Where the Salvage awarded does not exceed £200.

See Nos. 68—70, and 75—80, *infra*.

(c) Where the salvaged Property does not exceed £1,000.

See Nos. 75—80, *infra*.

(d) Within the Cinque Ports.

See Nos. 81, 82, *infra*.

(e) Leave to proceed in the Superior Court and Revocation thereof.

See tit. PRACTICE, Pt. II. pp. 1541—1543.

(f) Transfer of Actions.

Ibid. pp. 1540, 1541.

(g) In cases of Salvage by Officers and Men of H. M.'s Ships abroad.

See c. 5, p. 1809.

2. High Court of Admiralty.

(a) Generally.*

54. The Court of Admiralty had jurisdiction to decide all claims in the nature of salvage for services rendered to any vessel, whether within the body of a county, or upon the high seas. See 3 & 4 Vict. c. 65, s. 6.

55. Subject to the provisions of this act, that Court had jurisdiction to decide on all claims as to salvage, whether the services were performed upon the high seas, or within the body of any county, or partly in one place and partly in the other, and whether the wreck was found at sea or upon land, or partly in the sea and partly on land. See the M. S. Act, 1854 (c. 104), s. 476.

56. Every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salvaged, or of their respective agents. *Ibid.* s. 460.

57. Disputes with respect to salvage arising in the United Kingdom elsewhere than within the boundaries of the Cinque Ports shall be determined, if the parties do not agree to the arbitration of two justices, and the sum claimed exceeds two hundred pounds, in England by the High Court of Admiralty of England, in Ireland by the High Court of Admiralty of Ireland, and in Scotland by the Court of Session. *Ibid.*

57a. As to claims by owners or occupiers of land for damage to their property in rendering salvage assistance being recoverable like salvage, *Ibid.* s. 446.

58. *Held*, prior to the M. S. Act, 1854 (c. 104), s. 476, that the High Court of Admiralty had not, under 3 & 4 Vict. c. 65, s. 6, jurisdiction to award salvage in respect of the saving of a raft of timber within Yarmouth Harbour. *Raft of Timber*, 2 W. Rob. 251.

59. The jurisdiction of the Court of Admiralty in salvage causes was founded on a proceeding against property which had been salvaged. *The Zephyrus*, 1 W. Rob. 331.

60. *Semble*, foreigners might sue in the Court of Admiralty of England for salvage in respect of services rendered to a British vessel, and *semble* even to a foreign vessel, for salvage is a question of the *jus gentium*. *The Two Friends*, 1 C. Rob. 271.

61. Claims of American salvors, for services rendered to a British ship, adjudicated on in the High Court of Admiralty. *The Salacia*, 2 Hagg. 262.

62. A party asserting himself to be a salvor, but who, as the owner alleged, had been employed simply as agent, arrested the ship in a cause of salvage. The court refused to release the property, on an averment that the matter in dispute had been by mutual agreement referred to arbitration. The mere reference to arbitration is not sufficient to bar the jurisdiction of this court. Upon the merits, *held* that the action was maintainable. *The Purissima Concepcion*, 3 W. Rob. 181; 7 Notes of Cases, 150; 13 Jur. 967.

63. A first set of salvors who, while in possession, were assisted in the service by a second set of salvors, *held*, nevertheless, to have a primary interest, and therefore

* (32) The Court of Admiralty, which has jurisdiction in questions of salvage, is well adapted for the purpose of administering justice in those instances in which the property is valuable and the claimants numerous, and the court will fix the sum to be paid, adjust the proportions, take care of the property pending the suit, or, if a sale be necessary, direct a sale to be made and divide the proceeds between the salvors and proprietors according to equity and reason. 1 Park on Ins. 304.

(33) As a general rule, where the only question in a salvage suit is as to the rate of reward, and the salvaged property is within the jurisdiction of the court, a Court of Admiralty in this country will entertain the suit, notwithstanding that all the parties are foreigners. *One Hundred and Ninety-four Shaws*, 1 Abb. Adm. 317. [AMERICAN.]

(34) The officers and crew of a foreign vessel of war are entitled to salvage, as other vessels are. Application of the principle of

salvage to particular facts and amount of salvage fixed in them. *Robson v. The Huntress*, 2 Wallace, jun. 59. [AMERICAN.]

(35) Salvage services were rendered by one vessel to another in pursuance of a written agreement between the owners, which stipulated for a *per diem* compensation. *Held*, that the district court had jurisdiction of a libel *in rem* for salvage, notwithstanding such agreement. *The A. D. Patchin*, 1 Blatch. Ct. Ct. 414. [AMERICAN.]

(36) In this country it is clear that salvage compensation may be obtained in Admiralty for services rendered within the ebb and flow of the tide, without regard to locality, whether on the high seas or *inter fauces terræ*. *The John Gilpin*, Oloott, Adm. 77. [AMERICAN.]

(37) The Vice-Admiralty Court of Lower Canada has jurisdiction as to salvage of a wreck in the river St. Lawrence. *The Royal William*, Stuart's Vice-Adm. Rep. (Lower Canada), 107.

a right to choose their own jurisdiction (viz. whether to proceed for an award by magistrates or by a suit in the Court of Admiralty). They having elected to proceed before magistrates, the second salvors, who instituted proceedings in the Admiralty Court, held to have acted improperly in so doing, and in not intervening in the proceedings before the magistrates as their proper course. *Quare*, if parties have equal right, would a resort to the subordinate jurisdiction, when objected to, be proper? *The Eugene*, 3 Hagg. 158, 160.

64. Salvage services had been rendered to a vessel by several sets of salvors off Ramsgate. The owners of the vessel summoned a meeting of the commissioners of salvage for the Cinque Ports, to adjudicate on the matter. No notice of the intended meeting was given to any of the salvors, and it was proved that it was not usual to give any such notice. At the meeting of the commissioners one set of salvors was unrepresented, but it was proved that they were aware of the meeting, and were at hand. The commissioners made an award upon the whole matter. The salvors so unrepresented refused to accept their share of the money awarded, and brought their action in the Admiralty Court. Held, that the award was no bar to the action, the plaintiffs not having been parties to the first decision. *The Elise*, Swabey, 436.

65. In a suit for salvage of a foreign vessel, a tender having been made by the consul on behalf of the owners of £50, which was refused by the salvors, and an arbitration agreed on, under which £130 was awarded, to which the consul would not agree, the tender pronounced for as sufficient, and salvors' costs refused. *The Eleanora Charlotta*, 1 Hagg. 156.

66. The court cannot entertain the question as to a claim of the owner of a salving vessel (the master and crew of which rendered assistance to another vessel in distress, pursuant to an agreement for a given sum), for remuneration for loss on the cargo (fish) occasioned by the delay caused in fulfilling such agreement. Such a case held to be one of

contract, not of salvage, and the suit dismissed accordingly, but, under the circumstances, the bargain being a hard one, without costs. *The Mulgrave*, 2 Hagg. 77.

67. Lord Stowell, in the case of *The Mulgrave*, in using the words "cannot entertain the question," did not intend to hold he had no jurisdiction, but that the agreement being valid, and the question therefore one of contract, he could not regard it as a case of salvage. *The Catherine*, 6 Notes of Cases, Supp. li.

(b) *Where the Salvage awarded does not exceed £200.*

68. Though the Court of Admiralty had jurisdiction when the parties did not agree to the arbitration of two justices, and the sum claimed exceeded £200, yet if the claimants in such dispute did not recover in such court a greater sum than two hundred pounds, they could not, unless the court certified that the case was a fit one to be tried in a superior court, recover any costs, charges, or expenses incurred by them in the prosecution of their claim. See M. S. Act, 1854 (c. 104), s. 460.*

69. By the provisions of sect. 460 of the M. S. Act, 1854 (c. 104), the Court of Admiralty had no jurisdiction in respect of salvage if the sum claimed did not exceed £200. *The William and John*, 1 Asp. 314.

70. The master of a vessel agreed to pay the sum of £140 for salvage services to be rendered to his vessel. After the assistance had been given, proceedings were taken before certain justices, who overruled the agreement as exorbitant, and awarded the sum of £70. The salvors then instituted a cause of salvage in the Court of Admiralty. Held, that the action must be dismissed with costs. *The William and John*, 1 Asp. 314.

71. By the words "the sum claimed" in that section is meant the amount asked for before any legal proceedings have been commenced. *Ibid.* 311.

* (38) It will be seen that this section does not deprive the court of any jurisdiction except in cases where the sum claimed does not exceed £200, and it only meets, therefore, such cases as those of *The William and John*, where the sum claimed was under that

amount. Hence, probably, the more stringent provisions and more practicable rule laid down in the M. S. Act Amendment Act, 1862 (c. 63), s. 49, which, however, are in effect repealed as hereinafter mentioned.

(c) *Where the salvaged Property does not exceed £1,000.*

(aa) *Before the Judicature Act and Rules.*

72. The provisions contained in the eighth part of the M. S. Act, 1854, for giving summary jurisdiction to two justices in salvage cases, extend to all cases in which the value of the property saved does not exceed one thousand pounds, as well as to the cases provided for by that act; and apply whether the salvage service is rendered in the United Kingdom or not. See M. S. Act Amendment Act, 1862 (c. 63), s. 49.

73. By the M. S. Act Amendment Act, 1862 (c. 63), s. 49, the High Court of Admiralty had no jurisdiction in respect of salvage, if the property saved was not of the value of £1,000; and a disputed agreement as to remuneration for salvage services was not sufficient to give the court either the jurisdiction of which it had been deprived by the M. S. Act, 1854 (c. 104), or that which had been transferred by the M. S. Act Amendment Act, 1862 (c. 63). *The William and John*, 1 Asp. 314.

74. The words in the 49th section of the M. S. Act Amendment Act, 1862 (c. 63), determining the jurisdiction of the court by the value of the property saved, mean the value of the property when first brought into safety by the salvors, and not its value at any subsequent period. *The Stella*, L. R. 1 A. & E. 340.

(bb) *Since the Judicature Acts and Rules.*

75. Any county court having Admiralty jurisdiction has jurisdiction in causes of salvage where the value of the property saved does not exceed £1,000, or where the amount claimed does not exceed £300; and any person taking in the High Court of Admiralty or any superior court, except by order of such court, proceedings for salvage which he might, without agreement, have taken in a county court, and not recovering more than £300, or taking such proceeding where the property saved does not exceed £1,000, is not entitled to costs, and is liable to be condemned in costs, unless the judge of the superior court certifies it was a proper case to be tried there. See the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), ss. 3, 9.

76. *Semble*, under the 9th section of the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), the Court of Ad-

miralty may, in its discretion, take cognizance of salvage actions where the value of the property saved is under £1,000. *The Herman Wedel*, 39 L. J. Adm. 30.

77. The 9th section of the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), revives, subject to certain conditions, the original jurisdiction of the High Court of Admiralty, when the property saved is of less value than £1,000. *The Empress*, L. R. 3 A. & E. 502; 41 L. J. N.S. Adm. 32; 1 Asp. N.S. 183.

78. Subject to the provisions of the acts and these rules, the costs of and incident to all proceedings in the Supreme Court, are in the discretion of the court or judge except as therein mentioned. See Ord. LXV. r. 1, No. 976.

79. As to the repeal of sect. 9 of the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), by Ord. LXV. r. 1, No. 976, see *Tenant v. Ellis*, 6 Q. B. D. 46; 50 L. J. Q. B. 143.

80. See also as to the restrictions as to costs in actions in the superior court proper to be tried in an inferior court generally, tit. Costs, p. 350, and within the M. S. Acts, *Ibid.* p. 352.

(d) *Within the Cinque Ports.*

81. Where salvage services are rendered within the boundaries of the Cinque Ports, though the value of the property salvaged is under £1,000, the Court of Admiralty retained its concurrent jurisdiction with the Court of Admiralty of the Cinque Ports, unaffected by the 49th sect. of the M. S. Act Amendment Act, 1862 (c. 63). *The Jeune Paul*, 2 Asp. 478; L. R. 1 A. & E. 336; *The Maria Luisa*, Swabey, 67; 2 Jur. N.S. 264; 4 W. R. 376; 26 L. T. 316.

82. Therefore, a motion to dismiss a suit for salvage services, within these boundaries, brought in the Court of Admiralty, in a case in which the value of the property saved was about £500, was dismissed with costs. *Ibid.*

(e) *Towage.*

83. The Court of Admiralty had jurisdiction to decide all claims and demands in the nature of towage, whether the vessel was within the body of a county, or upon the high seas, at the time when the services were rendered. See 3 & 4 Vict. c. 65, s. 6.

84. The jurisdiction conferred on the Court of Admiralty by 3 & 4 Vict. c. 65, s. 6, was in respect of towage services

rendered, not of claims against the owner of the towing vessel for breaches of contract. *The Robert Pow*, 2 N. R. 527.

85. The master of a vessel agreed with a tug for towage from Sea Reach in the Thames to a London wharf, and agreed to pay £6, and give an order upon the owner of the wharf for the amount usually allowed by him (under the name of towage) as a premium to vessels of the kind coming to his wharf. The service was performed by the tug, and the master paid the £6, but refused to give the order on the owner of the wharf. The amount actually paid by the owner of the wharf according to his practice was proved, and it was also proved that if an order signed by the master of the vessel towed was presented by the master of the tug, the money would be (as a matter of practice) paid to him. *Held*, that the master of the vessel had no authority to agree to transfer to the master of the tug an uncertain sum payable to the owners of the vessel, and that the court had no authority to enforce such a contract or give damages for the breach of it. *The Martha*, 1 Lushington, 314; see also *The Ceylon*, No. 2217, July 19, 1864.

(f) *To British Government Ships.*

86. The East India Company are not exempt from the payment of salvage to a ship in their employment for services rendered to a ship belonging to them. *The Waterloo*, 2 Dodson, 433.

86a. See tit. JURISDICTION, p. 668. See No. 30, p. 1785.

* (39) As a general rule, where the only question in a salvage suit is as to the rate of reward, and the salvaged property is within the jurisdiction of the court, a Court of Admiralty in this country will entertain the suit, notwithstanding that all the parties are foreigners. *One Hundred and Ninety-four Shavits*, 1 Abb. Adm. 317. [AMERICAN.]

(39a) But *semble*, when the answer charges the plaintiff with wanton misconduct in obtaining possession of the property, and prays the privilege to contest the claim before the courts of their common country, the case should be dismissed to the home forum. *Ibid.*

(40) In a case of salvage, where the parties on both sides, except the owners of the cargo of the salvor ship, were foreigners, and no protest was made to the jurisdiction, but merely an objection raised by counsel at the argument, it was considered that the con-

(g) *To Foreign Government Ships.*

87. See tit. JURISDICTION, p. 669.

(h) *Foreigners and Foreign Ships.**

88. The court has jurisdiction of salvage of the property of foreigners. *The Two Friends*, 1 C. Rob. 271, 278.

See also Nos. 60; 61, and note 34, p. 1787.

(i) *On Sea and Land.†*

89. The High Court of Admiralty had jurisdiction over agreements made on land for the performance of salvage services. *The Catherine*, 12 Jur. 682; 6 Notes of Cases, Supp. xliii.

90. In salvage cases the court will take into consideration, in connection with salvage services at sea, those afterwards performed on land relating thereto, when the services are continuous. *The Mary Ann*, 1 Hagg. 160, 161.

91. Where a vessel had been driven on shore and part of the salvage services was performed when the waves beat over and part when she was lying dry, the Court of Admiralty had nevertheless jurisdiction in the matter. *The Rosalie*, 1 Spinks' Eccl. and Adm. Rep. 192; 18 Jur. 337.

92. It would be injurious to the course of justice if the court were to be astute in severing services at sea and on land. *Ibid.*

93. If the court were in difficulty as to such a case it would adopt the common law principle, and not throw off the jurisdiction, unless there was another to take cognizance of the case. *Ibid.*

94. In the course of salvage services the vessel salvaged was brought into harbour, and her cargo unladen. *Held*, that

considerations drawn from public convenience in favour of the jurisdiction greatly overbalanced those against it; and that, however it might be viewed when the jurisdiction of the court was protested against, there ought to be no doubt where the parties assented to it. *Mason v. The Ship Blaireau*, 2 Cranch, 240. [AMERICAN.]

(41) See also the observations of Mr. Justice Bradley, affirming such jurisdiction, in delivering the judgment of the Supreme Court in *The Belgenland*, 13 April, 1885. [AMERICAN.]

† (42) Plaintiffs, pursuant to agreement made on land with the owners, removed from on board a wreck in the river St. Lawrence the whole of the cargo and stored it on land. *Held*, that the service was one of salvage. *The Royal William*, Stuart's Vice-Adm. Rep. (Lower Canada), 107.

the whole was a continuous salvage service. *Ibid.*

95. A ship sunk on the Nore Sand was raised by means of an apparatus, and an action brought against her in a cause of salvage. The owners appeared under protest, alleging that the court had no jurisdiction, the services having been rendered under an agreement made upon land. Protest overruled, and *held*, that the services were salvage services, and therefore the court had jurisdiction over the subject-matter. *The Catherine*, 12 Jur. 682; 6 Notes of Cases, Supp. lxi.

96. *Held*, also, that the court having original jurisdiction over the subject-matter, had jurisdiction over its incidents. *Ibid.*

96a. *Held*, further, that the court had jurisdiction over agreements made upon land for the performance of salvage services. *Ibid.*

97. The ship L., on her voyage from Moulmein to Liverpool, laden with teak, was in distress in the Indian Ocean, when she was fallen in with by the N. The master and crew of the L. were taken on board the N., and some of the N.'s crew succeeded in getting the L. into Galle, the N. proceeding to Bombay with the master and crew of the L. Communications took place on behalf of the N. with the owners of the ship and cargo of the L. in England. The owners of cargo declined to interfere, but the owners of ship authorized the subsequent proceedings. An agent of the N. proceeded from Bombay to Galle, caused the cargo to be unladen and stowed, the necessary repairs to be done to the L., and the cargo to be re-shipped, and incurred considerable expenses and loss of time in superintending these measures. The L., under the charge of the mate and others of the N., and a further crew, sailed from Galle and arrived in England. Salvage as to the ship was settled by negotiation. In a suit against the owners of the cargo for salvage to the cargo, *held* that the salvage services terminated on the ship's arrival at Galle, and that the value of the cargo must be taken as at its arrival at Galle, and not at its arrival in England. *Cargo ex The Loodianah*, No. 1403, 21st April, 1863.

(j) *Life.*

(aa) *British Ships.**

98. Whenever any ship or boat is

stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the United Kingdom, and services are rendered by any person in saving the lives of the persons belonging thereto, there shall be payable by the owners to such salvors a reasonable amount of salvage, with all expenses properly incurred in the performance of such services; the amount to be determined, in case of dispute, in manner hereinafter mentioned (in cases under £200, and not within the Cinque Ports, by justices, and in other cases in England and Wales by the High Court of Admiralty of England). See the M. S. Act, 1854 (c. 104), s. 458.

99. All the provisions of the M. S. Act, 1854, in regard to salvage of life from any ship or boat within the limits of the United Kingdom, are extended to the salvage of life from any British ship or boat wheresoever the services may have been rendered. See The Admiralty Court Act, 1861 (c. 10), s. 9.

99a. Salvage, in respect of the preservation of the life of any person belonging to any such ship or boat, shall be payable by the owners of the ship or boat in priority to all other claims for salvage. See the M. S. Act, 1854 (c. 104), s. 459.

100. Prior to 9 & 10 Vict. c. 99 (since repealed) the Court of Admiralty had no authority to allot a salvage reward, on the ground alone that the lives of persons on board a vessel in distress had been preserved by the successful exertions of the parties suing; and a claim of salvors for preservation of life alone pronounced against accordingly, but without costs. *The Zephyrus*, 1 W. Rob. 329; *Silver Bullion*, 2 Spinks' Eccl. and Adm. Rep. 74; *The Fusileer*, 2 Lushington; 10 L. T. N.S. 699.

100a. But if the preservation of life could be connected with the preservation of property, whether by accident or not, the court could and would take notice of it, and join that to the *animus* in the first instance. *The Aid*, 1 Hagg. 84; *The Fusileer*, Br. & Lush. 341; 10 L. T. N.S. 699.

101. The High Court of Admiralty had no power prior to the above statutory authorities to decree salvage for the saving of life alone, whether the ship from which the persons were rescued was a British or a foreign ship. *The Johannes*, 30 L. J. Adm. 93.

* (43) Similar provisions were contained in 9 & 10 Vict. c. 99, s. 19, which was repealed

on the M. S. Act, 1854, coming into operation. See the M. S. Repeal Act, 1854 (c. 120).

102. But salvage of life was taken into consideration in connection with salvage of property in estimating the salvage award. *The Aid*, 1 Hagg. 84; *The Fusileer*, Br. & Lush. 341; 10 L. T. N.S. 699; 12 W. R. 968; 2 Asp. P. C. 177.

102a. Claim for rescue of crew from pirates, held, prior to the M. S. Act, 1854 (c. 104), not to be a salvage service. *The Mary*, 1 W. Rob. 448.

103. In a case of salvage of a derelict sold at £250, £30 awarded to a smack under 1 & 2 Geo. 4, c. 75, for her assistance in preserving the lives of the crew, she having put them on shore from the derelict, but not having been concerned in the salvage of the vessel. *The Queen Mab*, 3 Hagg. 242.

(bb) Foreign Ships.

104. All the provisions of the M. S. Act, 1854, in regard to salvage of life from any ship or boat within the limits of the United Kingdom, shall be extended to the salvage of life from any foreign ship or boat, where the services have been rendered, either wholly or in part, in British waters. See the Admiralty Court Act, 1861 (c. 10), s. 9.

105. Whenever it is made to appear to her Majesty that the government of any foreign country is willing that salvage shall be awarded by British courts for services rendered in saving life from any ship belonging to such country, when such ship is beyond the limits of British jurisdiction, her Majesty may, by order in council, direct that the provisions of the principal act, and of this act, with respect to salvage for services rendered in saving life from British ships, shall, in all British courts, be held to apply to services rendered in saving life from the ships of such foreign country, whether such services are rendered within British jurisdiction or not. The M. S. Act Amendment Act, 1862 (c. 63), s. 59.*

106. Whenever an order in council has been issued under this act, applying any provision of this act, or any regulation

made by or in pursuance of this act, to the ships of any foreign country, such ships shall in all cases arising in any British court be deemed to be subject to such provision or regulation, and shall for the purpose of such provision or regulation be treated as if they were British ships. *Ibid.* s. 61.

107. As to power to limit, or revoke, or alter such orders, and as to their publication, *Ibid.* ss. 62, 63, 64.

108. The provisions of the M. S. Act Amendment Act, 1862, and of the M. S. Act, 1854, with respect to salvage for saving life from British ships, shall, in all British courts, apply to services rendered in saving life from Prussian ships, whether within British jurisdiction or not. Order in Council, 7th April, 1864, in 2 Maude & Pollock on Merc. Sh. (4th ed. by Poll. & Bruce), p. 96.

109. The High Court of Admiralty cannot decree salvage for the saving of life alone on board a foreign ship when such saving of life has been effected on the high seas out of British jurisdiction. *The Johannes*, 1 Lushington, 182; 30 L. J. Adm. 93; 3 L. T. N.S. 757.

109a. It makes no difference with respect to such salvage, that the ship is afterwards brought within the jurisdiction. *Ibid.*

110. Where lives were saved by a foreign vessel beyond British waters, and the persons were thence transferred at their request to another vessel, by which they were conveyed within British waters, and to a British port, held, that this was not a salvage of life by a foreign ship or boat "where the services had been rendered wholly or in part in British waters" within the meaning of section 9 of the Admiralty Court Act, 1861 (c. 10), s. 9. *The Willem III.*, L. R. 3 A. & E. 487; 1 Asp. N.S. 129.

110a. See as to salvage of life generally, c. 7, p. 1847.

3. Courts of Common Law.†

111. By the common law a salvor has a lien on (*semble*, derelict) property saved

* (44) These provisions have not as yet been extended to any foreign country but Prussia.

† (45) A person who preserves goods which the owners or those entrusted with the care of them have either abandoned in distress at sea, or are unable to protect and save, is entitled by the common law of England to retain the possession of the goods saved until a proper compensation is made to him for his

trouble. This compensation, if the parties cannot agree upon it, may by the same law be ascertained by a jury in an action brought by the salvor against the proprietor of the goods, or the proprietor may tender to the salvor such sum of money as he thinks sufficient, and upon refusal to deliver the goods, bring an action against the salvor, and if the jury think the sum tendered sufficient, he will recover his goods or their value and

at sea (but not in a river), and he may retain the same until an adequate tender is made, after which he will be liable in detinue or trover for it, and with damages. See *Hartford v. Jones*, 1 Ld. Raym. 393; *Baring and others v. Day*, 8 East, 57; 1 Saund. 265; *Nicholson v. Chapman*, 2 H. B. 257; *Newman v. Walters*, 3 B. & P. 612.

112. In an action for salvage services, it appeared that the plaintiff, being a common sailor, was ordered by the master of his own ship to go in a boat with others, for a distance of fourteen miles, to the assistance of another vessel, which was stranded on the bar of a river, and to place himself under the command of the master of that other vessel. *Held*, that, under those circumstances, he could not, prior to the Judicature Acts, maintain an action against the owner of the vessel saved for the personal services which he had rendered. *Lipson v. Harrison*, 22 L. T. 83.

113. The courts of common law could not, prior to the Judicature Acts, by an action on account for money had and received, or on an account stated, entertain a claim by seamen for their share of salvage money paid to the owner or master of their vessel. The courts and functionaries having jurisdiction as to the distribution of salvage are those stated in sect. 460 of the M. S. Act, 1854 (c. 104). *Atkinson v. Woodall*, 31 L. J. N.S. Exch. 352; 31 L. J. M. C. 174; 3 Jur. N.S. 72; 6 L. T. N.S. 361; 10 W. R. 671.

114. B. employed C. to convey, in his barge, a quantity of copper ore from Liverpool to Birkenhead, and to deliver it to D., who had undertaken to indemnify B. from all risk in the transit. The barge having sunk owing to stress of weather, C. applied to B. to know if he should raise the ore. The answer was, that he must

ask D.; D. said, "I am insured; ask the insurer," which he did, and received an order to raise it. *Held*, that as B. never employed C. to raise the ore, the latter could have no lien upon it, neither could C. recover as against B. for salvage or general average. *Castellain v. Thompson*, 7 L. T. N.S. 424.

115. A ship was stranded in the harbour of Z., and to get her off it became necessary to unload a portion of the cargo, which was brought to Z. A., the receiver of droits at Z., and who also was agent for Lloyd's, superintended the salvage operations, but in the latter capacity only, and afterwards seized and detained the goods for several weeks, until sundry salvage claims had been settled, and a sum of £45 19s. paid to him for fees claimed to be due under the 9 & 10 Vict. c. 99, s. 19. B., the agent at Z. of C. and Co., the shippers of the goods, paid the amount under protest to A. *Held*, in an action by C. and Co. against A. for money had and received to their use, that A. was not entitled to the fees in question, and that although C. and Co. were not the owners of the goods, they were entitled in this form of action to recover back the money so wrongfully obtained from them. *Cotesworth v. Walsh*, 5 (IRISH) Jur. 253.

116. In an action of *indebitatus assumpsit* at common law, £400 awarded to a passenger who took the command of a ship abandoned by the crew, and brought her safe into port. *Newman v. Walters* (1804), 3 Bos. & Pull. 612.

4. Admiralty Court of the Cinque Ports.

117. As to the jurisdiction generally of the Admiralty Court of the Cinque Ports, see tit. JURISDICTION, p. 676; as to the practice in salvage actions in that court, see tit. PRACTICE, Pt. IV. p. 1703.

the cost of his suit. 11 Petersdorff's Abr. 483; Abb. Sh. (12th ed.), p. 537; and see 1 Park on Ins. 301.

(45a) A steamer struck on the Rocks of Hurlgate and stuck there in great peril. A. was employed as a person of great skill to get her off, which he did, and then sued the owners in *assumpsit* to recover the value of his services. *Held*, on a motion to set aside a report of referees which seemed based on the principles of salvage, that courts of common law have not jurisdiction in cases of salvage, but that they belong by long custom to the Courts of Admiralty, which from their

extraordinary process are the only proper tribunals; that each case, where there was no special contract, depended on its own circumstances to determine the nature of the compensation, whether it ought to be made on a *quantum meruit* or on salvage principles, and the vessel not being derelict and the owners having employed great numbers of men and boats to assist in relieving their vessel, the case was not one of salvage, but that a liberal compensation ought to be given to men of great skill who are employed to relieve vessels in imminent peril. *Sturgis v. Law*, 3 Sandf. Sup. Ct. 451. [AMERICAN.]

5. *Admiralty County Courts.*

118. As to the jurisdiction of Admiralty County Courts as to salvage and towage, see tit. JURISDICTION, p. 680; as to the practice of those courts in salvage actions, see tit. PRACTICE, p. 1704.

6. *Commissioners of Cinque Ports.*(a) *Generally.*

119. As to their jurisdiction, procedure and practice in salvage proceedings, see tit. PRACTICE, p. 1703.

(b) *Appeals from their Awards.*

120. As to appeals from such commissioners to the Probate, Divorce and Admiralty Division, see tit. APPEALS, pp. 15—57; and to the Court of Admiralty of the Cinque Ports, see tit. PRACTICE, No. 2447, p. 1703.

7. *Magistrates.*(a) *Generally.*

121. As to their jurisdiction to award salvage, see tit. JURISDICTION, p. 682; and as to practice on such awards, see tit. PRACTICE, p. 1709.

(b) *Appeals from their Awards.*

122. *Ibid.* p. 1711.

8. *Vice-Admiralty Courts.*1. *Generally.*

See tit. PRACTICE, p. 1711.

2. *Appeals from their Awards.*

Ibid. p. 1714.

3. *Board of Trade.*1. *Generally.*

123. The Board of Trade means the Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations. See the M. S. Act, 1854 (c. 104), s. 2; and the Harbours and Passing Tolls, &c. Act, 1861 (c. 47), ss. 65—69.

2. *Salvage of Life.*

124. As to payments by Board of Trade for salvage of life, see c. 7, p. 1849.

3. *Salvage of Wreck.*

125. As to payment, by the receiver to the salvors, for salvage of unclaimed wreck, of such amount as the Board of Trade may, in each case or by any general rule determine, see the M. S. Act, 1854 (c. 104), s. 475.

4. *Ramsgate Harbour Dues.**

126. On and after January, 1862, the Board of Trade shall be entitled to receive a percentage of five pounds in the hundred on all salvage paid or liable to be paid in respect of any ship or boat, or cargo or apparel of any ship or boat, or any wreck or other property, brought into Ramsgate harbour; and such percentage shall be deducted from the salvage, and paid to the Board of Trade, before the remainder of the salvage is paid over to the salvors, and shall be recoverable by the same means by which salvage is recoverable. See the Harbours and Passing Tolls, &c. Act, 1861 (c. 47), s. 28.

126a. Whenever any vessel enters Ramsgate harbour in distress, and for the purpose of repairs, any goods are unshipped therefrom, and the rates on such unshipment are duly paid, then, if such goods are afterwards reshipped there without any change in the ownership, no further rates shall be leviable upon them in respect of such reshipment. No rate shall be levied upon vessels using the harbour solely as a harbour of refuge, and remaining therein not more than sixty hours. *Ibid.* s. 27.

4. *Receivers of Wreck.*1. *Generally.†*

127. As to the construction of the term "receiver," as any person appointed in

* (46) The harbour of Ramsgate, and the powers and property of its trustees, are transferred to the Board of Trade. See the Harbours and Passing Tolls, &c. Act, 1861 (c. 47), s. 28.

† (47) The receivers of wreck were, before the M. S. Act, 1854 (c. 104), called receivers of droits. See 9 & 10 Vict. c. 99, now repealed.

(48) As to the duties generally of receivers of wreck, see Board of Trade Instructions as to Wrecks, Casualties, and Salvage, anno 1886, p. 1.

(48a) As to the limits of their districts being specified in their appointments, *Ibid.* p. 1, par. 4.

(49) As to the steps to be taken by receivers in the cases of sunken, stranded or abandoned vessels, *Ibid.* p. 22.

(49a) As to the relative duties of receivers and principal officers of customs and inspecting officers of coastguard in regard to ships in distress and shipping casualties, *Ibid.* pp. 3—8.

(50) As to the duties of the receivers as to detaining property until payment of salvage,

pursuance of this act receiver of wreck, see the M. S. Act, 1854 (c. 104), s. 2.

128. Whenever any ship or boat is stranded or in distress at any place on the shore of the sea or of any tidal water within the limits of the United Kingdom, the receiver of the district shall forthwith proceed there, and take the command of all persons present, and issue such directions, as he may think fit, with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof (penalty for disobedience not exceeding £50); but the receiver may not interfere between the master of such ship or boat and his crew in matters relating to the management thereof, unless requested so to do by such master. *Ibid.* s. 441.

129. The receiver may, with a view to such preservation of the property, summon such number of men as he thinks necessary to assist him: require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship, or boats as may be in his power; and demand the use of any waggon, cart, or horses that may be near at hand: (penalty for refusal without reasonable cause not exceeding £100). *Ibid.* s. 442.

130. Whenever any such accident occurs to any ship or boat, all persons may, for the purpose of rendering assistance thereto, or saving the lives of the persons on board the same, or the cargo or apparel thereof, unless there is some public road equally convenient, pass and repass with or without carriages or horses over any adjoining lands, without being subject to interruption by the owner or occupier, doing as little damage as pos-

sible, and may also, on the like condition, deposit on such lands any cargo or other article recovered from such ship or boat; and all damage sustained by any owner or occupier in consequence thereof, shall be a charge on the property, and shall, in default of payment, be recoverable like salvage, and the amount payable in respect thereof if disputed shall be determined like salvage. *Ibid.* s. 446.

131. Penalty not exceeding £100 against owners or occupiers of land impeding or hindering any person from so passing or repassing, with or without carriages, horses and servants, or from depositing any cargo or other article so recovered until it can be removed to a safe place of public deposit. *Ibid.* s. 447.

132. All cargo and other articles belonging to such ship or boat that may be washed on shore, or otherwise be lost or taken from such ship or boat, shall be delivered to the receiver (penalty not exceeding £100 against any person, whether owner or not, who secretes, keeps possession of, or refuses to deliver up the same), and the receiver or other person may take such cargo or article by force from the person so refusing to deliver the same. *Ibid.* s. 443.

133. During the absence of the receiver from the place where an accident occurs, or in places where no receiver has been appointed, the following officers in succession, each in the absence of the other, and in the order in which they are named, *i. e.*, any principal officer of customs or coastguard, or officer of inland revenue, any sheriff, justice of the peace, commissioned officer on full pay in the naval or military service of her Majesty, may do all matters authorized to be done by the

and to release same when security given, the form of bond or security by cash or deposit, *Ibid.* p. 43.

(50a) As to the receivers' withdrawal from the custody of property on receipt of warrant from the Admiralty Division of the High Court of Justice, and the mode of obtaining payment of the receivers' fees, *Ibid.* pp. 30, 31.

(51) As to the duties of receivers to endeavour to settle salvage claims amicably, and as to their duties generally with regard to settlement of salvage claims, *Ibid.* p. 36.

(51a) As to the salvage of life and the duties of the receiver in connection therewith, *Ibid.*

(52) As to the duties of receivers in regard to the delivery of salvaged property to the owners or their agents, *Ibid.* pp. 45—47.

(52a) As to the powers of receivers to advance salvage on small property, and as to the basis and limitations of such advances, *Ibid.* p. 44.

(53) As to the apportionment of salvage by receivers of wreck, *Ibid.* p. 40.

(53a) As to the principles guiding them in reference thereto, *Ibid.* p. 41.

(54) As to the custody of wrecked property by receivers, *Ibid.* pp. 22—28.

(54a) As to the burial of carcases of animals washed ashore, *Ibid.* p. 29.

(55) As to the duties of the constabulary in Ireland in co-operation with the receiver of wreck, *Ibid.* p. 52.

(55a) As to criminal proceedings in respect of wreck and salvage, see Stone's Justices' Manual (21st ed. by Kennett), p. 521.

receiver, but with respect to any goods or articles belonging to any such ship or boat, the delivery up of which to the receiver is hereinbefore required, any officer so acting shall be considered as the agent of the receiver, and shall place the same in the custody of the receiver; and no person so acting as substitute for any receiver shall be entitled to any fees payable to receivers, or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled. See M. S. Act, 1854 (c. 104), s. 445.

134. Whenever any salvage is due to any person under this act, the receiver shall act as follows: If the salvage is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof, he shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made, or process has been issued by some competent court for their detention. *Ibid.* s. 468.

135. If the salvage is due in respect of the saving of any wreck, and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained, he shall detain such wreck until payment is made, or process has been issued in manner aforesaid. *Ibid.*

136. But the receiver may, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, release from his custody such property so detained by him. *Ibid.*

137. In cases where the claim for salvage exceeds £200, in England the High Court of Admiralty of England, in Ireland the High Court of Admiralty of Ireland, and in Scotland the Court of Session, may determine any question arising as to the amount of such security or the sufficiency of the sureties. *Ibid.*

138. In all cases where bond or other security is given to the receiver for an amount exceeding £200 the salvor, or the owner of the property salvaged, or their respective agents, may institute proceedings in such courts for the purpose of having the questions arising between them adjudicated upon, and the courts may enforce payment of the bond or security, as if bail had been given in those courts. *Ibid.*

139. Whenever any ship, boat, cargo, apparel, or wreck is detained by any receiver for non-payment of any sums so due, and the parties liable to pay them

are aware of such detention, then, in the following cases:—(1) Where the amount is not disputed, and payment is not made within twenty days after it is due; (2) Where the amount is disputed, but no appeal lies and payment is not made within twenty days after the decision; (3) Where the amount is disputed, and an appeal lies to some other tribunal, and payment is not made within such twenty days, or process or other proceedings in the appeal are not taken out or instituted within such twenty days; the receiver may forthwith sell the property, or a sufficient part thereof, and out of the proceeds after payment of all expenses defray all sums of money due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners or other parties entitled to receive the same. *Ibid.* s. 469.

140. For provisions empowering receivers to institute examination with respect to ships in distress, *Ibid.* s. 448.

141. For provisions imposing a forfeiture of salvage on persons finding or taking possession of wreck without giving up possession thereof, or the required notice thereof to the receiver of wreck of the district, *Ibid.* s. 450.

142. For provisions that in cases of concealed wreck being seized by receiver of wreck in consequence of information given to him, the informer shall be entitled by way of salvage to such sum not exceeding £5 as the receiver may allow, *Ibid.* s. 451.

143. For provisions as to the appointment and jurisdiction of receivers of wreck, *Ibid.* ss. 439, 440.

144. For powers of receiver to suppress plunder and disorder by force, *Ibid.* s. 444.

145. Receivers hold their offices during the pleasure of the Board of Trade. See the M. S. Repeal Act, 1854 (c. 120), s. 11.

146. A vessel having run ashore on the coast of Essex was assisted by the owner of a smack, who put down an anchor and a hawser attached to the vessel for the purpose of securing her. The smack then left her for the purpose of carrying away some of her stores, with the intention, however, of returning. The owner of another smack came to her afterwards, and finding no one in or near the vessel, and her deck under water, took away the anchor and hawser and delivered them up to the deputy vice-admiral of Essex. *Held*, that the anchor and hawser were not parted with nor left abandoned within the meaning of the 1 & 2 Geo. 4, c. 75,

s. 1 (now repealed), and that the deputy vice-admiral was not justified in detaining them until salvage was paid, or security given for its payment. *Heathorn v. Darling*, 1 E. F. Moore, 5.

147. The deputy vice-admiral, who received an anchor and hawser, alleged to be left at sea, from the finder, refused on application by the real owner to deliver them up until the salvage was paid, or security given for the payment of it. *Held*, that this was a conversion, but if he had merely refused to deliver them up until it was ascertained whether salvage was due or not, it would not have amounted to a conversion. *Clark v. Chamberlain*, 2 Mee. & W. 78 ; 2 Gale, 217.

148. A receiver of droits had, as was alleged, improperly sold by public auction certain iron that had been salvaged and delivered to him. Application under 9 & 10 Vict. c. 99, that he should be compelled to bring the proceeds of sale into the registry for the benefit of salvors, refused, the court considering that it had no jurisdiction. *Derelict Iron*, 15 Jur. 300. See also *The Tritonia*, 5 Notes of Cases, Supp. 1.

149. *Held*, prior to the M. S. Act, 1854 (c. 104), that the receiver of droits is bound to give up the custody of a ship either on the salvors being compensated, or upon reasonable security being offered. *The Hopewell*, 2 Spinks' Eccl. and Adm. Rep. 249.

150. *Held*, prior to the M. S. Act, 1854 (c. 104), that a receiver of droits, from whose possession a derelict ship is taken by an Admiralty warrant, is entitled only to a fee of £2 for the first day she is in his possession, and £1 for each day after. *The Simpson*, 3 Jur. 270. [IRISH.]

151. The receiver of Admiralty droits is not bound to give up possession of a derelict vessel until his expenses have been paid. *The Tritonia*, 2 W. Rob. 523.

See also No. 298, p. 1814.

2. Apportionment.

152. Whenever the aggregate amount of salvage payable has been finally ascer-

tained either by agreement or by the award of justices or their umpire, but a dispute arises as to the apportionment thereof, then, if the amount does not exceed £200, the party liable to pay the amount so due may apply to the receiver of the district for liberty to pay the amount so ascertained to him; and he shall, if he thinks fit, receive the same accordingly, and grant a certificate of such payment and of the services in respect of which it is made; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel, and effects, against the claims of all persons in respect of the services therein mentioned; but if the amount exceeds £200, it shall be apportioned in manner hereinafter mentioned. See M. S. Act, 1854 (c. 104), s. 466.

153. Any distribution (of salvage by receiver of wreck) made in pursuance of this section is final and conclusive against the rights of all persons claiming to be entitled to any portion of the moneys so distributed. *Ibid.* s. 467.

3. Fishing Boats and Fishing Gear.

154. All fishing boats, all rigging gear, or other appurtenances of fishing boats, all nets, buoys, floats, or other fishing implements whatsoever found or picked up at sea shall, as soon as possible, be delivered to the receiver of wreck if the article saved be taken into the United Kingdom, and to the commissary of marine if the article saved be taken into France. See the Sea Fisheries Act, 1868, 1st Sched. Art. XXII.

155. The receiver of wreck or the commissary of marine, as the case may be, shall restore the articles saved to the owners thereof, or to their representatives. *Ibid.*

156. These functionaries shall fix the amount which the owners shall pay to the salvors. *Ibid.*

4. Property of Foreigners.*

157. Whenever any article belonging

* (56) As to the consul-general, consul, vice-consul or consular agent of the following countries being entitled to be considered as agents for the owners of ships and cargoes, as the case may be, of the respective countries they represent, and as to the duty of the receiver to inform such consular functionaries of the fact of the wreck or stranding of any vessel belonging to such country with as little delay as possible, see Board of

Trade Instructions as to Wreck and Salvage, anno 1886, p. 47.

(56a) These countries are Austria, Belgium, Brazil, Chili, Columbia, France, Greece, Honduras, Italy, Netherlands, Nicaragua, Peru, Portugal, Prussia, Russia, Salvador, Sandwich Islands, Spain. *Ibid.*

(57) In regard to the ship or cargoes of wrecked, stranded or sunken vessels of other countries, the receiver is to endeavour to act

to any foreign ship wrecked in or near the coasts of the United Kingdom, or to the cargo thereof, are found on or near such coasts, or brought into any port in the United Kingdom, the consul-general of the country to which such ship or cargo may have belonged, or any consular officer of such country, authorized in that behalf by any treaty or agreement with such country, shall, in the absence of the owner of such ship or articles and of the master or other agent of the owner, be deemed the agent of the owner, so far as relates to the custody and disposal of such articles. See the M. S. Act, 1855 (c. 91), s. 19.

5. Valuations by—.*

158. Whenever any salvage question arises the receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been returned to him, give a copy of the valuation to both parties; and any copy of such valuation, purporting to be signed by the valuer, and to be attested by the receiver, shall be received in evidence in any subsequent proceeding; and there shall be paid in respect of such valuation, by the party applying for the same, such fee as the Board of Trade may direct. The M. S. Act Amendment Act, 1862 (c. 63), s. 50.

158a. Such a valuation by the receiver of wreck is not, however, conclusive on the Court of Admiralty. *The Minna*, No. 2061, March 15, 1864.

6. Sale of Property by—.†

159. As to the sale, by the receiver, of perishable wreck or derelict property of small amount, see M. S. Act, 1854 (c. 104), s. 453; and Board of Trade Instructions

in harmony with the consul of such country, but is not to deliver the property to him except on proof of his agency. Board of Trade Instructions as to Wreck and Salvage, anno 1886, p. 47.

(57a) As to the receiver treating the master as the agent of both ship and cargo until agency is proved, *Ibid.* p. 46.

* (58) As to valuations under the authority of the receiver of wreck, *Ibid.* pp. 27, 33.

† (59) As to the sale, of anchors and chain cables by the receiver, *Ibid.* p. 33.

(59a) As to the sale, by the receiver, of

as to Wrecks, Casualties, and Salvage, anno 1886, p. 31, and tit. PRACTICE, Pt. II. p. 1674.

7. Fees and Books.‡

160. For provisions limiting salvage remuneration of receivers of wreck to their expenses and the fees therein provided for, and for making the same recoverable, and with the same lien and by the same remedies as salvage, see M. S. Act, 1854 (c. 104), s. 455.

160a. For provisions for the determination by the Board of Trade of disputes as to fees and expenses payable to receivers of wreck, *Ibid.* s. 456; and see also as to such fees the M. S. Repeal Act, 1854 c. (120), ss. 12, 13.

161. See as to fees of receivers for taking depositions, and as to such fees being recoverable like salvage, tit. EVIDENCE, note 24, p. 439.

8. Serjeants of the Admiralty of the Cinque Ports.§

162. The serjeants of the Admiralty of the Cinque Ports, their deputies or other officers, shall perform their duties during the pleasure and subject to the directions of the Board of Trade; and all such officers shall possess in their districts the same powers, rights, and privileges, and perform the same duties, as are by the M. S. Act, 1854 (c. 104), committed to Receivers, save that they shall not be entitled to take the command in cases of ships or boats stranded or in distress, unless authorized so to do by the Board of Trade. See the M. S. Repeal Act, 1854 (c. 120), s. 11.

162a. As to the payment of such serjeants, deputies, and other officers, *Ibid.* s. 12.

163. All fees or other remuneration received by any such serjeant, deputy, or other officer may be applied by him to his own use. *Ibid.* s. 13.

unclaimed wreck at the end of a year, *Ibid.* p. 50.

‡ (60) As to the fees, remunerations and expenses of the receiver of wreck, *Ibid.* pp. 53—63.

(60a) As to the report books to be kept by receivers, *Ibid.* p. 60.

§ (61) The act relating to the Cinque Ports (1 & 2 Geo. 4, c. 76), which was in force at the time of the passing of the M. S. Act, 1854 (c. 104), is, except ss. 1, 2, 3, 4, 5, 15, 16 and 18, repealed. *Ibid.* s. 4, and schedule thereto.

5. Salvors.

1. Generally.*

164. A salvor is a person who, without any particular relation to a ship in distress, proffers useful service, and gives it as a volunteer adventurer. *The Neptune*, 1 Hagg. 236.

164a. Volunteers go out at their own risk for the chance of earning reward, and if they labour unsuccessfully they are entitled to nothing. It is the effectual performance of salvage services which gives them a title to reward. But if men are engaged by a ship in distress, whether generally or particularly, they are to be paid according to their efforts, even though the labour or service may not prove beneficial. *The Undaunted*, 29 L. J. Adm. 177; 1 Lushington, 90; 2 L. T. N.S. 520; and see c. 6, s. 3, p. 1828.

165. All salvage, whether civil or military, is founded on the equity of remunerating private and spontaneous services rendered in the protection of the lives and property of others. The court cannot safely introduce other persons to share with the salvor (who was in this instance the recaptor from pirates) on constructive grounds. Such extension must be made by statute or other competent authority. The Court of Admiralty has no such authority. *The Calypso*, 2 Hagg. 218, 220.

166. Salvage is personal in its primary character at least, and those who are so employed in the service are those whom the law considers as standing in the first degree of relation to the property and to the proprietors. This is necessary for the protection of the owner, who ought not to be burthened with artificial claims. The

court looks primarily to the actual salvor, and has uniformly rejected all claims founded on prerogative rights, as of the Lord High Admiral in former times, of lords of manors, magistrates, and flag officers, except with reference to assistance substantially and beneficially afforded. *The Thetis*, 3 Hagg. 48, 58, 63.

167. In an action for salvage services, it appeared that the plaintiff, being a common sailor, was ordered by the captain of his own ship to go in a boat with others, for a distance of fourteen miles, to the assistance of another vessel, which was stranded on the bar of a river, and to place himself under the command of the captain of that other vessel. *Held*, that, under those circumstances, he could not maintain an action against the owner of the vessel saved for the personal services which he had rendered. *Lipson v. Harrison*, 29 L. T. Q. B. 83; but see note 72, p. 1804.

168. Claims of foreign salvors for services rendered to a British ship adjudicated upon in the Admiralty. *The Salacia*, 2 Hagg. 262.

168a. Salvage awarded to the families or representatives of persons who lost their lives in rendering the salvage services. *The Marquis of Huntley*, 3 Hagg. 249.

2. After Collision.†

169. Where a collision has occurred between two vessels solely owing to the fault of one of them, the innocent vessel is not debarred by the Merchant Shipping Act Amendment Act, 1862 (c. 63), s. 33, (now repealed, but see M. S. Act, 1873

* (62) For an account of the wrecking vessels of the Bahamas, which are fitted up expressly for the performance of salvage services at great expense, and their crews are experienced divers, see *The Inca*, 12 Moore, P. C. C. 191, n.

(62a) As to vessels fitted out specially for salvage purposes on the Florida coast, and termed wreckers, see *Marvin on Wreck and Salvage*, 4, 250. [AMERICAN.]

(63) It is no objection to a claim for salvage, that the interference or assistance of the salvor did not arise from a desire to preserve the property or benefit the owner. *Le Tigre*, 3 Washington, C. C. 567. [AMERICAN.]

(63a) Official persons while acting in the strict line of their official duty cannot be admitted to claim salvage. *Marvin on Wreck and Salvage*, 151. [AMERICAN.]

(64) But if the services exceed the just limits of official duty the officer is entitled to

salvage, although he may have intended to keep within the line of his duty. *Le Tigre*, 3 Washington, 567; *Hobart v. Drogan*, 10 Peters, 108. [AMERICAN.]

(64a) As to the effect of some of the salvors refusing to claim salvage, see note 29, p. 1783. [AMERICAN.]

(65) How far a person must be directly employed in aiding the recovery of a wreck to constitute him a salvor, *quære?* *The John Wurts*, Olcott, Adm. 462. [AMERICAN.]

† (65a) If a vessel while engaged in performing a salvage service, or while assisting another vessel under circumstances which prevent the assistance from being considered as salvage, unintentionally and unavoidably injures her, she is not liable in damages. 2 *Parsons on Maritime Law*, 598. *Stevens v. The S. W. Downs*, 1 Newb. Adm. 458. [AMERICAN.]

(65b) See also note 159, p. 1845.

(c. 85), s. 16,) which makes it the duty of ships mutually to assist each other after a collision, from obtaining salvage remuneration for services rendered to the other after the collision. *The Hannibal, The Queen*, L. R. 2 A. & E. 53; 37 L. J. Adm. 12; 2 Asp. 555.

170. A collision occurred between the H. and the Q. The H. was in tow of a tug. The tug, after the collision, rendered assistance to the Q. The Q. was found solely to blame for the collision. *Held*, that the tug's right to salvage remuneration was not affected by the M. S. Act Amendment Act, 1862 (c. 63), s. 33 (now repealed). *The Queen, Ibid.*

170a. *Scoble*, when, after a collision, the innocent vessel renders assistance by towing the other vessel, such innocent vessel is not entitled to salvage, having regard to sect. 16 of the M. S. Act, 1873 (c. 85), which enjoins on vessels after collision to render each other such assistance as may be practicable and necessary to save them from danger caused by the collision; *per Butt, J., The Beta, The Peter Graham*, 5 Asp. 276.

171. The owners of a steam-tug, which, while engaged in towing a vessel, negligently caused her to come into collision with a third vessel, cannot recover salvage reward for services rendered to her tow after the collision, those services having been rendered necessary by the misconduct of the tug. *The Glengaber*, L. R. 3 A. & E. 534; 31 L. J. Adm. 84; 1 Asp. N.S. 401.

172. But where, owing to the misconduct of her steam-tug B., the G. was endangered and salvage services were rendered by the steam-tug W.: *Held*, that the owners of the W. were entitled to salvage reward, although some of them were also owners of the B. *Ibid.*

173. Where a collision has occurred for which both vessels are to blame, neither vessel is entitled to reward for salvage services rendered either to the other vessel or the cargo therein, on the ground that no man can profit by his own wrong. *Cargo ex Capella*, L. R. 1 A. & E. 356; 2 Asp. 552.

173a. A collision occurred between two vessels, the W. and the B. The plaintiffs, at the request of the W., took the B. in tow, and succeeded, after the vessels had dragged some way, in separating them. In a cause of salvage against the W., *held*, that the services rendered to the W. were direct and not indirect, and that the plaintiffs were entitled to salvage remuneration.

The Woburn Abbey, 3 Asp. P. C. 310.

174. A steamer meeting a brig in some distress, having passed under her lee and gone a little ahead, offered her services to the brig. These were not accepted by the captain of the brig, who, however, was not fully aware of his dangerous position, but while the parties were so occupied the brig was carried nearer the steamer, whose engines were primed at the time. The captain of the steamer was aware of this defect in the engines of his vessel, and had not allowed for it, so that when the vessels drew nearer he was unable to get out of the way, and a collision, occurred between them, and the brig received such damage that she was obliged to accept the services of the steamer. In a salvage suit by the steamer against the brig, *held*, that the collision occurred solely through the default of the steamer, but that when the steamer first offered her services, the circumstances of the brig were such that no prudent man to whom they were fully known would have declined her assistance. *Held*, further, that the steamer was entitled to salvage remuneration, although but for her negligence the master of the brig would not have accepted the services of the steamer. *The Cherubim*, Ir. 2 Eq. 172; 3 Asp. 156.

174a. *Held*, however, that the negligence of the steamer must considerably reduce the sum which would otherwise have been awarded. *Ibid.*

175. A steamer and sailing vessel got foul of each other in the Mersey, and were both in considerable danger when the plaintiffs' steamship came up, and, at the request of the sailing vessel, took her in tow, and thereby freed both vessels from danger. *Held*, that the plaintiffs were entitled to salvage, not only from the sailing vessel, but also from the steamer. *The Vandyck*, 7 P. D. 43; 47 L. T. N.S. (C. A.) 694; 5 Asp. 17.

175a. In rendering salvage services the salvors' ship came into collision with the other ship. The salvors subsequently completed the salvage. *Held*, in an action brought by the owners, master, and crew of the salving vessel, that the collision was caused by the negligence of the salvors, that the salving ship was therefore liable for the damage; and that the salvors were entitled to salvage. *The C. S. Butler, The Baltic*, L. R. 4 A. & E. 178; 43 L. J. Adm. N.S. 17.

176. It is not usual for salvage suits

to be brought by one of the parties to a collision against the other. The court is very reluctant where small services are rendered in consequence to see them made the subject of salvage suits. Some salvage services having, however, been performed, attended with considerable labour and fatigue, but no risk, the court awarded £80 and costs. *The Sapho*, Swabey, 242.

3. Owners of salving Vessels.

(a) Generally.

177. The court, in estimating the amount of salvage to be awarded, will not overlook the fact that the salving vessel was a passenger ship. *The Vanguard*, 5 Jur. N.S. 364. [IRISH.]

178. The owner of a salving vessel is not an unfit person to originate a suit for salvage. *The Haidee*, 1 Notes of Cases, 598.

179. Where a part owner of a salving vessel has an interest in the vessel saved, his co-owners and the master and crew of the salving vessel may sue for salvage; the sum to which they are entitled being computed by deducting from the value of the entire service the share which would have been due to such part owner if he could have joined as plaintiff. *The Caroline*, 1 Asp. 145.

(b) Steamers.*

180. When steamers render salvage services they are entitled to a greater reward than any other set of salvors rendering the same service, because they can, owing to the power they possess, perform such services with much greater celerity than other vessels, and much greater safety to the vessel in danger, and frequently under circumstances in which no other assistance could prevail. *The Kingalock*, 1 Spinks' Eccl. and Adm. Rep. 267.

181. Where salvage services are rendered by steamships, the amount of salvage which the court will award is not necessarily affected by the fact of the services performed occupying only a short time, the court now holding, with respect to steamers, that it is better for the saved property that the service

should occupy a shorter space of time than with the manœuvres of sailing ships. *The Alicia Annie* and *The Aminta*, 2 Asp. 232; *The Northumberland* and *The Andalusia*, 2 Asp. 215; 12 L. T. N.S. 584.

182. The court always looks with considerable favour on the exertions of steam vessels assisting vessels aground, because a steamer can render assistance so much more quickly and effectually. *The Alfen*, Swabey, 190.

183. Steamers are to be paid in proportion to the value of the services rendered, and not to the time occupied in rendering them. *The General Palmer*, cited in *The Medora, Caledonia Co. v. Hutton and others*, 5 Notes of Cases, 159.

184. The court inclines to give as much encouragement as possible to salvage exertions of steam vessels, on account of the great skill and power of vessels of that description. *The Raikes*, 1 Hagg. 246.

185. When steamers render assistance they are considered as entitled to liberal rewards. *The London Merchant*, 3 Hagg. 401.

186. Steam vessels usually belong to great and opulent companies, and are fitted out at great cost. On these considerations, when they afford assistance, they obtain a large remuneration. *The Perth*, *ibid.* 416.

187. The court will award very liberal remuneration to a steam vessel specially built for and devoted to salvage services, inasmuch as she is not employed in general trade for the conveyance of goods and passengers, but depends entirely on her chances for public encouragement and support. *The Maryanne*, 9 Ir. Jur. N.S. 60; 2 Asp. 127.

188. A steam vessel specially summoned by signal or otherwise to the assistance of a vessel is to be remunerated for the distance she has to come in order to reach the vessel. *The Graces*, 8 Jur. 501; 2 W. Rob. 294.

189. The shorter the period occupied in rescuing a ship from distress the more meritorious is the salvage service. *The Syrian*, 2 Asp. 387.

190. As to towage, see c. 6, p. 1835.

191. As to awards of salvage to steamers, see tit. SALVAGE AWARDS, p. 1921.

* (66) A larger remuneration should be given when the salvage service is performed by or for steam vessels than in ordinary cases, inasmuch as, on the one hand, they are fitted out at great cost, and as salvor vessels possess

great skill and power; and on this account sound policy prompts to the encouragement of their salvage services. Marvin on Wreck and Salvage, 125. [AMERICAN.]

192. As to the rules of apportionment of salvage to owners of steamers, see c. 16, p. 1895.

193. As to cases of such apportionment, see tit. APPORTIONMENT OF SALVAGE AWARDS.

(c) *Sailing Vessels.**

194. It is a general rule that a party not actually occupied in effecting a salvage service is not entitled to share in a salvage remuneration. The exception which not unfrequently occurs to this rule is in favour of owners of vessels which, in rendering assistance, have either been diverted from their proper employment, or have experienced a special mischief, occasioning to the owners some inconvenience and loss, for which an equitable compensation may reasonably be claimed. *The Vine*, 2 Hagg. 2; *The Charlotte*, 2 W. Rob. 72; 6 Notes of Cases, 279.

195. The owners despatched their boats to render a salvage service, but were not personally present thereat. *Held*, that they were not entitled to be considered as salvors, but that some remuneration by way of equitable compensation was due to them for the use of their boats. *The Charlotte*, *Ibid*.

196. Salvage awarded to owners, master, and crew of a vessel, whose mate had gone on board another vessel on the high seas to supply the place of the master of the latter, who had been drowned. *The Janet Mitchell*, Swabey, 111.

197. When the masters and part of the

crews of smacks are employed to perform salvage services, the owners of the smacks have a right to sue for remuneration for the detention of the smacks, even when the service is not dangerous. *The Norden*, 1 Spinks' Eccl. and Adm. Rep. 185.

198. The crew of the A., a stranded vessel, having taken to their boats, in making for the nearest land, fell in with the B., also abandoned, and rendered salvage services to her. Claim by the owner of the A. to share in the salvage on the ground that the salvors were enabled to reach the vessel salvaged solely by means of his boats, sails and compass, and that some of the salvors were his apprentices, rejected. *The Two Friends*, 8 Jur. 1011; 2 W. Rob. 349.

199. As to claims for consequential losses by deviation, see c. 15, p. 1885.

200. As to claims for consequential losses by owners of fishing vessels, *Ibid*. p. 1887.

201. As to apportionment of the amount of salvage between owners and personal salvors, see c. 16, pp. 1895—1898, and tit. SALVAGE AWARDS, p. 1921.

4. *Owners and Charterers.†*

202. The crews of two ships belonging to J. L. rendered some salvage services to a ship, chartered to him, and he was bound to provide and pay the master and crew, and the cargo on board belonged to him. *Held*, that no salvage could be claimed by the owners, masters or crews of the two vessels rendering assistance. *The Maria Jane*, 14 Jur. 857.

* (67) In a schooner built by the master and crew out of the remnants of the wreck, they conveyed the cables and anchors of the wrecked ship and a part of her oil to Oahu. *Held*, that the master and crew were entitled, as owners of the schooner, to compensation for such transportation. *The Holder Borden*, Sprague, 144. [AMERICAN.]

(67a) The salvors used a boat belonging to one of them in order to reach a derelict vessel. *Held*, that the use of the boat, and injury to it, were fully compensated for by payment to the owner of its full value, and that he could not claim on account of it any other sum beyond what the other salvors had. *Hawkins v. Avery*, 32 Barb. N. Y. 551. [AMERICAN.]

(68) A steamer, valued with her cargo at 290,000 dollars, ran aground on Deal Beach, about fifty miles from New York City. A company formed expressly for the purpose of carrying on the business of wrecking and salvage, but employing masters and crews on regular wages and giving them no share

of whatever compensation they received, applied to the owners of the steamer for the job of getting her off. They were asked what would be the cost of sending the assistance, and answered 2,000 or 2,500 dollars, whereupon they were employed, and sending down two schooners with heavy anchors and cables, they, in about twenty-four hours' work, got the vessel off and claimed 15,000 dollars salvage. *Held*, that such a corporation could not have the characteristics of a salvor: that if their compensation were to be given as salvage, they could only have the owners' share of what would be proper salvage: that the compensation should be a *quantum meruit*. Decree for 2,500 dollars. *The Morning Star*, 2 Asp. 327. [AMERICAN.]

† (69) If by the terms of the charter-party the vessel itself is let to the charterers they should be considered the owners, and as such entitled to salvage, but not if the use of the vessel is all they pay for. 2 Parsons on Maritime Law, 609. [AMERICAN.]

203. The charterers of a vessel are not, except under very special circumstances, entitled to the salvage earned by that vessel. *The Alfen*, Swabey, 189.

204. By the terms of a charter-party the ship was hired for thirteen months, the charterer to pay all expenses of navigation, but the shipowner to pay repairs of wear and tear or damage. *Held*, that this stipulation did not include damage by rendering salvage service, and that the charterer was entitled to salvage for assistance rendered to another vessel. *The Arabian*, April 5, 1855.

205. C. agreed to charter a steamer for the purpose of running between two French ports, and to pay all expenses of crew, repairs, and all other charges incidental to the running of the steamer, excepting only marine insurance, which was to be defrayed by the owner. The agreement was determinable by either party on giving seven days' notice, and the steamer was to be delivered up free of all expense to the owner in the same condition as at the time of making the agreement, reasonable wear and tear excepted. The master was not to be removed without the consent of the owner, except in the event of misconduct. The steamer, while employed under this agreement, rendered salvage services. *Held*, that C., and not the owner, was entitled to salvage reward. *The Scout*, L. R. 3 A. & E. 512; 41 L. J. Adm. 42; 1 Asp. N.S. 258.

206. In a case of salvage rendered by one ship to another, both being chartered by the East India Company, and sailing together in association and under the same orders, the salvage being very meritorious, the property salvaged £275,000, but the vessel salvaged having rendered efficient service to the salvor when in distress in the course of the voyage, £4,000 awarded. *The Waterloo*, 2 Dodson, 443.

207. Two ships were owned by the same person, and a third chartered by him, he appointing the master and crew, and they were all employed in the same trade. The chartered vessel fell into distress, and was assisted by the masters and crews of the two other vessels. *Held*, that their services did not exceed their duty under their contract, as the servants

and agents of a common employer, and that they were not entitled to salvage. *The Maria Jane*, 14 Jur. 857.

208. The owners of a vessel rendering salvage services, being also the charterers of the vessel receiving the services, are not thereby debarred from claiming salvage reward, unless the effect of the charter-party has been to divest the owners of the possession and control of the salvaged vessel, and to transfer the same for the time to the charterers. (*The Maria Jane* distinguished; *The Waterloo* followed.) *The Collier*, L. R. 1 A. & E. 83; 2 Asp. 473.

209. But though the claim is not barred, there may be such a connection between the two vessels as may affect the *quantum*. *Ibid*.

210. The defendants, after stating the circumstances, averred that, though the services rendered might be of the nature of salvage, yet as the owners of the salvaging, and the charterers of the salvaged, vessel were the same persons, no salvage was due; the court, on the question of the admission of the pleading, ordered the averment of no salvage due to be struck out, and the statement of circumstances to stand; as, though they would not bar the claim for salvage, they might affect the *quantum*. *Ibid*.

210a. A steamer, broken down, was towed some thirty miles by another steamer of the same owners. Fifteen of the crew of the towing steamer commenced a salvage action against the towed vessel, and arrested her in the sum of £5,000 on a value of £105,500, the court awarded the plaintiffs one pound each, and condemned them in costs, considering the arrest in so large a sum improper, and that the action ought to have been brought in an Admiralty County Court. *The Agamemnon*, 5 Asp. 92.

5. Associated Vessels.*

211. When the service rendered by one ship to another in a distant part of the world partakes of the true description of salvage service, the claim for salvage cannot be resisted on the ground that both ships were British. *The Portia*, 9 Jur. 167.

* (70) As to agreements of consortium between wrecking vessels engaged in salvage on the Florida coast to share mutually in sal-

vage awarded to each of them, see 1 Conkling's Adm. Practice (2nd ed.), 306-310; Marvin on Wreck and Salvage, 250. [AMERICAN.]

212. When vessels proceed on the same voyage, leaving port nearly together, and assistance (*semble*, involving no risk nor much labour) is rendered by one to the other without any great deviation, the amount of salvage ought not to be large. *The Ganges*, 1 Notes of Cases, 90.

213. A slave ship on the coast of Africa was rescued from insurgent slaves by another slave ship. The court likened it to a rescue from pirates or a public enemy, and awarded as salvage one-tenth of the value. *The Trelawny*, 4 C. Rob. 223; and see *The Ann*, 5 C. Rob. 100.

214. Where salvage services have been rendered by one vessel to another, the master and crew of the salving vessel are not debarred from claiming salvage remuneration because the vessels belonged to the same owners. *The Suppho*, L. R. 3 P. C. 690; L. R. 3 A. & E. 142; 40 L. J. Adm. 47; 8 Moore, P. C. C. N.S. 66; 1 Asp. N.S. 65; 3 Asp. 521.

215. Unless the services rendered were services which, under their contract, they were bound to perform. *Ibid.*

216. This is the rule laid down in the case of *The Maria Jane*, 14 Jur. 857. *Ibid.*

217. Although seamen cannot recover salvage remuneration for services which by their contract they are bound to perform, when salvage services are performed by one ship to another, and both ships belong to the same owner, the crew of the ship which has performed the salvage service is entitled to salvage remuneration, provided such service is rendered as a moral duty, and not by reason of any contract with the owner. *Ibid.*

218. See also Nos. 202—210, *supra*; and No. 236, *infra*.

219. As to agreements to render mutual assistance, see c. 10, p. 1871.

6. Seaworthiness.

220. A steamer G. laden with cargo became disabled at sea in consequence of the breaking of her crank shaft through a latent defect in the welding, which it

was impossible to discover. Her cargo was shipped under bills of lading, which contained among the excepted perils, "all and every the dangers and accidents of the seas and of navigation, of whatsoever nature or kind." Another steamer belonging to the same owners towed the disabled vessel to a place of safety. In an action of salvage by the owners, master and crew of the salving vessel against the owners of cargo on board the G., *held*—1. That the G. was in fact unseaworthy. 2. That the implied warranty of seaworthiness is absolute, and not merely that the owners will do their best to make the vessel seaworthy. 3. That the exception in the bills of lading had no application, the G. being unseaworthy, and the unseaworthiness being the efficient cause of the loss or damage. 4. That the master and crew were entitled to salvage, but not the owners. 5. That the owners must reimburse the cargo owners the amount of salvage awarded. *The Glenfruin*, 10 P. D. 103; 54 L. J. P. D. 49; 5 Asp. 413.

220a. As to seaworthiness in reference to the contract of carriage, see tit. GOONS, CARRIAGE OF—, Pt. II. p. 491, and Pt. III. p. 520; and as to the implied warranty of seaworthiness in reference to the contract of insurance, see tit. MARINE INSURANCE, Pt. XIX. p. 987. See also note 196, p. 1856.

7. Crew not actually engaged.*

221. It has been the rule of the Court of Admiralty from time immemorial to allow persons who remain on board a salving ship to be considered as co-salvors, although the court has repeatedly in its award made a distinction in favour of those persons who have actually incurred the difficulty and peril of the salvage enterprise. *The Sarah Jane*, 2 W. Rob. 115.

222. When two vessels come up together to render assistance to a ship in distress, all the persons composing the

* (71) A derelict vessel was fallen in with by a tow boat below the Balize, and saved by the exertions of the captain and pilot, the crew refusing to assist, and doing nothing but their ordinary duties on board their own craft. *Held*, that they had no claim for salvage. *The Charles*, 1 Newb. Adm. 329. [AMERICAN.]

(71a) When a vessel, in the course of a voyage, falls in with a wreck, all the crew who are ready and willing to engage in saving

it are entitled to a share of the reward, although they may not have gone on board the wreck. *The Centurion*, Ware, 477.

(72) The master has no right to compel the mate to perform a salvage service, and if he does perform one by the order of the master without objection he is to be considered as a volunteer. *Williamson v. The Brig Alphonso*, 1 Curtis, Ct. C. 376. [AMERICAN.] But see No. 167, p. 1799.

crews, although a part only are actually employed, are entitled to be considered as salvors. *The Mountaineer*, *ibid.* 7.

223. Salvage awarded to owners, master, and crew of a vessel, whose mate had gone on board another vessel on the high seas to supply the place of the master of the latter, who had been drowned. *The Janet Mitchell*, Swabey, 111.

224. One of a ship's company who refused to concur with the rest in undertaking a salvage service, held not entitled to any share in the salvage awarded. *The Baltimore*, 2 Dodson, 137.

225. The crew of another vessel on board the salving vessel, and working with the crew thereof in effecting the salvage, are entitled to some, but to a very moderate reward; £50 out of an award of £1,500 allotted to them. *The Salacia*, 2 Hagg. 269, 271.

226. Part of the crew of the salving vessel, who put off in their boat to the vessel salvaged at great risk, the sea being very tempestuous at the time, held entitled to a larger share in a salvage award than the remainder of the crew, who consented to the attempt, and risked for that purpose their common interest in the voyage (a whaling one) on which the salving vessel was bound. *The Jane*, 2 Hagg. 343.

227. In a case of salvage effected by king's ships, claim of the captain, officers, and crew of a king's ship which was not engaged in the service, to share generally with the salvors in respect of draughts of men and stores, and of the schooner and launch from that ship, supplied by them and used in effecting the salvage service, rejected, and their right to share limited to that portion of the crew actually engaged in the salvage service. *The Thetis*, 3 Hagg. 61.

228. The commander of her Majesty's ship *Cygnets*, on the coast of Africa, met with a merchant vessel, the master of which and one of the crew were

sick, and the mate was incompetent to navigate her. He removed the master and sick seamen on board his own ship, and put his gunner and three of his men on board, accompanying her in his own vessel, and occasionally taking her in tow, to Prince Edward's Island, where the *Cygnets* was bound. The vessels then parted company, the gunner and one seaman returning on board the *Cygnets*, the sailing master of which was sent on board and took charge of her to England. The sailing master and the two seamen were entered on the ship's books and received wages for the voyage to England. Held, that the commander was entitled to claim salvage on behalf of himself, his officers, and crew, in respect of such services; £150 awarded, the value of ship and cargo being £1,300. *The Charlotte Wylie*, 5 Notes of Cases, 4.

229. Part of the crew of a light ship, together with part of the crew of a fishing smack, performed a salvage service. The claim for salvage remuneration as regards the crew of the former was confined only to those actually engaged in the service, and not extended to the persons left on board the light ship. *The Emma*, 3 W. Rob. 151.

230. For an application of the rule that those who remain on board a salving vessel are to be considered as co-salvors, see *The Cadiz* and *The Boyne*, 3 Asp. N.S. 332.

230a. See also s. 8, *infra*.

8. Passengers in salving Vessels.*

231. The ship *B. C.* fell in with the derelict ship *A.*, and put on board part of the crew of the *B. C.*, who navigated the *A.* into port. *C. W.*, an able seaman, who had been sent on board the *A.* from hospital by authority, proposed to the master of the *A.*, on the ship being so left short-handed, to assist in steering

* (73) Passengers on board the salvor ship, if they join or assist in the salvage enterprise, may entitle themselves to a just share of the salvage. *The Ship Blaireau*, 2 Cranch, 240; *The Brig Cora*, 2 Washington, C. C. 80; *McGinnis v. The Steamboat Pontiac*, 1 Newb. Adm. 130; 5 McLean, C. C. 359. [AMERICAN.]

(73a) A passenger is not obliged to take on himself an extraordinary responsibility in the conduct of the ship, and if requested by the master and crew to do so, he is entitled to compensation. 1 Park on Ins. 303,

(74) In case of danger and distress, it is the duty, as well as the interest, of the passenger to contribute his aid according to his ability, and he is entitled to no compensation for so doing. He is not, however, bound to remain on board in time of danger, but may leave the vessel if he can; much less is he required to take upon himself any responsibility as to the conduct of the ship. If, therefore, he performs any extraordinary services, he becomes entitled to remuneration for such services. *Dana's Seaman's Manual*, 197. [AMERICAN.]

the A., and he did so. *Held*, that he was entitled to share rateably with the crew left on board the A. in the salvage award. *The Agamemnon*, No. 2239, August, 1864.

232. Passengers *held* entitled to share with the crew in the salvage awarded. *The Hope*, 3 Hagg. 423.

232a. See also No. 225, *supra*; and as to passengers in vessels salvaged, s. 11, p. 1808.

9. Owners of Vessels salvaged.

233. Owners have a sufficient interest to entitle them to oppose a claim of a joint salvor. *The Blendenhall*, 1 Dodson, 417.

234. If a part owner of a salvaging vessel has an interest in a vessel salvaged, his co-owners and the master and crew of the salvaging vessel may sue for salvage, the sum to which they are entitled being computed by deducting from the value of the entire service the share which would have been due to such part owner if he could have joined. *The Caroline*, 5 L. T. N.S. 89; 1 Lushington, 334.

235. The purchaser of the hull of a

wrecked vessel, who purchases upon the express condition "that if he recovers the cargo for the owners he will be allowed salvage remuneration," will be awarded liberal compensation. *The Augusta Jesse*, 4 Jur. N.S. 227. [IRISH.]

236. A steamer having become disabled owing to an injury to her machinery, was towed into port by another steamer belonging to the same owners. The cargo on board the vessel salvaged had been shipped under bills of lading containing an exception against "accidents from machinery." *Held*, that the owners, master, and crew of the salvaging vessel were entitled to salvage remuneration in respect of the cargo on board the vessel salvaged, and that the master and crew were also entitled in respect of the vessel salvaged and her freight. *The Miranda*, L. R. 3 A. & E. 361; 41 L. J. Adm. 82; 1 Asp. N.S. 440.

See also No. 220, p. 1804.

10. Crew of Vessels salvaged.*

237. The general rule is very strong and inflexible, that mariners are not per-

* (75) Seamen, while acting in the line of their strict duty, cannot entitle themselves to salvage, but extraordinary events may occur in which their connection with the ship may be dissolved *de facto*, or by operation of law, or they may exceed their proper duty, in which cases they may be permitted to claim as salvors. *The Robert and Anne*, Stuart's Vice-Adm. Rep. 253 (Lower Canada); and *The Flora Wilson*, therein cited.

(75a) Salvage decreed to seamen out of the proceeds of the materials saved from the wreck by their exertions. *The Sillery*, *ibid.* 182. [LOWER CANADA.]

(76) When an individual performs a service required by law as a duty, he cannot claim salvage for performing it. *The Wave v. Hayer*, 2 Paino, C. C. 131. [AMERICAN.]

(76a) By the American law, if the ship is lost but part of the cargo is saved by the exertions of the crew, they are not entitled to wages, but to a reasonable compensation *pro opere et labore* in the nature of salvage for their services in saving the cargo, to be paid out of the cargo so saved by them. *The Dawn*, Daveis, 121; *Pitman v. Hooper*, 3 Sumner, 60; *The Calharna Maria*, 2 Peters' Ad. Dec. 424; *Bridge v. Niagara Ins. Co.*, 1 Hall, N. Y. 423; *The Massachusetts*, 7 Law Rep. 522; *The Nippon's Crew*, 13 *Ibid.* 266; *The Acorn*, 19 *Ibid.* 499; *Meener v. Suffolk Bank*, 1 *Ibid.* 248; *The Two Catherine's*, 2 Mason, 319; *The Sophia*, Gilpin, 77; *The Cato*, 1

Peters' Ad. Dec. 48; *Marvin on Wreck and Salvage*, 164, n. This compensation, though denominated salvage, has come at length to be regarded strictly as wages, and as constituting merely an exception to the general rule that wages are dependent on freight. 1 Conkling's Adm. Practice (2nd ed.), 345, n. 107. [AMERICAN.]

(77) Seamen of the saved ship, in the ordinary course of things, in the performance of their duties, are not allowed to become salvors, whatever may have been the perils, hardships, or gallantry of their services in saving the ship and cargo; but extraordinary events may occur in which their connection with the ship may be dissolved *de facto*, or by operation of law, or they may exceed their proper duty, in which cases they may be permitted to claim as salvors. *Hobart v. Drogan*, 10 Pet. Rep. 108. [AMERICAN.]

(77a) The seaman is much more closely bound to his ship than a pilot, and his duties to her are more extensive, permanent and severe. *The Elvira*, Gilpin, 66; *Marvin on Wreck and Salvage*, 160. [AMERICAN.]

(78) If a vessel in distress be abandoned at sea by the master, and all the crew excepting one man who is left by accident or design, he is discharged from his contract as a mariner of that vessel, and may entitle himself to salvage. *Mason v. The Ship Blair-eau*, 2 Cranch, 240, 268. [AMERICAN.]

(78a) The master and crew becoming disconnected from the ship, are entitled to wages

mitted to assume the character of salvors, but extraordinary circumstances might induce the court to recognize their claim in that character. *The Neptune*, 1 Hagg.

as salvors or labourers, according to the nature of the service. *Bridge v. Niagara Company*, 1 Hall, 423. [AMERICAN.]

(79) If the master for the safety of life temporarily leave the ship, the crew are not thereby discharged from their contract, and released from all their obligations to the vessel. When they have escaped to the shore, they are still under the command, and bound to obey the lawful orders of the master in all that can be done for the interest and safety of the ship, so long as there is any reasonable hope of doing anything for her safety or that of her cargo. It is only when the master has finally abandoned the *spes recuperandi*, that the crew are wholly released from the obligations of their contract. *The Acorn*, 19 Law Rep. 499; 21 *Ibid.* 87. [AMERICAN.]

(79a) Part of the crew of a vessel enclosed in a field of ice off the mouth of Boston harbour, voluntarily remained on board their vessel under circumstances of great peril to life, and rendered valuable services in rescuing it, after the master and the rest of the crew had, for the safety of their lives, abandoned the vessel and gone on shore, and other crews involved in the same peril had also done the same thing. *Held*, that such conduct was beyond what was required by the just and fair obligations of their contract, and that they were entitled to a salvage reward, but less in amount than would be allowed to strangers, for they still owed service to the ship under their contract, but not precisely that service which was rendered. *Ibid.* See also *Beane v. The Mazurka*, 2 Curtis, C. C. 72; *The Schooner Speedwell*, 21 Law Reporter, 99. [AMERICAN.]

(80) When a steamboat is in imminent peril, and a person, in no way connected with the boat, takes the charge of her as master, at the request of her regular master, who is disabled by sickness, and with the concurrence of one of her owners, with an injunction to save her if possible, and without any stipulation as to compensation or the time of service, the fact that he acted in the capacity of master does not exclude him from a claim for salvage; and the fact that it is not shown that, but for his assistance, the boat would not have been saved, makes no difference, he having done all that could be done for her safety, and having incurred great personal peril in taking the command. *McGinnis v. Steamboat Pontiac*, 5 MoLean, 359; 1 Newb. Adm. 130. [AMERICAN.]

(81) In a collision at sea the master and crew of one vessel at the first shock, fearing that their vessel would sink, went on board the other for safety, and while the vessels were interlocked, a part of the crew returned on board their own vessel, and immediately the vessels parted, leaving the master and a

part of the crew on board the other vessel. The seamen who had been accidentally left on board their own vessel afterwards succeeded in bringing her into port. *Held*, that they were not entitled to salvage. *The Star*, 14 Law Reporter, 487. (Vice-Admiralty Court, Halifax, N. S.)

(82) A steamer was so severely injured by a collision at sea, as to be deemed in immediate danger of sinking, and the master, passengers, and crew abandoned her for the safety of their lives, the passengers going on board the other vessel, and the master and crew remaining near the wreck in their boats, employed in saving articles found floating. After a brief interval, the steamer not sinking, though full of water, the master and crew went on board again for the purpose of saving, and did save baggage, money, and other property to a large amount, one carpet bag containing in bank-bills 46,000 dollars. *Held*, that their services did not exceed the limits of their duty as the crew of the vessel, and that they were not entitled to salvage. *Mesner v. Suffolk Bank*, 1 Law Reporter, 249. See also *The Schooner John Perkins*, 21 Law Reporter, 87. [AMERICAN.]

(83) No claim for salvage can be maintained by the crew of a vessel upon the ground that by their services she is brought through a storm into port, sound in hull. *Miller v. Kelly*, 1 Abb. Adm. 564. [AMERICAN.]

(84) A whaler was wrecked on a reef, near an uninhabited island, in the Pacific Ocean, and the master and crew out of the materials of the wreck built a schooner of the burden of thirty-seven tons, in which the master and part of the crew sailed to Oahu in twenty-three days, where the master purchased a brig and returned and saved a part of the cargo. *Held*, that the master was entitled to extra compensation. *The Holder Borden*, 10 Law Reporter, 193; Sprague, 144. [AMERICAN.]

(85) The crew, with great labour, had rescued a part of the oil from the water, and placed it upon the island, and it afterwards came to a place of safety. *Held*, that the crew were not salvors. *Ibid.* [AMERICAN.]

(86) A seaman may be a salvor of his own vessel after his contract for service shall have been dissolved. He may be absolved from his allegiance to the ship by being deserted by the master and the rest of the ship's company. *The Triumph*, Sprague, 428; *The Antelope*, 1 Low. 130; *The Olive Branch*, *ibid.* 286. [AMERICAN.]

(87) The mate and four seamen at the request of the master crossed the Gulf Stream from Key Sal on the Bahama coast to Key West, a distance of 180 miles, in an open boat in bad weather, and in much peril of their lives, in order to procure assistance to

237; *The Florence*, 16 Jur. 572; 19 L. T. 304.

238. On the wreck of the ship the seamen are bound by their contract to do their utmost to save ship and cargo, but the contract with the seamen may be dissolved by the abandonment of the vessel, or by the act of the master dismissing them from their employment, and they may then render services entitling them to salvage. *The Warrior*, 1 Lushington, 476; 6 L. T. N.S. 133; *The Vrede*, 30 L. J. Adm. 209.

239. The abandonment of a ship, under such circumstances, relied on as effecting a dissolution of the contract, must be clearly proved. *Ibid.*

240. A ship by accident in calm weather went on a rocky beach in the Canary Islands, beat heavily, and in half an hour filled with water; the master and crew immediately quitted the ship and went on shore. The next day the master discharged all the officers and crew, but it was not proved that they were guilty of fraud in accepting their discharge. On the same day some of the crew, at the suggestion of the mate, returned to the ship, and, working for several days, succeeded in saving part of the ship's stores and a considerable amount of cargo; the ship then broke up. *Held*, that there was no abandonment terminating the seamen's contract, but that the contract was terminated by the discharge given by the master, and that, for their subsequent services, the seamen were entitled to salvage reward. *The Warrior*, *Ibid.*

241. The owners of a vessel are bound by the special agreement of the captain to give extra wages to the crew who had signed ship's articles, for navigating a vessel home in a leaky or unseaworthy condition, if it appears that they were released from those articles, but otherwise he has no authority to make such

special agreement, and it is void for want of consideration. *The Christiana*, 5 Jur. N.S. 63. [IRISH.]

242. A ship was, by order of her master, abandoned at sea, and on the next day her crew were put on board a steamer, and fell in with the abandoned ship. Part of the crew volunteered to return to the ship, but without the master, and were accordingly put on board by the steamer, and with the assistance of a smack and other boats the ship was subsequently brought to Corunna. *Held*, that the crew were entitled to be rewarded as salvors. *The Florence*, 16 Jur. 572; 19 L. T. 304.

243. Under ordinary circumstances the crew of a salvaged vessel cannot claim as salvors against their own ship, but they may be so placed by the acts of their master that their contract with the ship is at an end. They would then, if they performed salvage services, be entitled to salvage reward. *The Lejonet*, L. R. 3 Adm. & Ecc. 556; 41 L. J. Adm. N.S. 95; 1 Asp. N.S. 438.

244. The bark L. was so damaged by collision that her master, and all the crew but the mate, got on board the ship that did the damage. The mate remained behind alone, and saved the bark by his services and those of the steamship C. and her crew which he engaged. *Held*, that the mate was entitled to salvage. *Ibid.*

See also Nos. 207, 211, 212, 214, 215, 217, 228, 229.

11. Passengers in Vessels salvaged.*

245. When there is a common danger, it is incumbent on all to assist. To entitle passengers to reward for civil salvage, there must be a voluntary remaining on board, accompanied with extraordinary exertions on behalf of the ship. *The Vrede*, 1 Lushington, 322; 30 L. J.

take off the passengers and crew from the wreck, and to save the cargo. They succeeded in procuring assistance, by means of which the passengers and cargo were saved. *Held*, that these services exceeded the duty they owed* to the ship, and entitled them to salvage. *The Mary Hale*, cited in *Marvin on Wreck and Salvage*, 161. [AMERICAN.]

(†8) A wreck was abandoned by her crew, the crew having been received on board another vessel, which afterwards again fell in with the wreck, and the seamen saved from the wreck assisted in saving property therefrom; they were allowed a half-share of

the salvage. *Taylor v. Ship Cato*, 1 Pet. Ad. 48. [AMERICAN.]

* (89) A passenger can render salvage services to the vessel on board which he is a passenger, though his relation of passenger still continues. But to render him a salvor, such services must be of an extraordinary character, and beyond the line of his duty. *Towle v. The Great Eastern*, 11 L. T. N.S. 516; 2 Asp. 148. [AMERICAN.]

(90) Pumping and aiding in working a ship by usual and well-known means would not be extraordinary services. *Ibid.*

Adm. 209; and see *The Salacia*, 2 Hagg. 262; *Boyce v. Bayliffe*, 1 Camp. 58.

246. A vessel having received injury, but being in no immediate danger, and the passengers remained on board, and assisted at pumping her until her arrival in port. *Held*, not a salvage service. *The Vrede*, *ibid*.

247. Claim for salvage by a passenger (a lieutenant in the royal navy) rejected on the ground that where there is a common danger it is the duty of every one on board to render all the assistance he can. *The Branston*, 2 Hagg. 3, n.

248. A passenger who took the command of a ship abandoned by the crew and brought her safely into port, and to whom the owners acknowledged she was saved by his exertions, awarded £400 as salvage. *Newman v. Walters* (1804), 3 Bos. & Pull. 612.

248a. See also as to passengers in salving vessels, s. 8, p. 1805.

12. *Officers and Crews of H.M.'s Ships.*

(a) *Generally.**

249. As to the term "salvor" in the case of salvage services by officers or crew, or part of crew of any of her Majesty's ships, meaning the person in command of such ship, see the M. S. Act, 1854 (c. 104), s. 2.

250. Officers and crews of king's ships are entitled to salvage remuneration for personal risk and labour encountered in a salvage service, on the same footing as other salvors. *The Louisa*, 1 Dodson, 317; *The Wilsons*, 1 W. Rob. 172; *The Ewell Grove*, 3 Hagg. 209.

251. Persons employed in the public service have a peculiar duty to render aid to the trade of the country. They should manifest a peculiar readiness to do so. *The Clifton*, 3 Hagg. 121; *The Mary Ann*, 1 Hagg. 158.

252. The public force of the country is not to be employed gratuitously in the

salvage of property of private individuals, to save them from expense. Government steamers are kept for the public service, and the officers in command cannot employ them in the service of individuals, and thus risk the public property, without authority or an indemnity for all expense and damage; nor are they then to hazard their lives or undergo labour without reward, though they are entitled to a lower rate of remuneration than private salvors. *The Lustre*, 3 Hagg. 155.

253. On a claim for salvage preferred by the commander, officers and crew (130 men) of a government steamer, the use of which for the purpose had been applied for by the owners of the vessel salvaged, and granted by the admiral on the stipulation that the owners and underwriters should be answerable for the stores expended or damaged; *held*, that such stipulation was no bar to their claim for reward for personal service, but only a reason for a less remuneration. *Ibid*.

254. Where salvage assistance is rendered by vessels belonging to her Majesty, and there is personal risk and labour, her Majesty's officers and seamen are entitled to be rewarded in a precisely similar manner, on the same principles, and in the same degree, as where any other persons render that service; but with regard to the use of the vessel (prior to the M. S. Act, 1854 (c. 104)), a different consideration would apply, and a less remuneration would always be made on account of the vessel being the property of the country, and the property of owners under these circumstances never being risked. *The Iodine*, 3 Notes of Cases, 141; *The Earl of Eglinton*, Swabey, 7.

255. When the salving vessel is a government vessel, her commander cannot advance any claim for the service of the vessel herself, though a steamer, nor

* (91) The officers and crew of a vessel of war of the United States, agreeably to the general instructions of the secretary of the navy to all the naval vessels of the government and under the direction of the commander of the vessel, rendered services in towing into port an American merchant vessel, found abandoned at sea 140 miles from the port of New York, but no unusual peril was encountered, and only a delay of two days occasioned. *Held*, that the crew were not entitled to salvage. *The Josephine*,

2 Blatch. Ct. Ct. 322. [AMERICAN.]

(92) *Quere*, whether the officers and crews of the naval vessels of the United States are in any case entitled to salvage for services rendered to American merchant vessels in distress, notwithstanding the instructions on the subject given by the government. *Ibid*.

(92a) The officers and crew of a foreign vessel of war are entitled to salvage in causes civil and maritime, as other vessels are. *Robson v. The Huntress*, 2 Wallace, jun. 59. [AMERICAN.]

any demand at all like that of the owners of steam or other vessels who have risked their property in order to render assistance. The commander would only be responsible for any damage which improperly occurred to his vessel. *The Rosalie*, 1 Spinks' Eccl. and Adm. Rep. 189; 18 Jur. 337; *The Mary Pleasants*, Swabey, 225.

256. In cases of recapture by a privateer one sixth, and by a king's ship one eighth, is awarded. By parity of reason and fair analogy, a similar principle may apply in cases of civil salvage effected by vessels in the public service. *The Ewell Grove*, 3 Hagg. 224.

257. King's ships may acquire a title to civil salvage, by assistance rendered to vessels in distress, even where that distress does not arise from the dangers of the sea, and where the assistance is not of a maritime kind; but such services must be very splendid and extraordinary to entitle them to a salvage reward. *The Francis and Eliza*, 2 Dodson, 117.

258. A king's ship held not entitled to salvage for rescuing a convict vessel from the possession of the convicts and of the mutinous crew and soldiers on board her, no great danger or personal exertion having been incurred; but costs of asserted salvors allowed. *Ibid.*

259. A claim for salvage preferred by a king's ship, after a delay of eight months, not *in rem*, but by monitions against owners and consignees, dismissed, the salvors being held (the salvage being very slight) to be barred by lapse of time. *The Rapid*, 3 Hagg. 419; but see *The John*, 8 Jur. 276.

260. To entitle king's ships to a salvage remuneration for services to a private ship, the services must be important, and even then the remuneration would be less than to a merchant ship, on the same principle as in war salvage. *The Rapid*, *Ibid.*

261. In a case of salvage effected by king's ships, a claim of the Admiralty (prior to the M. S. Act, 1854 (c. 104), for wages and victualling of the men, and for wear and tear of the ships, amounting together to £13,800, allowed, as not being opposed by the owners, but only by some of the salvors, the court holding that the salvors had no reason to complain of being so supplied; but it declined to give any opinion on the claim beyond drawing the distinction between the assistance afforded in ordinary cases by public vessels, for which nothing had been

charged, and the appropriation of them, with additional supplies of men and stores, for 18 months together, to an exclusive service, as in this case. *The Thetis*, 3 Hagg. 62. Affirmed on appeal, 2 Knapp, 409.

262. In a case of salvage effected by king's ships, the admiral of the station, who had contributed effective salvage assistance beyond the performance of his mere official duties, held to be entitled as a salvor. *Ibid.*

263. In a case of salvage effected by king's ships, claim of the master, officers, and crew of a king's ship which was not engaged in the service, to share generally with the salvors in respect of draughts of men and stores, and of the schooner and launch from that ship, supplied by them and used in effecting the salvage service, rejected, and their right to share limited to that portion of the crew actually engaged in the salvage service. *Ibid.*

264. *Quare*, is not every acquisition distributable to the officers and crews of his Majesty's ships and to marines in the first instance acquired for the crown? *Ibid.*

265. Could prize agents, the only persons authorized to make distribution in such cases, compromise any such rights without the consent of the crown? *Ibid.*

266. Could not the crown claim, in cases of salvage effected by servants of the crown in its pay and on board its ships, the amount of salvage and its appropriation for public purposes? *Ibid.*

267. Salvage services were rendered to a merchant vessel by a steam frigate of the East India Company, her officers, and crew. The court reviewed the considerations applicable to the claims of such parties, and pronounced for a tender of 5,000 rupees. *The Lord Dufferin*, 7 Notes of Cases, Supp. xxxiii.

268. A British vessel was taken by the French, who took out all the crew but the master and a boy, who, however, rose on the prize master and crew, and having regained possession of the vessel, made for England. A violent storm coming on, the master applied for and obtained assistance from an English frigate, by whose aid he continued to manage the vessel until it was thought dangerous to remain longer on board, when they all removed to the frigate. The storm abating shortly afterwards, the master and his assistants returned on board, and ultimately brought the vessel into port. Salvage of one-sixth (£1,000) awarded to the

master and boy, viz. £850 to the master, and £150 to the boy; £500 awarded to the whole crew of the frigate, to be distributed as in a case of prize, with costs of all salvors. *The Beaver*, 3 C. Rob. 292.

269. A ship belonging to the Bombay Government, with a hired commander and crew, is in the same position as a Queen's ship with regard to the 484th section of the M. S. Act, 1854 (c. 104), which does not allow any claim to be made on behalf of Queen's ship or stores. *The Dalhousie*, 1 P. D. 271; 3 Asp. N.S. 240, n. (a); *Cargo ex Woosung*, 1 P. D. (C. A.) 260; 44 L. J. Adm. 45; 3 Asp. N.S. 50; *ibid.* C. A. 239.

270. In a suit for salvage remuneration for services rendered by a vessel belonging to the harbour of Ramsgate, and vested in the Board of Trade under the Harbours and Passing Tolls Act, 1861 (c. 47), s. 32, held, that the vessel was not one of her Majesty's ships within the meaning of the M. S. Act, 1854 (c. 104), ss. 484, 485. *The Cybele*, 2 P. D. 224; 3 P. D. (C. A.) 8; 47 L. J. P. D. & A. 13; *ibid.* C. A. 86; 3 Asp. N.S. 478; *ibid.* C. A. 532.

271. The naval master of a Queen's ship sent a transport steamer that had been chartered to the government to the assistance of a vessel in distress. In addition to her own crew, the transport took with her a naval officer and some extra seamen. The master of the Queen's ship could not have ordered those on board the transport to render their services except with the consent of her master; nor, on the other hand, could the master of the transport have rendered them without the permission of the naval master. Held, that the naval master was entitled to share as a salvor. *The Nile*, L. R. 4 A. & E. 449; 44 L. J. Adm. 38; 3 Asp. N.S. 11.

272. Action for salvage by the officers and crew of H.M.S. D., of the Bombay marine, against the steamer A., wrecked in the Red Sea. The value of the cargo salvaged was £22,400. The service was of great merit, owing to the great heat and the decomposed state of the cargo of rice, seed, and hides, and the liability to sickness to which the salvors were exposed. The court, excluding the salvaging ship as government property, awarded £4,500 as salvage. *The Azalea*, 3 Asp. N.S. 240, n.

See also No. 228, p. 1805.

273. As to the mode of procedure by officers and men of the royal navy claiming as salvors, see tit. PRACTICE, Pt. III. c. 15, p. 1691.

- 273a. As to the apportionment of salvage among officers and crews of Queen's ships, *Ibid.* c. 17, p. 1694.

(b) *No Claim in respect of Ship Stores, &c.*

274. In cases where salvage services are rendered by any ship belonging to her Majesty, or by the commander or crew thereof, no claim shall be made or allowed for any loss, damage, or risk thereby caused to such ship, or to the stores, tackle, or furniture thereof, or for the use of any stores, or other articles belonging to her Majesty supplied in order to effect such services, or for any other expense or loss sustained by her Majesty by reason of such services. *Ibid.* s. 484. See also *The Rosalie*, 1 Spinks' Eccl. and Adm. Rep. 189; 18 Jur. 337.

(c) *Consent of Lords of the Admiralty to Proceedings.*

275. No claim whatever on account of any salvage services rendered to any ship or cargo or to any appurtenances of any ship by the commander or crew or part of the crew of any of her Majesty's ships shall be finally adjudicated upon unless the consent of the Admiralty has first been obtained, such consent to be signified by writing under the hand of the secretary to the Admiralty; and if any person who has originated proceedings in respect of any such claim fails to prove such consent to the satisfaction of the court, his suit shall stand dismissed, and he shall pay all the costs of such proceedings. See the M. S. Act, 1854 (c. 104), s. 485.*

276. But any document purporting to give such consent and to be signed by the secretary to the Admiralty shall be *prima facie* evidence of such consent having been given. *Ibid.*

276a. Officers and crews of her Majesty's ships, on obtaining the consent of the Admiralty, as required by sect. 485 of the M. S. Act, 1854 (c. 104), may recover salvage from the owners of ship and cargo for services rendered thereto, and for salvage services rendered to passengers belonging to the ship. *The Alma*, 1 Lushington, 378.

See also No. 270, *supra*.

* (93) This provision applies to officers and men of the coastguard. See Special Instructions for the Coastguard Service, anno 1875, Cap. IV. No. 522, p. 127.

(d) *Abroad.*

277. Whenever services for which salvage is claimed are rendered to any ship or cargo, or part thereof, at any place out of the United Kingdom and the four seas adjoining, by the commander, crew or part of the crew of any of her Majesty's ships, the property salvaged shall, if the salvor is justified by the circumstances in detaining it at all, be taken to some port where there is a consular officer or Vice-Admiralty Court; and within twenty-four hours after arriving there the salvor and the master or person in charge of the property shall each deliver to the consular officer or Vice-Admiralty judge there a statement on oath, specifying, so far as practicable—

(1.) The place, condition, and circumstances in which the ship, cargo, or property was at the time when the services were rendered :

(2.) The nature and duration of the services :

And the salvor shall add to his statement,

(3.) The proportion of the value of the ship, cargo, freight, and property which he claims for salvage, or the values at which he estimates them respectively, and the several amounts he claims for salvage in respect of the same :

(4.) Any other circumstances he thinks relevant :

And the master or person in charge of the property shall add to his statement,

(3.) A copy of the certificate of registry of the ship, and of the indorsements thereon, stating any change which to his knowledge or belief has occurred therein; and stating also, to the best of his knowledge and belief, the then state of the title to the ship, and of the incumbrances and certificates of mortgage or sale, if any, affecting the same, and the names and places of business of the owners and incumbrancers :

(4.) The name and place of business or residence of the freighter (if any) of the ship, and the freight to be paid for the voyage she is then on :

(5.) A general account of the quantity and nature of the cargo at the time the salvage services were rendered :

(6.) The name and place of business or residence of the owner of such cargo and of the consignee thereof :

(7.) The values at which the master estimates the ship, cargo, freight, and property respectively, or, if he thinks fit,

in lieu of such estimated value of the cargo, a copy of the ship's manifest :

(8.) The amounts which the master thinks should be paid as salvage for the services rendered :

(9.) An accurate list of property saved, in cases where the ship is not saved :

(10.) An account of the proceeds of the sale of the ship, cargo, or property, in cases where the same or any of them are sold at such port :

(11.) The number, capacities, and condition of the crew of the ship at the time the services were rendered :

(12.) Any other circumstances he thinks relevant to the matters in question :

(13.) A statement of his willingness to execute a bond in the form in the table marked W. in the schedule hereto, in such amount as the consular officer or Vice-Admiralty judge may fix. See the Merchant Shipping Act, 1854 (c. 104), s. 486.

278. The consular officer or judge, as the case may be, shall within four days after receiving the statements fix the amount to be inserted in the bond at such sum as he thinks sufficient to answer the demand for the salvage services rendered; but such sum shall not exceed one half of the value which in his estimation the ship, freight, and cargo, or any parts thereof in respect of which salvage is claimed, are worth; and the consular officer or judge may, if either of the statements is not delivered to him within the time hereby required, proceed *ex parte*, but he shall in no case under this act require the cargo to be unladen; and the consular officer may in any proceeding under this act relating to salvage take affidavits and receive affirmations. *Ibid.* s. 487.

279. The consular officer or judge shall send notice of the sum he has so fixed to the salvor and the master; and upon such master executing a bond in such form with the sum inserted therein, in the presence of the officer or judge (who shall attest the same), and delivering the same to the salvor, the right of the salvor to detain or retain possession of the ship, cargo or property, or any of them, in respect of the salvage claim, shall cease. *Ibid.* s. 488.

280. If the ship, cargo or property in respect of which the claim for salvage is made is not owned by persons domiciled in her Majesty's dominions, the right of the salvor to detain or retain possession thereof shall not cease unless the master

procures, in addition to the bond, such security for the due performance of the conditions thereof as the officer or judge considers sufficient for the purpose, and places the same in the possession or custody of the officer or judge, or, if the salvor so desires, in the possession or custody of the officer or judge jointly with any other person whom the salvor appoints for the purpose. *Ibid.* s. 489.

281. The consular officer or judge shall at the earliest opportunity transmit the statements and documents so sent to him, and a notice of the sum he has so fixed, to the High Court of Admiralty of England; or, if the salvor and the master or other person in charge agree that the bond shall be adjudicated upon by any Vice-Admiralty Court, to such court. *Ibid.* s. 490.

282. The bond shall bind the respective owners of the ship, freight and cargo, and their respective heirs, executors and administrators, for the salvage adjudged to be payable in respect of the ship, freight and cargo respectively. *Ibid.* s. 491.

283. The bond shall be adjudicated on and enforced by the High Court of Admiralty in England, or if the salvor and master at the time of the execution of the bond agree upon any Vice-Admiralty Court, then by such Vice-Admiralty Court; and any such Vice-Admiralty Court may in every proceeding under this act exercise all the powers of the High Court of Admiralty; and where any security for the due performance of the conditions of the bond has been placed in the custody of the consular officer or Vice-Admiralty judge, singly or jointly with any other person, the persons having the custody of such security shall respectively deal with the same as the court that adjudicates on the bond directs. *Ibid.* s. 492.

* (94) As to the duties of officers and men of the coastguard in reference to ships in distress generally, and in co-operation with the receiver of wreck, see Board of Trade Instructions as to Wrecks, Casualties and Salvage, anno 1886, pp. 50—60, and Special Instructions for the Coastguard Service, issued by the Lords Commissioners of the Admiralty, anno 1875, No. 523, p. 128.

(94a) As to their claims for salvage, see Board of Trade Instructions, *Ibid.* pp. 36—38, and Instructions to Coastguard, *Ibid.* Nos. 521—525, p. 128. But they must obtain the consent of the Admiralty to their prosecuting them. *Ibid.* No. 522, p. 127.

(95) As to the scale of their remuneration and payment of their expenses, see Board

284. The High Court of Admiralty shall have power to enforce any bond given in pursuance of this act in any Vice-Admiralty Court in any part of her Majesty's dominions; and all courts in Scotland, Ireland and the islands of Jersey, Guernsey, Alderney, Sark and Man, exercising Admiralty jurisdiction shall, upon application, aid and assist the High Court of Admiralty in enforcing such bonds. *Ibid.* s. 493.

285. Any such salvor of any ship, cargo or property who elects not to proceed under this act, shall have no power to detain the ship, cargo or property, but may proceed otherwise for the enforcement of his salvage claim as if this act had not been passed; and nothing in this act shall abridge or affect the rights of salvors, except in the cases by it provided for. *Ibid.* s. 494.

286. All bonds, statements, agreements and other documents made or executed in the United Kingdom in pursuance of the eighth part of this act, are exempt from stamp duty. *Ibid.* s. 495.

287. "Her Majesty's dominions" shall mean her Majesty's dominions strictly so called, and all territories under the government of the East India Company, and all other territories (if any) governed by any charter or licence from the Crown or Parliament of the United Kingdom. *Ibid.* s. 2.

13. Officers and Men of the Coastguard.*

288. Where services are rendered by officers or men of the coastguard in watching or protecting shipwrecked property, then, unless it can be shown that such services have been declined by the owner or his agent, or that salvage has been awarded for them, the owner shall pay in respect thereof remuneration according to a scale fixed by the Board of Trade;

of Trade Instructions, *Ibid.* pp. 55—60; and see c. 16, p. 1893.

(95a) When they are employed for the protection of the revenue only they have no claim on the owners of the property. See Instructions to Coastguard, *Ibid.* No. 527, p. 128. Nor have they any claim in respect of the salvage of government property. *Ibid.* No. 523, p. 128.

(96) They can claim no expenses when the wrecked property protected is within three miles of the station. *Ibid.* No. 525, p. 128.

(96a) As to the communication by telegraph to the secretary of Lloyds by the coastguard of information of wrecks and casualties occurring to ships on the coasts of the United Kingdom, *Ibid.* No. 528, p. 129.

but such scale shall not exceed any scale by which payment to officers and men of the coastguard for extra duties in the ordinary service of the commissioners of customs is for the time being regulated; and such remuneration shall be recoverable by the same means, paid to the same persons, and accounted for and applied in the same manner as fees received by receivers appointed under the M. S. Act, 1854. See the M. S. Act Amendment Act, 1855 (c. 91), s. 20.

289. Coastguardmen are entitled to salvage reward, for although it is a part of their duty to save life and property, it is a duty for which they should be paid. *The Silver Bullion*, 2 Spinks' Eccl. and Adm. Rep. 70; *The Ocean*, 1838, 2 Monthly Law Mag. Notes of Cases, 441.

290. An officer and four men of coastguard effecting salvage of life and property by means of Manby's apparatus, used from the shore, held entitled to salvage, both as to life and property, under 8 & 9 Vict. c. 99, s. 19 (since repealed). *The Silver Bullion*, 2 Spinks' Eccl. and Adm. Rep. 74.

291. A vessel got on the Arklow Bank, and was lost. Part of her cargo was saved by forty-seven smacks, acting under the directions of the officer of the coastguard. The court considered that it was rather a meritorious service than a pure salvage service, that the crews were employed under authority, and were not really voluntary salvors. *The Amazon*, 2 L. T. N.S. 140.

292. The circumstances of the crew of a revenue cutter going on board a derelict for the protection of the revenue will not make them salvors. *The Queen Mab*, 3 Hagg. 243.

293. As to the apportionment of salvage among officers and men of the coastguard, see c. 17, s. 4, p. 1893.

14. Officers and Men of Foreign Government Ships.*

15. Agents.†

294. A person who under an agreement with the master of a stranded vessel had taken charge of the ship, and had succeeded in saving and warehousing a portion of the cargo, the vessel having gone to pieces, held entitled to a salvage

remuneration, although his services were to be considered in the light of a meritorious and successful agency, rather than of salvage services. *The Favourite*, 2 W. Rob. 255.

295. An agent of Lloyds at the port of Swansea, having at the request of the master of a vessel in distress hired some men for the purpose of rendering her assistance, afterwards brought a claim of salvage against her owners. The court held that the claim could not be allowed, as the agent of Lloyds was only discharging a duty properly incumbent upon him. *The Lively*, 3 W. Rob. 67; 6 Notes of Cases, 206.

296. An agent of Lloyds at an outport who undertook, in the character of agent, to relieve a vessel from her difficulties, and employed the necessary persons to do the work, may claim as a salvor in the Court of Admiralty, although he did not actually perform in person anything strictly in the nature of a salvage service. *The Purissima Concepcion*, 3 W. Rob. 183, 185; 7 Notes of Cases, 150; 13 Jur. 545, 967.

297. Such agent held to be entitled only to his disbursements and an allowance of five per cent. on the sum advanced, as a reward for his trouble. *Ibid.*

298. A ship was stranded in the harbour of Z., and to get her off it became necessary to unload a portion of the cargo, which was brought to Z. A., the receiver of droits at Z., and who also was agent for Lloyds, superintended the salvage operations, but in the latter capacity only. Upon the arrival of the goods at Z., A. seized and detained them for several weeks until £45 19s. had been paid to him for fees claimed to be due under the 9 & 10 Vict. c. 99, s. 19. Held, that A. was not entitled to the fees in question. *Cotesworth v. Walsh*, 5 Ir. Jur. 253.

299. A person having been appointed, under a power of attorney of the master, "true and lawful attorney irrevocable, in the name of the master and on his behalf to use all possible means for the recovery of ship and cargo, and to perform all lawful acts necessary concerning the premises," and such appointment having been afterwards adopted by the owners of the principal part of the cargo, a claim

* (97) The officers and crew of foreign vessels of war are entitled to salvage like other salvors. As to the principles of awards in such cases, see *Robson v. The*

Huntress, 2 Wallace, junr. 59. [AMERICAN.]
† (97a) As to who may act as agents of foreign ships wrecked on British coasts, see notes 56, 57, p. 1797.

for salvage made by such person in respect of services rendered to the ship by him, acting under such power, held, upon the evidence, to be limited and controlled, as made under such character of agent, and the jurisdiction of the court to entertain a claim of salvage made in such a capacity pronounced for. £225, in addition to £815 15s. 6d. disbursements, awarded out of £4,500, the value of the property saved, with costs. *The Happy Return*, 2 Hagg. 198.

300. Reference decreed to the registrar and merchants of the accounts of a party appointed agent by the master, and claiming also as salvor in that capacity. *Ibid.* 2 Hagg. 207; *The Purissima Concepcion*, 3 W. Rob. 186; 7 Notes of Cases, 150; 13 Jur. 545, 967.

301. The claim of a vessel to salvage is not affected by the fact of her being in the employ of Lloyds' agent. *The Traveller*, 3 Hagg. 372.

302. The agent of a vessel will be awarded extra remuneration by the court *quod* agent, but not as a salvor, if it appears that, owing to the dangerous position of the vessel, after he became agent, he used more than ordinary exertion to discharge her cargo, &c. *The Vesta*, 4 Ir. Jur. N.S. 210.

303. The value of the ship and cargo was £1,600, the court awarded the sum of £50, or about three per cent. on the

entire value, to the agent of the vessel, for extra services rendered by him. *Ibid.*

304. The court will refer a claim, if objected to, of agents' expenses, as a deduction from a salvage award, to the consideration of the registrar and merchants. *The Louisa*, 2 W. Rob. 24.

305. The court will allow a claim as agent and a claim as salvor to be united under particular circumstances. In a cause of salvage, where the plaintiffs were engaged by the master to land cargo from a stranded vessel, £80 tendered over and above disbursements, which amounted to about £120, held sufficient remuneration to the plaintiffs, whether their services were regarded as salvage services or as agency services. *The Cargo ex Honor*, L. R. 1 A. & E. 87; 2 Asp. 445; 35 L. J. Adm. 113.

306. Where it is difficult to draw a distinction between salvage and agency services, the court will, under particular circumstances, allow the claims for each to be combined. *The Honor*, 2 Asp. 445.

307. As to misconduct of agents as affecting their principals the salvors, see c. 9, s. 7, p. 1864.

16. Pilots.

(a) Generally.*

308. In case any ship or vessel shall be met with in distress, at sea or in the

* (98) As to the rights of pilots to extra pilotage or salvage for extra services, see *The Adventurer*, Stuart's Vice-Adm. Rep. 103 (Lower Canada); 1 Bell's Com. 594; 3 Kent's Com. 198; Valin Commentaire sur l'Ord. de la Marine, tom. 2, p. 203; Boucher Inst. au Droit Maritime, 2682; Vincen's Exposition Raisonnée de la Législation Commerciale, vol. iii. p. 107.

(98a) The American doctrine is substantially the same. *Hobart v. Drogan*, 10 Peters, 108, 117; *The Bark Richmond*, 4 Law Reporter, 20; *The Bark Dido*, 2 Paine, C. C. 243, 466; *Love v. Hinckley*, 1 Abbott, 436; *Hand v. The Elvira*, Gilpin, 60; *The Ship Warren*, 12 N. Y. L. Observer, 257; Marvin on Wreck and Salvage, 154; 1 Conkling's Adm. Practice (2nd ed.), 346; 2 Parsons on Maritime Law, 603. [AMERICAN.]

(99) In America, however, the States are authorized to make their own pilotage laws, and most of these laws make it part of the duty of a pilot to assist vessels in distress, and either give the rate of extra compensation to be awarded or point out the tribunal which shall determine the amount due. 2 Parsons on Maritime Law, 604. [AMERICAN.]

(100) What pilots do in the ordinary course

of their duty can never be made the foundation for a claim for salvage, and the difficulty and exertion being more or less in such a case can make no difference. Marvin on Wreck and Salvage, 153. *The Elvira*, Gilpin, 65. [AMERICAN.]

(100a) They take their chance for such hazards; they know that they must be exposed to them; and it must be presumed that the official compensation is calculated on the probability of such exposures. *Ibid.*

(101) There are three kinds of cases in relation to salvage by pilots: one purely salvage, where property has been saved from imminent peril, one purely pilotage, and one between the two, where extra services beyond pilotage have been rendered, and the pilot has become entitled to extra compensation. *The Richmond*, 4 Law Reporter, 20. [AMERICAN.]

(102) The barque R. off Holmes' Hole, without a rudder, was towed and piloted into that harbour by licensed pilots. She remained there fourteen days, and thence went to Boston. Value 50,000 dollars. The owners paid 40 dollars for pilotage into Holmes' Hole, 28 dollars for keeper's fees fourteen days, and 60 dollars for pilotage to Boston,

river Humber, by any of the Humber pilots, and shall stand in need of any extraordinary assistance of such pilot, his crew or boat, then the compensation to be made for such assistance shall be settled and ascertained, according to the circumstances of the case, by the commissioners appointed to carry into effect the provisions of this act as to pilotage in the port of Hull, and other matters; and if any agreement for such extraordinary assistance shall at any time be made by any such pilot, such agreement shall be void; or in case any vessel shall, at the particular request of the master or commander, or other person having the command thereof, be piloted or assisted by any of the Humber pilots into the Humber, from any further distance than such as is provided for by the schedule hereunto annexed, every such pilot shall be paid for such extra pilotage such sum as the commissioners shall direct. See 2 & 3 Will. 4, c. 105, s. 33 (local and personal, but by sect. 94 to be deemed a public act).

309. It shall be lawful for the commissioners acting in the execution of this act, or any five or more of them, and

they are hereby required, upon application in writing made to them for that purpose, to adjust any difference whenever any shall arise between the owner or master, or the agent for the owner or master, of any vessel whereof the anchors, cables, or other stores or materials shall be found in the Humber or the entrance thereof, and the person or persons finding, taking up, and bringing the same, touching the salvage thereof; and the award or determination in writing of the commissioners or any five or more of them shall be conclusive. *Ibid.* s. 54.

310. For provisions as to the payment of such awards, *Ibid.* s. 56.

311. For powers to make bye-laws thereon, *Ibid.* s. 65.

312. In case any vessel shall be met with in distress by any pilot (licensed under this act), and shall stand in need of any extraordinary assistance from a pilot boat or the crew thereof, the compensation to be made by the master of such vessel shall be settled by the board according to the circumstances of the case, and every agreement (if any) for such extraordinary assistance made by the

and tendered 150 dollars extra. *Held*, that the services were to be compensated for as extra pilotage, and that the tender was sufficient. *The Richmond*, 4 Law Reporter, 20. [AMERICAN.]

(103) A pilot while acting in the strict line of his duty, however he may entitle himself to extraordinary pilotage compensation for extraordinary services, as contradistinguished from ordinary pilotage for ordinary services, cannot be entitled to claim salvage. In this respect he is not distinguished from any other officer, public or private, acting within the appropriate sphere of his duty. *Hobart v. Drogan*, 10 Peters, 108. [AMERICAN.]

(104) But a pilot, as such, is not disabled in virtue of his office from becoming a salvor; on the contrary, whenever he performs salvage services beyond the line of his appropriate duty, or under circumstances to which those duties do not justly attach, he stands in the same relation to the property as any other salvor, that is, with a title to compensation to the extent of the merit of his services, viewed in the light of a liberal public policy. *Ibid.*

(105) What a pilot does beyond the limits of his duty as such may be the foundation of a claim for salvage, but not such acts as are within his duty, however meritorious. *Hand v. The Schooner Elvira*, Gilpin, 60. See also *The Wave v. Hyer*, 2 Paine, C. C. 131; *Hope v. The Dido*, *ibid.* 243; *Lea v. Ship Alexander*, *ibid.* 466; *Dulany v. Ship Peragio*,

Bee, 212; *Case of Le Tigre*, 3 Wash. C. C. 567. [AMERICAN.]

(106) A pilot towed into port a vessel which had lost her rudder, *held*, that whether he was entitled to claim salvage or not, depended on the question whether the loss of her rudder rendered the vessel unnavigable. *Hope v. The Dido*, 2 Paine, C. C. 243. [AMERICAN.]

(106a) Whenever a vessel has been run aground upon a shoal, on the high seas, in charge of her officers, and she is relieved from imminent peril by other persons, it presents a case for salvage whether the service has been rendered by pilots or by other persons. *Lea v. Ship Alexander*, 2 Paine, C. C. 466. [AMERICAN.]

(107) The contract of a pilot with the boat on which he is employed is virtually dissolved when the boat, being on fire, is surrendered by the master to the master of another boat to save her. After such surrender the pilot may become a salvor. *The T. P. Leathers*, 1 Newb. Adm. 421. [AMERICAN.]

(107a) The masters of licensed wreckers on the coast of Florida, although not professional pilots, are nevertheless deemed qualified in most instances in point of skill and local information to pilot vessels from inside the reef into the gulf, and are bound to do so when reasonably required, and when a reasonable compensation is offered them. See Marvin on Wreck and Salvage, 230. [AMERICAN.]

pilot shall be absolutely void. See the Bristol Channel Pilot Act, 1861 (c. cxxxvi), s. 36.

313. For provisions prohibiting any pilot licensed under this act from making any claim for salvage without the consent of the board by whom he was licensed, to be evidenced by some writing under the hand of the secretary of the board, *Ibid.* s. 37.

314. For similar provisions as to pilots, and crews of life-boats licensed for the port of Liverpool, see The Mersey Dock Acts Consolidation Act, 1858 (c. xcii), s. 163.*

315. Pilots are not in strictness entitled to salvage; their duties are necessarily hazardous, but under extraordinary circumstances of peril or exertion they become entitled to an extra pilotage as for a service in the nature of a salvage service. *The Sarah*, 1 C. Rob. 313; *The Joseph Harvey*, *ibid.* 306; *The General Palmer*, 2 Hagg. 176; *The Enterprise*, *ibid.* 178, n.; *The City of Edinburgh*, *ibid.* 333; *The William Ward*, 8 Ir. Jur. 336.

316. The nature of the service and the provisions of the Pilot Acts have fixed a rate of remuneration on a liberal scale to pilots; and in return they are under an obligation to afford their assistance in all weathers, unless under circumstances of absolute danger to their lives. *The General Palmer*, 2 Hagg. 177, 179; *The Rosehaugh*, 1 Spinks' Eccl. and Adm. Rep. 268.

317. Claims of salvage set up by pilots are *stricti juris*. Unless the circumstances of the case distinguish such a claim greatly from general pilot service, the court will construe it strictly with reference to the Pilot Acts, and award the remuneration there given as for pilot service only. *Ibid.* 177, 178, n.

318. The claims of pilots and salvors stand on different grounds, and their services are paid for on different principles. A pilot is entitled to what may be deemed a *quasi* monopoly. If there be one on the coast he must be employed. He has no right to be engaged in any other occupation, and he is paid, not in conformity with the nature of the service which he performs, but in conformity with the draught of the vessel. And it must be assumed that that rate is sufficient; but salvors who are not pilots stand in a very different position. There is no legal ob-

ligation on salvors to go on board, and they are entitled to be paid for their services, not merely as pilots, but also for any loss they may sustain in the employment of the vessel. *The Cumberland*, 9 Jur. 191.

319. *Semble*, that in an extraordinary case the safe conduct of a ship into port under circumstances of extreme danger and personal exertion may exalt a pilotage service into something of a salvage service; but in general they are distinguishable enough, and the pilot, though he contributes to the safety of the ship, is not to claim as a legal salvor. *The Joseph Harvey*, 1 C. Rob. 306.

320. Pilotage is confined to conducting into port a vessel in no state of distress or alarm, nor having any apprehension of distress arising from antecedent causes. The scale of remuneration to pilots has been calculated on such definition. But where the pilot's services exceed mere pilotage, they are to be rewarded for them as salvors, and not as pilots. *The Elizabeth*, 8 Jur. 365.

321. It is a settled doctrine of the Admiralty Court that no pilot is bound to go on board a vessel in distress to render pilot service for mere pilotage reward. His refusal under such circumstances would subject him to no censure, and if he did take charge of a vessel so circumstanced he would be entitled to a salvage remuneration. *The Frederick*, 1 W. Rob. 17.

322. Pilots are not to be compensated for a salvage service by mere pilotage, though, on the other hand, everything which is not pilotage is not to be construed into salvage. *The Jonge Andries*, Swabey, 229, 304; 11 Moore, P. C. C. 318; *The Galatea*, Swabey, 350.

323. A fishing smack fell in with a steamer which had been on the sands, but had got off with some damage to her rudder, and had hoisted a signal for a pilot. The master of the smack boarded her and piloted her into harbour. *Held*, that the owners and crew of the smack were entitled to salvage remuneration as well as the master. *The Anders Knape*, 4 P. D. 213; 4 Asp. 142.

324. A person, whether a pilot or not, who takes charge of a vessel in distress, with the consent of her master, is entitled to salvage reward, in the absence of an express contract to the contrary. *Ibid.*

* (108) Other pilotage authorities have by their bye-laws made similar regulations.

325. *Semble*, it is immaterial whether, under circumstances entitling a person to salvage reward in any case, he does or does not hold himself out rightly or wrongly as being a pilot, so long as he performs the service. (*The Frederick*, 1 W. Rob. 16, approved.) *The Anders Knape*, 4 P. D. 213; 4 Asp. 142.

326. The fact of a vessel being in distress will not necessarily entitle pilots to salvage reward, nor will the fact of a vessel being undamaged necessarily disentitle them to such reward. The question is, whether or not the services rendered were such as could be reasonably expected to be performed for ordinary, or even extraordinary, pilotage reward. *Akerblom v. Price*, 7 Q. B. D. 129; 50 L. J. Q. B. 629; 4 Asp. 441.

327. A vessel was being driven towards sands. The crew were ignorant of the locality, and the vessel though she had sustained no damage would almost inevitably have been lost. Some pilots at the risk of their lives came to her, and being unable owing to the sea to board her, guided her to a safe anchorage. *Held*, that they were entitled to salvage reward. *Ibid.*

328. If a vessel out at sea beyond the limits of pilotage ground requires assistance to conduct her to a place of safety, that is not pilotage but salvage. *The Hedwig*, 1 Spinks' Ecl. and Adm. Rep. 23.

329. A service which would be pilotage in the case of a duly licensed pilot becomes salvage as regards the reward, when voluntarily performed by others. *The Rosehaugh*, 1 Spinks' Ecl. and Adm. Rep. 267. See also *The Hedwig*, *ibid.* 19.

330. A licensed pilot is not bound to remain on board a ship in distress, in any event, and at the peril of his life; and if he does he is entitled to be paid for extraordinary services as a salvor. *The Jane Anderson*, 3 Jur. 293. [IRISH.]

331. If pilots engage in an attempt to pilot a ship in such weather as to expose their lives to great danger, they may be treated as salvors, inasmuch as no pilot is bound to hazard his life in such an adventure, and if he undertakes it he is not to be debarred from receiving the compensation that others who are not pilots would receive. *The Hercule*, 8 Jur. 412. [IRISH.]

332. In extraordinary pilot services additional pilotage is the proper rate of reward. Double the ordinary rate of pilotage allotted by the court, with £15 *nomine expensarum*, in such a case. *The Enterprise*, 2 Hagg, 178, n.

333. A foreign vessel, fifty miles off the

Dutch coast, being in difficulty in consequence of the boisterous state of the weather, and being leaky, called in the assistance of an English fishing smack, and engaged the master, by a written agreement, "To pilot and to sail ahead for £50." After four days' boisterous weather, during which the master of the smack worked at the pumps, the vessel was got into port. The owners of the smack refused the tender of £50, and brought an action for salvage services rendered to the vessel. *Held*, that the agreement was to perform, for a specific sum, more than mere pilotage services, and was not to be set aside because the weather became tempestuous, and by reason thereof the vessel was longer in arriving at a port of safety than might reasonably be anticipated, and that salvage was barred by the agreement. *The Jonge Andries*, Swabey, 303. Affirmed on appeal, *Halsey v. Albertuszen*, 11 Moore, P. C. C. 313.

334. Parties acting in and assuming the character of pilots, and whose services were engaged in that capacity, *held*, not to be entitled to be rewarded as salvors; but compellable to adopt the rules and be remunerated after the rate of pilot services. On a claim for salvage by such parties, tender of £1 10s. pronounced for. *The Columbus*, 2 Hagg. 178, n.

335. If towing be necessary, pilots are bound to perform it, having a claim for compensation for any damage to their boats and for extra labour. *The General Palmer*, *ibid.* 179.

336. Application of a pilot for salvage by reason of his pilot-boat having been, at his recommendation, employed in towing the vessel for three hours, during which the pilot-boat sustained some little damage. A tender of £20 before and of £50 after action refused. The court and Trinity masters *held* such towage not to have been absolutely necessary, and that the pilot was bound to perform it, having a claim for extra labour, &c., and for compensation by reason of damage. Tender pronounced for, but, under the circumstances, without costs. *Ibid.* 176.

337. A pilot is not bound for his ordinary pilotage to take charge of a vessel in any degree damaged. It is his duty to take charge of the ship, but he is entitled to claim for salvage. *The Black Sea*, April 3, 1855; see also *The Orion*, November 14, 1850; *The Liberty*, 19 April, 1850; *The Mayor*, 19 June, 1850.

338. Pilots having gone out to a ship in a leaky condition, and rendered con-

siderable assistance in working the pumps, and in laying out, and afterwards slipping and recovering, an anchor and cable, held entitled to reward as salvors, and not merely to pilotage remuneration. *The Hebe*, 2 W. Rob. 247; 7 Notes of Cases, Supp. i.

339. A pilot who had boarded a foreign vessel which had suffered damage in boisterous weather, was engaged by the master to take charge of her as a pilot, and brought her to a place of safety, held entitled to claim as a salvor. Application to foreign vessels of the rule respecting licensed pilots claiming as salvors. *The King Oscar*, 6 Notes of Cases, 284.

340. Claim of salvage by coast pilots and boatmen in respect of services, for which £15 had been tendered by the owners, pronounced against, and tender upheld on the ground that there had been a want of exertion, and of a proper attempt to get off sooner to the vessel, which was off the coast for two days before any assistance was rendered, and that the services rendered were of a pilotage nature only, there being no danger and the weather moderate when the salvors put off to the vessel. Salvors' costs allowed by the court, though condemning the neglect of the salvors to put off earlier to the vessel, and notwithstanding a charge asserted, but not satisfactorily proved, that the salvors had prevented another boat's crew from coming off earlier to the assistance of the vessel. *The City of Edinburgh*, 2 Hagg. 333, 337.

341. In a claim for salvage for having piloted a foreign vessel out of an unfrequented channel, the weather being fine, the vessel uninjured and preparing to anchor, knowing her situation, held, that a case of pilotage only, not salvage, was made out, and suit dismissed, but without costs. *The Funchal Baptiste*, 3 Hagg. 386, n.

342. A suit for salvage, instituted by a pilot, appearing to have advanced false pretensions, and to have misconducted himself, dismissed with costs, and the conduct of the pilot reported to the Trinity House. *The Joseph Harvey*, 1 C. Rob. 306.

343. A pilot attempted to exalt a pilotage into a salvage service, and sued for remuneration accordingly. The suit dismissed, and the pilot condemned in costs, the court observing, that it should consider whether it would not report him to the Trinity House. *The Johannes*, 6 Notes of Cases, 288.

344. A barque anchored off the Deal Bank buoy engaged a waterman who was not a licensed Trinity House pilot to act as pilot for a stipulated sum until the vessel arrived off Beachy Head. A gale coming on, the vessel slipped her anchor, and was navigated in safety by the waterman to Margate Roads. Assistance was also rendered to the vessel by other parties whose claim to rank as salvors was admitted. Held, that the waterman having assumed the character of a pilot, must be regarded as such, that he had not been required to act in any other capacity than that of pilot, and that, therefore, he was not entitled to salvage reward. *The Aeolus*, L. R. 4 A. & E. 29; 42 L. J. N.S. 14; 1 Asp. N.S. 516.

345. The exceptions to the general rule that a pilot cannot claim as a salvor, ought to be few and well defined. The services of a pilot cannot easily be converted into those of a salvor. The same rule of law applies to a licensed waterman when acting as a pilot. *Ibid.*

346. A pilot is not bound to go for mere pilotage reward on board a vessel in distress. *The Cherubim*, Ir. L. R. 2 Eq. 172; 3 Asp. 156. [IRISH.]

347. In a salvage suit by B. and others, it was proved that B., together with his co-plaintiffs, put off to a vessel that was in some distress, but that the services rendered by B. were only those of ordinary pilotage. Held, that B.'s co-plaintiffs, though they had performed some slight services on board the vessel, were in reality associated with B. their leader, and were not entitled to salvage remuneration. *Ibid.*

348. As to pilotage by other than pilots, see c. 6, p. 1844.

(b) *Ambiguous Signal.*

349. The court will consider the state of a vessel at the time a signal is hoisted on board of her in order to determine whether such signal is a signal for a pilot or for assistance. *The Little Joe*, 1 Lushington, 88; 2 L. T. N.S. 474; 6 Jur. N.S. 783; *The Hedwig*, 1 Spinks' Eccl. and Adm. Rep. 23; 17 Jur. 977.

350. In the case of ambiguous signals, especially with reference to foreign vessels, if the vessel wants more than pilotage, any signal should be interpreted to mean a request for salvage assistance. On the other hand, if the condition of the ship shows that a pilot only is wanted, the signal used should be interpreted to be

a signal for a pilot only. *The Little Joe*, 1 Lushington, 88; 2 L. T. N.S. 174; 6 Jur. N.S. 783.

351. An ensign hoisted in the ship's foretopmast rigging, held to be an ambiguous signal as to whether the vessel wanted salvage assistance or only a pilot. *Ibid.*

352. A vessel, she having sustained damage and two of her crew having received considerable injury, hoisted a signal. Held, to be a signal for assistance, and not for pilotage. When a vessel is out of pilotage ground altogether, and services are rendered in taking her to a place of safety, they are considered salvage and not pilotage services. *The Hedwig*, 1 Spinks' Eccl. and Adm. Rep. 123; 17 Jur. 977.

353. Where a dispute arises as to whether a signal hoisted was for a pilot or a signal of distress, the fact is to be determined by the state of the vessel itself at the time. *The Dosseitei*, 10 Jur. 866.

354. If the signal hoisted was for a pilot only, that does not prevent the services rendered from being in the nature

of salvage. The true question always is—what was the condition of the ship? Was she in distress? and the character of the signal hoisted is only one part of the evidence bearing upon this question. *The Bomarsund*, 1 Lushington, 78.

355. When a damaged vessel hoists a signal, the presumption is that it is a signal of distress. *The Otto Hermann—The Albert—The Ella Constance*, 33 L. J. Adm. 189.

356. An ambiguous signal will be construed according to the state of the vessel when the signal was displayed to determine whether such signal was for a pilot or for assistance. *The Racer*, 2 Asp. N.S. 317.

356a. As to signals generally, and what are signals of distress, and what are signals for pilots, see tit. OWNERS, pp. 1247, 1248.

17. Second Salvors.*

(a) Generally.

357. A salvor who is in possession has a lien, a qualified property in the thing

* (109) By the principles of maritime law, those beginning a salvage service, and in the successful prosecution of it, are entitled to be regarded as the meritorious salvors of whatever is preserved when wrongfully interrupted in the work by others who complete the salvage. *The John Gilpin*, Olcott, Adm. 77; *The Mary*, 2 Wheaton, 123. [AMERICAN.]

(110) Parties taking possession have a right to retain it until the salvage is completed, and no other person has the right to interfere with them, provided they are able to effect the salvage, and are conducting the business with fidelity and vigour. *Ibid.* [AMERICAN.]

(111) If salvors, in effecting a salvage service, themselves fall into distress and are relieved by other salvors, they do not lose their original right to salvage, but the second partake in the salvage only according to their merit. Second salvors cannot lawfully make it a condition of giving assistance, that the original salvors shall abandon all claims to salvage. *The Henry Eubank and Cargo*, 1 Sumner's Rep. 400. [AMERICAN.]

(112) When property is left derelict on the high seas, those who first find and take possession of it with the intention of saving it acquire a right to the exclusive possession, which others who afterwards discover it have no right to disturb. *The Amethyst*, Daveis, 20. [AMERICAN.]

(113) If the salvors have not sufficient force to effect the salvage without great risk of the loss of the goods, they cannot, consistently with the good faith which they owe

to the owners, refuse the assistance of others who offer their aid, and who thus may become entitled as joint salvors to a share in the reward. *Ibid.* [AMERICAN.]

(114) The finder of a derelict who takes actual possession, not bare possession by an act of the will *oculis et affectu*, but actual possession by a corporal prehension of the thing, with an intention of saving it, gains a right of possession which he can maintain against all persons, even the true owner. *Marvin on Wreck and Salvage*, 136. [AMERICAN.]

(115) Should the salvors in possession of a derelict meet with the master or owner, and he should tender his assistance in saving and securing the property, this ought not without good reason to be refused, as this would be no bar to the right of salvage, and should it be unreasonably rejected it might materially affect the opinion of the court as to the amount proper to be allowed. *Marvin on Wreck and Salvage*, 137; *The Bee*, Wars, 339; *The Amethyst*, Daveis, 20; *La Belle Creole*, 1 Peters' Adm. Dec. 35; *Justinian's Institutes*, lib. 2, tit. 1, ss. 46, 47. [AMERICAN.]

(116) Persons who have taken actual possession of a derelict with the means and for the purpose of saving it, do not lose their right of possession by temporarily leaving it with an intention of returning and resuming the actual possession. But their absence must be with an intention of returning, and strictly temporary, and for a justifiable cause, otherwise they will lose their right of prior possession. They acquire no right of pos-

saved; and where a salvage is in the act of performance and under means sufficient, no other party can interfere with assistance that is unsought and not needed. *The Maria*, Edwards, 175.

358. Two fishing smacks, the P. and the C. described a wreck at a distance. The P. stood towards it, found it to be a derelict, and took it in tow. An hour afterwards the C. came up, proffered assistance which was accepted, and both vessels proceeded to tow the wreck together. Two hours after this a gun-brig

came up and dispossessed the fishing vessels, and claimed as sole salvor. *Held*, that the question of merit or demerit on her part must depend on the preliminary question whether her assistance was wanted or not, and it not appearing that there was any necessity for her assistance, the court pronounced for the claims of the fishing vessels, and awarded two-fifths, after deducting expenses, to the salvors, the salvage not being one attended with great labour or danger; fifty guineas allowed to the crew of the gun-brig, the

session, which they can maintain by a kind of continued claim by discovery merely, without keeping the thing in possession or applying constant exertions for its preservation and rescue. Notorious possession, with the avowal of the object of such possession, are cardinal requisites to the creation or maintenance of the privileges of a salvor. Where they do not exist any other person may take the property with all the advantages of the first finder. *Marvin on Wreck and Salvage*, 137; *The Amethyst*, Daveis, 20; *The Schooner John Wurts*, Olcott, 462. [AMERICAN.]

(117) Three fishing vessels discovered a derelict off the coast of Maine. She was boarded from one of them, and the three masters agreed to lie by her during the night, and tow her into port the next day. The three schooners hoisted signal lights and lay by in company through the night, and remained so near the wreck that she was seen at ten and twelve o'clock. At daylight the wreck was seen at the distance of a mile from the schooners, and at the same time another vessel was seen bearing down on the wreck. They manned their boats for the purpose of resuming the possession, but when they arrived they found that she had been boarded by the stranger vessel O., which had then come up with her. When the parties met a controversy arose between them, each party claiming the right of prior possession. *Held*, that when the O. discovered the wreck it was in the legal possession of the other salvors. *The Amethyst*, Daveis, 20; *Marvin on Wreck and Salvage*, 138. [AMERICAN.]

(118) If a first set of salvors voluntarily and absolutely abandon the enterprise *cum animo non revertendi* before its successful completion, they have no legal claims to salvage; and if the abandonment is voluntarily made, without any advantage being taken of their necessities by a second set of salvors, such second set may intervene and save the property, and entitle themselves to the reward to the exclusion of the first set, who may afterwards wish to return and re-engage in the service. *Marvin on Wreck and Salvage*, 142; *The Schooner John Wurts*, 1 Olcott, 462; *The Henry Eubank*, 1 Sumner,

400. [AMERICAN.]

(119) Although it may be the duty of salvors who have fallen into circumstances of distress and peril to accept the proffered assistance of others, who may thereby become co-salvors, yet such second salvors have no right to make it a condition of rendering their services, that the first shall abandon the enterprise, or give up their right to be considered as salvors, and any agreement to that effect would be deemed by the court a fraudulent advantage taken of their necessities, and utterly void. In such cases of joint service the first salvors are to be considered as the principals, and the second as auxiliaries; and the salvage will be divided among them according to their respective merits. *Marvin on Wreck and Salvage*, 142. *The Henry Eubank*, 1 Sumner, 400. [AMERICAN.]

(120) The smallness of the salving vessel is no excuse for breaking open boxes and stowing the goods in bulk, when there are larger vessels ready and willing to receive them, as co-salvors. Nor can a salvor be justified in exposing the goods to the risk of loss by rafting them, when a vessel can be procured as a co-salvor to carry them. In these cases it is the duty of the salvor to accept the assistance of others, without stopping to make terms. *Marvin on Wreck and Salvage*, 230. [AMERICAN.]

(121) The services of persons unjustifiably intruding themselves, enure to the benefit of the original salvors. *The Brig John Gilpin*, 1 Olcott, 77; *The Mary*, 2 Wheaton, 123. [AMERICAN.]

(122) How far the misconduct of one salvor may rightfully be held to prejudice the claims of his co-salvors, it is not in all cases easy to determine. The courts endeavour to discriminate between the innocent and meritorious, and the guilty and worthless, rewarding the one and punishing the other. But in cases of joint or associated service this discrimination cannot always be made consistently with either sound policy or justice to the owners of the property, but the innocent and meritorious salvor must be made to suffer for the misconduct or neglect of his co-salvors. *Marvin on Wreck and Salvage*, 227. [AMERICAN.]

court inferring that the commander acted under an impression that his interference was necessary. *The Maria*, Edwards, 175.

359. Salvors in possession of a ship have a legal interest which cannot be divested before adjudication in a competent court, and neither king's officers nor any other persons are entitled, on the ground of superior authority, to dispossess them without cause; such parties claiming as joint-salvors must show an apparent, if not an actual, necessity for their interference. *The Blendenhall*, 1 Dodson, 417.

360. Claims of salvors who dispossessed original salvors pronounced against, the circumstances being held not to constitute an apparent necessity for their interference. *Ibid.*

361. The court is always jealous in maintaining the rights of original salvors, unless it appears that further assistance was necessary for the preservation of the property. *The Charlotta*, 2 Hagg. 361.

362. Salvors in possession have a right to refuse assistance, if they think themselves sufficient to effect the service. No other vessel, except from strong necessity, has a right to interfere in the salvage. *The Effort*, 3 Hagg. 167, 168; *The Queen Mab*, *Ibid.* 243.

363. Salvors obtaining possession of a derelict but not able to bring her into safety, can scarcely be said to have possession of her. *The Berlin*, 3 Jur. 34. [IRISH.]

364. If salvors are in possession of a ship and it is barely possible that they may be able to bring her into safety, they are not justified in refusing further competent assistance. *The Cambria*, 15 Dec. 1848. [IRISH.]

365. *Semble*, where the services of the first salvors are necessarily intermittent it is competent to other persons in the interim to come in and act as salvors. *The Clarisse*, Swabey, 132.

366. Salvors going to the assistance of a vessel in distress do not acquire the sole management of her. They only act under sufferance and permission, except in the case of a derelict. There the first occupant has, if equal to the service, a right of exclusive possession. He takes possession for the benefit of the Crown in the first instance, but subject to a liberal remuneration. *The Dantzic Packet*, 3 Hagg. 385.

367. Prior salvors have no right to interfere with the master in attempting to exclude further assistance, and such mis-

conduct diminishes their title to salvage. *Ibid.*

368. The court, in allotting a salvage reward, reduced the amount due in respect of the services rendered, on the ground of the salvors having interfered with the master in attempting to exclude further assistance. *Ibid.*

369. In general, when the services of salvors have been accepted, they cannot be dispossessed by subsequent salvors. *The Glasgow Packet*, 2 W. Rob. 306; 8 Jur. 675.

370. If salvors are in possession of a vessel and their services have been accepted, and they can with safety to the vessel and facility discharge what they have undertaken, it is not competent to any other persons to interfere with them. But in a doubtful case the salvors will not be justified in refusing further assistance. *The Glory*, 14 Jur. 676.

370a. If primary salvors without sufficient reason reject the services of third parties offered to them at a moment of great hazard when the success of the enterprise is uncertain, the court will hold that they exercised an injudicious discretion and to a certain extent failed in their duty, and will abate their salvage reward accordingly. *The Berlin*, 4 Jur. 11; *The Elizabeth*, 8 Jur. 340. [IRISH.]

371. Salvors able to effect the salvage unaided, met a steam-tug at sea, and offered her a specified sum to tow the derelict into harbour, and the crew of the tug purposely replied in language calculated to lead the salvors to suppose that their offer was accepted; the court considered such language as an assent to the proposition, and as binding the parties using it to the acceptance of the offer. *Ibid.*

372. In a salvage of a very meritorious character to a vessel of the value of £4,600 by one smack which was awarded liberal salvage, the court awarded £100 to a second smack who went to assist, showing a willingness, but was of little substantial service owing to her bad sailing. *The Albion*, 3 Hagg. 255.

373. The master of a steamer will be justified in insisting upon his services being accepted to tow a derelict ship into harbour, if he conscientiously believes that the salvors, who have possession of her, have not means at their disposal to bring her safely into port, and his omitting to do so would be considered a breach of duty by the Court of Admiralty. *The Gudrun*, 5 Jur. N.S. 360. [IRISH.]

374. In conflicting claims of salvage the *onus probandi* lies on the salvors who come afterwards to assist those in possession, to show most clearly an adoption of their services, an incompetency in the first occupants to effect the salvage, or an absolute necessity for their interference. A mere acquiescence in, or submission to, such assistance of second salvors by first salvors under the influence of superior numbers, *held*, not to found the second salvors' claim, and the necessity, required to be shown, not to have been strictly made out by them. *The Eugene*, 3 Hagg. 160.

375. A first set of salvors who, while in possession, were assisted in the service by a second set of salvors, *held*, nevertheless to have a primary interest, and therefore a right to choose their own jurisdiction (*viz.* whether to proceed for an award by magistrates or by a suit in the Court of Admiralty). They having elected to proceed before magistrates, the second salvors, who instituted proceedings in the Admiralty Court, *held* to have acted improperly in so doing, and in not intervening in the proceedings before the magistrates as their proper course. *Quære*, if parties have equal rights, would a resort to the subordinate jurisdiction, when objected to, be proper? *Ibid.*

376. In a heavy sea a vessel was found by salvors stuck fast on a rock, her bottom beaten in, and her rudder lost. They succeeded in warping her off and keeping her afloat sufficiently to enable some of her cargo, which was bullion, to be got out of her. She then sunk, and the salvors left her, but returned, and in their sight she was weighed by others, who rescued the remainder of her cargo. Both sets of salvors *held* entitled to salvage, and to an equal amount. *The Jonge Bastiaan*, 5 C. Rob. 323; 15 Moore, P. C. C. 527.

377. When once salvors are in possession, they are not to be dispossessed by a subsequent set unless there be reasonable cause. The second set of salvors must show that there was no fair probability that the vessel could be brought by the first set into port in safety in due time. A vessel of 400 tons burthen with a valuable cargo, 70 miles from Liverpool, was, after having been abandoned, taken possession of by a schooner of 75 tons burthen. Subsequently she was fallen in with by a steamer which had been dispatched to her assistance. *Held*, that the steamer was justified in dispossessing

those on board the schooner, but that the latter were also entitled to salvage. *The Pickwick*, 16 Jur. 670.

378. Two smacks and a steamer having for some days rendered salvage services to a derelict vessel bottom upwards, at length, owing to the state of the weather, lost sight of her. After some ineffectual attempts to find her, the steamer went away, but the smacks continued the search and again fell in with the derelict, and while a man from one of them was upon her, and another in a boat alongside, two powerful Government steamers came up and took possession. *Held*, that they were entitled to do so, but that all the first salvors had nevertheless a right to salvage remuneration. The value of ship and cargo being £2,400, the court awarded the first salvors £140 besides £210 expenses incurred by them in obtaining towing hawsers and other requisites for the service. *The Magdalen*, 1 Asp. 189; 5 L. T. N.S. 807; 31 L. J. Adm. 22.

379. A first set of salvors was by force of circumstances compelled to abandon the vessel. A second set of salvors saved part of the property, but at a time when the agents of the owner had given notice that no assistance was to be given by any person not belonging to the first set of salvors. *Held*, that the agents had a right to refuse the assistance of all persons, but that as only two of the second set of salvors were proved to have received the notice of the agents, these two only were not entitled to reward. *The Samuel*, 15 Jur. 407; 17 L. T. 204.

380. A set of salvors who rendered assistance during a whole day to get a vessel off a sand on which she had got, but without success, afterwards left, taking with them the whole of the crew of the stranded vessel, without expressing any intention of returning thereto. A second set of salvors then took possession of the vessel, and succeeded in getting her off the sand; eight of the first salvors afterwards returned and claimed to join in rendering assistance, which, however, was refused. The court upon the whole *res gestæ* was of opinion that the first salvors had abandoned the vessel without any intention of returning thereto, and that the second salvors rightly resisted their claim to join in rendering assistance, and therefore pronounced against the claim for salvage of the first salvors, but without costs. *The India*, 1 W. Rob. 406.

381. When salvors are on board a ship in distress, and their services have been accepted by the master, if before they have done one stroke of work they are forcibly dispossessed (without the concurrence of the master) by any persons who in any manner save the ship or cargo or part of the same, the second set of alleged salvors can earn nothing for their own benefit, but every act done and every service rendered by them must enure to the benefit of the original salvors. A claim for salvage made by the second set of salvors in such a case dismissed with costs. *The Fleece*, 3 W. Rob. 280, 281; 7 Notes of Cases, 534; *The Blendenhall*, 1 Dodson, 417.

381a. The Yarmouth lifeboat came to the assistance of the brigantine G., which was on the Scroby Sand, and took off her captain and crew, which, it was held, they were not justified in doing, and landed them. During the absence of the Yarmouth lifeboat the Caistor lifeboat came up, and endeavoured to get the G. off the sand. While they were so engaged they were forcibly dispossessed by the crew of the Yarmouth lifeboat, who, with the assistance of a tug, took the G. into Yarmouth harbour. No salvage nor costs were allowed to the Yarmouth lifeboat or tug, and £100 awarded to the Caistor lifeboat. *The George*, June 9, 1866.

382. Interference of second salvors with first salvors punished by reduction of salvage. *The Clarisse*, Swabey, 133.

383. A joint action of two sets of salvors, viz., the crew of the smack A., the primary salvors, and the crew of six other smacks, for salvage in respect of services rendered to a foreign ship in getting her off the Long Sand, dismissed on the ground that the primary salvors, who had boarded the vessel prior to her striking on the sand, had acted erroneously, and had, by the means they adopted, caused the vessel to get on the sand. On a subsequent application to the court on behalf of the other salvors, whose services had been rendered after the vessel had got on the sand, and who had not, in such services, recognized the prior acts of the primary salvors, £200 awarded to them, with costs, on a value of £7,500. Had the claims of the second salvors been founded in any degree on the original error of the first salvors, no services which they might have rendered afterwards, however meritorious, would have entitled them to derive a benefit from the error and misconduct of the first salvors. *The Neptune*, 1 W. Rob. 297.

384. In a case of salvage in getting a vessel off the Newcombe Sand, it appeared that in order to get the vessel off the sand both her bower anchors and chains had been slipped, and that the salvors after getting her off called in the aid of another boat to recover the anchors. *Held*, that the general salvage was completed when the vessel was off the sand, and that the getting up of the anchors formed no part of the salvage services, so as to entitle those who recovered the anchors to share in the general salvage of the ship and cargo. *The Endeavour (Colby v. Watson)*, 6 Moo. P. C. C. 6, 334; 6 Notes of Cases, 56.

385. The court will look with considerable indulgence on the efforts of persons offering their services to vessels in distress, when there are no other individuals on the spot capable of rendering more efficient assistance; but different considerations apply to the conduct of individuals assuming the character of salvors when there are other persons at hand more competent to discharge those duties. Claims of certain fishermen for salvage in respect of services rendered by them to a foreign vessel on the Norfolk coast, when there were regular pilots at hand to have taken charge of her, pronounced against, the court and Trinity masters being of opinion that the proceedings of the salvors had been erroneous and injudicious, and of no benefit to the vessel. Under the circumstances, however, the court declined to give costs against the salvors. *The Dygden*, 1 Notes of Cases, 115.

386. See also as to derelict, c. 13, p. 1881; and as to lien, c. 11, p. 1877.

(b) *After incomplete Assistance of first Salvors.*

387. Salvors having made great and meritorious exertions to save a ship and cargo, were at length, with her crew, compelled to abandon her. She was afterwards found and saved by a steamer. *Held*, that the original salvors were entitled to salvage reward under the circumstances. *The E. U.*, 1 Spinks' Ecl. and Adm. Rep. 63.

387a. *Semble*, if salvors fall in with a vessel in the Bay of Biscay, and bring her to Plymouth, where in consequence of the weather they are compelled to abandon her, and afterwards another vessel comes up and brings her into port, the first salvors would be entitled to

salvage for having brought her to a place where there was a much greater chance of her being saved. *Ibid.* 65.

388. Salvors may be entitled to reward *pro tanto* for performing a part of a salvage service, though others may complete it. *The Samuel*, 15 Jur. 409; 17 L. T. 204.

388a. A ship in a situation of great peril was assisted by smacks, but the essential service of bringing her away from the place she was in to one of safety was performed by a steamer, the services of the smacks being of no importance in the end, by reason of the steamer's coming up. *Held*, that the smacks were, notwithstanding, entitled to a large reward. *The Genessee*, 12 Jur. 401.

389. A derelict was found at sea by salvors, who were incapable of effective service, but remained by until a second set of salvors came up, who dispossessed them and brought the vessel into port. The court, on a value of £2,400, allotted to the first salvors £140, besides £210 for expenses for hawsers, &c. *The Magdalen*, 5 L. T. N.S. 807; 31 L. J. N.S. Adm. 22.

390. In a salvage of a very meritorious character to a vessel of the value of £4,600 by one smack, which was awarded liberal salvage, the court awarded £100 to a second smack who went to assist, showed a willingness, but was of little substantial service. *The Albion*, 3 Hagg. 255.

391. The steamer V. fell in with the C., showing signals of distress, with her propeller shaft broken, about thirty miles out of her usual course from America to England and took her in tow. The V. towed the C. some eighty-five miles, and some ten miles nearer her proper track. The hawser then broke, and, owing to the danger of the V. in again connecting the vessels, she having cattle on board, the V. left the C. The C. subsequently arrived safely at Queenstown. £200 awarded to the V. *The Camilla*, 9 P. D. 27; 53 L. J. P. D. 12; 5 Asp. 197.

392. The steamship S. having broken

down twelve miles east of Scarborough was in twenty-four hours towed into the Tyne at different intervals by the steam trawlers M. and F. A. and the smack S. The master of the smack S. having entered into an agreement with the master of the steamship S., whereby he was for the sum of £20 to procure assistance, informed the M. of the whereabouts of the S., on condition of sharing in the salvage earned by the M. On a value of £10,552 the court awarded to the M. £200 in respect of the salvage and £100 for loss of profits and repairs, and to the S. £10, and to the F. A. £70. *The Sunnyside*, 8 P. D. 137; 5 Asp. 140.

392a. Five men, who had boarded a derelict and navigated her for three days, having hoisted a signal which attracted the attention of the B., abandoned the derelict which was worked into port by the B. *Held*, that the five men were not entitled to salvage. *The Killeena*, 6 P. D. 183; 4 Asp. 473.

393. See also Nos. 357—385, *supra*.

18. Underwriters.

394. The underwriters of a vessel and cargo that had been abandoned hired another vessel, and subsequently succeeded in salvaging the first ship and cargo. *Held*, that they were entitled to sue as salvors. *The Pickwick*, 16 Jur. 670.

19. Women.

395. Women may entitle themselves to a salvage reward. *The Jane and Matilda*, 1 Hagg. 194.

6. The Services.*

1. Generally.

396. Whenever any ship or boat is stranded or otherwise in distress on the

* (123) For Mr. Justice Story's view of the circumstances constituting salvage services, see notes 14—19, p. 1782.

(124) The fact of putting a man on board a vessel to take charge, the vessel having had no one previously on board, but not having been abandoned by the captain and crew, who had only gone for assistance, and whose movements and intentions were known, gives no right of possession as against the captain, nor any claim for salvage. *The*

Cleone, 24 Alb. Law Journ. 35. [AMERICAN.]

(125) A sloop, with a cargo of iron ore on deck, got on a rock in a dangerous strait, and was left by her crew, who went ashore near there. While they were there the vessel, by the action of the tide, came off the rock and drifted with the tide towards another dangerous rock. While so drifting she was seen by those on a passenger steamer a short distance away. The steamer hastened

shore of any sea or tidal water situate within the limits of the United Kingdom, and services are rendered by any person, (1) in assisting such ship or boat; (2) in saving the lives of the persons belonging to it; (3) in saving the cargo or apparel of such ship or boat, or any portion thereof; and whenever any wreck is saved by any person other than a receiver within the United Kingdom, there shall be payable by the owners of the property to the person by whom any such service is rendered or wreck saved, a reasonable amount of salvage, with all expenses properly incurred in the performance of such services or the saving of such wreck. See the M. S. Act, 1854 (c. 104), s. 458.

397. Promptitude in rendering assistance is a principal ingredient in salvage services. *The City of Edinburgh*, 2 Hagg. 334.

398. The foundation of the authority and jurisdiction of the Court of Admiralty is a service actually rendered. *The Ranger*, 9 Jur. 119.

399. No salvage, therefore, can be awarded where no service has been performed. *Ibid.*

400. Yet circumstances may justify the court in directing the expenses of parties attempting to render a service to be paid by the ship which had been in danger. *Ibid.*

401. Where, therefore, a vessel, having got into a situation of danger, extricated herself therefrom before the arrival of salvors, who proceeded to her assistance at considerable risk, claim for salvage refused. *Ibid.*

402. But costs of salvors under such circumstances allowed. *Ibid.*

403. Though a salvage service be not long nor in itself very successful in the issue, yet if the salvors render all the assistance their means will allow with risk and danger to themselves, they are entitled to salvage remuneration. *The Santipore*, 1 Spinks' Eccl. and Adm. Rep. 234.

404. If pursuant to an order from a vessel in distress an anchor and cable

were put on board her, and afterwards from the violence of the weather the vessel was lost, the salvors who put on board the anchor and cable would still be entitled to be paid for their services. *The E. U.*, 1 Spinks' Eccl. and Adm. Rep. 64.

405. All services rendered at sea to vessels in danger or distress are salvage services. *The Charlotte*, 3 W. Rob. 71; 6 Notes of Cases, 229.

406. It is not necessary that the distress should be actual or immediate, or that the danger should be imminent and absolute. *Ibid.*

407. It will be sufficient if at the time the assistance is rendered the ship has encountered any danger or misfortune which might possibly expose her to destruction if the services were not rendered. *Ibid.*

408. Where a ship is in distress, and accepts the services of strange hands, the services are in the nature of salvage, although the work done may be of no great difficulty or importance. *The Bomarsund*, 1 Lushington, 77.

409. Negotiation by the owner to refer a claim of salvage to arbitration is no conclusive admission of salvage services rendered. *The Martha*, Swabey, 489; *The Purissima Concepcion*, 7 Notes of Cases, 151; 13 Jur. 545.

410. Nor negotiation of a defence on the ground of the salvors' misconduct. *Ibid.*

411. Salvors are only entitled to salvage on the value of the property at the port where their services are concluded. *The George Dean*, Swabey, 290.

412. Salvage services to a vessel and cargo bound to the Mauritius were rendered at Lisbon, and the cargo was transhipped and brought to London and there sold. The value of the cargo at Lisbon was ascertained by putting it at between £7 and £8 per cent. less than the proceeds of its sale in London, deducting freight and other charges for the voyage from Lisbon to London, and allowing a *pro rata* freight as far as Lisbon. *Ibid.*

413. It is not necessary there should

out, and taking hold of her towed her to a place of safety, her crew reaching her just after the steamer took hold of her. *Held*, that the steamer was entitled to salvage, and 300 dollars awarded to her on a value of 3,500 dollars. *The Joseph C. Griggs*, 2 Asp. 438. [AMERICAN.]

(126) A wrecker simply received on board his vessel goods, placed there by the ship's

company in order to lighten the ship, and the master worked the ship off the reef by means of the sails. *Held*, that the wrecker was not entitled to salvage upon the value of the ship and the cargo remaining on board. *Marvin on Wreck and Salvage*, 111. *The Alabamian*, 2 A. R. 254. [AMERICAN.]

(127) See also as to the wrecking vessels of the Bahamas, notes 62, 62a, p. 1799.

be absolute danger to constitute a salvage service. It is sufficient if there is a state of difficulty, and reasonable apprehension. *The Phantom*, L. R. 1 A. & E. 58; 2 Asp. 442.

414. A steamer having broken the main-shaft of her propeller, was compelled to take assistance, and was towed forty miles into port without danger to those assisting her. *Held*, that the services were salvage rather than towage. *The Jubilee*, 4 Asp. 275.

415. Where two vessels are in collision, and a salvor renders service to one, without a request from or engagement by the other, and the latter is thereby rescued from a position of immediate danger, such service being a direct benefit to both vessels, entitles the salvor to salvage reward from both. *The Vanduyck*, 7 P. D. 42; 5 Asp. 17.

416. The plaintiffs under a charter-party shipped rye on board the defendants' ship to be carried from T. to A. Owing to the negligent navigation of the defendants' servants, the ship was stranded and part of the rye was lost; but a considerable quantity was saved by persons employed by the underwriters of the cargo with the assent of the defendants. The average statement was prepared, and the sum assessed was agreed to by the plaintiffs, and paid by the underwriters. *Held*, that the plaintiffs were entitled to recover the amount of such expenses, as, without they had been incurred, the remainder of the cargo could not have been sent to its destination, which was for the benefit of the defendants, and that the payment under the circumstances was not voluntary. *Scaramanga v. Marquand*, 52 L. T. 764; 1 C. & E. 100—C. A. See also No. 538, p. 1837.

417. See also, as to the principles of salvage, c. 1, p. 1781.

2. Acceptance.

418. If salvage services are rendered to a ship, it is not necessary to show that those on board either requested or expressly accepted the assistance. It is sufficient if the circumstances are such that if an offer of services had been made, any prudent man would have accepted it. *The H. M. Hayes*, nomine *Golden Light and Annapolis*, 5 L. T. N.S. 37, 39; 1 Lushington, 355.

419. A first set of salvors was by force of circumstances compelled to abandon the vessel. A second set of salvors saved

part of the property, but at a time when the agents of the owner had given notice that no assistance was to be given by any person not belonging to the first set of salvors. *Held*, that the agents had a right to refuse the assistance of all persons, but that as only two of the second set of salvors were proved to have received the notice of the agents, these two only were not entitled to reward. *The Samuel*, 15 Jur. 407; 17 L. T. 204.

420. Prior salvors have no right to interfere with the master by attempting to exclude further assistance, and such misconduct diminishes their title to salvage. *The Dantzic Packet*, 3 Hagg. 383.

421. The owners, when present, are the only proper judges of the necessity for the continuance of salvors' services. Salvors having obtruded their services after notice for their discontinuance, compensation refused on account of such services, but salvage awarded for the services antecedently rendered, with a sum *nomine expensarum*. *Ibid.*; *The Glasgow Packet*, 8 Jur. 675; 2 W. Rob. 306; 3 Notes of Cases, 107.

422. A vessel on the West rocks, seven miles from Harwich, entered into a written agreement with the masters of two smacks for their assistance in getting her off, and into the port of Harwich, for £6. The weather was moderate at the time, but became more boisterous shortly afterwards. The smacks engaged the assistance of four other smacks, and effected the service agreed. A claim for salvage having been preferred by the smacks, on the ground that they had understood the agreement was merely for laying out an anchor, and resisted by the owners of the vessel salvaged, who tendered £6, and averred that the engagement of the four other smacks was unnecessary, and made against the express expostulation of the master of the vessel salvaged, the court dismissed the claim of the salvors, and upheld the tender, holding the agreement fully proved, that the first two smacks were bound thereby, and that the four other smacks must seek their remedy, if any, against their employers, the first two smacks, but gave no costs. *The True Blue*, 2 W. Rob. 176; 7 Jur. 756; 2 Notes of Cases, 413.

423. As to second salvors, see c. 5, pp. 1820—1824.

424. As to the effect of salvors refusing or obtruding further assistance, see c. 9, p. 1860.

3. Success.*

425. When a salvage is finally effected, those who meritoriously contribute to that result are entitled to a share in the reward, although the part they took, standing by itself, would not have effected it. *The Atlas*, 1 Lushington, 527; 1 Asp. 168; 5 L. T. N.S. 434; 8 Jur. N.S. 753; 31 L. J. Adm. 210; 10 W. R. 850.

426. Success is the main ground on which a salvage reward is given. *The Lockwoods*, 9 Jur. 1017.

427. A salvage reward is for benefit actually conferred in the preservation of property, not for meritorious exertions alone. *The India*, 1 W. Rob. 406.

428. An attempt, however meritorious, to save a vessel and cargo, will not, if unsuccessful, furnish any title to a salvage reward. *The Zephyrus*, 1 W. Rob. 330.

429. To entitle salvors to reward, their services, however meritorious, must also be successful. *The Atlas*, 1 Lushington, 521; 5 L. T. N.S. 434; 31 L. J. Adm. 46; But see S. C. on appeal, 1 Lushington, 525; 8 Jur. N.S. 753; 31 L. J. Adm. 210; 10 W. R. 850.

430. The principle of salvage remuneration is to reward exertions which have

been successful in saving property. *The E. U.*, 1 Spinks' Eccl. & Adm. Rep. 64; *The Edward Hawkins*, 1 Lushington, 516.

431. Exertions, therefore, however meritorious, must have been successful to some extent in order to receive salvage reward. *Ibid.*

432. In the case of a volunteer service, no salvage is due unless the property, or part of it, is ultimately recovered. See *The Undaunted*, 1 Lushington, 92; *The Aztecs*, 3 Asp. 326; *The Nellie*, 2 Asp. N.S. 143; *The E. U.*, 1 Spinks' Eccl. & Adm. Rep. 65.

433. But where salvage services have been rendered to a vessel pursuant to a request from those on board her, the services must be paid for, whether they are successful or not. *Ibid.*

434. And this though there may have been an agreement between the parties to render a particular service which proved impracticable of accomplishment. *The Nellie*, *supra*; *The Aztecs*, *supra*. But see next No.

435. The M. L. was requested by the master of the R., in distress, to remain by him, and it was agreed in writing that the M. L. should, for £1,200, stay by the R. until she was in a safe position to get

* (128) In the absence of an express agreement the law implies that salvage services are to be paid for as such, and only upon the contingency of a successful result. *Marvin on Wreck and Salvage*, 128. *Ship Versailles*, 1 Curteis, 360; *The Independence*, 2 *ibid.* 350; *Talbot v. Seeman*, 1 Cranch, 1; 1 Curtis, S. C. Dec. 331; *The Henry Ewbank*, 1 Sumner, 400; *Clarke v. The Brig Healey*, 4 Washington, 651. [AMERICAN.]

(129) Unless the property be saved in fact by those who claim as salvors, salvage will not be allowed, however good their intentions, and their exertions, however heroic and perilous. *Clarke v. The Brig Dodge*, 4 Washington's Rep. 651; *The T. P. Leathers*, 1 Newb. Adm. 421. [AMERICAN.]

(130) If Providence aids the salvors' exertions, and the object is thus attained, that circumstance would not deprive them of merit, although it might diminish the rate of compensation. *Marvin on Wreck and Salvage*, 110. [AMERICAN.]

(131) But exertions must be made, and the probability that they contributed or might contribute to save the property, should appear by some proof, although from circumstances slight proof only could be expected. *Ibid.*

(132) An indispensable ingredient of a salvage claim is that the service has contributed immediately to the rescue or preservation of property in peril at sea. *The John Wurte, Olcott*, Adm. 462. [AMERICAN.]

(133) The steamer P. was imbedded in ice in the Ohio River and in a condition of great peril; the salvor, at the request of the master and of the owner, both of whom went on shore, the former being sick, took charge of the boat, which was finally saved by the providential breaking up of the ice in the way it did. *Held*, that the fact that the exertions of the salvor did not save the boat, (she being finally saved by the particular manner in which the ice broke up,) did not deprive him of the reward due to a salvor, inasmuch as he voluntarily encountered the danger, and did all that could be done under the circumstances. *McGinnis v. The Pontiac*, 1 Newb. Adm. Rep. 130; 5 McLean, 359. [AMERICAN.]

(134) A vessel was floating down the Delaware Bay, imbedded in a field of ice, and was temporarily deserted by her crew, who feared she would strike upon certain shoals and be overwhelmed by the ice. The asserted salvors boarded her and claimed salvage, on the pretence that they had cut away the ice, but it was shown that the vessel avoided the shoal simply by drifting in another direction without their agency. *Held*, that the vessel had not been saved by any exertions of the asserted salvors, and that they were consequently not entitled to salvage. *The Brig Dodge Healey*, 4 Washington, 651. [AMERICAN.]

to port. The next morning, as the R. proved to be sinking, the M. L. took her crew on board, and the R. sank. In an action for life salvage, *held*, that as no property was saved no action would lie for life salvage merely, or on the special agreement. *The Renpor*, 8 P. D. 115, C. A.; 52 L. J. P. D. 49; 5 Asp. 98.

436. There is a broad distinction between salvors who go out to, and salvors who are employed by, a ship in distress. *The Undaunted*, 1 Lushington, 92; 2 L. T. N.S. 520; 29 L. J. Adm. 176.

437. The former go out at their own risk for the chance of earning reward, and if they labour unsuccessfully are entitled to nothing, for the effectual performance of salvage services is that which gives them a title to salvage remuneration. *Ibid.*

438. But if men are engaged generally or particularly by a ship in distress, they are to be paid according to their efforts made, even though their labour and service may not prove beneficial to the vessel. *Ibid.*

439. A vessel having in a gale of wind off the North Foreland parted both her anchors and cables, requested a steamer to proceed to the nearest port and bring off an anchor and cable. The steamer engaged two luggers for this purpose, who, however, did not reach the vessel till she got to Gravesend. *Held*, that the luggers as well as the steamer were entitled to salvage reward. *Ibid.*

440. The court will look with considerable indulgence on the efforts of persons offering their services to vessels in distress, where there are no other individuals on the spot capable of rendering more efficient assistance. *The Dygden*, 1 Notes of Cases, 115.

441. A vessel got on the rocks off Folkestone, and received assistance from boats which were unable to get her off. A tug steamer also tried in vain. A large passenger steamer towed her off for a few minutes, when the hawser broke and she went ashore and became a wreck, but her cargo, to the value of £9,657, was saved. Defence that the salvage services were unsuccessful, and that therefore no salvage was due, not sustained, and salvage decreed to all the salvors. *The Santipore*, 1 Spinks' Eccl. and Adm. Rep. 231.

442. The A. agreed to render assistance to the B. in distress and did render it for several hours, when believing from the conduct of the B. that her services were no longer required she left. The

B. then, by her own exertions, got to a place of safety. *Held*, that the A. was entitled to remuneration for the services actually rendered. *The Nellie*, 2 Asp. N.S. 142.

443. Salvage is a reward for benefits actually conferred not for a service attempted to be rendered. *The Chetah*, L. R. 2 P. C. 205; 38 L. J. Adm. 1; 3 Asp. P. C. 177; 5 Moore, P. C. N.S. 279.

444. A vessel after unsuccessfully attempting to tow another vessel succeeded in making herself fast to the other vessel's stern and in steering her safely to port. *Held*, by the Privy Council, that in estimating the value of the salvage services rendered, the period during which the unsuccessful endeavours were made to tow, ought not to be taken into account. *Ibid.*

445. A tug, at the request of another vessel, attempted to tow her into port. Owing to the state of the weather she was unable to do so and ran back with her to her former position. On the following day she succeeded in bringing the vessel into port. *Held*, that as the unsuccessful services on the first day had been rendered at the special request of the vessel the time so occupied (though not contributing to the final salvage) must be taken into consideration in awarding salvage remuneration. *The Avenir*, I. R. 2 Eq. 111; 3 Asp. 63. [IRISH.]

446. *Semble*, salvage remuneration will not be awarded for unsuccessful services however meritorious at the time, unless they contributed to the final salvage. *Ibid.*

447. Or unless they were rendered at the special request of the vessel saved. *Ibid.*

448. A steam-tug attempting to render assistance to a ship exhibiting signals of distress, may, in a case where such ship is afterwards saved by means of other assistance, be entitled to some salvage reward, even though her efforts have been practically unavailing. *The Melpomene*, L. R. 4 A. & E. 129; 42 L. J. Adm. 45; 2 Asp. N.S. 122.

449. When a salvage is finally effected those who meritoriously contribute to that result are entitled to a share in the reward, although the part they took, standing by itself, would not have effected it. *The Rosalind*, 2 Asp. 220. [IRISH.]

450. A ship driven from her anchors was drifting on shore. The master hoisted signals for assistance. Two whaling

boats went to the ship's assistance and managed to keep her off the shore by means of warps until more efficient aid came up, when the ship was got into deep water and moored in safety. *Held*, that the services of the whalers was highly meritorious, and that they were entitled to material salvage reward, upon the principle laid down by the Privy Council in the case of the *Atlas*, "that where a salvage is finally effected, those who contributed to that result are entitled to a share in the reward, although the part they took, standing by itself, would not in fact have produced it. *The Rosalind*, 2 Asp. 220. [IRISH.]

451. See also Nos. 398—404, p. 1826.

4. Risk of Life.

(a) Generally.

452. What enhances the pretensions of salvors most is the actual danger they have incurred. The value of human life is that which is and ought to be principally considered in the preservation of other men's property; and if this be shown to have been hazarded, it is most highly estimated. *The William Beckford*, 3 C. Rob. 356; *The Travellers*, 3 Hagg. 371; *The London Merchant*, *ibid.* 394.

453. Whenever there is risk of life the court always gives a larger rate of salvage remuneration. *The Ebenezer*, 8 Jur. 386.

454. Where danger to life has been incurred by the salvors, and afterwards successful service rendered, the danger to and actual loss of life is a circumstance always tending to enhance the value of the reward. *The William Hannington*, 9 Jur. 631.

455. In the consideration of salvage

cases the primary object is the danger of the property saved, its value, and the assistance actually received; the secondary object, the risk to salvors and their property, the skill, time employed, and other collateral circumstances. *The Travellers*, 3 Hagg. 371.

456. In a salvage service the primary ingredients and objects are the lives and property in jeopardy; but the risk of those employed, and the length of time, are also to be considered. *The London Merchant*, 3 Hagg. 394.

457. The Court of Admiralty, in considering the amount to be awarded to salvors, will estimate the danger incurred during the entire or any portion of the time occupied in the service; but it will not take into consideration a mere apprehended danger, such as might occur from a conjectured change of wind or weather. *The Stephano Flori*, 3 Jur. N.S. 418. [IRISH.]

458. See also c. 7, p. 1847.

(b) From Infectious Disease.

459. A vessel infected with yellow fever was taken in charge and navigated 3,000 miles to port by the mate of another vessel. The property salvaged being valued at £5,135, the court awarded £900, £600 thereof to the mate. *The Skiblander*, 3 P. D. 24; 47 L. J. Adm. 84; 3 Asp. N.S. 556.

459a. For similar cases of salvage, see tit. SALVAGE AWARDS, p. 1921.

5. Risk of Property.*

460. The main ingredients of all salvage services are the danger to the ship

* (135) To authorize a claim for salvage compensation it is not necessary that the loss should have been inevitably certain, but only that the danger should be real and imminent. *Talbot v. Seaman*, 1 Cranch, 1; 1 Curtis, S. C. Dec. 331; *The Delphos*, 1 Newb. Adm. 412; *McGinnis v. Steamboat Pontiac*, 5 McLean, 359. [AMERICAN.]

(136) Mere speculative danger is insufficient, but it need not be such that escape from it by other means was impossible. *Ibid.*

(137) Not only the actual toil and expenses are to be considered in a case of salvage, but also the imminent contingency that the service might prove unavailing by the breaking up of the vessel before any amount of property could be saved. *The John Gilpin*, Olcott, Adm. 77. [AMERICAN.]

(138) Whenever a vessel has been run

aground upon a shoal on the high seas, in charge of her officers, and she is relieved from imminent peril by other persons, it presents a case for salvage, whether the service has been rendered by pilots or by other persons. *Lea v. Ship Alexander*, 2 Paine, C. C. 466. [AMERICAN.]

(139) A vessel dismasted in a gale, and lying at anchor on a bank in the open sea, is in a condition to have a salvage service rendered. *The Independence*, 2 Curtis, C. C. 350. [AMERICAN.]

(140) A vessel in point of fact for twelve or fourteen hours in a condition where her instant destruction was menaced, and the lives of those who might remain on board of her greatly jeopardized, may be rightly taken possession of by salvors. *The John Gilpin*, Olcott, Adm. 77. [AMERICAN.]

saved, and the danger to the ship which is the salvor. *The Nimrod*, 14 Jur. 942; 7 Notes of Cases, 570; *The Persia*, 1 Spinks' Eccl. and Adm. Rep. 168.

461. The principle upon which alone a salvage service can be founded is the rescuing a ship and cargo from some impending danger or distress. *The Mary*, 1 W. Rob. 457.

462. The court, in considering the value of a salvage service, regards not merely the actual state of things, but what they might probably have been at a particular time of year and in a certain state of weather. *The Monkwearmouth*, 9 Jur. 72.

463. In a claim of salvage for approaching a foreign vessel in impending danger, a strong case must be shown that the danger was impending, and that if not warned the vessel would have incurred it. *The Giacomo Tarabochia*, 3 Hagg. 345.

464. Claim for salvage against a foreign vessel in proximate danger dismissed, the assistance having been unnecessary and refused. Salvors condemned in £5 *nomine expensarum*, the court holding that the claimants acted *bonâ fide*. *The Henrietta*, 3 Hagg. 345, n.

465. The danger from which a vessel is saved must be probable and immediate, not that which is contingent. Two vessels, the A. and G., having come into collision, were drifting up the river in the direction of a third vessel. A steam-tug succeeded in rescuing the A. from the G., and also in bringing the G. to anchor before she drifted on to the H. *Held*, that no salvage services were rendered to the H. *The H. M. Hayes*, *nomine Golden Light and Annapolis*, 5 L. T. N.S. 39; 1 Lushington, 355.

466. In a salvage suit a contingent danger should not enter into the consideration of the court in awarding da-

mages. The danger must be existing when the salvage service is rendered, it is not enough that the place may become dangerous by subsequent circumstances. *The William Ward*, 8 Jur. 336. [IRISH.]

467. The owners of a vessel are not to be held liable for salvage in a case where there was no risk, injury or danger whatever, even although the alleged salvor towed the vessel into harbour, labouring under an erroneous impression that she was in a disabled or sinking state. *The Union*, 3 Jur. N.S. 462. [IRISH.]

468. An ordinary salvage service performed with skill, good conduct and complete success to a vessel in imminent peril of being totally lost, but rendered with no risk or danger to the salvors, the court awarded to the salvors a sum of £375, or one-fourth of the admitted value and costs. *The Rothsay Castle*, 2 Asp. 206.

469. Salvage services of a highly meritorious character having been performed by salvors, in saving the lives of the crew and the ship and cargo valued at £46,000, the Admiralty Court awarded £1,000 as salvage for such services. On appeal, *held* that the sum was insufficient, and the remuneration increased to £2,000 in consideration (1) of the great danger the salvors incurred; and (2) the fact of the saving of lives and the value of the ship and cargo. *The Glenduror*, 8 Moore, P. C. C. N.S. 22.

470. See also No. 457, *supra*.

6. Deviation.

See c. 14, p. 1887.

7. Incomplete Assistance.

See c. 5, p. 1824.

8. Information or Advice.*

471. For provisions that in cases of concealed wreck being seized by receiver

(141) The American ship *Constitution*, on a voyage from Havre to Charleston, South Carolina, having on board a box of bullion, foundered at sea. The box was taken on board of the Danish brig *Urania*, bound to Copenhagen; and three days afterwards, while at sea, was transferred to the *Constellation*, an American ship, bound to the United States. *Held*, that the bullion, while on board of the *Urania*, was not in that peril required by law to make it the subject of salvage. *Box of Bullion*, Sprague, 57. [AMERICAN.]

(142) *Held*, further, that the taking it on

board of the *Constellation* was not a continuation of salvage service. *Ibid*.

(143) There being no agreement to transfer any right of the *Urania* to the *Constellation*, and the captain of the former having declared himself fully compensated, no such transfer was created by implication of law. *Ibid*.

* (144) If two vessels, A. and B., are sailing nearly in the same direction, and B. is taking a course which would cause her to strike a hidden reef of rocks unknown to those on board her but known to those on board the A., who warn the B. of the danger, and in consequence of that warning the mas-

of wreck in consequence of information given to him, the informer shall be entitled by way of salvage to such sum, not exceeding £5, as the receiver may allow. See the M. S. Act, 1854 (c. 104), s. 451.

472. For rewards to persons discovering casks of spirits floating or sunk in the sea, and giving information thereon to officers of customs or other persons duly authorized to make seizure thereof, see 39 & 40 Vict. c. 36, s. 216.

473. A claim of salvage cannot be grafted on the local ignorance of a master of a foreign vessel. *The Vrouw Margaretha*, 4 C. Rob. 104.

474. Ignorance of the locality, though in the case of a foreign master, is, under certain circumstances, no defence against a claim for salvage, but the reverse. *The Cumberland*, 9 Jur. 191; and *The Eugenie*, note thereto, 192.

475. The ignorance of a foreign master, where nothing is required but the simple assistance of a pilot, would not tend to augment the rate of salvage, nor would the ignorance of an English master, because it is the business of a pilot to supply any deficiency of the master's knowledge. Ignorance of the locality, however, under other circumstances, is not an unimportant matter for consideration, because when the question is what would be the probable fate of a vessel if compelled to keep at sea, the master being in entire ignorance of the dangers with which she was beset, then undoubtedly the ignorance of the persons on board adds to all the ordinary and natural perils in which the vessel would be placed. *The Eugenie*, 3 Notes of Cases, 430.

476. The ignorance of a foreign master as to the locality is not, standing alone, a ground for pilots or others to claim salvage for offering the necessary advice or instructions; but this is so only when the advice given is merely that belonging to pilotage. The case is different if the ship be beleaguered with concealed and manifold dangers, and by a prompt and courageous effort information is brought out from land, in consequence of which fatal mistakes are prevented, and a way of safety opened to the vessel and crew. *The Hebe*, 7 Notes of Cases, Sup. ix. [IRISH.]

477. A French brig, bound to St. Peters-

burg, being in the Bristol Channel, the master having lost his course and being ignorant of the locality, was at the entrance of Caermarthen Bay approached by a fishing boat, from which a man was put on board, under whose directions the brig was navigated to Tenby Roads. The value of ship and cargo was £3,000, and a tender of £5 was made by the owners; the court, taking into consideration the master's ignorance of the locality, that the sails were out of repair, that the vessel was therefore not altogether free from danger, that the persons boarding her were not pilots, and that no duty was therefore imposed on them, awarded, though estimating the service as very little beyond pilotage, £12, with costs. *The Eugenie*, 3 Notes of Cases, 430.

478. Advice may, in certain circumstances, constitute a salvage service. *The Eliza*, 1 Lushington, 536.

479. A vessel ran on shore by mistaking her course, and being in danger hoisted a signal of distress. A pilot's cutter came up, and hailed the vessel to adopt certain measures. The vessel acted accordingly and came off the shore. *Held*, that the service so rendered by the cutter was a salvage service. *Ibid*.

480. An ambiguous signal had been hoisted, which, when the alleged salvors reached the vessel, proved to be only a signal for a pilot. They gave some information to the vessel which had been in difficulties, but had been relieved from them, and was not then in a disabled condition. Claim in respect of salvage rejected, but, by reason of the ambiguous signal, without costs. *The Little Joe*, 2 L. T. N.S. 473; 1 Lushington, 88; 6 Jur. N.S. 783.

481. It is very doubtful whether, even if needed, the mere giving of information and advice to a foreign vessel as to the locality would amount to a salvage service. *Ibid*.

482. The fact of an officer of the Royal Navy having given directions to the salvors, *held* not to detract from the merit of their service. *The Persia*, 1 Spink's Eccl. and Adm. Rep. 166.

483. A steam-tug, having a vessel in tow, went out of her course to inform another steam-tug that she had seen a ship ashore. The second steam-tug having gone and rescued the ship, *held*, that

ter of the B. changes his course and thereby avoids the reef, *semble*, such warning constitutes a salvage service. *The American Ins. Co.*

v. Johnson, 1 Blatch. & How. 30; *Marvin on Wreck and Salvage*, 118, n. [AMERICAN.]
144a. See also note 165a, p. 1846.

both steam-tugs were entitled to salvage. *The Sarah*, 3 P. D. 39; 3 Asp. N.S. 542.

484. A steamer, seeing a vessel in a dangerous position, approached her and properly advised her to port. A pilot had just before boarded the vessel and had given the same advice, which was acted upon. *Held*, that the steamer could not claim salvage remuneration. *The Strathnaver*, 1 App. Cas. P. C. 58; 3 Asp. N.S. 113.

9. Sending Actual Salvors.*

485. A person merely hiring labourers to assist in the unloading of a stranded vessel, although entitled to his disbursements and to some remuneration for his superintendence, will not be entitled to claim as a salvor. *The Watt*, 2 W. Rob. 70.

486. Persons not personally engaged in a salvage service but contributing thereto by furnishing boats or other articles, are entitled to remuneration, not as salvors, but for the use of the articles supplied. *The Charlotte*, 6 Notes of Cases, 282; 3 W. Rob. 68.

487. The claim for salvage of an officer of the coastguard, who sent his men and boat, but did not assist in person, rejected. *The Vine*, 2 Hagg. 1.

488. A magistrate sent a few men to a derelict vessel to assist in righting her and to keep off plunderers. Claim by him for salvage rejected. *The Aquila*, 1 C. Rob. 45.

489. As a general rule, persons who remain on shore, but hire a vessel for the purpose of performing a salvage service, are not entitled to sue as salvors. *The Pickwick*, 16 Jur. 670.

490. The underwriters of a vessel and cargo that had been left by her master and crew hired another vessel, and subsequently succeeded in salvaging the first ship and cargo. *Held*, entitled to sue as salvors. *Ibid*.

491. An agent of Lloyd's at the port of Swansea, having at the request of the master of a vessel in distress hired some men for the purpose of rendering her assistance, afterwards brought a claim of

salvage against her owners. *Held*, that the claim could not be allowed, as the agent of Lloyd's was only discharging a duty properly incumbent upon him. *The Lively*, 3 W. Rob. 67; 6 Notes of Cases, 206.

492. Salvage awarded in the Court of Admiralty to a magistrate in Ireland as for salvage services, which consisted in his sending police officers to protect the cargo of a stranded vessel. Cited in the *Purissima Concepcion*, 3 W. Rob. 184; 7 Notes of Cases, 150; 13 Jur. 967.

493. Necessary services rendered by vessels under orders of the salvaging vessel in carrying out the requests of the vessel salvaged are looked upon as part of the same salvage service. *The Undaunted*, 1 Lushington, 92; 2 L. T. N.S. 520; 29 L. J. Adm. 176.

494. A vessel, having in a gale of wind off the North Foreland parted both her anchors and cables, requested a steamer to proceed to the nearest port and bring off an anchor and cable. The steamer engaged two luggers for this purpose, which, however, did not reach the vessel till she got to Gravesend. *Held*, that the luggers as well as the steamer were entitled to salvage reward. *Ibid*.

495. The master and crew of a fishing smack boarded with some risk and peril a vessel in danger and distress, and conveyed a message to a steamer to go out of port to her assistance, and the master of the smack returned with the steamer and accompanied the vessel to London. *Held*, that the master and crew of the smack were entitled to salvage, and £40 awarded. *The Ocean*, 2 W. Rob. 91.

496. The court will consider the crew of a small boat which could not of itself effect the salvage, in the light of salvors, if it appears that they were the means of communicating the fact to the salvaging vessel, and directing her in the course she should take to recover the derelict. *The Carrier Pigeon*, 4 Ir. Jur. N.S. 99; 33 L. T. 19.

497. Remuneration awarded to a messenger who had gone a distance of twelve miles to procure salvage assistance to a

* (145) Small boats, going for larger vessels to assist a stranded vessel, have often been rewarded as salvors by the Court of Admiralty for the Florida district. Marvin on Wreck and Salvage, 120. [AMERICAN.]

(146) The master of a steamer hoisted his flag as a signal to speak a wrecking vessel, stopped the steamer one minute, without

changing his course, and informed the master of the wrecker that a ship was ashore at a particular place on the reef, by reason of which information the ship received valuable assistance ten hours earlier than she would otherwise have done. *Held*, a salvage service, and fifty dollars awarded. *Ibid*.

vessel. *The Elizabeth Bibby*, 3 Ir. Jur. 257.

498. A steam-tug, having a vessel in tow, saw a ship ashore and went out of her way to inform, and informed, another steam-tug of what she had seen. The other steam-tug thereupon proceeded to the stranded ship and towed her into safety. *Held*, that the owners, masters, and crews of both steam-tugs were entitled to salvage. *The Sarah*, 3 P. D. 39.

499. See also the next section, and as to crew not actually engaged, see c. 5, s. 7, p. 1804.

10. *Supplying Master or Men.*

(a) *Generally.*

500. Salvage claimed by owners, master, and crew of a vessel, whose mate had gone on board another vessel on the high seas to supply the place of the master of the latter, who had been drowned. The owners had given the mate £200. The court awarded to the claimants £1,000. *The Janet Mitchell*, Swabey, 111. See also *The Nicolina*, 2 W. Rob. 175.

501. The crew of the R., on the high seas, having been much reduced by death and sickness, another vessel, the A., supplied the deficiency by two from among her own crew. The owners of the R. gave the two men £20 each, and denied further liability. *Held*, in an action by the rest of the crew of the A., that the service on their part was of the nature of salvage. The value of the property saved being £9,350, the court awarded £150 to be apportioned, £60 to the owners, £25 to the master, and the remainder among the crew. *The Roe*, Swabey, 84.

502. A vessel, which had received some injury from bad weather, placed several hands on board a derelict. *Held*, that the parties on board the saving vessel were entitled to extra remuneration for the additional labour imposed upon them in consequence of the absence of the hands transferred to the distressed ship. *The Sansone*, 3 Jur. 258. [IRISH.]

503. In a case of salvage effected by king's ships, claim of the captain, officers, and crew of a king's ship which was not engaged in the service, to share generally with the salvors in respect of draughts of men and stores, and of the schooner and

launch from that ship, supplied by them and used in effecting the salvage service, rejected, and their right to share limited to that portion of the crew actually engaged in the salvage service. *The Thesis*, 3 Hagg. 61.

504. The commander of her Majesty's ship *Cygnat*, on the coast of Africa, having met with a merchant vessel, the master of which and one of the crew were sick, and the mate was incompetent to navigate her, removed the master and sick seaman on board his own ship, and put his gunner and three of his men on board, accompanying her in his own vessel, and occasionally taking her in tow, to Prince Edward's Island, where the *Cygnat* was bound. The vessels then parted company, the gunner and one seaman returning on board the *Cygnat*, the sailing master of which was sent on board and took charge of her to England. The sailing master and the two seamen were entered on the ship's books and received wages for the voyage to England. *Held*, that the commander was entitled to claim salvage on behalf of himself, his officers, and crew, in respect of such services; £140 awarded, the value of ship and cargo being £1,300. *The Charlotte Wylie*, 5 Notes of Cases, 4.

504a. The vessel C. being in distress, two of the crew of the L. were sent on board to assist in navigating her. *Held*, that the services rendered being of the nature of salvage, the owners, master, and crew of the L. were entitled to salvage reward in addition to the two men who had been sent on board the C. *The Charles*, L. R. 3 A. & E. 536; 1 Asp. N.S. 296.

(b) *To Ships infected with Disease.*

505. See the previous section, and No. 459, *supra*, and tit. SALVAGE AWARDS, p. 1921.

11. *Losses or Damages in rendering Salvage Assistance.*

506. See c. 14, p. 1885.

12. *After Collision.*

507. See c. 5, p. 1799.

13. *Fire.**

508. A vessel lying in a dock, and in great danger of catching fire from the

* (147) A steamer being on fire upon a sandbank in the Mississippi, an unsuccessful attempt was made by another boat to draw her off and extinguish the fire. On the arri-

val of a third boat she was drawn off by the two, after which the flames were extinguished by the last comer alone. *Held*, that the last was the only salvor, the mere drawing off *

surrounding warehouses which were in flames, was towed thence by a steamer to a place of safety. *Held*, that a valuable salvage service had been performed by the steamer. *The Tees, The Pentucket*, 1 Lushington, 505.

509. Salvage awarded for the saving of lives and property from a burning ship at Spithead. *The Eastern Monarch*, 1 Lushington, 81.

510. Salvage awarded, for assisting to extinguish the flames in a vessel which had taken fire by spontaneous combustion, and for towing her into port. *The Rosalie*, 1 Spinks' Eccl. and Adm. Rep. 188.

14. *Transshipment.*

511. The court looks with jealousy on salvage by transshipment, as leading to deception on owners and underwriters. It is to be vigilantly watched how far a ship giving assistance in distress adopts the best measures. *The Hope*, 3 Hagg. 424.

512. Mere transshipment of cargo is not a salvage service, and the Court of Admiralty has no jurisdiction to entertain a claim for reward for such a service, but *aliter*, if the cargo were in danger at the time. Such service then assumes a salvage character, not affected by the degree of danger. *The Westminster*, 1 W. Rob. 231.

513. On salvage of the crew and portion of cargo (value £7,000) by transshipment (on board a valuable Indiaman) from an American ship in a sinking state,

about 300 miles eastward of the Cape of Good Hope, £2,000 awarded. *The Hope*, 3 Hagg. 423.

514. On claim for salvage effected by transshipment of a portion (of the value of £24,000) of a cargo of tea (of the value of £40,000) by three large steamers of the value of upwards of £30,000, with crews of fifty-eight men in all, and engaged, one for six days, another for four days, and another for three days, the cargo being at the time in danger of being lost, or at least much damaged, from the ship having struck on the rocks, £1,500 awarded on the cargo saved and the freight thereof. *The Westminster*, 1 W. Rob. 229.

515. In a case of meritorious salvage by transshipment a moiety decreed to the salvors, costs and expenses having been first deducted from the whole fund. *The Columbia*, 3 Hagg. 428.

15. *Towage.*

(a) *Generally.**

516. Ordinary towage is that which takes place for the purpose of expediting a vessel on her voyage. *The Kinglock*, 1 Spinks' Eccl. & Adm. Rep. 265.

517. A towage service may be described as the employment of one vessel to expedite the voyage of another when nothing more is required than the accelerating of her progress. *The Princess Alice*, 3 W. Rob. 140; 6 Notes of Cases, 585.

518. When a towage contract is made, it in law implies an engagement that each

boat aground being a common act of river courtesy. *The T. P. Leathers*, 1 Newb. Adm. 421. [AMERICAN.]

(148) A captain, whose vessel was on fire, surrendered her into the hands of salvors, to save her if they could, but was present with his crew when the services were performed. *Held*, that this was not such abandonment as would make it a case of derelict. *The Delphos*, 1 Newb. Adm. 412. [AMERICAN.]

(149) An abandonment of a burning steamboat on the Mississippi by the master to another steamboat for the purpose of saving her, does not constitute a case of derelict. *The T. P. Leathers*, 1 Newb. Adm. 421. [AMERICAN.]

(150) A steamboat on fire coming down the river created some alarm among those moored at a wharf, several of which were towed out of danger by the only steamer happening to have steam up at the time. *Held*, without deciding whether this was a case of marine salvage, that the libellants were not entitled to more than what would be a liberal allowance as towage. A cross libel in the nature of a re-

conventional demand for injuries received during the towage was dismissed, it appearing evident that they were the result of unavoidable accident in the confusion of the moment, and the service being at the request and to the benefit of the cross libellants. *The S. W. Downs v. The Storm*, 1 Newb. Adm. 458. [AMERICAN.]

(151) The contract of a pilot with the boat on which he is employed is virtually dissolved when the boat, being on fire, is surrendered by the master to the master of another boat to save her. After such surrender the pilot may become a salvor. *The T. P. Leathers*, 1 Newb. Adm. 421. [AMERICAN.]

* (152) There is no determinate rule of law absolutely distinguishing towage service from salvage service. *The H. B. Foster*, 1 Abb. Adm. 222. [AMERICAN.]

(153) Towage may be a salvage service when performed in aid of a vessel in distress. *Ibid.*

(154) Towage service is aid rendered in the propulsion of a vessel, &c., irrespective of any circumstances of peril. *Ibid.*

party to the contract will perform his duty in completing it, that proper skill and diligence will be used on board both the vessel and tug, and that neither party by neglect or mismanagement will create unnecessary risk to the other, or increase any risk which might be incidental to the service undertaken. *Bland v. Ross (The Julia)*, 14 Moore, P. C. C. 210; 1 Lushington, 224.

519. *Held*, that in a case of a contract of towage the principles laid down in *Priestly v. Fowler* (3 M. & W. 5), and other cases of that class, as to the relations between employer and employed, do not apply. *Ibid.*

520. When an engagement is made for a steam-tug to tow a vessel from one place to another, the tug is bound by that engagement to do all that is necessary to facilitate the safe voyage of the vessel from the one place to the other, and she is to take the chance of bad weather, which may occasion delay and inconvenience. *The Galatea*, Swabey, 349; 12 L. T. 49; 4 Jur. 1064; 7 W. R. 21.

521. If during the performance of a towage agreement the tug becomes incapable of completing it, though by a contingency purely accidental and which no precaution could have provided against, it is competent to the vessel in tow thereupon to terminate the agreement. *The Lady Flora Hastings*, 3 W. Rob. 122.

522. An agreement was made with a steam-tug belonging to a steam-tug company to tow a vessel from Dover to Gravesend for £40. The steam-tug broke down, *in itinere*, and the towage was completed by other steam-tugs belonging to the same company. The defence of the owners of the vessel in tow that the contract was annulled by the nonfulfilment of the original agreement not sustained: *Semble*, the acceptance of the services of the other steam-tugs by the master of the vessel in tow was a continuance of the original contract. *Ibid.*

523. When a tug meets with a vessel disabled and undertakes for any sum agreed upon between the parties to perform the service of bringing the vessel from one port to another or to a place of safety, that may be called an extraordinary towage, because it is not in the ordinary occupation of the vessel. Ordinary towage takes place for the purpose of expediting a vessel on her voyage either homeward or outward. *The Kingalock*, 1 Spinks' Eccl. and Adm. Rep. 264; 18 Jur. 409.

524. When a steam-tug engages to tow a vessel for a fixed sum, she does not warrant that she will do so under all circumstances. *The Minnehaha*, 15 Moore, P. C. C. 133; 1 Lushington, 335; 9 W. R. 925; 4 L. T. N.S. 810; 7 Jur N.S. 1257; 1 Asp. 111.

525. But the tug engages to use her best endeavours, competent skill, and a reasonably sufficient crew, tackle and equipments for the task. If unforeseen difficulties occur, such as the breaking of the ship's hawser, she is not relieved from doing her best. *Ibid.*

526. But if she is prevented from fulfilling her contract by accidents not contemplated, and which render the fulfilment of her contract impossible, in such a case she is, by the general rule of law, relieved from her obligations. *Ibid.*

527. But she is not relieved from her obligations because of unforeseen difficulties causing an interruption in the performance of the task, and preventing its completion in the mode originally intended. *Ibid.*

528. The burden of proof of an agreement for towage is upon the party setting up the agreement. *Ibid.*

528a. It is not the duty of those in charge of a tow which is being towed with a long scope of hawser, by night at sea, to direct the movements of the tug. The circumstances are different to towing by day in a river. *The Stormcock*, 4 Asp. 410.

529. A contract of towage provided that no extra charge was to be made in case of accident except for detention arising therefrom, in which case demurrage at the rate of ten pounds per day was to be paid. Owing to the parting of the hawser through no fault of the tug, the tow and the tug were obliged to put into port where they were detained seven days in consequence of the state of the weather. *Held* (Lord Ardmillan dissenting), that demurrage was payable for the seven days as the detention arose from the parting of the hawser through accident. *New Steam Tug Co. v. McClew*, 3rd Series, vol. 7, p. 733. [SCOTCH.]

530. The word "accident" meant the same as "the act of God" and "perils of the sea." Per the Lord President Inglis. *Ibid.*

531. A master mariner agreed with certain owners of barges to take charge of them on a voyage across the Atlantic. The owners were to provide the necessary steam power for towing. The towing

power proving insufficient, the voyage lasted much longer than the agreed time, and three of the barges were lost. *Held*, reversing the decision of the court below (Bramwell, L. J., dissenting), that there was no implied warranty by the defendants that the tug should be reasonably efficient for the purposes of the voyage. *Robertson v. Amazon Tug and Lighterage Co.*, 4 Asp. 496.

532. A tug contracted to tow a ship from A. to B. for a specified sum. The ship, during the voyage, was injured by collision, and the tug was detained three days with the ship. In an action of towage, *held*, that the court had no jurisdiction to award, in addition to the agreed towage, any remuneration for the delay. *The Hjennett*, 5 P. D. 227; 49 L. J. P. D. 66; 4 Asp. 274.

532a. A tug agreed to tow a vessel from Foyal to Liverpool for a lump sum. She towed her for 900 miles, and then having no more coals left her and did not return. The owners of the tug brought an action for the agreed sum. *Held*, that they were not entitled to recover any part of it, as the contract was entire. *The Queen of Australia*, February 18, 1880; 4 Asp. 274, n.

533. *Semble*, the officer in charge of the tow may give express orders as to the course, in which case the tug is bound to obey them; but in the absence of such orders the tug has the general direction of the course, and is bound to tow the vessel in a safe and prudent course. *The Robert Dixon*, 4 Asp. 246.

534. The steamer W. found the steamer A. off Cape Finisterre in a disabled condition, and towed her for two days in heavy weather. To prevent the W. then abandoning her, owing to the A.'s condition, it was then agreed between the masters that the W. "should stand by the A. as long as possible, and that the W. and owners are to be paid for the time and towing already done and to be done." The W. thereupon again took the A. in tow, but two days afterwards, owing to stress of weather, she was found necessarily abandoned, and was lost. *Held*, that the agreement was reasonable, and £400 awarded. *The Alfred*, 50 L. T. 511; 5 Asp. 214.

535. The masts of a ship had been cut away, and she was making a considerable quantity of water, but being laden with timber was in no danger of sinking. Salvors, five in number, with their fishing smack of sixty tons burthen, rendered her for thirty-six hours services which in effect

amounted only to towage services. Their claim included £34 compensation for loss of fish, and £25 damage to hawser. The court found that an agreement had been made between them and the master of the ship that they should receive £150 for their services, and confirmed a tender for that amount, with costs. Value of the property saved £1,850. *The Arthur*, 1 Asp. 228.

536. For salvage services rendered in towing a disabled vessel into safety, the court awarded £4,000, of which £3,000 was apportioned to the owners. *The Kenmure Castle*, 7 P. D. 47; 47 L. T. 661; 33 W. R. 708; 5 Asp. 27.

537. The master of a vessel agreed with a tug for towage from Sea Reach, in the Thames, to a London wharf, for £6, and to give an order upon the owner of the wharf for the amount usually allowed by him (under the name of towage) as a premium to vessels of the kind coming to his wharf. The service was performed, and the master paid the money, but refused to give the order. The amount usually paid by the owner of the wharf was proved; and also that if an order, signed by the master, had been presented, the money would have been paid. *Held*, that the master had no authority to agree to transfer to the master of the tug an uncertain sum payable to the owners of the vessel; and that the court had no authority to enforce such a contract or give damages for the breach of it. Action for towage dismissed with costs. *The Martha*, 1 Lushington, 314. See also *The Ceylon*, No. 2217, 19th July, 1864.

538. The plaintiffs, owners of the schooner J. M. S., having come into collision with a tug and her tow, brought an action against the tug to recover the damages occasioned by the collision. The plaintiffs entered into an agreement with the owners of the tow, under which they received a sum of money, described "as an advance on account of the damages to be recovered from the owners of the tug." And it was stipulated that the owners of the tow should give the plaintiffs all information and assistance necessary to bring the action to a successful issue; that if the schooner and tug should both be held to blame, the plaintiffs should repay any sum by which the money already paid exceeded the moiety of damages recoverable against the tug; and that, as a basis of the arrangement, the schooner should be found blameless for the collision. The court having found

the tug alone to blame, *held*, that the above was not such a payment by the tow in satisfaction of the damages as amounted to a settlement in discharge of the action, and was, therefore, no bar to the action. *The Stormcock*, 53 L. T. 53.

(b) *Subsequent Salvage.**

539. If, during a towage contract, the ship in tow is, by sudden and unforeseen circumstances, placed in danger, and the towing vessel incurs risks and performs duties not within the scope of her original engagement, she is entitled for such additional services to additional remuneration as a salvor if the ship is saved. In such a case the claimants must show that the ship being in danger from no fault of theirs, they performed services which were not covered by their towage contract, and did all they could to prevent the danger. *The Minnehaha*, 15 Moore, P. C. C. 133; 1 Lushington, 335; 9 W. R. 925; 4 L. T. N.S. 810; 7 Jur. N.S. 1257.

540. If, a ship being in danger, a steam-tug coming to her assistance makes a towage contract, and nothing supervenes afterwards to change the character of the services, the steam-tug can claim nothing beyond towage remuneration. *Ibid.*

541. Circumstances may change a stipulated towage into a salvage service, the right to salvage superseding the towage contract, but such a claim is to be jealously watched. Such salvage can never be claimed when the danger of the vessel salvaged is attributable in any way to the default of the tug. *Ibid.*

542. In estimating the amount of salvage reward to a steam-tug rendering salvage services to a vessel while under a towage contract to her, the fact that the contract is still to be carried out is to be taken into consideration. *Ibid.*

543. The M., a large ship with a valuable cargo, brought up at the mouth of the Mersey and engaged the U. K., a powerful steam-tug, to tow her to Liverpool for thirty guineas. Shortly after the service commenced the hawser broke and the ship drifted over a shoal into Formby Hole, a place of danger. The U. K. got out her own hawser and attached

it to the M., and another tug, the S. K., was also engaged. Both tugs manœuvred the ship to prevent her getting on the bank, and eventually, on the tide rising, towed her to Liverpool. *Held*, on appeal, that both tugs were entitled to salvage, and £300 awarded to the U. K., and £50 to the S. K. *Ibid.*

544. Many circumstances may arise to convert the service into the character of a salvage service, as, for instance, where the ship in tow is disabled in her hull or rigging, or where she is aground, or where the service itself is attended with danger or extraordinary labour to the towing vessel. *The Princess Alice*, 3 W. Rob. 140; 6 Notes of Cases, 585.

545. The services of a steam-tug within its usual locality are not necessarily towage, but may by circumstances be held to be salvage services. *The Medora*, 1 Spinks' Eccl. & Adm. Rep. 17.

546. Mere towage service is confined to vessels that have received no injury or damage, and mere towage reward is payable in those cases only where the vessel receiving the service is in the same condition she would ordinarily be in without having encountered any damage or accident. *The Reward*, 1 W. Rob. 174; *The Charles Adolphe*, Swabey, 153.

547. If towage lead to the rescue of a vessel from danger, it should be remunerated as salvage; or if an engagement even be made in port to go out and tow, unforeseen circumstances might convert such towage into a salvage service. *The Isabella*, 3 Hagg. 428.

548. *Semble*, if a steamer be requested by a vessel at anchor in a gale of wind to lie by her, and if necessary take her in tow, in such a case, even though the vessel might without assistance ride out the gale, the steamer would be entitled to salvage reward, the *quantum* to be determined by the risk encountered by both vessels, the value of property at hazard, and the other circumstances of the case. *The Undaunted*, 1 Lushington, 90; 29 L. J. Adm. 177; 2 L. T. N.S. 520.

549. To convert towage into salvage there must supervene an element of serious danger, not in contemplation

* (155) If a vessel is hired to do a stated service, as towing a dismantled vessel anchored in a dangerous situation to a place of safety, but no price is named because the time it may take is not altogether certain, this is a salvage service, and the agreement

is of no avail. *Hennessey v. Ship Versailles*, 1 Curtis, C. C. 353; *The Independence*, 2 *ibid.* 350. But this doctrine is doubted. See 2 Parsons on Maritime Law, 629, n.; *Hemmenway v. Fisher*, 20 How. 255. [AMERICAN.]

when the contract for towage was made. And whether towage has become salvage depends upon whether circumstances have arisen which would justify the tug in abandoning the contract to tow. *The J. C. Potter*, 40 L. J. Adm. N.S. 9; L. R. 3 A. & E. 292.

549a. Where a steamship, carrying fore-and-aft sails only, and not rigged for proceeding under sail alone, breaks the main shaft of her propeller, and is compelled to take assistance from another ship, which tows her forty miles into a port, the service is of a salvage character, although the service is not attended with any danger to the salvors. *The Jubilee*, 4 Asp. 275.

550. A steam-tug took a ship in tow, under an agreement to tow her to Liverpool for £45. The weather was then moderate, but afterwards increased to a heavy gale. The steam-tug never let go the ship's hawser, and, after much danger to both ship and steam-tug, brought the ship to Liverpool. *Held*, that a service had been performed beyond the scope of the agreement to tow, and that the tug and her crew were entitled to salvage. *The J. C. Potter*, *supra*.

551. Where the master of a steamer engages to tow a vessel, it is upon the supposition that the wind and weather and the time of performing the service will be what are ordinary at the time of year; but if an unexpected change of weather or other unforeseen accidents occurs, he is bound to adhere to the vessel, and to do all in his power to rescue her from danger; and he will be entitled to reasonable extra remuneration for the extra service. Circumstances under which such extra remuneration was allowed. *The White Star*, 1 A. & E. 68.

552. *Held*, that the owners of a steam-tug, which had towed a disabled vessel from a bay into a harbour which she could not have otherwise reached, were, in a question with another salvor, entitled to a share of the salvage, and not to the mere ordinary rate of towage, although the steam-tug had not left the bounds within which she ordinarily plied, and had not incurred any extraordinary risk or labour. *Robinson v. Thoms*, Feb. 5th, 1851; 13 D. 592; 23 Jur. 267. [SCOTCH.]

553. A tug was taken out of her ordinary occupation, carried to a foreign port, and there detained for a time. *Held*, that the price paid for ordinary towage was no guide to the court as to the sum which

should be allotted to remunerate this service. *The Batavier*, 1 Spinks' Eccl. & Adm. Rep. 174.

553a. An agreement for towage was entered into, the weather being bad at the time. It became much worse, and great difficulty was experienced in completing the service. In an action for salvage the defendants tendered the amount of the agreement and an additional sum for quarantine expenses and consequent detention. *Held*, that the agreement was not affected by the tender of the amount of the extra expenses. Tender pronounced for with costs from the time of making the tender. *The Waverley*, 40 L. J. Adm. N.S. 42; L. R. 3 A. & E. 369; 1 Asp. N.S. 47.

554. No danger was incurred by the asserted salvors, and the master and crew of the vessel assisted were not aware of the existence of any danger to their own vessel, but accepted the services of a steamer to bring them into port, and a tender of the usual amount for towage was made for such services: *held*, that the services did not amount to salvage services. Tender affirmed with costs. *The Harbinger*, 16 Jur. 729.

555. In a claim for salvage, a tender of £2 confirmed, with £5 *nomine expensarum*, the court holding the case to be one of mere towage, and twenty-nine co-salvors having accepted similar tenders. *The Albion*, 2 Hagg. 180, n.

556. The steamer C. was employed under an agreement to tow to a specified place the E. H. which was partially disabled. She towed for eleven hours, and was then obliged by a gale of wind to quit the E. H. in a position of peril. The vessel was subsequently saved by her own resources. The C. claimed salvage. It was proved that at the time of being taken in tow the E. H. was not in danger, and that she was not rescued from danger or brought into a place of safety. *Held*, that no salvage service had been performed, and cause dismissed with costs. *The Edward Hawkins*, 1 Lushington, 515; 31 L. J. Adm. N.S. 46. Affirmed on appeal, 1 Lushington, 517.

557. Towage services were rendered without any agreement as to remuneration. There was at the time neither actual nor imminent danger to the vessel to which they were rendered. *Held*, that under the circumstances the services were towage and not salvage. *The Strathnaver*, 1 App. Cas. P. C. 58; 3 Asp. N.S. P. C. 113.

558. The plaintiff's vessel, without any specific sum being agreed upon by way of remuneration, was engaged to tow another vessel in distress and remained by her all night. In the morning the vessel in distress employed a third vessel at a fixed sum to take her in tow, the plaintiff's vessel still offering to do her best, but refusing to agree to any specific sum. *Held*, that the services of the plaintiff's vessel ought not to have been discarded, and that she was entitled to remuneration. *The Maude*, 3 Asp. N.S. 338.

559. A steamship disabled by the breaking of her crank-shaft was towed a distance of about thirty miles without danger or risk by another steamship belonging to the same owners. Fifteen of the crew of the towing vessel instituted a salvage action in the sum of £5,000 against the vessel towed, and arrested vessel, cargo and freight. *Held*, that such services were salvage services, but of so slight a character that £15 awarded on a value of £105,500, and condemned salvors in costs, the court expressing its disapprobation at the institution of the action in the High Court, and at the arrest of the vessel for such an amount. *The Agamemnon*, 5 Asp. 92.

560. A contract to tow embraces the risk of ordinary bad weather. *The Galatea*, 7 W. R. 21; Swabey, 349; 12 L. T. 49; 4 Jur. 1064.

561. But this is put an end to by weather rendering the completion of the undertaking impossible. *Ibid*.

562. In that case subsequent services may be in the nature of salvage. *Ibid*.

563. When an engagement is made for a steamer to tow a ship from one place to another, the steamer is bound to do all that is necessary to facilitate the safe voyage of the ship from the one place to the other, and she is to take the chance of bad weather which may occasion delay and inconvenience. *Ibid*.

564. But she does not take the chance of the undertaking being entirely interrupted by the act of God, that is, from the state of the wind and weather being such as to compel her to abandon the original undertaking. *Ibid*.

565. When from the state of the wind and weather the performance of the service originally contracted for is prevented, a steam-tug is not at liberty to abandon the ship she has engaged to tow, but it is her duty to render all the assistance in her power to bring the ship to a place of

safety, and for so doing she is entitled to a salvage remuneration. *The Galatea*, Swabey, 350; 4 Jur. 1064; 7 W. R. 12; 12 L. T. 49; *The Saratoga*, 1 Lushington, 318; *The Minnehaha*, *ibid*. 335; 30 L. J. Adm. 211; 7 Jur. N.S. 1257; 9 W. R. 925; 4 L. T. N.S. 810.

566. When there is an agreement to tow a disabled vessel from one port to another, it not being an ordinary towage service, the court will not engraft upon it additional salvage for any little assistance rendered. *The Kingalock*, 1 Spinks' Eccl. and Adm. Rep. 264, 265; 18 Jur. 409.

567. But when a service has been commenced as an ordinary towage service, the vessel being in no distress, for the mere purpose of expediting the voyage, if it happens that a salvage service unexpectedly becomes engrafted upon it the towing vessel may not be bound to take the ordinary reward for a towing service. *Ibid*.

568. In ordinary towage an agreement may be affected by subsequent events. In extraordinary towage the agreement is, as a general rule, binding. *Ibid*.

569. In an agreement for extraordinary towage the concealment of a fact which might operate on the service vitiates the agreement. *Ibid*.

570. The master of a damaged brig agreed with the master of a steam-tug to tow the brig to London for £40, having concealed from the master of the tug the fact of the brig's being damaged. The master of the tug having discovered the fact of the damage, repudiated the agreement, and brought a suit for salvage. *Held*, that the agreement was void, and salvage of £160 awarded. *Ibid*. 265; 18 Jur. 409.

571. If in the performance of a contract for towing, new services become necessary in consequence of unforeseen occurrences, the agreement is not at once rendered void, and the tug at liberty to abandon the vessel. *The Annapolis*, 5 L. T. N.S. 38; 1 Lushington, 355.

572. Nor, on the other hand, is the tug bound to perform the new service for the same stipulation as is allowed for the other service. *Ibid*.

573. A steam-tug having been engaged to tow a ship, A., two other ships came into collision with the A., and other dangers were incurred, in course of which the tug, to save herself, let the A. go, and afterwards, with another tug, resumed towing the A., and finally assisted the

other ships, and in the end claimed salvage from all three: *held*, that though the tug, to save herself, was entitled to let the ship A. go, yet she was bound to return with due speed to resume the towage of the A., and did no more than her towage contract bound her to do. *Ibid*.

574. But that as regards the other ships, she was entitled to salvage. *Ibid*.

575. If, in the performance of a towage service pursuant to an agreement, such towing being honestly, fairly, and skilfully employed, it happens from inevitable circumstances that an accident occurs to the vessel in tow, and essential services are rendered by the vessel towing her, the agreement does not cover such services, but tends to diminish the *quantum* of reward for such extra services. *The William Brandt, jun.*, 2 Notes of Cases, Supp. lxvii.

576. A vessel having made an agreement with a steamer for towage services for £16, before the service commenced got on a sand, from which she was, after a second attempt, got off by the steamer, who then performed the towage services agreed for. The value of the property was £6,250; the court awarded £60. *Ibid*.

577. The attendance of a steamer which has been engaged in towage, but which has been unable to continue that service owing to the boisterous state of the weather, will be considered as a salvage service, and paid for accordingly, even although her services were not again called into active requisition. *The John Bryant*, 5 Jur. 233. [IRISH.]

578. Towage of a ship near the land in unsettled weather, if her ground tackle is disabled, is in the nature of salvage. *The Albion*, 1 Lushington, 282.

579. A steam-tug was engaged to tow a ship from the North Foreland to Gravesend, and towed her to the Prince's Channel, where both vessels anchored to stop tide. In the night a gale of wind arose, and blew the ship to sea, with loss of anchors and damage to hawse-pipes, bow planking, and windlass. The tug was forced to run to Ramsgate, and the next day, the weather having moderated, put to sea, and after considerable search discovered the ship, which had received an anchor and chain by a lugger from the shore. The ship was then towed by the steam-tug, another tug assisting, to the port of London. *Held*, that the services of both tugs were in the nature of salvage, and that the first tug was entitled to salvage remuneration for her labour

and loss of employment whilst seeking the ship. *Ibid*.

580. A steam-tug under contract to tow into dock was lashed alongside a vessel; in rounding to enter the dock basin the tide forced the vessel and the steam-tug close to a landing-stage, with the steam-tug next to the stage; the pilot of the vessel hailed the tug to go on and go ahead, which the tug did, but was forced against the stage, and injured. *Held*, that the steam-tug was bound to endeavour to save the vessel from the impending peril, especially upon the order of the pilot, and for so doing was entitled to salvage reward, including repayment of all damages and losses thereby incurred. *The Saratoga*, 1 Lushington, 318.

581. In a case of towage partaking of a salvage character, *held* that the salvors, a steam-tug company, were not bound by the rates of towage published by them, but were entitled to a higher rate in the nature of salvage. *The Reward*, 10 Monthly Law Mag. (Notes of Cases), 61; *The Beulah*, 2 Notes of Cases, 63.

582. Claim of salvage *held* to be a towage service merely. Tender of £4 pronounced for, and salvors condemned in £50 *nomine expensarum*. *The Princess Alice*, 3 W. Rob. 138.

583. The ship L. E. was being towed by a steam-tug to be docked at high water, when, to make sure of docking that tide, another tug, the S., was engaged for the sum of £5 to assist in towing her to the pier head. After the S. made fast, the L. E. grounded, but was towed off by both tugs in a few minutes, and was then docked. A cause of salvage was brought on behalf of the second tug. *Held*, that the L. E. was not in immediate danger, and that the tug had not incurred any risk or performed any duty which was not within the scope of her original engagement, and cause dismissed with costs. *The Lady Egidia*, 1 Lushington, 513.

584. While a steam-tug was engaged in towing a vessel the tow-rope broke. Claim by the steam-tug for salvage dismissed. *The Chancellor*, April, 1853.

585. A vessel engaged to tow another is bound, notwithstanding change of weather, to adhere to her, and perform services other than the services originally engaged in. The original agreement is not invalidated, but she is entitled to receive something additional to the remuneration originally agreed on. *The White Star*, L. R. 1 A. & E. 68.

586. When supervening circumstances,

from stress of weather or otherwise, are such as to justify a towing vessel in abandoning her contract, it is still her duty to remain by the towed vessel for the purpose of rendering her assistance, but for such assistance she is entitled to salvage reward. *The J. C. Potter*, L. R. 3 A. & E. 292; 40 L. J. Adm. 9; 3 Asp. 506.

587. For supervening circumstances to justify the abandonment of a towage contract and found a salvage service, there must be among them an element of serious danger, not in contemplation of the parties to the contract. *Ibid.*

588. The steam-tug R. agreed to tow the ship J. C. P. to Liverpool for £45. Owing to the weather the service occupied twice the ordinary time, and for three hours both vessels were in great peril. Had the tug abandoned her contract the J. C. P. would probably have been lost. The value of the J. C. P. together with freight and cargo was £20,000, and the damage to the tug was about £144. A salvage action having been instituted by the owners of the tug, *held*, that the tug would have been justified in abandoning her contract, and was entitled to salvage reward. £500 awarded. *Ibid.*

589. A tug under a contract to tow may, by rendering services beyond the scope of the towage contract, earn salvage reward, although she incurred no risk. *The Pericles*, B. & L. 80.

590. An agreement is not invalidated by the concealment of an immaterial fact. The owners and crew of a tug sued for salvage services, alleging that an agreement made for towage service was invalid by reason that the illness of the larger number of the crew was concealed at the time of making the agreement. *Held*, that the owners and crew of the tug not being injured by such concealment the agreement was valid, and no salvage service had been rendered. *The Canova*, L. R. 1 A. & E. 54.

591. As to agreements for salvage, see c. 10, p. 1867.

592. As to the avoidance, by subsequent circumstances, of agreements for salvage, *Ibid.* p. 1876.

(c) *Misconduct.**

593. When a steamboat engages to tow a vessel, she engages that she will use her best endeavours for that purpose. *The Minnehaha*, 1 Lushington, 335; 15 Moo. P. C. C. 133; 7 Jur. N.S. 1257; 9 W. R. 925; 4 L. T. N.S. 810; 30 L. J. Adm. 211; 1 Asp. 111. See also *The Julia*, 14 Moo. P. C. C. 210; 1 Lushington, 224.

594. If in the course of the service the ship is rescued from danger by the tug, but that danger was attributable to wilful misconduct or negligence on the part of the tug, or to the want of that reasonable skill or equipments implied in the towage contract, the tug cannot claim salvage. *Ibid.*

595. If during the performance of a towage service the towing hawser is broken under circumstances of great peril to the ship, and the tug does not come up as soon as she reasonably might and ought to have done in order to repair the mischief, she can make no claim for salvage. *Ibid.*

595a. As a general rule, steam-tugs in the performance of a towage contract, even when rendering salvage services, are bound to obey the orders of the pilot on board the vessel in tow. *Ibid.*

596. Where the tug is familiar with the navigation and the tow a foreigner, it is the tug's duty to tow in a safe direction without waiting for directions from the tow. *The Robert Dixon*, 4 Asp. 95, 127.

596a. A tug engaged to tow a ship, in charge of a compulsory pilot, attempted to tow across a bank instead of round it, and the ship grounded and was damaged. The pilot signalled the tug to alter her course, and on seeing his signals disregarded cast off the tow-rope. *Held*, that as the casting-off of the tow-rope would have had to be done at the last moment, there was no such contributory negligence on the part of the tow as prevented her from recovering from the tug owners, although the nautical assessors considered the pilot's conduct negligent. *Spaight v. Tedcastle*, 6 App. Cas. 217; 4 Asp. 406; 44 L. T. 589; 29 W. R. 761.

597. Where a vessel was in tow during a thick fog and those on board her, know-

* (156) The owner of a steamboat agreed, in writing, to tow a flat boat with cargo, at the risk of the owners of the flat boat. In a suit against the former for negligence, there was evidence tending to show that the flat boat was not skilfully loaded, and that the towing was rendered thereby more hazardous, but that the defendant was aware of this fact

before taking the flat boat in charge, and that, owing to his gross negligence in towing her at too great a speed, the boat was sunk and the cargo damaged. *Held*, that the negligence being gross, the defendant was liable, apart from his character as a common carrier, and notwithstanding the writing. *Wright v. Gaff*, 6 Ind. 416. [AMERICAN.]

ing there was danger, did not order the tug to stop, and the vessel ran aground. *Held*, that they were guilty of contributory negligence. *Smith v. The Saint Laurence Tow Boat Company*, L. R. 5 P. C. 308.

597a. *Semble*, if during the performance of a towage contract by the tug S. to tow the A., the S. sees other vessels in danger, and there is another tug of inferior power at hand and competent to tow the A., the S. would be justified in leaving her to assist the vessels in danger, notwithstanding the pilot of the A. ordered the S. to remain by her. *The Annapolis*, 1 Lushington, 363.

598. A ship in charge of a licensed pilot got upon the Goodwin Sands. She was assisted off by a steamer, taken in tow, and then got upon Sandwich Flats. *Held*, that the ship's getting on Sandwich Flats might have been prevented by ordinary care and skill, that culpable negligence was therefore imputable to the steamer, and that the master of the steamer could not separate the towing of the vessel from his claim for salvage services for getting the vessel off the sand. Claim for salvage dismissed accordingly, with costs. *The Duke of Manchester*, 10 Jur. 863; 4 Notes of Cases, 575; 5 *Ibid.* 470. Affirmed on appeal, *Ibid.*, 6 Moore, P. C. C. 91.

598a. A master of a steam-tug, of which the defendant was owner, was employed by the plaintiff to tow his smack out of a harbour. In so doing the smack was stranded, through the negligence of the master. The plaintiff had on previous occasions hired the defendant's steam-tug, and on paying the charge had received a receipt, upon the back of which was printed a notice that the defendant would not be answerable for damage occasioned by any supposed negligence of his servants. *Held*, that it was a question for the jury whether the contract was made on the terms printed on the back of the receipts. *Symonds v. Paine*, 6 H. & N. 709; 30 L. J. Exch. 256.

599. The master of a steam-tug who had contracted to tow a fishing smack out of the harbour of Great Yarmouth to sea on the terms that his owners should not be liable for damage arising from any negligence or default of themselves or their servants, after the towage had been in part performed, took in tow, in addition to the smack, six other vessels, and in consequence was unable to keep the fishing smack in her course, so that she went aground and was lost. By having

more than six vessels in tow at once the master of the tug disobeyed a regulation made by the harbour master of Great Yarmouth under statutory authorities. *Held*, that the loss of the smack was occasioned by the negligence of the master of the tug, but that the owners were protected from liability by the terms of the towage contract. *The United Service*, 9 P. D. 3.

599a. In all ordinary cases of towage it is a part of the contract that the steam-tug shall be subservient to the pilot on board the vessel in tow, and it is the duty of those on board the steam-tug implicitly to obey and carry out his orders. There may be cases in which this duty ought to be relaxed, as in cases of salvage, where the master of the steam-tug is called in to remedy the errors of the pilot, or where he sees the pilot acting in such a manner as to threaten the destruction of his own vessel and endanger the lives and properties of others, but these cases form the exception to a general rule. *The Christina*, 6 Moo. P. C. C. 372; 12 Jur. 251; 3 W. Rob. 27; 6 Notes of Cases, 4, 361.

600. The tug, through neglect of the orders of the pilot on board the vessel in tow, had caused her to come in collision with another vessel. *Held*, that although the pilot might not have exercised a sound discretion in the orders he gave, yet there was no sufficient justification for the master of the steam-tug refusing to obey and carry those orders into effect. *Ibid.*

600a. Where, in the performance of towage services, the tow gets into a position of danger, the tug is not entitled to salvage for extricating her from it, unless the tow's dangerous position was an inevitable accident not arising from any negligence of the tug; and if the danger arose from the fault of the tug, the tow is entitled to recover from the tug owners the losses or damages thereby occasioned. *The Robert Dixon*, 4 Asp. 246.

601. A steam-tug entered into a verbal agreement with the master of a vessel having a duly licensed pilot on board to tow her to London. In coming up the river they came across a brig near a tier of vessels; the pilot hailed the tug to go to the westward of the brig, but the master of the tug disobeyed the order, and went to the eastward, thereby causing a collision between the vessels. The tug afterwards completed the towage. *Held*, that in such circumstances the disobedience of the orders of the pilot was

not justifiable, and that the towage was forfeited. Whether, notwithstanding such misconduct, the tug could recover towage from the owners of the vessel under the contract, and leave the vessel towed to a cross-action for damage, was a question which, as it had not been properly raised in the Admiralty Court, the Judicial Committee, as a court of appeal, refused to entertain. *The Robert Dixon*, 4 Asp. 245.

602. As to the responsibility of the tug to obey the orders of the pilot on board the tow, see further, tit. OWNERS, pp. 1406—1409.

603. As to the effect of misconduct of salvors, see c. 9, p. 1856.

16. Pilotage by other than Pilots.

604. A service which would be pilotage in the case of a duly licensed pilot becomes salvage as regards the reward, when voluntarily performed by others in a place where there are no licensed pilots. *The Rosehaugh*, 1 Spinks' Eccl. and Adm. Rep. 267. See also *The Hedwig*, *Ibid.* 19.

605. When a vessel is out of pilotage ground altogether, and services are rendered in taking her to a place of safety, they are considered salvage and not pilotage services. *The Hedwig*, 1 Spinks' Eccl. and Adm. Rep. 23; 17 Jur. 977.

606. The court will look with considerable indulgence on the efforts of persons offering their services to vessels in distress, where there are no other individuals on the spot capable of rendering more efficient assistance; but different considerations apply to the conduct of individuals assuming the character of salvors when there are other persons at hand more competent to discharge those duties. Claims of certain fishermen for salvage in respect of services rendered by them to a foreign vessel on the Norfolk coast, when there were regular pilots at hand to have taken charge of her, pronounced against, the court and Trinity masters being of opinion that the proceedings of the salvors had been erroneous and injudicious, and of no benefit to the vessel. Under the circumstances, however, the court declined to give costs against the salvors. *The Dygden*, 1 Notes of Cases, 115.

607. A French brig, bound to St. Petersburg, being in the Bristol Channel, the master having lost his course and

being ignorant of the locality, was at the entrance of Carmarthen Bay approached by a fishing boat, from which a man was put on board, under whose directions the brig was navigated to Tenby Roads. The value of ship and cargo was £3,000, and a tender of £5 was made by the owners; the court, taking into consideration the master's ignorance of the locality, that the sails were out of repair, that the vessel was therefore not altogether free from danger, that the persons boarding her were not pilots, and that no duty was therefore imposed on them, awarded, though estimating the service as very little beyond pilotage, £12, with costs. *The Eugenie*, 3 Notes of Cases, 430.

608. As to the services of parties acting in and assuming the character of pilots, and engaged in that capacity, see *The Columbus*, 2 Hagg. 178, n., No. 334, p. 1818.

609. As to services by coast pilots and boatmen who had shown a want of exertion and of a proper attempt to get off sooner to the vessel, and had prevented another boat's crew coming off earlier, see *The City of Edinburgh*, 2 Hagg. 333, 337, No. 340, p. 1819.

610. As to the services of a waterman engaged to act as pilot for a stipulated sum, see *The Æolus*, L. R. 4 A. & E. 29; 42 L. J. Adm. 14; 1 Asp. N.S. 516; No. 344, p. 1819.

611. As to services by pilots, see Nos. 308—347, pp. 1815—1819.

611a. As to the effect of an ambiguous signal on the salvage reward, see p. 1819.

17. Mutual Benefit.

612. A vessel struck on a reef of rocks near the island of Cuba, and was abandoned by her crew. Another vessel was abandoned near the same spot, and her crew in their boats having fallen in with the first vessel, got her off the reef and brought her to England. On a value of £1,237 the court awarded £350 and costs, intimating that the case was one in which mutual benefit was rendered and received by the salvors. *The Two Friends*, 8 Jur. 1011.

See also c. 5, p. 1803, and c. 10, p. 1871.

18. Mixed (Military and Civil).*

613. If a capture be made with an intention of prize, and the ship turn out to

* (157) But see *The United States v. Amistad*, 15 Peters, 518. [AMERICAN.]

(157a) Salvage is demandable of right on property taken from pirates. *Davidson v.*

belong to a friend, there is no reason why the original but mistaken intention of the captor should defeat any salvage interest that might arise from other circumstances in the case. Civil salvage decreed accordingly for actual services rendered at the same time in preserving the ship and valuable cargo in distress. £500 and costs awarded. *The Franklin*, 4 C. Rob. 147.

614. Salvage is not due to the crew of a ship for rescuing it from mutineers. *The Governor Raffles*, 2 Dodson, 14.

615. A king's ship held not entitled to salvage for rescuing a convict vessel from the possession of the convicts and of the mutinous crew and soldiers on board her, no great danger or personal exertion having been incurred; but costs of asserted salvors allowed. *The Francis and Eliza*, *ibid.* 115.

616. A slave ship on the coast of Africa was rescued from insurgent slaves by another slave ship. The court likened it to a rescue effected from pirates, or out of the hands of the public enemy, and awarded one-tenth of the value as salvage. *The Trelawny*, 4 C. Rob. 223.

617. A claim for salvage for rescue of a slave ship from insurgent slaves, held not to be substantiated. *The Ann*, 5 C. Rob. 100.

618. A vessel, part of whose crew had been captured by pirates, approached the harbour of A., having a signal of distress hoisted, and firing guns at intervals. Certain parties put off to her, and brought her into harbour, effecting the service during a period of two hours and a half only, with no risk or great exertion. An expedition against the pirates was afterwards planned and undertaken by the salvors and the rest of the crew, in which, after that part of the crew which had been captured had been ransomed, the pirates were attacked and some slain, but the greater part made their escape. A claim of salvage having been preferred in respect of such services, the bringing the vessel into harbour held to be a salvage service, but the expedition against the pirates not to be of that character; and that it would not have been so had the expedition been undertaken solely for the rescue of the crew, and successfully.

£30 awarded as salvage, with costs. *The Mary*, 1 W. Rob. 448.

619. Recaptors from pirates are entitled to a salvage reward. One-eighth might be a proper award to them. *The Marianna*, 3 Hagg. 208. See also *The Calypso*, 2 *ibid.* 213.

620. Military salvage pronounced for on donation from the enemy of a ship and part of the cargo captured by them to the master, in consideration of his taking home crews of other prize vessels taken by them, together with civil salvage for exertions in bringing home the ship and cargo. *The Sir Peter*, 2 Dodson, 73.

621. A British ship was taken by the French, who took out all the crew but the master and a boy, who, however, rose on the prizemaster and crew, and having regained possession of the vessel, made for England. A violent storm coming on, the master applied for and obtained assistance from an English frigate, by whose aid he continued to manage the vessel until it was thought dangerous to remain longer on board, when they all removed to the frigate. The storm abating shortly afterwards, the master and his assistants returned on board, and ultimately brought the vessel into port. Salvage of one-sixth (£1,000) awarded to the master and boy, viz. £850 to the master, and £150 to the boy; £500 awarded to the whole crew of the frigate, to be distributed as in a case of prize, with costs of all salvors. *The Beaver*, 3 C. Rob. 292.

622. In a cause of mixed military and civil salvage, the court inclined, though no bail had been given, to support a valuation and award, not clearly excessive, made on the spot, and on reference to three competent arbitrators chosen by both parties, but since objected to by the owners. A specific sum, abating something from the amount awarded, decreed, with costs of the salvors. *The Sir Francis Barton*, 2 Hagg. 156.

622a. Salvage awarded in a case of military salvage of a government transport. *The Lord Nelson*, Edwards, 79.

19. Other Cases.*

623. The supplying of a cable and chain by the crew of a lugger to a vessel

Sealskins, 2 Paine, C. C. 324. [AMERICAN.]

(158) As to military salvage, see Pritchards' Admiralty Digest (1st ed.), 400, and Pritchard's Digest of Prize Law, preparing for

publication; also, 2 Parsons on Maritime Law, 623. [AMERICAN.]

* (159) Two vessels at anchor came in collision without fault, and it was necessary, to prevent the destruction of both, for one to

which had slipped her anchor, but was not otherwise disabled, in boisterous weather and in the neighbourhood of dangers, held to be a salvage service. The nature of such an act differs according to the circumstances under which it is performed. *The Prince of Wales*, 6 Notes of Cases, 39.

624. Rescue of a vessel ashore from plunder by the natives, and removal of her into deep water, held to be a salvage service. *The Lady Worsley*, 2 Spinks' Eccl. and Adm. Rep. 255.

625. If a vessel at anchor in a gale of wind hails a steamer to lie by her, and be ready to take her in tow if required, and the steamer does so, and the ship rides out the gale safely without the assistance of the steamer, the court would hold the steamer entitled to salvage. *The Undaunted*, 1 Lush. 90; 2 L. T. N.S. 520; 29 L. J. Adm. 176.

626. If the signal hoisted was for a pilot only, that does not prevent the services rendered from being in the nature of salvage. The true question always is, What was the condition of the ship? Was she in distress? and the character of the signal hoisted is only one part of the evidence bearing upon this question. *The Bomarsund*, 1 Lushington, 78.

627. See also as to ambiguous signal, c. 5, p. 1819.

slip the cable and go ashore. Held, that this gave no claim against the other for a salvage service. *Beane v. The Mazurka*, 2 Curtiss, C. C. 72. [AMERICAN.]

(159a) The rescuing a raft of timber found adrift in harbour, and floating out to sea unaccompanied by any person, is in its nature a maritime salvage service, for which salvage compensation may be awarded. *A Raft of Spars*, 1 Abb. Adm. 291. [AMERICAN.]

(160) Compensation was granted for keeping company with a distressed vessel, at the earnest request of her master. *Allen v. Ship Canada*, Bee, 90. [AMERICAN.]

(161) Salvage cannot be claimed for taking up a drifted boat. *Windsor v. Walker*, Martin, 74. [AMERICAN.]

(162) Compensation awarded for services in getting off a ship after consultation with merchants and owners of ships, the services falling below a salvage service. *George v. Ship Arctic*, 232. See *Ryan v. Cato*, Bee, 241. [AMERICAN.]

(163) In a salvage service effected by landmen, the fact that in doing so they neglected their growing crops of cotton was considered in awarding salvage. *Stephens v. Bales of Cotton*, Bee, 170. [AMERICAN.]

(164) If the master of a vessel in distress has requested the assistance of salvors by a

628. A was engaged by the master, under an agreement to assist in saving the cargo of a vessel stranded, and which subsequently went to pieces. A., by great efforts and with considerable danger, placed a great part of the cargo in safety. Held, that although not strictly entitled as for salvage service, the court would allow a liberal remuneration for successful and meritorious agency. *The Favourite*, 2 W. Rob. 255.

629. A vessel got on the Arklow Bank, and was lost. Part of her cargo was saved by forty-seven smacke acting under the directions of the officer of the coast-guard. The court considered that it was rather a meritorious service than a pure salvage service, that the crews were employed under authority, and were not really voluntary salvors. *The Amazon*, 2 L. T. N.S. 140.

630. The lord of a manor is not entitled to salvage for taking, against the consent of the owner, and preserving parts of a ship thrown on his manor, when the servants of the owner are there to take care of it for him. *Sutton v. Buck*, 2 Taunt. 302.

631. The circumstance of the crew of a revenue cutter going on board a derelict for the protection of the revenue will not make them salvors. *The Queen Mab*, 3 Hagg. 243.

signal of distress or otherwise, and they have incurred danger, expense, or labour, in compliance with such request, and their aid has been refused, it seems they have a right to some compensation, at least, if the vessel ultimately comes to a place of safety. *The Susan*, Sprague, 499. [AMERICAN.]

(165) With a brig purchased by him at Oahu, the master of the lost ship proceeded thence to the island, and with much risk took on board the part of the crew and oil, which had been left there, and brought them safely to Fall River. Held, that the master was entitled to recover compensation for the service, over and above his expenses and risk. *The Holder Borden*, Sprague, 144. [AMERICAN.]

(165a) A vessel, being ignorant of her whereabouts, had struck a shoal, but got off and came to anchor, and a steamer coming by gave her information of her position, and attempted to tow her to a place of safety, but the hawser breaking, no further attempt to tow was made, and the steamer guided the vessel out to sea clear of all shoals, being with her about five hours. Held, that the steamer was entitled to salvage. *The Cornelius Grinnell*, 11 L. T. N.S. 278. [AMERICAN.]

632. A ship sunk on the Nore Sand had been raised by means of an apparatus. *Held*, that this was a salvage service. *The Catherine*, 12 Jur. 682; 6 Notes of Cases, Supp. xliii.

633. Claim of a Deal boatman (intervening in a salvage suit) for salvage services antecedently, rejected, no effective service being shown to have been rendered. Decision affirmed on appeal. Costs not asked for. *The Branken Moor*, 3 Hagg. 373.

634. A salvor of wreck is not entitled to remuneration for services other than those of a salvage nature, out of proceeds of cargo sold duty free, pursuant to 1 & 2 Geo. 4, c. 75. Objection to the report of the registrar and merchants rejecting such further claims, overruled. *The Jonge Nicolaas*, 1 Hagg. 209, 210.

635. A steamer came out from a port at some distance, in consequence of a signal for assistance from a ship supposed to be in distress. In fixing the salvage remuneration, *held*, that the distance and time lost in reaching the vessel must be taken into consideration. *The Graces*, 2 W. Rob. 294.

636. Claim for salvage for bringing into port a barge found (without anchor or crew) on a sand where it was a common usage to leave barges, rejected, but, under the circumstances, without costs. *The Upnor*, 2 Hagg. 3.

637. Claim for salvage unopposed, preferred by some fishermen, who discovered a whale three miles from the shore, and towed it to land, pronounced for, and the produce of the whale decreed to them. *The Lord Warden of the Cinque Ports v. The King in his Office of Admiralty*, 2 Hagg. 438.

7. Life.

1. By British Ships.

638. As to the jurisdiction of the Admiralty Division and Court of Admiralty in respect of salvage of life, see the M. S. Act, 1854 (c. 104), s. 458, and No. 98, p. 1791.*

639. See also thereon the Admiralty Court Act, 1861 (c. 10), s. 9, in No. 104, p. 1792.

640. *Held*, that the words "the lives

of the persons belonging to such ship or boat," in sect. 458 of the M. S. Act, 1854 (c. 104), and similar words in the Admiralty Court Act, 1861 (c. 10), s. 9, include passengers. *The Fusileer*, Br. & Lushington, 341; 2 Asp. 177; 34 L. J. Adm. 25; 4 Jur. N.S. 289; 10 L. T. N.S. 699; 12 *ibid.* 186; 12 W. R. 968; 13 *ibid.* 592.

641. The owners of the cargo are liable to contribute to that portion of the claim of salvors which arises from saving the lives of passengers, although the salvors may have rendered no direct benefit to the cargo, as the benefit to property is not a criterion of remuneration for life salvage. *Ibid.*

642. An action for salvage of life was instituted against cargo, a portion of which had been sold before the commencement of the suit. *Quære*, whether the court had not power to follow the portion of the cargo sold, or even the proceeds of the sale? *The Governor Maclean*, 13 W. R. 728.

643. Preservation of human life is made by the M. S. Act, 1854 (c. 104), a distinct ground of salvage reward, with priority over all other claims for salvage, where the property is insufficient. *The Coromandel*, Swabey, 205. See also *The Bartley*, *ibid.* 199.

644. The intention of the legislature, as expressed in the M. S. Act, 1854 (c. 104), with regard to the saving of life, was to provide for the contingency of life saved and property lost, by giving the court the power to reward for the salvage of life only, and also to empower the court to reward for saving life as part of the salvage services performed. *The Coromandel*, Swabey, 207.

645. In a case of salvage a greater amount was awarded to the vessel saving the lives as well as some of the property than to the vessels saving property only. *The Clarisse*, Swabey, 131. (Before the judge of the Cinque Ports.)

646. The Court of Admiralty had no original jurisdiction to award salvage for the saving of life only. *The Johannes*, 1 Asp. 24.

647. The M. S. Act, 1854 (c. 104), did not give the court jurisdiction over salvage of life only, performed on the high seas, at a distance of more than three miles from the shore of the United Kingdom, if the

* (166) Similar provisions were contained in 9 & 10 Vict. c. 99, s. 19, which was repealed on the M. S. Act, 1854, coming into

operation. See the M. S. Repeal Act, 1854 (c. 120).

ship from which the lives were saved was a foreign ship. *The Johannes*, 1 Asp. 24.*

648. It is immaterial to this question that before action the ship has been brought by other salvors into a British port. *Ibid.*

649. The court is now, since the M. S. Act, 1854 (c. 104), bound to take into special consideration in connexion with the salvage of property the salvation of human life, and to give a corresponding reward. *The Bartley*, Swabey, 199; *The Thomas Fielden*, 32 L. J. Adm. 61.

650. A liberal reward is to be given for the saving of human life, consideration being had to the degree of peril to which the salvors and the persons saved are exposed. *The Eastern Monarch*, 1 Lushington, 81.

651. In cases of salvage of both life and property, the whole property arrested—ship, freight and cargo—are liable for both species of salvage. *The Eliza*, No. 1626, 21st April, 1863.

652. But in cases of salvage to life only the ship alone is liable for the salvage pursuant to the statute, and not the cargo jointly with the ship. *Ibid.*

653. In a case of salvage of life and property, *held*, that the whole salvage, both of ship and property, was to be borne by ship and cargo, according to their rateable values. *Ibid.*

654. In a case of salvage, the court having out of the proceeds of ship and cargo, amounting to £608, awarded one-half to salvors of property, awarded £150 to life salvors, taking off the crew, together with costs to both plaintiffs. *The Anna Helena*, 49 L. T. 204; 5 Asp. 142.

655. A steam vessel, having sustained severe damage by a collision, some of her crew, who were foreigners, without any order from the master, got into one of the boats and rowed away. They were shortly afterwards picked up by a fishing smack. *Held*, that the owners and crew of the smack were entitled to salvage remuneration. *The Cairo*, L. R. 4 A. & E. 184; 43 L. J. Adm. 33, 320; 2 Asp. N.S. 257.

656. The plaintiffs saved the lives of several passengers on board a German vessel wrecked on the coast of England. Subsequently a large quantity of specie was recovered from the wreck by divers

employed by the owners of such specie. *Held*, by the Court of Appeal (Brett, L. J., dissenting), affirming the decision of the Admiralty Court, that the plaintiffs were entitled to salvage remuneration out of the specie so recovered. *The Cargo ex Schiller*, 1 P. D. 473; 2 *ibid.* C. A. 145; 46 L. J. P. D. & A. 9; 3 Asp. N.S. 226; *Ibid.* C. A. 439.

657. In the absence of special contract some property in the ship or cargo must be saved in order to found the liability of the owners of the ship or cargo to the payment of salvage remuneration in respect of life or otherwise. *The Cargo ex Sarpedon*, 3 P. D. 28; 3 Asp. N.S. 509.

658. Salvors rescued the crew and passengers and also certain specie in a vessel, but the vessel itself was lost. In a suit instituted against the specie, a sum was awarded in respect of the above services. The owners of the specie then claimed contribution from the owners of the vessel in respect of so much of the sum as was awarded on account of life salvage. *Held*, that the owners of the vessel were not liable. *Ibid.*

659. A ship was wrecked in the Red Sea off an island which was uninhabited and without water. The C. took the passengers and crew on board, and brought them to England. *Held*, that the service was not life salvage. *The Cargo ex Woolsung*, 44 L. J. Adm. N.S. 45.

660. The Mersey Docks and Harbour Board, which is empowered by act of parliament to maintain lifeboats, agreed with certain tug companies that the companies should provide tug-boats to tow the lifeboats to vessels in distress, the board contracting to pay fifteen guineas for each occasion. The agreement contained a proviso that nothing contained therein should prejudice or affect the rights of the companies in regard to services in saving ships or other property to be rendered by their steamers. *Held*, that the agreement did not bar the companies or the masters and crews of the tugs from claiming life salvage. *The Pensacola*, B. & L. 307.

661. A steamship was requested by another steamship in distress to stand by her. An agreement was accordingly made between the two masters for a fixed sum that the sound vessel would remain by

* (167) The Admiralty Court Act, 1861 (c. 10), s. 9, has, however, in the case of British ships, extended their provisions in the M. S.

Act, 1854 (c. 104), as to salvage of life, to whomsoever the services may have been rendered. See No. 639, *supra*.

the damaged one till she was in a safe position to get to port. The sound vessel remained by the damaged one until the latter was about to sink, when she took her crew on board, and the damaged steamer immediately afterwards sank. The owners, master and crew of the salving ship brought an action for life salvage. *Held*, that as no *res* was saved, the action would not lie either as a salvage action simply or on the agreement. *The Renpor*, 8 P. D. 115; 5 Asp. 98.

662. Officers and crews of her Majesty's ships, with the consent of the Admiralty, recover salvage, as well for saving life as for services to ship and cargo. *The Alma*, 1 Lushington, 381.

663. As to the jurisdiction of the Court of Admiralty as to salvage of life, see c. 2, p. 1791.

664. As to the priority of liens for salvage of life, see c. 11, p. 1879.

2. *By Foreign Ships.*

See c. 2, p. 1849.

3. *Payment by Board of Trade.*

(a) *Generally.*

665. Salvage in respect of the preservation of the life of any person belonging to any such ship or boat, shall be payable by the owners of the ship or boat in priority to all other claims for salvage. See the M. S. Act, 1854 (c. 104), s. 459.

666. Where such ship or boat is destroyed, or the value thereof is insufficient, after payment of the expenses incurred, to pay the life salvage, the Board of Trade may award to the salvors of life out of the Mercantile Marine Fund such sum as it deems fit, in whole or part satisfaction of life salvage so left unpaid. *Ibid.*

667. The Board of Trade may, out of the Mercantile Marine Fund, direct payment to be made for affording assistance

towards the preservation of life and property in cases of shipwreck and distress at sea, and for rewards for the preservation of life in such cases. The M. S. Repeal Act, 1854 (c. 120), s. 7.

(b) *Rocket Apparatus, Life Boats, &c.**

668. The Board of Trade may out of the mercantile marine fund direct payment to be made of such expenses for establishing and maintaining on the coasts of the United Kingdom proper lifeboats with the necessary crews and equipments. *Ibid.*

4. *Awards.*

669. See c. 15, p. 1889.

5. *Priority of Lien.*

670. See c. 11, p. 1879.

8. *The Property saved.*

1. *Generally.*

671. Salvage is payable out of ship, freight and cargo, at risk, without distinction as to the nature of the cargo. *The Longford*, 6 P. D. 60; 4 Asp. 385.

672. Salvage services were rendered to a vessel carrying cargo as a common carrier. The peril had been caused by the negligence of the master. *Held*, that the salvors could maintain a personal action against the owners of the vessel for salvage of the cargo as well as of the ship. *Duncan v. Dundee, Perth, and London Shipping Co.*, 4th Series, vol. 5, p. 742. [SCOTCH.]

2. *Steam Vessels with Passengers.†*

673. In cases of salvage of steam boats carrying passengers, the salvage reward is not to be estimated by the same considerations of value as with regard to other vessels. Steam vessels are a peculiar species of vessels making large profits,

* (168) For the instructions to the officers and men of the coastguard and receivers of wreck as to the charge of the rocket life-saving apparatus, and the use and superintendence of the use thereof, see the Board of Trade Instructions relating to the rocket apparatus for saving life from shipwreck, anno 1880, and the Special Instructions of the Admiralty to the Coastguard, anno 1875, cc. 5, 6, pp. 129—131.

† (169) In cases of salvage the court has no authority to allow a reward for saving life. This is a common duty of humanity.

But when the saving of life is connected with the saving of property the court may consider it in fixing the amount of salvage. *The Emblem, Davels*, 61. [AMERICAN.]

(169a) A larger remuneration should be given when the salvage service is performed for steam vessels than in ordinary cases, inasmuch as they usually carry many passengers, and the cause of humanity requires that prompt and efficient salvage services rendered to them should be liberally rewarded. *Marvin on Wreck and Salvage*, 125. [AMERICAN.]

and are not therefore to pay for such services as though only carrying ballast. Humanity requires that every possible encouragement, in the way of liberal reward, should be given, in order to induce a prompt and efficient assistance to them, and the reward must be beyond a mere proportion of the value, as in ordinary cases. *The Ardincaple*, 3 Hagg. 153.

674. A steam navigation company is peculiarly bound to encourage salvage assistance. *The London Merchant*, *ibid.* 400.

674a. As to salvors, owners of steam vessels, see c. 5, p. 1801; as to salvage by steam vessels, see tit. SALVAGE AWARDS, p. 1921.

3. Fishing Boats, Gear, &c.

675. All fishing boats, all rigging, gear, or other appurtenances of fishing boats, all nets, buoys, floats, or other fishing implements whatsoever, found or picked up at sea, shall as soon as possible be delivered to the collector of customs, if the article saved be taken into England, and to the commissary of marine if the article saved is taken into France. 6 & 7 Vict. c. 79,* reciting the convention concerning the fisheries between this country and France, Art. 61.

676. The collector of customs, or the commissary of marine, as the case may be, shall restore the articles saved to the owners thereof, or to their representatives. These functionaries may, when the circumstances are such as to call for it, award to the salvors a suitable compensation for their trouble and care. This compensation, which shall in no case exceed one-fourth of the actual value of the articles saved, shall be paid to the owners. *Ibid.* Art. 62.

676a. Whenever any fishing boat, rigging, gear, or any other appurtenance, of any fishing boat, or any net, buoy, float, or other fishing implement, shall have been found or picked up at sea, and brought into a British port, and shall not be forthwith delivered to the collector

of customs, pursuant to the sixty-first article, any magistrate or justice of the peace, on application of the collector, may issue his warrant for delivering of the articles to such collector, who shall take possession of the same, and deliver them to the owner thereof or his representative, on payment to him, for behoof of the salvors, of such compensation as the collector shall award pursuant to the sixty-second article. See 6 & 7 Vict. c. 79, s. 15.

677. As to sea-going fishing vessels generally, see tit. OWNERS, Pt. II, p. 1235.

677a. As to British and French fishing vessels generally, under the Sea Fisheries Acts, and the conventions between this country and France, *Ibid.* p. 1288.

4. Personal Baggage.†

678. The wearing apparel and other goods *ejusdem generis* belonging to passengers are not liable to contribute to salvage. *The Willem III.*, L. R. 3 A. & E. 487; 1 Asp. N.S. 129.

5. Bullion.‡

679. Specie contributes towards salvage in the same proportion as ship, freight, or any other cargo. *The Longford*, 6 P. D. 60; 4 Asp. 385.

680. In a case of money found derelict, no owner appearing, a moiety was granted to the salvor. *The King v. Property Derelict*, 1 Hagg. 383.

681. Case of salvage of derelict treasure. *The Thetis*, 3 Hagg. 61; 2 Knapp, P. C. C. 409.

681a. Case of salvage of bullion. *The Jonge Bastiaan*, 5 C. Rob. 323.

682. As to specie in connection with life salvage, see Nos. 656, 658, p. 1848.

683. As to awards for salvage of specie, see tit. SALVAGE AWARDS, p. 1921.

683a. Where steam-tugs rendered salvage services by towing a sinking vessel with passengers, cargo, and bullion on board into safety, *held*, that the bullion was liable to contribute to the salvage reward in proportion to its value rateably

* (170) As to the extent to which this act is now in force, see tit. OWNERS, note 115, p. 1238.

† (171) Wearing apparel of the master and seamen is excepted from salvage. 1 Park on Ins. 27; Beawes' Lex Mer. 147.

(172) The clothing of the master and crew which is left on board a vessel when they abandon her, is not included in the property

on which salvage is allowed. *The Rising Sun*, Ware, 378. [AMERICAN.]

(172a) In the Florida district the wreckers have never demanded salvage upon the clothing or personal baggage of the master, crew or passengers, nor upon the master's charts and instruments of navigation. *Marvin on Wreck and Salvage*, 133. [AMERICAN.]

‡ (173) See note 141, p. 1831.

with the other property salvaged. *The Longford*, 6 P. D. 60; 4 Asp. 385.

6. *Timber.**

7. *Papers.†*

8. *Derelict Property.‡*

684. As to payment, for salvage of unclaimed wreck, to the salvors, by the receiver, of such amount as the Board of Trade may in each case or by any general rule determine, see the M. S. Act, 1854 (c. 104), s. 475.

685. For provisions requiring persons finding any anchor, cable, or other sort of ship's stores or materials, within or at the entrance of the river Humber, to bring them without delay to Hull, and within two days afterwards to deliver them to the owner or master, or his agent, or at the place appointed for depositing such articles when unclaimed (penalty for default, or for destroying, damaging, or removing any such articles, or any buoy, buoy rope, or other mark, or fastening thereto, £20), see 2 & 3 Will. 4, c. 105, s. 55.

686. A vessel derelict, waterlogged, and very disabled, having been met with by another vessel, the master and mate of which fished down the hatchway of the

derelict, and dragged up certain property, which they afterwards used up and shared amongst their crew, a monition at the instance of the king in his office of Admiralty was decreed against them to show cause why the same should not be brought into the registry, to be proceeded against as droits of Admiralty. *The King v. Property Derelict*, 1 Hagg. 383.

687. The property having been afterwards brought in by the master pursuant to the monition, and with an affidavit as to the goods found, and his ignorance of the law requiring a condemnation thereof, the property was condemned as a droit of Admiralty, and on a prayer of the master for a salvage remuneration, a moiety thereof decreed to him. *Ibid.*

688. One hundred pounds disbursements and costs awarded to the reeve or deputy of a lord of the manor, for custody of wreck, in lieu of salvage, without prejudice to the rights of the lord of the manor. *The Augusta Lovell*, 1 Hagg. 21.

689. See also c. 13, p. 1881, and Nos. 146—151, p. 1797.

9. *Value.*

(a) *Generally.§*

690. In fixing a proportion of the value for salvage reward the Court of Admiralty

* (174) The rescuing of a raft of timber found adrift in harbour, and floating out to sea unaccompanied by any person, is in its nature a maritime salvage service, for which salvage compensation may be awarded. *A Raft of Spars*, 1 Abb. Adm. 291. [AMERICAN.]

† (175) The court can allow no salvage for saving from a wreck bills of exchange or other papers the evidence of a debt or of title to property. *The Emblem*, Daveis, 61.

(176) A private armed vessel sailing under a commission from a foreign government is not liable for salvage. *L'Invincible*, 1 Wheaton, 238. [AMERICAN.]

(177) The private property of a foreign sovereign and prize property brought into port by a foreign vessel of war are liable for salvage. *The Santissima Trinidad*, 7 *ibid.* 283. [AMERICAN.]

(178) Salvage is not allowed on money found on the person of a drowned man, but the expense of his interment was allowed therefrom. *The Amethyst*, Daveis, 20, 29. [AMERICAN.]

(179) If the property saved remains in the custody of the court pending a suit for salvage, and it perishes by accident, as by fire, without any default on either side, the loss is to be borne by the owners and salvors as a common loss. *The Three Friends*, 4 C. Rob. 268; Story on Bailment, s. 623.

(180) But if the property has been delivered to either upon bail or stipulation, the loss is to be borne exclusively by such party, for he takes upon himself the risk. *Ibid.*

‡ (181) Vessels sunk at sea are not "wrecks," but when found are derelict, and he who finds and recovers them has a lien on them for salvage. *Baker v. Hoag*, 3 Seldon (N. Y.) 555. [AMERICAN.]

(182) A vessel with slaves on board but no white person, considered as derelict, and one-third given as salvage to the person bringing her in. *Flinn v. Leander*, Bee, 260. [AMERICAN.]

§ (183) The valuation of a recaptured ship, in order to ascertain the rate of salvage, may be determined by the policy of insurance, if there be no reason to suspect she is undervalued, and the same rule may be observed as to the goods where there are policies upon them; if that, however, should not be the case, the salvors have a right to insist upon proof of the real value, which may be given by the production of the merchant's invoices. 1 Park on Ins. 327; Beawes' Lex Merc. 147.

(184) In many cases where the value is known to be large and the service small, a proper remuneration may be made without ascertaining the precise value. *Marvin on Wreck and Salvage*, 123. [AMERICAN.]

is in the habit of giving a smaller proportion where the property is large, and a higher proportion where the property is small, and for the obvious reason that where the property is of small value, a small proportion would not hold out a sufficient encouragement, whereas in cases of considerable value a small proportion would afford an adequate remuneration. *The Mary Stenhouse*, 8 Ir. Jur. Adm. N.S. 58. See also *The Syrian*, 2 Asp. 387.

691. Although the value of the property salvaged is to be considered in the estimate of the remuneration, it must not be allowed to raise the *quantum* to an amount altogether out of proportion to the services actually rendered. *The Amerique*, L. R. 6 P. C. 468; 2 Asp. N.S. P. C. 460.

692. Salvage services were rendered to a vessel and cargo bound for London. The salvors took them in to Lisbon, from whence the cargo was subsequently transhipped and brought to London. It was asserted that the cargo was unsaleable at Lisbon. *Held*, that the proper method of arriving at the value of the cargo at Lisbon would be, not on any assertion of its being unsaleable there, but by putting it at between £7 and £8 per cent. less than the proceeds of its sale in London, deducting freight and charges for the voyage from Lisbon to London, but allowing a *pro rata* freight as far as London. *The George Dean*, Swabey, 291.

693. The value of freight salvaged is reckoned *pro rata itineris peracti*, and the other equities of the case. *The Norma*, 1 Lushington, 124; 3 L. T. N.S. 340; 1 Asp. 7.

694. A ship bound from Honduras to England was disabled on the voyage, and towed into Bermuda, where expenses nearly equal to the whole freight were incurred to refit; the voyage home was afterwards completed, and the cargo de-

livered. The court allowed salvage upon one-half of the total gross freight. *The Cumberland*, 6 Jur. N.S. 325; 5 L. T. N.S. 496. [IRISH.]

695. On salvage of cargo, the freight thereon, as well as the cargo itself, is liable to salvage. *The Westminster*, 1 W. Rob. 233.

696. The freight is not to be deducted, but to be added to the cargo, in estimating the value in respect of which the salvage remuneration is to be allotted. *Ibid.*

697. In estimating the value of recaptured property for the purpose of a salvage apportionment the true rule is to take the value, not at the time of capture, but at the place of restitution, which is to be considered with reference to the moment of the arrival of the property in port. *The Progress*, Edwards, 222.

698. Salvors are not entitled to stipulate for remuneration proportioned to the value of the cargo. *The Henry*, 3 L. T. 553.

699. See as to the valuation of property jettisoned, *Fletcher v. Alexander*, L. R. 3 C. P. 375; *Hill v. Wilson*, 4 C. P. D. 329.

700. Where in a salvage suit a mistake has been made relative to the value of the vessel to which the salvage services were rendered, the court has power to correct the mistake and vary the decree. *The James Armstrong*, L. R. 4 Adm. & Ecc. 380.

701. As to the mode of ascertaining the value, see tit. PRACTICE, pp. 1559, 1692.

702. By commission of appraisement. *Ibid.* p. 1671.

703. By valuation of receiver of wreck. *Ibid.* p. 1672.

(b) Deductions.*

704. Salvors are, generally speaking, entitled to salvage upon ship, freight, and

(185) In decreeing salvage at an intermediate port of distress freight can rarely become a distinct subject of consideration in the apportionment of the salvage, for it is not yet earned. It is only in cases where freight *pro rata itineris* is due that it can be considered. But if the ship carries on the cargo, the freight earned is made to contribute to the salvage expenses, in the adjustment made at the end of the voyage. (*The Nathaniel Hooper*, 3 Sumner, 566.) Where, however, the ship is disabled or lost, and the cargo is to be forwarded in another vessel or is sold, it is often desirable that a partial ad-

justment should be made at the port of distress. Marvin on Wreck and Salvage, 178. [AMERICAN.]

* (186) The wearing apparel of the master and seamen is excepted from the allowance of salvage. 1 Park on Ins. 327; Beawes' Lex Merc. 147.

(187) The clothing of the master and crew, which is left on board a vessel when they abandon her, is not included in the mass of property on which salvage is allowed. *The Rising Sun*, Ware, 378. [AMERICAN.]

(188) In determining the value upon which salvage should be awarded, seamen's wages

cargo. *The Fleece*, 3 W. Rob. 282; 7 Notes of Cases, 537.

705. When, therefore, a sum of money has been paid by the owners of the cargo on account of freight they cannot, as against the salvors' claim, deduct it from the value of the property saved. *Ibid.*

706. In all cases of salvage, those who conduct the service are entitled to have the value of the whole property stated, that is, the ship, freight, and cargo. *The Charlotte Wylie*, 5 Notes of Cases, 6.

707. Where the freight is included in the cargo they have it *de facto*, though not in the same manner as where the freight is considered as a distinct item. *Ibid.*

708. The owners of the cargo claimed a deduction for freight. *Held*, that if it were to be deducted from the value of the cargo, it must be taken afterwards as a separate item upon which salvage would be decreed, and that no dispute being raised between the owners of the ship and the cargo, the item could not be allowed. *Ibid.*

709. In a salvage suit, expenses, by which all parties interested in the cargo have received benefit, are proper deductions to be allowed to the owners. *The Simpson*, 3 Jur. 270. [IRISH.]

710. A vessel found derelict at sea was brought to this country by salvors, but in consequence of the state of the weather they were compelled to run her ashore at Eastbourne, from whence she was brought round by other persons to Portsmouth. *Held*, that the expenses of bringing the vessel from Eastbourne to Portsmouth were proper deductions to be allowed from the value of the ship and cargo. *The Watt*, 2 W. Rob. 71.

711. In ascertaining in a salvage suit the net value of the cargo saved, the 2½ per cent. discount for prompt payment, and certain other items, viz. for custom-house entries, freight, weighing, brokerage, and commission, sworn to be accustomed charges, were allowed to be deducted, but not a gratuity of £5 5s. to the master. *The Peace*, Swabey, 115; 27 L. T. 255; 4 W. R. 635.

712. *Semble*, necessary expenses, without which the cargo could not have been sold, will be allowed as deductions unless contrary to the rules of trade. *Ibid.*

713. In estimating the value of cargo for a salvage award no deductions for primage or insurance will be allowed. *The Charlotte Wylie*, 5 Notes of Cases, 6; *The Fleece*, 2 W. Rob. 282; 7 Notes of Cases, 537.

714. Disbursements by the marshal of the court for the necessary expenses of unshipping and storing the cargo saved are a proper deduction from the estimate of value for the purposes of salvage reward. *The Hebe*, 7 Notes of Cases, Supp. iii.

715. But not the amount of a bottomry bond executed prior to the salvage services being rendered, nor debts contracted for wages, provisions, and other necessaries for the crew subsequently to the salvage. *Ibid.*

716. *Held*, that a bottomry bond given subsequently to the salvage and wages accruing during the same time are legitimate deductions from the value of the property saved. *The Selina*, 2 Notes of Cases, 18.

717. But not the wages earned prior to the salvage. *Ibid.*

718. Expenses of prosecuting certain persons forcibly dispossessing salvors who

earned subsequently to the rendition, and in continuation of the salvage services, a bottomry bond given by the salvors, and other charges fairly and necessarily incurred by the salvors or owners in the storage or preservation of the property, are to be deducted from the value. The owner is benefited only to the extent of the net value saved to him. But wages, bottomry bonds, or other liens earned or created antecedent to the rendition of the salvage services are not to be deducted; for these are saved to the persons interested in them, as much as the goods, and are subject to the salvage. *Marvin on Wreck and Salvage*, 124. [AMERICAN.]

(189) In salvage causes in the American Admiralty Courts, costs and expense are usually made a charge upon the gross pro-

perty, unless caused by the laches or other improper conduct of any particular claimant, in which case they are made to fall on him alone. *The Nathaniel Hooper*, 3 Sumner, 581; *Marvin on Wreck and Salvage*, 92. [AMERICAN.]

(190) In the district court of Florida at Key West, the master's expenses of keeping property proceeded against in the Admiralty Court there are subjected to examination and revision of the court. *Ibid.* 93.

(191) In the following cases a sale of cargo duty free to defray the salvage was made under 1 & 2 Geo. 4, c. 75:—*The Augusta Lovell*, 1 Hagg. 21, n.; *The Jonge Nicolaas*, *ibid.* 201, 209. But such sales are now no longer allowed. See the M. S. Act, 1854 (c. 104), ss. 499, 500.

are, with the consent of the master, in possession of a ship in distress, can form no item of deduction, as against the original salvors' claim in the value of the property saved. *The Fleece*, 3 W. Rob. 281; 7 Notes of Cases, 537.

719. In a cause of salvage a tender of £534 was made before action, and refused. After action, a tender of £275 only was made, on the ground that the salvors by their improper conduct subsequently to the service in causing a detention of the vessel had occasioned a loss of £260 to the owners. *Held*, that assuming the truth of such misconduct no such deduction from salvage could be made. *The Hopewell*, 2 Spinks' Eccl. and Adm. Rep. 249.

720. In a question between the owners of a ship and salvors, the expense of making a valuation of the property saved is a proper charge against the owners. *The Samuel*, 15 Jur. 410.

721. But as to costs of commission of appraisement, see tit. Costrs, p. 411.

722. *Semble*, salvage remuneration is to be calculated on the value of the ship and cargo, without any previous deduction for wages due at the time when the salvage service was rendered. *The Sahira*, 7 Jur. 182.

(c) Termination of Services.

723. The salvage concluded at one port, and the cargo was transhipped and brought to another and there sold. Salvors *held* only entitled to salvage on the value at the port where their services concluded. *The George Dean*, Swabey, 290; 30 L. T. 220; 6 W. R. 263.

724. Salvors are entitled to salvage upon a value calculated at the place where their services terminated. *The Norma*, 1 Lushington, 124; 3 L. T. N.S. 340; 1 Asp. 7.

725. As to a salvage service having been completed, so as to disentitle those

who recovered anchors to share therein, see *The Endeavour*, 6 Moore, P. C. C. 6, 334; 6 Notes of Cases, 56; and No. 384, p. 1824.

726. The general rule, unless the exception can be distinctly proved, is that the value of the ship and cargo shall be taken at the port whither the ship is carried. *Cargo ex The Loodianah*, No. 1403, 21 April, 1863.

727. The ship L., on her voyage from Moulmein to Liverpool, laden with teak, was in distress in the Indian Ocean, when she was fallen in with by the N. The master and crew of the L. were taken on board the N., and some of the N.'s crew succeeded in getting the L. into Galle, the N. proceeding to Bombay with the master and crew of the L. Communications took place on behalf of the N. with the owners of the ship and cargo of the L. in England. The owners of cargo declined to interfere, but the owners of ship authorized the subsequent proceedings. An agent of the N. proceeded from Bombay to Galle, caused the cargo to be unladen and stowed, the necessary repairs to be done to the L., and the cargo to be reshipped, and incurred considerable expenses and loss of time in superintending these measures. The L., under the charge of the mate and others of the N., and a further crew, sailed from Galle and arrived in England. Salvage as to the ship was settled by negotiation. In a suit against the owners of the cargo for salvage to the cargo, *held*, that the salvage services terminated on the ship's arrival at Galle, and that the value of the cargo must be taken as at its arrival at Galle, and not at its arrival in England. *Ibid.*

10. Rate of Contribution.*

728. Ship and cargo must each pay its

* (192) In awarding salvage compensation no distinction can be drawn between vessel and cargo, on the ground that less exertion was necessary to save the latter. The service is considered as a single service, to be compensated by a *quantum* of the proceeds of the whole property saved. *The T. P. Leathers*, 1 Newb. Adm. 421. [AMERICAN.]

(193) This discrimination in favour of gold and silver does not obtain in the American Courts of Admiralty, but when silver and bullion are saved in connection with the ship

and cargo, they pay, as in a case of general average, the same rate of salvage as the ship and other articles of the cargo. *Marvin on Wreck and Salvage*, 174; 2 Parsons on Maritime Law, 620; and see *Warder v. La Belle Creole*, 1 Peters, Adm. 31, 46.

(194) If the ship and freight are accidentally lost, and the cargo or a part of it only is saved, no principle of law requires that in all such cases the total salvage awarded should be apportioned upon all the goods saved according to their respective values. It is a

own share of salvage, neither can be made liable for the salvage due from the other, whether the salvors proceed in the Admiralty Court, or before the local magistrates. *The Pyrenees*, 3 N. R. 251.

729. A different rate of salvage for the ship and different parts of the cargo held to be unusual, inconvenient, and leading to error. *The Vesta*, 2 Hagg. 189.

730. So also as to an apportionment with reference to the difference of danger to which portions of the property were exposed. *Ibid.*

731. On appeal from award of magistrates on that and other grounds, the court refused (the other grounds being held insufficient) to disturb the award on the ground of variation in apportionment; but declined in consequence thereof to condemn the appellants in costs. *Ibid.*

732. There is no distinction that the services rendered were of greater importance to the ship than to the cargo, and that she should therefore bear more of the burthen, or *vice versa*. *The Emma*, 2 W. Rob. 318, 319.

733. *Semble*, the only exception is in the case of silver or bullion. *Ibid.*; *sed contra*, *The Jonge Bastiaan*, 5 C. Rob. 324.

734. A salvage suit was entered against the vessel alone, her value being £4,247. The court, advertent to the difficulty of apportioning salvage where the value of the cargo was not stated, awarded £600 on the value of the vessel alone. *The Mary Pleasants*, Swabey, 224.

735. If, in a suit for salvage, the ship alone has been proceeded against, the question would be what amount of salvage should be decreed with reference to the united value of the ship, freight, and cargo, and what proportion thereof the ship should defray. *The Maria Jane*, 14 Jur. 857.

736. In a case of salvage of life and property, held that the whole salvage, both of life and property, was to be borne by ship and cargo according to their rateable values. *The Fusileer*, Br. & Lushington, 341; 2 Asp. 177, P. C.; 10 L. T. N.S. 699; 12 W. R. 968.

737. Salvors having agreed to take £400, the owners of the ship and freight were, in an action subsequently entered against them, condemned in such proportion of that sum as the value of the ship and freight bore to the whole property saved. *The Peace*, Swabey, 115.

738. The owners of the cargo were afterwards proceeded against. Held, that the cargo was, according to its net value, liable proportionably for payment of a share of the £400, and of the costs of the original suit. *Ibid.*

739. The plaintiff was the owner of the hull of a wrecked vessel, out of which the cargo was saved, the court apportioned the expenses incurred in saving both ship and cargo, between him and the owners of the cargo, making the plaintiff bear one-tenth of the expense, and the defendants the remaining nine-tenths. *The Augusta Jesse*, 4 Jur. N.S. 227. [IRISH.]

740. The owners of goods on board a ship are bound to contribute to the salvage of the ship and cargo, as in a case of general average. *Briggs v. Merchant Traders' Ship Loan and Assurance Association*, 13 Q. B. 167; 13 Jur. 787; 18 L. J. Q. B. 178.

741. When ship and cargo are in peril the fact that the shipowners have, by the act of the master, become bound to pay, and have paid, a sum of money for preservation of ship and cargo, and that the master, in so binding them, pursued a reasonable course under the circumstances, is not conclusive that the whole sum was chargeable to general average, so as to bind the cargo owners to pay their proportion. *Anderson, Tritton & Co. v. The Ocean Steamship Co.*, 10 App. Cas. 107; 78 L. T. 113.

742. A shipowner who has properly paid salvage to pilots for saving ship and cargo is entitled to a general average contribution in respect of the sum so paid. *Akerblom v. Price*, 7 Q. B. D. 129; 4 Asp. 441, C. A.

742a. See also No. 416, p. 1827, and No. 538, p. 1837.

743. See also tit. AVERAGE, p. 85, Nos. 110—118.

744. See also as to freight, tit. GOODS, CARRIAGE OF—, Nos. 1051—1057, p. 595.

case of wreck in which the principle of *salvus qui perit* applies. The rights of the co-shippers are distinct, not confused nor blended. The goods of A. are not made to contribute to the salvage on B.'s goods, nor *vice versa*. It fol-

lows that different rates of salvage may be awarded upon the different articles saved, if the justice of the case requires it. *Marvin on Wreck and Salvage*, 176; and see *Stevens v. Bales of Cotton*, Bee, Adm. 170. [AMERICAN.]

11. *To what Port to be brought.**

745. *Primâ facie* it is sufficient for salvors to show that they have brought the vessel to a place of safety. *The Houthandel*, 1 Spinks' Eccl. and Adm. Rep. 28.

746. The *onus* then lies on the objectors to show that the salvors ought to have taken the vessel to another port. *Ibid.*

747. *Semble*, it is not the duty of salvors to comply with the request of the master of vessel salvaged to be conducted to a foreign port to their own manifest inconvenience. *Ibid.* 25; *The Palinurus*, 23 July, 1842.

748. Salvors in possession of a vessel abandoned by all her crew but two, who had been unable to effect their escape; *held*, justified under the circumstances in taking her into port without delay for the purpose of taking her crew on board again. *The Orbona*, 1 Spinks' Eccl. and Adm. Rep. 161.

749. A vessel on her Majesty's service and bound to Heligoland having discovered a vessel derelict, *held* to have acted right in taking the vessel salvaged to Heligoland instead of bringing her into an English port, especially as the ship's papers could not be found. *L'Esperance*, 1 Dodson, 48.

750. It is desirable and more correct in cases of salvage, and *semble* of a foreign vessel derelict and rescued from pirates by British subjects, that the vessel should be brought for adjudication into an English port. *The Calypso*, 2 Hagg. 212.

750a. Salvors pronounced blameable for taking a vessel salvaged to an inconvenient port. *The Eleanor Charlotta*, 1 Hagg. 156.

12. *Right of Possession.*

751. Where a vessel is abandoned, and becomes a derelict, the owners of cargo on board are entitled, until the shipowner again gets possession of the ship, to treat the contract of affreightment as abandoned, and to have the cargo delivered to them at any port to which it may be brought by salvors, on giving bail to cover salvage, and without payment of freight to the shipowner. *The Cito*, C. A. 468.

751a. Where a salvaging ship takes a crew off a vessel in distress, and puts men on board her, refusing to allow her own crew to return, and the two vessels are, in company, navigated into port, there is no such abandonment of the ship as to put an end to the contract of carriage, and consequently there will be freight due upon the consignees requiring the delivery of the cargo, such freight being *pro rata*, assuming the port not to be the port to which the cargo ought to have been taken under the contract of carriage. *The Septir*, 5 Asp. 411.

13. *Appraisement.*

752. See tit. PRACTICE, Pt. II. p. 1671.

14. *Sale.*

753. As to sales in the Admiralty Division, see tit. PRACTICE, Pt. II. p. 1673.

754. And as to sale by receiver of salvaged property to defray salvage claims, *Ibid.* p. 1674, and c. 4, p. 1798.

9. *Diminution or Forfeiture.*1. *Generally.†*

755. For provisions imposing a for-

* (195) If the master attempts to proceed on his voyage to a distant port inconvenient to the salvors, against their consent, without satisfying their demand, they may lawfully resist the attempt and take the control of the ship, carry it to a convenient port, and place it in the custody of the law. Marvin on Wreck and Salvage, 150. [AMERICAN.]

† (195a) According to the course of Admiralty proceedings no person can come into that court and ask its assistance, unless he can *ex æquo et bono* make out a case fit for its interposition. *The Schooner Boston*, 1 Sumner, 341. (Story, J.) [AMERICAN.]

(196) The owner of a licensed wrecker, on the coast of Florida, impliedly engages that his vessel is seaworthy, and it is required so to be by the act of Congress which authorizes

the licence. He is therefore *held* liable for damage to goods taken on board from a wreck caused by the unseaworthy condition of his vessel. Marvin on Wreck and Salvage, 171. [AMERICAN.]

(197) The obligation which a vessel is under to warn another of a danger clearly discerned by her, but of which the other is ignorant, is so far an imperfect one, that it may not supply a right of action by the party injured against the other for a neglect to comply with it. But if the party in fault comes into a court of justice seeking salvage for rescuing the other from a danger which he might have prevented, it is clear that all right to a salvage reward is destroyed. Salvage is a recompense resting essentially upon equitable considerations; the salvor must present his

feiture of salvage on persons finding or taking possession of wreck without giving up possession thereof, or the required notice thereof to the receiver of wreck of the district, see the M. S. Act, 1854 (c. 104), s. 450.

756. As to the per-centage payable to the Board of Trade on salvage of all property brought into Ramsgate harbour, see the Harbours and Passing Tolls, &c. Act, 1861 (c. 47), s. 28.

757. When persons undertake to perform a salvage service they are bound to exercise ordinary skill and ordinary prudence in the execution of the duty which they take upon themselves to perform.

claims with clean hands. *The American Ins. Co. v. Johnson*, 1 Blatch. & How. 30; *The Angelina*, 5 A. R. 200; Marvin on Wreck and Salvage, 118. [AMERICAN.]

(198) A wrecking vessel and a brig were sailing in the same direction along the Florida reef nearly in company. The master of the wrecking vessel foresaw that the brig, unless she changed her course, would strike a hidden reef known to him, but unknown to the master of the brig; and he had the opportunity, with little or no inconvenience to himself, to warn the master of the brig of the danger, but he omitted to do so, and the brig struck the reef, after which he rendered salvage services to her in getting her off. Salvage allowed, but at a very reduced rate. *Ibid.*

(199) The compensation to be awarded presupposes good faith, meritorious service, complete restoration, and incorruptible vigilance, so far as the property is within the reach or under the control of the salvors. *The Schooner Boston*, 1 Sumner, 341. (Story, J.) [AMERICAN.]

(200) The party who asks aid must come into court with clean hands. In cases of salvage the party founds himself upon a meritorious service, and upon the implied understanding that he brings before the court for its final award all the property saved, with entire good faith, and he asks a compensation for the restitution of it uninjured and unembezzled by him. *Ibid.*

(201) How far the misconduct of one salvor may rightfully be held to prejudice the claims of his co-salvors, it is not in all cases easy to determine. The courts endeavour to discriminate between the innocent and meritorious, and the guilty and worthless, rewarding the one and punishing the other. But in cases of joint or associated service this discrimination cannot always be made consistently with either sound policy or justice to the owners of the property, but the innocent and meritorious salvor must be made to suffer for the misconduct or neglect of his co-salvors. Marvin on Wreck and Salvage, 227. [AMERICAN.]

There are instances where gross negligence, independent of any wilful inattention, has been visited with the forfeiture of the whole claim for salvage remuneration. There is also another kind of negligence, the effect of which is to diminish the amount of salvage reward, not to take it entirely away. *The Cape Packet*, 3 W. Rob. 125; 6 Notes of Cases, 565.

758. *Semble*, the deduction in the amount of salvage awarded is to be measured not by the amount of damage sustained, but in proportion to the *quantum* of negligence or ignorance displayed by the salvors. *Ibid.*

759. Salvors may forfeit partially or

202. As a general rule all who participate in the misconduct, by consent, encouragement, connivance, or concealment, or by seeking to derive advantage from it, become thereby aiders and abettors, and ought in justice to suffer in the same degree as the principal, and the fraud, neglect, or other misconduct, of the principal salvor, or *dux facti*, may *primâ facie* fairly be imputed to his co-salvors, as the act of their adopted agent or representative. As they seek to derive a benefit from his lawful acts, so they should suffer in general the just consequences of his unlawful acts. *Ibid.* 228.

(203) Every act of misconduct of the salvors as to the property, fraudulently or wantonly done to the injury of the owners, at any time before the salvage is decreed, is to be treated in the same way as if it had occurred while the property was in their exclusive possession. *The Schooner Boston*, 1 Sumner, 341. (Story, J.) [AMERICAN.]

(204) Good faith and fairness are required of salvors in the manner of settling the salvage. *Houseman v. North Carolina*, 15 Peters, 40; Marvin on Wreck and Salvage, 22, 233. [AMERICAN.]

(205) When the master of a vessel, in the course of a voyage, engages in a salvage service, he cannot oppose to the claim of any of his crew for a share of the salvage their misconduct during the voyage, if they are guilty of no misconduct during the time they are engaged in the salvage. *The Centurion*, Ware, 477. [AMERICAN.]

(206) In an action by one of the crew of a vessel against the owner for his share of salvage money, paid by the owner of goods saved from a wreck without any deduction for embezzlement, the owner of the vessel cannot set up in defence that the plaintiff had embezzled a portion of the goods. *Blake v. Patten*, 3 Shep. 173. [AMERICAN.]

(207) When the shares of any salvors are forfeited they do not accrue to their co-salvors to increase their shares, but are reserved for the owners of the property saved. *The Rising Sun*, Ware, 378. [AMERICAN.]

totally by various degrees of misconduct their right to salvage reward, but the evidence to establish their misconduct must be conclusive. *The Charles Adolphe*, Swabey, 153.

760. Services of the highest class of salvage may be lessened by subsequent misconduct, and especially by exorbitant demands. *The John and Thomas*, 1 Hagg. 157, n.

760a. If the conduct of salvors who may have rendered essential service is directed by improper motives; if they attempt to usurp authority by depriving the captain and crew of the possession of their ship; or use undue interference with them in the discharge of their duties, the court may reduce the salvage otherwise due to them. *The San Nicola*, 6 Jur. 91. [IRISH.]

761. If salvors, in order to magnify the estimate of their own services to a ship in distress, take the master and crew on shore, the court will mark its disapproval of such conduct by withholding, or at least reducing, salvage remuneration. *The Magnolia*, 2 Ir. Jur. N.S. 235; 29 L. T. 40.

762. *Quare*, whether third persons can avail themselves of the breach of a contract to which they are strangers, on the ground that if it had been duly performed they would have escaped injury to which they had been subjected. *The Annapolis*, 1 Asp. 127; *The Golden Light*, 5 L. T. N.S. 37.

763. Negotiation by the owner to refer a claim of salvage to arbitration is no conclusive admission of salvage services rendered, or negation of a defence on the ground of the salvors' misconduct. *The Martha*, Swabey, 489; *The Purissima Concepcion*, 7 Notes of Cases, 151; 13 Jur. 545, 967.

764. The court will not entertain the salvage claim of parties who have been convicted for misconduct in the same transaction for which they claim the salvage reward. *The Wear Packet*, 2 Spinks' Eccl. and Adm. Rep. 256; *sed contra The Louisa*, No. 1507, 17 February, 1863.

765. Essential services had been rendered, but there had been errors of conduct on both sides, tending to reduce the value of the property, which was about £32,000. The court in its award took these circumstances into consideration,

and awarded £800 and costs. *The Prins Frederick*, 2 Dodson, 482.

766. The plaintiffs put off to a vessel that had struck upon a reef, and brought her to a place of safety. At the time they put off they knew that the master of the vessel had given directions that no stranger should put off to her, and that with his crew he was watching her from the shore, and they also knew that if the vessel was allowed to float off on the top of high water she would inevitably have gone ashore unless prevented in time. *Held*, that the services rendered were of a highly meritorious nature, but that the salvors had been guilty of misconduct (1) in not offering their services to the master before putting off to the vessel; (2) in not warning the master of the dangerous position of the vessel should she float off on high water. Value of ship and cargo saved £2,300; £50 awarded and certificate for costs given. *The Lisbon*, I. R. 1 Eq. 144. [IRISH.]

767. Negligence may in some instances forfeit all claim to salvage remuneration; but the negligence which would have that effect must be such as cannot be attributed to mere error of judgment. *The Cherubim*, I. R. 2 Eq. 172; 3 Asp. 156. [IRISH.]

768. The barque N. fell in with the K. a derelict barque in the Atlantic, and put five men on board who navigated her for three days. The barque B. then fell in with the K., and the five men of the N. on board of the K. were, at their own request, taken on board the B. The B. then sent some of her own crew on board the K. and took her in tow, and towed her until the tow rope broke, when the vessels parted company, and the B.'s men on board the K., with the assistance of the L., a steamship which they afterwards fell in with, brought the K. into Fal-mouth. In suits instituted on behalf of the masters, owners, and crews of the N., the B., and the L., the court *held* that the N. was not entitled to salvage reward.* (*The Undaunted*, Lush. 90, and *The Jonge Bastiaan*, 5 C. Rob. 323, approved.) *The Killeena*, 6 P. D. 193.

769. The master and crew of the Y., a vessel in distress, got on board the K., a steamer standing by her. The mate

* (208) The application of the defendants that the N. be condemned in the costs of her proceedings was not granted. *The Killeena*,

6 P. D. 193.

(209) Circumstances constituting a waiver of salvage considered. *Ibid.*

and two of the crew of the K. afterwards went on board the Y. but refused to take back her master, and also refused the services of a steam-tug. The mate saved the Y. from her immediate danger. From want of local knowledge he anchored the Y. in an insecure place, when she began to drift, was forsaken by the salvors and sank. She was subsequently raised by her owners at a considerable expense. In an action for salvage the owners of the Y. denied that a reward was due and counter-claimed for damages. *Held*, that the mate was guilty of misconduct in refusing to take the master of the Y. on board of her and to engage the services of the tug; that if the Y. had been ultimately saved such conduct would have worked a partial forfeiture only, but that as the loss arising from the misconduct was probably equal to that from which the Y. was first rescued no salvage reward was due. *The Yan Yean*, 8 P. D. 147; 52 L. J. P. D. 67; 5 Asp. 135.

769a. But *held*, that the circumstances of the case did not call for the condemnation of the owner of the K. in damages. *Ibid*.

770. As to the forfeiture or diminution of the claims of second salvors for interfering improperly with first salvors, see c. 5, p. 1820.

771. As to diminution of salvage in cases of mutual benefit, see c. 6, p. 1844.

2. Wilful Misconduct generally.*

772. The burden of proving wilful or criminal misconduct is on those who impute it, and it must be proved, like any other criminal charge, beyond reasonable doubt. *The Atlas*, 1 Lushington, 528; 1 Asp. 168; 8 Jur. N.S. 753; 31 L. J. Adm. 210; 10 W. R. 850; *The Charles Adolphe*, Swabey, 156.

773. Wilful or criminal misconduct works an entire forfeiture of salvage. *Ibid*.

774. Salvors in the course of rendering assistance to a derelict vessel engaged with a steam-tug that for the sum of £7

she would tow them and the derelict into port. By the misconduct of the steam-tug the vessel took the ground, and the services of other salvors became necessary to bring her into safety. *Held*, that the misconduct of the steam-tug operated as a forfeiture of the claim to salvage by the first salvors. *The Atlas*, 1 Asp. 168.

775. If the misconduct of the salvors has been very great and attended with great loss to the vessel which they ought to have salvaged, they forfeit the whole or part of the salvage to which they would otherwise have been entitled. *The Glory*, 14 Jur. 678.

776. Wilful neglect or wilful misconduct entails a forfeiture of the whole claim for salvage remuneration. *The Cape Packet*, 3 W. Rob. 125; 6 Notes of Cases, 565.

777. In performing salvage services bad faith and intention not to do the whole duty, or to protract from improper motives the duration of the service, are acts of wilful misconduct which forfeit all right to salvage. *The Magdalen*, 5 L. T. N.S. 807; 31 L. J. Adm. 22.

778. When essential service has been rendered, the amount of compensation for that service may not only be diminished by reason of the subsequent negligence or misconduct of the salvors, but all reward may be forfeited. *The Dosseitei*, 10 Jur. 865; *The Duke of Manchester*, *Ibid*. 863; 4 Notes of Cases, 580, and the cases there cited; *Ibid*., on appeal, 5 Notes of Cases, 470; 6 Moore, P. C. C. 91.

779. A ship in charge of a licensed pilot got upon the Goodwin Sands. She was assisted off by a steamer, taken in tow, and then got upon Sandwich Flats. *Held*, that the steamer was not relieved from the responsibility of watching the course of the ship because the latter had a licensed pilot on board, and that as the ship's getting on Sandwich Flats might have been prevented by ordinary care and skill, and culpable negligence was therefore imputable to the steamer, her claim to salvage compensation was for-

* (210) Spoliation, smuggling, or other gross misconduct of the salvors, may forfeit all claim to salvage. *The Bello Corrunes*, 6 Wheaton, 152. [AMERICAN.]

See also notes, Nos. 197—207, *supra*.

(211) Forfeiture of salvage award and for-

feiture of wages, because of embezzlement, rest upon the same ground; per Benedict, J. (citing *The Blaireau*, 2 Cranch, 267). *The Florence*, 13 L. T. N.S. 613; 2 Asp. 297. [AMERICAN.]

feited by such misconduct, and suit dismissed accordingly, with costs. *The Duke of Manchester, supra.*

780. *Held*, further, that the master of the tug could not separate the towing of the vessel from his claim for salvage services for getting the vessel off the sand, for that they constituted one transaction of salvage. *Ibid.*

781. Salvors guilty of misconduct in resisting the employment of a steamer and creating a riot, *held* to have thereby forfeited all claim to salvage reward, but under the circumstances not condemned in costs. *The Martha*, Swabey, 489. See also *The Dosseitei*, 10 Jur. 865.

782. Advice given by salvors, which is not tainted by any fraudulent design, but is offered according to the best of their judgment, although it may lead to unfortunate consequences, cannot be considered as misconduct. *The John Bryant*, 5 Jur. 233. [IRISH.]

783. Claim to salvage for important services to a vessel and cargo derelict on the coast of Africa, *held* forfeited by the misconduct of the salvors in improperly retaining possession of and dealing with the property salvaged without regard to the owner's interests, and under circumstances of suspicion of collusion with the owner's agent. *The Lady Worsley*, 2 Spinks' Eccl. and Adm. Rep. 253.

784. Salvors found guilty of misconduct deprived of their claim to salvage remuneration, although a sum had been tendered by the owners of the vessel salvaged. *The Scindia*, 2 Asp. 232.

785. Where a collision occurred between two vessels and both were held to blame, the crew of one of the vessels having rendered salvage services to the other, and instituted an action of salvage against the owners of the cargo of the other, *held* not entitled to salvage. *The Cargo ex Capella*, 2 Asp. 552.

786. Violent and overbearing conduct of salvors, although it may not work a forfeiture of salvage, will operate to diminish the amount. *The Marie*, 7 P. D. 203; 5 Asp. 27.

786a. As to the dispossession of first salvors by second salvors, see c. 5, p. 1820.

787. As to the effect of misconduct in the execution of a towage contract, see c. 6, p. 1842.

788. As to obedience to pilot, see tit. OWNERS, p. 1403.

3. Refusal of further Assistance.*

789. A ship in great distress was taken by the salvors to, and anchored in, a place of comparative safety. She might have been placed in perfect safety, if the salvors had then availed themselves of further assistance, which was offered, but, instead of so doing, they left her at anchor for six hours, while they proceeded for ropes and spare to their own port. *Held*, that by neglecting to avail themselves of such assistance, the salvors had not conducted themselves with due regard to the lives and property on board the ship, and that the amount of salvage remuneration must be diminished by such misconduct. On a value of £10,000, £50 awarded as salvage, with costs of salvors. *The Dosseitei*, 10 Jur. 865.

790. The court, in allotting a salvage reward, reduced the amount due in respect of the services rendered, on the ground of the salvors having interfered with the master in attempting to exclude further assistance. *The Dantzic Packet*, 3 Hagg. 383.

791. Smacksmen came alongside a vessel in distress on the Corton and Holmes Sands and offered their services, which were rejected. They stayed alongside and prevented the acceptance of the services of a tug to tow the vessel off. It did not appear that if the tug had been engaged she could then have extricated the vessel. Afterwards the smacksmen were engaged to kedge the vessel off, but that proving unsuccessful they lightened the vessel of much of her cargo, and the next day brought her off the sand. If there had been no misconduct the court would have awarded £300; £100 awarded to the salvors, and two-thirds only of their costs. *The Glory*, 14 Jur. 676.

792. As to the right of first salvors to refuse assistance of second salvors, see c. 5, p. 1820.

4. Obtruding further Assistance.

793. The owners, when present, are

* (212) Half the shares of eight men (wreckers) were declared forfeited for refusing to assist in the navigation of the vessel

after she had been got off the reef. *Marvin on Wreck and Salvage*, 236. [AMERICAN.]

the only proper judges of the necessity for the continuance of salvors' services. Salvors having obtruded their services after notice for their discontinuance, compensation refused for such services, but salvage awarded for the services antecedently rendered, with a sum *nomine expensarum*. *The Dantzic Packet*, 3 Hagg. 383; *The Glasgow Packet*, 8 Jur. 675; 2 W. Rob. 306.

794. In a claim for salvage to a dismasted vessel at anchor, the salvors having refused to quit her, and obstructed the master and agent in taking her into harbour by a hired steamer. *Held*, that the salvors had misconducted themselves, and tender of £30 pronounced for with costs from the time of refusal of the tender. *The Black Boy*, 3 Hagg. 386, n.

5. *Non-delivery up of, or obstructing return to, Vessel salvaged.**

795. Unless a vessel has been utterly abandoned, and is, according to the legal meaning of the word, a derelict, salvors are bound to give up charge to the master on his appearing and claiming such charge. *The Champion*, B. & L. 69.

796. The court will not lay down any general rule, but will be guided by the circumstances of each case, whether or

not the master of a salving vessel is justified in refusing to allow the master and crew of the salvaged vessel to return to her before the completion of the salvage services. *The Cleopatra*, 37 L. J. Adm. 31.

797. A ship laden with lead and iron was sunk off the mouth of the Thames. The salvors saved a part of the cargo, and were proceeding in their further salvage services, when the owners interfered, and claimed the right to save the property themselves. The salvors forcibly resisted the owners' claim. *Held*, that the ship was not a derelict, that the authority of the owners remained, that the salvors were justified in their proceedings up to the time the owners interfered, and would have been entitled to be paid for their work and labour up to that time, even though they had not saved any part of the cargo, if prevented from continuing their work by the owners, but that their forcible resistance to the will of the owners of the property was such gross misconduct as worked a forfeiture of all salvage. Suit instituted by them dismissed with costs. *The Barefoot*, 14 Jur. 841.

6. *Negligence or Want of Skill.†*

798. When a salvage is finally effected, no mere mistake or error of judgment in

* (213) A brig in going out of the harbour of New York grounded on the Outer Middle, below the narrows, in a storm and bilged, and the master and crew left her. The salvors who were wreckers, and kept a vessel and crew in readiness to assist vessels in distress, proceeded to her, and commenced saving the cargo and materials. The next morning the master returned to the wreck in a steam-tug, but without lighters necessary to save the cargo and materials, and demanded possession, which the salvors refused, asserting that they were legally in possession. In the afternoon an agent of the owners also demanded possession, which the salvors also refused, but they employed all the men who came down and were willing to work in saving the property. *Held*, that possession having been taken when the vessel was abandoned derelict and in peril of destruction, the salvors had a right to retain it until the salvage was completed, and that no other person could interfere with them forcibly, provided they were able to effect the purpose and were conducting the business with fidelity and vigour. *The John Gipin*, Olcott, 77. [AMERICAN.]

† (214) Salvors may incur a forfeiture of their claims by negligence, but whether, besides such forfeiture, they may not also in

a case of gross negligence be responsible to the owners of the property for loss occasioned thereby, does not appear ever to have been the subject of any judicial determination. *Marvin on Wreck and Salvage*, 170. [AMERICAN.]

(215) Salvors are bound not only to scrupulous honesty themselves, but while the property is in their custody, they are jointly required to employ every reasonable degree of diligence to guard it from plunder by others; any negligence in this respect, if not visited with forfeiture of salvage, will be remembered in fixing the amount. *The John Perkins*, 19 Law Rep. 490. [AMERICAN.]

(216) Salvors have no right unnecessarily to damage the goods, nor to put them in a situation where they are likely to be stolen. They are to take the same care of them that they, uninsured, would wish others to take of their goods under like circumstances. *Marvin on Wreck and Salvage*, 230. [AMERICAN.]

(217) A valuable ship and cargo were ashore on the Florida reef, and the wreckers supposing that they knew perfectly well the depth of water and the channels around the ship, neglected to sound and ascertain them with precision, and in consequence of this neglect they did not get the ship off so soon

the manner of effecting it, no misconduct short of that which is wilful, will work a forfeiture of salvage. *The Atlas*, 1 Lushington, 528; 1 Asp. 235; 5 L. T. N.S. 434; 8 Jur. N.S. 753; 31 L. J. Adm. 210; 10 W. R. 850.

799. Mistake or misconduct other than wilful which diminishes the value of the property salvaged, or occasions expense to the owners, is to be considered in the amount of compensation awarded. *Ibid.*

800. When essential services have been rendered by salvors the amount of salvage reward may not only be diminished by negligence or misconduct, but under peculiar circumstances altogether forfeited. *The Medina*, cited in *The Duke of Manchester*, 4 Notes of Cases, 580.

801. However valuable a service may be salvors may forfeit their just reward if they are guilty of misconduct. *The Lady Worsley*, 2 Spinks' Eccl. & Adm. Rep. 256.

802. Whenever salvors undertake to perform a service it is their duty to show adequate skill in performing it so as to bring it to the best termination. *The Houthandel*, 1 Spinks' Eccl. & Adm. Rep. 27; *The Duke of Manchester*, 4 Notes of Cases, 575; 6 Moore, P. C. C. 91.

803. Salvors must possess skill and knowledge sufficient to enable them duly to perform the duties which they undertake. *The Magdalen*, 1 Asp. 189; 5 L. T. N.S. 807; 31 L. J. Adm. 22.

804. Error not wilful in performing a salvage service operates only in diminution of the amount of remuneration. *Ibid.*

805. A second set of salvors having discovered a derelict vessel bottom upwards at sea near the Eddystone Lighthouse, succeeded, after great exertions during two days and a half, in towing her into Fal-mouth. They then, in spite of repeated remonstrances, carried on for a month a series of unskilful attempts to right the vessel, in consequence of which attempts she was much strained and injured. The court reduced the reward it would have otherwise held they had earned, as compensation to the owners for the additional damage thus done to the property, proportioning the amount deducted to the want of skill shown. Value of ship and cargo £2,400. Salvage of £600 awarded. *Ibid.*

806. There is to be expected from salvors ordinary skill and prudence in the performance of the duties they take upon themselves to perform; not that they should be finished navigators, but that they should exercise such a degree of prudence and skill as persons in their condition ordinarily possess. *The Cape Packet*, 3 W. Rob. 125; 6 Notes of Cases, 565.

807. Where salvors have displayed great want of skill and prudence in the performance of the salvage service, their claim for such service will be proportionately diminished; a reduced amount of salvage awarded in such a case. *Ibid.*

808. In fixing the extent of diminution of salvage remuneration where the service has been negligently performed, the court is not guided by the consideration of the amount of injury sustained, but

by a whole tide as they might and would have done had they sounded. A deduction of 4,000 dollars was made by the court from the amount which it would have given but for such neglect. *The Ashburton*, 5 A. R. 432. A similar reduction was made in the case of *The Sultan*. Marvin on Wreck and Salvage, 235. [AMERICAN.]

(218) The salvors (wreckers) neglected to use chains to the anchors instead of hawsers, where they had reason to think that the hawsers would break or be cut by the rocks. The court diminished their salvage one half. *The Diadem*, 5 A. R. 432. Marvin on Wreck and Salvage, 236. [AMERICAN.]

(219) The licensed wreckers of over fifty tons burden on the Florida coast are required, by law and rules of court, to be furnished with suitable anchors, chains, and hawsers, to be used in getting off stranded vessels; and the breaking of chains or hawsers, or heaving home anchors, is ordinarily no excuse for a failure to get a ship off in due time, for these are contingencies the wreckers are

bound to guard against, by resorting to the use of larger chains or hawsers, or by doubling them and by backing their anchors. Whenever they have the management of the business, and they fail to get a stranded vessel afloat at the first high water at which she might have been floated had they employed the proper means, they must be considered as having failed in point of skill and energy, and must suffer the just and legal consequences of such failure, notwithstanding they may have saved the ship and cargo. *Ibid.* 116.

(219a) Salvors are well rewarded for good service, and better rewarded for better service. If the master of the ship retains the management of the business in his own hands, and forms his own plans, the salvors do not exonerate themselves from a just responsibility for a failure, unless they show that they have given him the benefit of their local information and experience, and have faithfully and energetically assisted him to carry out his plans. *Ibid.*

by the principle of proportioning the diminution to the degree of negligence. *Ibid.*

809. There may be cases of negligence so gross as to forfeit all claim for salvage. *Ibid.*

810. Want of adequate knowledge on the part of the salvors, *e.g.*, mere ignorance of the coast, where it only diminishes the success of the salvage services, only diminishes the amount of salvage. *The Rosalie*, 1 Spinks' Eccl. & Adm. Rep. 191; 18 Jur. 337.

811. Essential services had been rendered, but there had been errors of conduct, tending to reduce the value of the property. The property saved being about £32,000, award made of £800. *The Prins Frederick*, 2 Dodson, 482.

812. Salvage reward always bears a proportion to the skill and knowledge required and shown, the degree of skill and knowledge expected being according to the station in life of the salvors. *The Lockwoods*, 9 Jur. 1017.

813. The orders given by a lieutenant in the navy in command of a revenue cutter, in rendering assistance to a vessel in distress, *held* to be without a knowledge of the danger, and without duly weighing the consequences of such orders, and the measures adopted unsuccessful and injurious. Claim of salvage pronounced against, notwithstanding a certificate by the master of the vessel saved admitting a benefit from the services of the salvors. *Ibid.*

814. The same skill that would be required from duly licensed Trinity pilots is not to be expected from salvors assuming the management of vessels in cases of difficulty. *The Neptune*, 1 W. Rob. 300.

815. But to entitle such salvors to a salvage reward, they must show that they possessed skill commensurate with their vocation and condition in life, and adequate to the duties they undertook to perform. *Ibid.*

816. A derelict steamer was fallen in with by the G. steamer and towed to Bridlington Bay, but received considerable damage by taking the ground as she was going into the harbour. *Held*, that the salvors were wrong in attempting to take so large a vessel into such a harbour, and that a deduction must accordingly be made from the salvage they would otherwise have received. *The Perla*, Swabey, 230; *The Adrianus Wilhelminus*, Dec. 21, 1852.

817. In such a case it is not the practice to impose on the salvor the whole burthen of the loss, but only a part of it in proportion to the degree of blame which attaches to him. *Ibid.*

818. The court will look with considerable indulgence on the efforts of persons offering their services to vessels in distress when there are no other individuals on the spot capable of rendering more efficient assistance; but different considerations apply to the conduct of individuals assuming the character of salvors when there are other persons at hand more competent to discharge those duties. Claims of certain fishermen for salvage in respect of services rendered by them to a foreign vessel on the Norfolk coast, when there were regular pilots at hand to have taken charge of her, pronounced against, the court and Trinity masters being of opinion that the proceedings of the salvors had been erroneous and injudicious, and of no benefit to the vessel. Under the circumstances, however, the court declined to give costs against the salvors. *The Dygden*, 1 Notes of Cases, 115.

819. A steamer, for a stipulated sum, rendered salvage services to a barque. While doing so she came into collision with the barque on three separate occasions through negligence of those on board the steamer. A cause of salvage was instituted by the owners of the steamer, and a cause of damage by the owners of the barque. The causes having been heard together, *held*, that the plaintiffs in the salvage suit were entitled to recover the salvage remuneration stipulated for, and that the plaintiffs in the damage suit were entitled to recover therein. *The C. S. Butler, The Baltic*, L. R. 4 A. & E. 178; 43 L. J. Adm. 17; 2 Asp. N.S. 237.

820. A tug agreed to tow a ship from Liverpool round the Skerries for a fixed sum. The tug imprudently towed the ship, in bad weather, too near a lee-shore, and the wind becoming worse during the service, the hawser parted, the ship was placed in a position of danger, and was compelled to let go her anchors to avoid being driven on shore. From this position she was rescued by the tug, but after being compelled to slip her anchors and chains, which were lost. *Held*, that the tug owners were not entitled to salvage, and were liable for the loss of the anchors and chains. *The Robert Dixon*, L. R. 4 P. D. 121; 4 Asp. 95.

821. See, further, as to the effect of

negligence or misconduct in the fulfilment of a towage contract, c. 6, p. 1842.

7. Agents of Salvors.

822. If a ship or cargo is not saved there can be no salvage, and if this result follows from the miscarriage or the misconduct of an agent employed by those who claim as salvors, however great or meritorious their exertions may have been, they are identified with their agent for this purpose, and their claim fails. *The Atlas*, 1 Lushington, 527; 8 Jur. N.S. 753; 31 L. J. Adm. 210; 10 W. R. 850.

823. If by the imprudence or unskillfulness of the agent of the salvor, the value of the property is diminished, the salvor, however innocent or meritorious as to his own acts, must suffer for it in the diminished amount of his compensation; but *semble*, this rule is to be acted upon with caution. *Ibid.*

824. Salvors in the course of rendering assistance to a derelict vessel, engaged with a steam-tug that for £7 she should tow them and the derelict into port. By the misconduct of the tug the vessel took the ground, and the services of other salvors became necessary to bring her into safety. *Held*, that the misconduct of the tug operated as a forfeiture of the claim to salvage of the first salvors. *Held*, on appeal (overruling the decision in the court below), that the misconduct of the steam-tug did not operate as a forfeiture of the claim of the first salvors to salvage. On a value of £620 (of which £120 had been given to the second

salvors) £190 awarded to the first salvors. *Ibid.*

825. Salvors brought a vessel in distress into a situation of safety from ordinary peril, but not to anchor, and then gave up charge of her to a licensed pilot. *Held*, that they were not prejudiced in their claim for salvage by injuries subsequently caused to the ship by the negligence of the pilot. *The Bomarsund*, 1 Lushington, 77.

826. See also the next section.

826a. As to agents as salvors, see c. 5, p. 1814.

8. Associated Services.

827. In a case of joint or associated salvage, the misconduct of the principal salvor, the *dux facti* may fairly be imputed, *primâ facie* at least, to the co-salvors as the act of their adopted agent or representative. *The Lisbon*, Ir. L. R. 1 Eq. 144. [IRISH.]

828. In cases of associated service, all may have to suffer for the neglect or misconduct of one of their number. *The Cherubim*, Ir. L. R. 2 Eq. 172; 3 Asp. 156. [IRISH.]

829. In cases of associated service, as the performance of a laudable act of salvage by one may tend to the benefit of his companions, so it may happen that they may all have to suffer for the neglect or misconduct of one of their number. *Ibid.*

829a. See also the preceding section.

9. Fraud.*

830. A fraudulent salvage claim dismissed with costs. *The Susannah*, 3 Hagg. 345, n.

* (220) The law exacts good faith on the part of salvors. Fraud committed against the master, owners, or underwriters, or collusion with the master to defraud the owners or underwriters, will work a forfeiture of salvage. Marvin on Wreck and Salvage, 231. [AMERICAN.]

(221) The claim of the owner of the salvaging vessel may *primâ facie* be tainted by the fraud, neglect, or other misconduct of his master. *Ibid.* 228.

(222) When a vessel is fraudulently cast away or abandoned by the master without any collusion with the salvors, they are entitled to salvage for saving the property. But if, knowing his offence, they remain silent and permit the idea to prevail that the vessel was lost by accident, they thereby assist him to cover up his iniquity and to escape just punishment, and they become partakers of his crime and justly forfeit their

claim to salvage. *Ibid.* 111; *Brevoort v. The Fair American*, 1 Pet. Adm. 87, 95; 2 Parsons on Maritime Law, 613. [AMERICAN.]

(223) They cannot knowingly and rightfully derive a profit from, or enjoy the fruits of, his villainy without exposing it. They are bound in good faith to make known the facts to whomsoever may be interested, and to state them in their pleadings. *Ibid.*

(224) The wreckers had unnecessarily lightened a bark of 205 bales of cotton in order to magnify their services, and obtain a larger salvage than they were justly entitled to. *Held*, that their whole salvage was forfeited, notwithstanding they had rendered important services. *The Bark Aurora*, 12 A. R. 365. [AMERICAN.]

(225) The wreckers carried out an anchor ahead and planted it in such a position as to hold the vessel on the reef instead of hauling it off. *Held*, that the circumstances disclosed

831. Claim for salvage against a foreign vessel for rescuing her from impending danger dismissed, with costs, no necessity for any interference being shown, and the salvors disclosing a false case. *The Giacomo*, 3 Hagg. 345.

832. Highly exaggerated statements as to the service, held a ground for supporting the tender and for dismissal of the suit with costs; the master and the whole crew uniting in opposing the interests of their employer after their discharge, held a strong ground for viewing their evidence with suspicion and distrust. *The Towan*, 2 W. Rob. 259.

833. A suit for salvage, instituted by a pilot, appearing to have advanced false pretensions, and to have misconducted himself, dismissed with costs, and the conduct of the pilot reported to the Trinity House. *The Joseph Harvey*, 1 C. Rob. 306.

834. As to fraud in agreements for salvage, see c. 10, p. 1876.

10. *Embezzlement.**

835. Salvors who have plundered the cargo of the vessel saved are not entitled

a case of dishonesty and fraud on their part, and not merely one of negligence, and their whole salvage was decreed to be forfeited. *The Byron*, 5 A. R. 248; *Marvin on Wreck and Salvage*, 231. [AMERICAN.]

(226) Where a person who had an interest to enhance the amount of the salvage, which was known to the salvors, acted as the master's consignee and adviser, and the salvage was settled by arbitration, notwithstanding there was within a convenient distance an Admiralty Court that might have been resorted to without injurious delay, and the sum awarded was larger than was just, held, that the circumstances afforded evidence of an attempt by imposition upon the master or by collusion with him to obtain a larger salvage than was just, and that such attempt worked a forfeiture of all salvage. *Houseman v. North Carolina*, 15 Peters, 40; *Marvin on Wreck and Salvage*, 22, 233. [AMERICAN.]

(227) Wreckers had agreed with the master of the ship to give him 2,500 dollars for the exclusive privilege of saving the property. Held, that such agreement was an attempt to corrupt the master, was immoral in its tendency, and operated as a fraud upon owners and underwriters, and entailed a forfeiture of all salvage. *The Ship James*, 1839 (*Church v. 1712 Dollars*), 4 A. R.; *Marvin on Wreck and Salvage*, 232. [AMERICAN.]

* (228) By the Ordonnance de la Marine of Louis XIV., salvors are responsible for everything that is stolen, unless they deliver the felons or point them out. Tit. ix. Arts. 3, 4, and 5.

(229) Punctilious honesty is required of salvors. Embezzlement, however small in amount, whether at sea, in port, or after the goods are in the custody of the law, works a forfeiture of all salvage. *Marvin on Wreck and Salvage*, 229. [AMERICAN.]

(230) The compensation to be awarded presupposes good faith, meritorious service, complete restoration, and incorruptible vigilance, so far as the property is within the reach or under the control of the salvors. *The Schooner Boston*, 1 Sumner, 341. (Story, J.) [AMERICAN.]

(231) In cases of salvage the party founds himself upon a meritorious service, and upon the implied understanding that he bring before the court for its final award all the property saved, with entire good faith, and he asks a compensation for the restitution of it uninjured and unembezzled by him. *Ibid.*

(232) Embezzlement of the property saved works a forfeiture of the right to salvage. *The Dove and Cargo*, 1 Gallison, 585; *Mason v. The Ship Blaireau*, 2 Cranch, 240; *The Missouri*, 18 Law Rep. 38. [AMERICAN.]

(233) Embezzlement works a forfeiture of all claim to salvage, whether it takes place before the property is brought in or after it is in the custody of the officers of the court. Salvors are responsible *civiliter* for their conduct in relation to the salvage property, so long as it is subject to the decree of the court. *The Boston and Cargo*, 1 Sumner, 328. [AMERICAN.]

(234) Embezzlement by a salvor works a forfeiture of his claim of salvage, but does not prejudice his co-salvors, who are innocent. *The Rising Sun*, Ware, 378. [AMERICAN.]

(235) If the master and all the crew are implicated in the embezzlement, it will not work a forfeiture of the share of innocent owners of the salvor ship. *Ibid.*

(236) Embezzlement is ordinarily so secret and purely individual an act, that its commission by one salvor, though the master, is held not to prejudice his co-salvors or owners, who are innocent. It works a forfeiture of the share of the guilty party only. But a person may become guilty by consent, by connivance, by concealment, by encouragement, or by not preventing the act when in his power. *Marvin on Wreck and Salvage*, 229. [AMERICAN.]

(237) Salvors are bound not only to scrupulous honesty themselves, but while the property is in their custody, they are jointly required to employ every reasonable degree of vigilance to guard it from plunder by others; any negligence in this respect, if not visited with an entire forfeiture of salvage, will be remembered in fixing the amount. *The John Perkins*, 19 Law Rep. 490. [AMERICAN.]

to any salvage remuneration. *The Florence*, 16 Jur. 576.

836. When salvors are on board a vessel for the purpose of rendering her assistance, they are entitled to consume all that is necessary of the stores for the purpose of maintaining themselves in the discharge of that duty. *The Houthandel*, 1 Spinks' Ecl. and Adm. Rep. 29.

837. If there is some waste under circumstances of this kind it is impossible for the court to look into *minutiae*. *Ibid.*

838. In allotting a salvage remuneration the court made a deduction from the sum allotted to the salvors, to compensate the crew of the derelict for clothes on board, which had been lost or made away with by the salvors, the court not imputing to them any felonious intention. *The Louisa*, 2 W. Rob. 26; 7 Jur. 182.

839. A vessel, having been captured by a privateer and plundered, was suffered to go adrift without a crew, and getting near the shore, was surrounded by the plaintiffs in small boats and plundered of everything they could get at, till she grounded on a bar and remained there

for some days. The plaintiffs then took possession of her, and, after she came off the bar and had grounded in the inlet, her owners came, and with the plaintiffs' assistance got her off. *Held*, that the plaintiffs were not entitled to salvage for what they had done. *James v. The S. A. Boice*, 2 Asp. 264.

840. But, as the owners had offered to pay the plaintiffs for their services, a *quantum meruit* allowed for work and labour, but without costs. *Ibid.*

841. Where two ships claimed as salvors of a derelict ship, and it was proved that the master of one of them abstracted goods from the derelict with an evident intention of not restoring or accounting for them, *held*, that this misconduct of the master tainted the whole salvage service of his ship, and deprived his crew as well as himself of all participation in the salvage award. *The Scindia*, 2 Asp. 232.

11. Other Cases.*

842. Salvors in possession of a vessel

(238) Salvors have no right unnecessarily to damage the goods, nor to put them in a situation where they are likely to be stolen. They are to take the same care of them that they, uninsured, would wish others to take of their goods under like circumstances. *Marvin on Wreck and Salvage*, 230. [AMERICAN.]

(239) The master has no right to give away any of the cargo or stores of a wrecked vessel, nor to consent to an appropriation of them by others; and where a wrecker on the Florida coast used some of the ship's stores, with the master's consent, to feed the ship's crew, the ship being lost, the court disapproved of the act, and said that the wreckers were expected to feed wrecked crews and passengers from their own stores, that their doing so was considered by the court as a part of the salvage service, and that they were not to use the ship's provisions except in cases of extreme want, but were to account for them, fragments as well as whole articles. *Ibid.* 122.

(240) The captain and owners had concealed a part of the goods saved; their share of the salvage was declared forfeited to the owners of the vessel saved. *Flinn v. The Leander*, Bee, 260; *Mason v. Ship Blaireau*, 2 Cranch, 239. [AMERICAN.]

(241) In an action by one of the crew of a vessel against the owner for his share of salvage money, paid by the owner of goods saved from a wreck without any deduction for embezzlement, the owner of the vessel cannot set up in defence that the plaintiff had embezzled a portion of the goods. *Blake v. Patten*, 3 Shep. 173. [AMERICAN.]

(242) A vessel had been, by the aid of the master and crew of another vessel, saved from going to pieces on the rocks, and was subsequently stranded. While the property on board was in the process of transportation to the other vessel, with their aid, and still in danger, the masters of the two vessels engaged in a fraudulent conspiracy to appropriate to their own use a portion of the property saved. Part was afterwards remitted to the owners. The master of the salvaging vessel brought a part to a home port, and concealed it. It was subsequently discovered by other persons, and seized on behalf of the owners and crew of the salvaging vessel, for salvage. *Held*, that the fraudulent conduct of the master did not defeat the claim of the owners and crew of the salvaging vessel, and that they were entitled to salvage, both on the property concealed and on that remitted. *The Missouri's Cargo*, Sprague, 260. [AMERICAN.]

* (243) The voluntary or careless destruction of the shipper's marks upon the boxes or packages will entail a forfeiture or diminution of the salvage. *Marvin on Wreck and Salvage*, 230. [AMERICAN.]

(243a) Taking the goods out of their boxes and stowing them in bulk in the salvaging vessels, will work a forfeiture or diminution of salvage, unless such measure is justified by the urgent necessities of the case. *Ibid.*

(244) The masters of licensed wreckers on the coast of Florida, although not professional pilots, are qualified in most instances to pilot vessels from inside the reef into the gulf, and cannot, consistently with cor-

abandoned by all her crew but two, who had been unable to effect their escape, would not be bound to delay their course for the sake of taking on board again the crew of the vessel. *The Orbona*, 1 Spinks' Eccl. & Adm. Rep. 161.

843. It is the primary duty of salvors to recognize and obey the authority of a commander possessed of competent skill. *The Simpson*, 3 Jur. Adm. 270. [IRISH.]

844. See also s. 1, p. 1856.

845. As to subsequent negligence of other than salvors, see No. 825, *supra*.

846. As to the consumption of stores of the salvaged vessel by salvors, see No. 836, *supra*.

10. Agreements.

1. Generally.*

847. The High Court of Admiralty has jurisdiction over agreements made on

rect notions of moral duty, lie idly by and see a vessel get into peril known to them but unknown to the master, without giving him warning and offering their assistance. If they omit to give such warning and to offer such assistance, when they have the opportunity, and the vessel runs upon rocks which they might have guarded it against, they forfeit their right to be considered as meritorious salvors, and will be paid for subsequent services at a reduced rate of compensation. *Ibid.* 117.

(245) The shares of the owners, masters, and crews of two wrecking vessels were declared forfeited for making a disturbance at the wreck and refusing to work in connection with other salvors. *Ibid.* 236.

(246) Half the shares of eight men (wreckers) were declared forfeited, for refusing to assist in the navigation of the vessel after she had been got off the reef. *Ibid.*

(247) The shares of two seamen (wreckers) were forfeited, for attempting to seduce the ship's company from their duty by telling them that the ship being in charge of wreckers, they were not bound to work unless they were paid extra. *The Mary Hale*, 5 A. R.; Marvin on Wreck and Salvage, 236. [AMERICAN.]

(248) The shares of the master of a wrecker were declared forfeited for not carrying out an anchor when requested by the master of the ship. Marvin on Wreck and Salvage, 236. [AMERICAN.]

* (249) By the naval laws of Oleron, if salvage services be rendered to a ship, and a cause thereon come before any judicature, it shall be considered the pains and trouble the salvors have been at, and the reward be accordingly, without any regard to promises made them by the master or other parties concerned in the time of their distress. Leg. Oleron, cap. 4; and see same cited in Godolph. Adm. Jur. Ext. 4.

(250) Courts of Admiralty will enforce contracts made for salvage service and salvage compensation, where the salvor has not taken advantage of his power to make an unreasonable bargain. *Post v. Jones*, 19 How. 160; see also *The Emulous*, 1 Sumner, 207; *Bearse*

v. Three hundred and forty Pigs of Copper, 1 Story, 314; 1 Sumner, 210. [AMERICAN.]

(251) But they will not tolerate the doctrine that a salvor can take advantage of his situation and avail himself of the calamity of others to drive a bargain. *Ibid.*

(252) A contract to pay a *quantum meruit* for an attempt to save property, whether successful or not, is inconsistent with a claim for a salvage compensation. *The Independence*, 2 Curtis, C. C. 350. [AMERICAN.]

(253) But anything short of this, though it may affect the amount of the compensation, does not change the nature of the service. *Ibid.*

(254) If the service be rendered on a contract for a fixed price, or for a *quantum meruit*, it does not alter its nature as a salvage service. *The Emulous*, 1 Sumner's Rep. 207. [AMERICAN.]

255. It only fixes the rule by which the court is to be governed in awarding the compensation. *Ibid.*

(256) Salvage services were rendered by one vessel to another in pursuance of a written agreement between the owners, which stipulated for a *per diem* compensation. *Held*, that the contract was not necessarily binding upon the vessel in peril to award. *The A. D. Patchin*, 1 Blatch. Ct. Ct. 414. [AMERICAN.]

(257) *Held*, also, that the district court had jurisdiction of a libel *in rem* for salvage, notwithstanding such written agreement. *Ibid.*

(258) Several contracts for salvage services had been made at various times, and a subsequent salvage service was performed under no definite contract. The rule fixed in the prior contracts was held not to be imperative, but only to be an auxiliary circumstance in determining what was a fair allowance for such subsequent salvage service. *Bearse v. Three Hundred and Forty Pigs of Copper*, 1 Story, 314; 2 Parsons on Maritime Law, 630. [AMERICAN.]

(259) It is not blameable to refuse to interpose to save property, without a salvage compensation or a contract fixing its amount. *The Independence*, 2 Curtis, C. C. 350. [AMERICAN.]

land for the performance of salvage services. *The Catherine*, 12 Jur. 682; 6 Notes of Cases, Supp. xliii.

848. When a vessel is in need of salvage services and the master is unable to act, the vice-consul may, and it is his duty to, make an agreement as to the remuneration, and the court will uphold the agreement, provided it is just and equitable. *The Vera Cruz*, 1 Lush. 583.

849. But an agreement made by a vice-consul set aside as inequitable. *Ibid.*

850. The engagement to render assistance to a vessel in distress, and the performance of that engagement so far as is necessary or possible, establish a title to salvage reward. *The Alpha*, 1 Lushington, 92; 2 L. T. N.S. 520; 29 L. J. Adm. 176.

851. Where an agreement to fix the amount of the remuneration to be paid for salvage services has been deliberately entered into at the time of the commencement of the danger between perfectly competent parties, the court will not allow the agreement to be set aside, merely because the execution of it has turned out more difficult than was anticipated at the time of making the contract. *The Waverley*, L. R. 3 A. & E. 369; 40 L. J. Adm. 42; 1 Asp. N.S. 47.

852. The circumstances under which such contracts may be set aside, considered. *Ibid.*

853. Salvors are not entitled to make an agreement upon any other grounds than these: The extent of danger to which the property to be salvaged is exposed, the degree of labour they will have to undergo, the risk to which they themselves may be exposed, and the length of time to be occupied; but they are not to speculate on the value of the cargo. *The Henry*, 15 Jur. 184; 16 L. T. 533.

854. The master of a ship in distress

agreed to pay the salvors £100 for their proposed services. He represented to them that the cargo was of small value. This statement being found to be false, the court nevertheless pronounced for the agreement with costs. *Ibid.*

855. Agreements for the salvage of the ship, irrespective of the cargo on board at the time, are not allowed by the court, and where such agreements are proved, the court will refuse to pronounce any salvage due. *The Westminster*, 1 W. Rob. 235.*

856. An agreement, if entered into, might be a bar to the parties recovering a salvage reward, but cannot convert that which is a salvage service into one of a different nature. *The William Lushington*, 7 Notes of Cases, 361, 362.

857. To bar a claim for salvage there must be a distinct agreement between the parties in explicit terms, and for a given sum. *Ibid.* 363.

858. An agreement or understanding for the performance of salvage services, but stating no precise sum, held no bar to a claim for salvage. *Ibid.*

859. When the court is satisfied that a salvage agreement has been entered into with due consideration for the interests of the crew, it will be disinclined to disturb such agreement, though the sum agreed to is less than the court would have awarded. *The Macgregor Laird*, L. R. W. N. 1867, p. 308.

860. The engagement to render assistance to a vessel in distress and the performance of that engagement so far as possible establish a title to salvage reward. *The Undaunted*, 1 Lushington, 90; 29 L. J. Adm. 177; 2 L. T. N.S. 520.

861. Though the court will set aside an extortionate agreement, yet it will never say that salvors are to blame for not making any agreement at all. *The Henry*, 15 Jur. 183; 16 L. T. 533.

(260) Where aid in saving a vessel from a sea peril is rendered under a contract, it is a salvage service, unless, by the terms of the contract, the compensation is to be absolute, and not contingent upon success. *The Susan*, Sprague, 499. [AMERICAN.]

(261) Persons assisting such salvor may maintain a claim for salvage compensation, if their right to payment depends upon success. But the court will take care that the owner of the property shall, in such case, be protected against the contractor, and shall not be forced to pay, in the whole, more than the amount agreed. *The Whittaker*, Sprague,

282. [AMERICAN.]

(262) An agreement for a specified sum is binding upon the salvor, and his compensation, although still salvage, is limited to the amount agreed. *Ibid.*

(263) A contract to labour for the relief of a vessel in peril, at an agreed compensation, to be paid at all events, displaces a claim for salvage. *Ibid.*

* (264) Except probably where the cargo is taken out and additional expense in this way incurred. 2 Parsons on Maritime Law, 629. [AMERICAN.]

862. Negotiation by the owner to refer a claim of salvage to arbitration is no conclusive admission of salvage services rendered, or negation of a defence on the ground of the salvors' misconduct. *The Martha*, Swabey, 489; *The Purissima Concepcion*, 7 Notes of Cases, 151; 13 Jur. 545.

863. A foreign ship was driven by stress of weather into Bridlington, where W. B. undertook the management of the ship and her concerns, and subsequently sent in his accounts. These were disputed by the master, and an agreement was then made to refer them to arbitration. The master signed the agreement on the 17th March, 1848, and W. B. on the 5th March; and the ship was arrested in a cause of salvage on behalf of W. B. on the 12th March. *Held*, that the agreement was no bar to the action. *La Purissima Concepcion*, *ibid*.

864. An agreement out of court between salvors and owners of the ship salvaged affords no certain criterion by which the court can award remuneration between the salvors and the owners of the cargo. *The Emma*, 8 Jur. 651.

865. In a suit for salvage of a foreign vessel, a tender was made, by the consul on behalf of the owners, of £50. This was refused by the salvors, and an arbitration agreed on, under which £130 was awarded, to which the consul would not agree. The tender pronounced for as sufficient, and salvors' costs refused. *The Eleanor Charlotta*, 1 Hagg. 156.

866. As to the validity of an agreement made on land to raise a sunken vessel, the proof of due execution thereof, and the authority of one of the parties thereto to bind the salvors as their agent, see *The Catherine*, 6 Notes of Cases, Supp. xliii.; 12 Jur. 682; *The Duchess of Kent*, 26th July, 1853.

867. The charge of a vessel in danger had been given up to the salvors who made an agreement with two steamers to render them assistance. *Held*, no argument that any agreement had been made between the salvors and master or owners of the vessel. *The Jan Hendrick*, 1 Spinks' Eccl. and Adm. Rep. 184.

868. Owners setting up an agreement in bar of a salvage claim are bound to pay into court the amount stipulated for under the agreement. *The Catherine*, 6 Notes of Cases, Supp. 2.

869. A vessel on the West rocks, seven miles from Harwich, entered into a written agreement with the masters of

two smacks for their assistance in getting her off, and into Harwich, for £6. The weather was moderate at the time, but became more boisterous shortly afterwards. The smacks engaged four other smacks, effected the service, and claimed salvage. The owners tendered £6, and averred that the engagement of the four other smacks was unnecessary, and made against the expostulation of the master of the vessel salvaged. Tender upheld, the court holding the agreement fully proved, that the first two smacks were bound thereby, and that the four other smacks must seek their remedy, if any, against their employers, the first two smacks; but no costs given. *The True Blue*, 2 W. Rob. 176; 7 Jur. 756; 2 Notes of Cases, 413.

870. The masts of a ship had been cut away and she was making a considerable quantity of water, but, being laden with timber, was in no danger of sinking. Salvors, five in number, with their fishing smack of sixty tons burthen, under an agreement for £150, rendered her, for thirty-six hours, services, which in effect amounted only to towage. Their claim included £34 compensation for loss of fish, and £25 damage to hawser. Tender of £150 pronounced for with costs. The value of the property salvaged was £1,850. *The Arthur*, 6 L. T. N.S. 556.

871. The master of a vessel agreed to pay the sum of £140 for salvage services to be rendered to his vessel. After the assistance had been given, proceedings were taken before certain justices, who overruled the agreement as exorbitant, and awarded the sum of £70; and a cause of salvage was thereupon instituted in the Court of Admiralty. Action dismissed with costs. *The William and John*, 8 L. T. N.S. 57; 9 Jur. 284.

872. A written agreement was made by the two masters to stay by a vessel in distress and see her safe into port for £500. The salvors contended that the agreement was conditional, and signed upon the understanding that the service was not to extend beyond the following morning. Agreement upheld. *The Repulse*, 2 W. Rob. 396.

873. The steamship R. being in imminent peril, hermaster, on behalf of himself and owners, entered into an agreement with the master of the salvaging steamship, that "the steamer L. M. agrees to stay by me until I am in a safe position to get to port for the sum of £1,200, my vessel being badly holed in starboard bow, near

collision bulkhead." In pursuance of the agreement the L. M. at great risk stood by the R. until she sank, when the L. M. took off the master and crew. *Held*, that no life salvage was recoverable, as no property had been saved, and that neither master nor owners were liable under the contract, as the condition, "until I am in a safe position to get to port," had not been fulfilled. *The Renpor*, 5 Asp. 98.

874. *Semble*, a master has no authority to bind his owners by an agreement for the purpose of merely saving the lives of himself and crew, without regard to any saving of the property of the shipowner. *Ibid*.

875. Salvors agreed to take a disabled vessel into harbour, weather permitting, for a fixed sum. The salvors did their utmost, but owing to a sudden change of wind, were unable to perform the agreement. *Held*, that they were nevertheless entitled to salvage remuneration for the services rendered. *The Aztecs*, 3 Asp. 326.

876. In a cause of salvage the defendants alleged that the services were rendered under an agreement to pay the plaintiffs £50. The defendants did not plead the agreement in bar, nor did they pay anything into court. The court found that the agreement was a collateral one, which could not be enforced in the Admiralty Court, and awarded £300. *The Empire Queen*, 3 Asp. 187. [IRISH.]

877. The W. fell in with the N., and an agreement was made between the masters to tow the N. to Queensland for £200. There was no evidence to show that the master of the W. consulted his officers and crew as to the agreement. The service was performed, and thirteen of the officers and crew of the W. brought an action of salvage against the N. *Held*, that the agreement was a fair one, and binding on the plaintiffs, who were condemned in costs. *The Nasmyth*, 10 P. D. 41; 54 L. J. P. D. 63; 5 Asp. 364.

878. The G. fell in with the R. in distress, and an agreement was signed by the two masters:—"At my request the captain of the G. will tow my ship

the R. to St. Nazaire. The matter of compensation to be left to arbitrators at home." The G. towed the R. safely to St. Nazaire. The R. discharged her cargo at Dunkirk, and an average bond in the usual form was taken from the consignees of the cargo. The owners of the G. brought an action *in rem* against the R. for salvage of ship and freight, and were awarded salvage. They also brought an action in France against the cargo owners, for salvage of the cargo, but failed in it. They then brought an action *in personam* against the owners of the R. for salvage in respect of the cargo, or, in the alternative, for damages for not taking a proper bond to secure salvage from the cargo owners. *Held*, that the defendants were not liable to pay salvage on the cargo, and had not bound themselves to do so, nor was it their duty to obtain such a bond. *The Raisby*, 10 P. D. 114; 54 L. J. P. D. 65; 63 L. T. 56; 54 L. J. Adm. 65; 5 Asp. 473; 33 W. R. 938. See also No. 416, p. 1827.

879. As to towage agreements, see c. 6, p. 1835.

2. The Parties.*

880. The owners of vessels are bound by the agreements of the masters. *The Africa*, 1 Spinks' Eccl. and Adm. Rep. 300.

880a. *Semble*, so also are the officers and crew. *The Nasmyth*, 14 Q. B. D. 41.

881. Although the master of a ship is on land, as at sea, agent for the crew to bind them by agreement in respect of salvage compensation, it is doubtful whether he is agent for the owner for that purpose when the owner is at hand and gives him no authority. *The Elise*, Swabey, 440.

882. An agreement made by the master of the salving vessel with the owner of the vessel salvaged as to the *quantum* of salvage to be paid, *held* to be binding on the master and his employers, but not upon the crew, such agreement having been made without their sanction or concurrence. *The Britain*, 1 W. Rob. 40; *The Sarah Jane*, 2 W. Rob. 115.

883. An agreement for salvage may be made on behalf of a Portuguese vessel by

* (265) A settlement by the master is not binding on the owners unless he acted *bona fide*, and the settlement is such as a discreet owner on the spot would probably have made. *Housman v. Schooner North Carolina*, 15 Peters, 45; *Marvin on Wreck and Salvage*, 149, 22. [AMERICAN.]

(266) Wreckers had agreed with the master of a ship to give him 2,500 dollars for the ex-

clusive privilege of saving the property. *Held*, that such agreement was an attempt to corrupt the master, was immoral in its tendency, and operated as a fraud upon owners and underwriters, and entailed a forfeiture of all salvage. *The Ship James*, 1839; *Church v. 1712 Dollars*, 4 A. R.; *Marvin on Wreck and Salvage*, 232. [AMERICAN.]

the Portuguese vice-consul, whose services had been accepted by the master, who could not speak English. *The Vera Cruz*, 1 Lushington, 584.

884. An agreement made with some of the crew of a salving ship is not binding on the remainder of the crew. *The Sansone*, 3 Jur. 258. [IRISH.]

885. No person can be legally bound by any contract unless he has himself entered into it personally or through a duly authorized agent, or has by his own act subsequently ratified that contract. The consent of a third party without the presence or authority of the salvor to a compensation for salvage does not bind the salvor himself. *The Charlotte*, 3 W. Rob. 71; 6 Notes of Cases, 279.

886. An agreement or understanding between the owners of the vessel salvaged and the owner of a cutter engaged by them to render the service, no specified sum being fixed therein, held, not to bar the parties suing (including the master and the crew of the cutter) who acted in the service under the personal direction of the owner of the cutter, but were not parties to, or cognizant of, the understanding. *The William Lushington*, 7 Notes of Cases, 361.

887. In a case of salvage for carrying out two anchors with appropriate chain cable from Dover to a vessel off Hythe, and in which an award was made by the Commissioners of Cinque Ports, which was appealed to the Court of Admiralty, the merchant who supplied the anchors and cable appeared for the owners before the commissioners, but his agency was on the appeal repudiated by them, as having been undertaken without their instructions. Held, that the facts did not disclose any authority to him to act as agent. *The Lord Goderich* (1841), 10 Monthly Law Mag. (Notes of Cases), 217.

887a. Salvage services had been rendered to a vessel by several sets of salvors off Ramsgate. The owners of the vessel summoned a meeting of the Commissioners of Salvage for the Cinque Ports, to adjudicate on the matter. No notice of the intended meeting was given to any of the salvors, and it was proved that it was not usual to give any such notice. At the meeting of the commissioners one set of

salvors was unrepresented, but it was proved that they were aware of the meeting, and were at hand. The commissioners made an award upon the whole matter. The salvors so unrepresented refused to accept their share of the money awarded, and brought their action in the Admiralty Court. Held, that the award was no bar to the action, the plaintiffs not having been parties to the first decision. *The Elise*, Swabey, 436.

3. Queen's Ships.

888. A vessel having been wrecked in the Red Sea, the owners of her cargo agreed with the Under-Secretary of State for India, in consideration of a Queen's ship being sent to render assistance, to pay for the coal consumed and to make a present to the officers and crew. Held, that this agreement did not debar the officers and crew of the Queen's ship, sent in pursuance of the agreement, from claiming salvage remuneration. *Cargo ex Woosung*, 1 P. D. (C. A.) 260; 44 L. J. Adm. 45; 3 Asp. N.S. 50; *ibid.* C. A. 239.

888a. *Quære*, can the commander of a Queen's ship enter into an agreement for salvage remuneration? *Semble*, he cannot. *Ibid.*

889. Agreement between the commander of a Queen's ship and the master of a vessel wrecked, that a lump sum of half the proceeds of the cargo saved should be paid as salvage. Held, by the Court of Appeal (reversing the decision of the Court of Admiralty), that this agreement must be set aside, but that the officers and crew of the Queen's ship might claim salvage. *Ibid.*

890. See also cases in c. 5, s. 12 (a).

890a. As to agreements by officers and crews of H.M.'s ships, or of other ships, with masters of ships salvaged for waiver of lien for salvage services abroad on the latter consenting to abide the adjudication of the Court of Admiralty or Vice-Admiralty, and giving security, and as to the statements on both sides to be thereupon made and transmitted to the court, see the M. S. Act, 1854 (c. 104), s. 497, and Nos. 277—287, p. 1812.

4. To render mutual Assistance.*

891. Claim of salvage for services

* (267) Even where vessels sailing together are not consorts, nor owned by the same party, it is possible that there may be

a usage of mutual help which would defeat a claim of salvage, and under such circumstances such a claim would be materially

rendered by one vessel to another (both being engaged in the Honduras trade) under an agreement to render mutual assistance, it being the usual custom of vessels in that trade so to do, pronounced against, but under the circumstances, the owner of the asserted salving ship being a bankrupt, without costs. *The Zephyr*, 2 Hagg. 43.

892. In a suit for salvage for services rendered by one vessel to another, under an agreement of mutual assistance, a declaration of the master of the vessel salvaged, that if the salvor had not brought his action he would have done his utmost to have obtained from his owners a remuneration for his services, *held*, to amount only to a hope that the salvor would receive an honorary acknowledgment for his prompt attention. Claim of salvage pronounced against. *Ibid.*

893. In a claim of salvage for services rendered by one vessel engaged in the whale fishery to another engaged in the same trade, and which was opposed partly on the ground that it was a custom in that trade to render assistance gratuitously, claim pronounced against without reference to the custom, which the court *held* not to have been proved either way, but on the ground that no salvage services had been rendered. The court will be cautious not to encourage vague pretensions in a case of this kind. *Quære*, would proof of the custom referred to exclude a claim of salvage? *The Margaret*, 2 Hagg. 48, n.

894. In a cause of salvage for services rendered by one whaling vessel to another while engaged in the whale fishery in the South Seas, a custom set up in bar, as existing in the South Sea fishery, for vessels engaged therein to assist one another gratuitously in such cases, *held* to be a legal custom, but the evidence of the fact of such custom being insufficient, an issue directed under 3 & 4 Vict. c. 65,

to try the existence thereof, which was found for. Motion for new trial refused and cause dismissed, but without costs. *The Harriot*, 1 W. Rob. 439.

895. An asserted custom for whaling vessels to assist each other gratuitously must be founded on the principle of mutual benefit and protection of property, and on the assumption that the parties are embarked in a common enterprise, and that whatever service is mutually rendered may be mutually required. Such a custom *held* not to apply to a case where the salving whalers embarked some time afterwards expressly with a view to render assistance to the vessel salvaged and others in distress, and was not engaged in the operation of any joint enterprise with them. *The Swan*, *Ibid.* 70.

896. In foreign countries, where the custom prevails of rendering mutual assistance without claiming salvage reward, steamers would not be bound by the custom as regards sailing-vessels, there being no mutuality between them. *The Africa*, 1 Spinks' Ecl. and Adm. Rep. 299.

897. A custom at Plymouth that fishing boats belonging to that port should assist each other gratuitously, *held* not binding upon the owners and crew of a fishing boat not belonging to that port. *The Red Rover*, 3 W. Rob. 151.

898. Salvage awarded for assistance to a vessel in the China seas, notwithstanding a custom for vessels in those parts to render mutual assistance to each other. *The Gravina*, 5 June, 1856.

899. As to cases of associated vessels, see c. 5, p. 1803.

900. As to cases of mutual benefit, see c. 6, p. 1844.

5. Avoidance.

(a) Generally.*

901. Every stipulation in any agreement by which any seaman consents to

diminished even if no usage were proved. Thus, if a steamer is stranded on a sandbank in the Mississippi, and another steamer draws her off, usage prohibits any claim for salvage. (*Montgomery v. Steamboat T. P. Leathers*, 1 Newb. Adm. 421, 429.) 2 Parsons on Maritime Law, 627. [AMERICAN.]

* (268) A contract for salvage compensation should be presumed *primâ facie* to be fair, but if proved to be unconscionable a Court of Admiralty, like a court of equity, would refuse to enforce it. *The H. D. Bacon*, 1 Newb. Adm. 274. [AMERICAN.]

(269) When there is a hiring or bargain in good faith, free from fraud or mistake, the terms are adhered to as the rule of compensation. *The H. B. Foster*, 1 Abb. Adm. 222; *Bondies v. Sherwood*, 22 How. U. S. 214. [AMERICAN.]

(270) Contracts made for salvage services are not held obligatory by a Court of Admiralty, unless it appears that no advantage has been taken of the situation of the parties, and that the rate of compensation is just and reasonable. *The Jenny Lind*, 1 Newb. Adm. 443. See also *Post v. Jones*, 19 How. 150;

abandon any right which he may have or obtain in the nature of salvage shall be wholly inoperative. See the M. S. Act, 1854 (c. 104), s. 182.

902. The 182nd section of the principal act does not apply to the case of any stipulation made by the seamen belonging to any ship, which according to the terms of the agreement is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by such ship to any other ship or ships. See the M. S. Act Amendment Act, 1862 (c. 63), s. 18.

903. By the ancient law of the Court of Admiralty, as well as by statute law prior to the M. S. Act Amendment Act, 1862 (c. 63), s. 18, any stipulation by which a seaman agrees to abandon a claim for salvage was invalid. The burden of proof is upon those who set up such an agreement to show, not merely the existence of the agreement, but that the seamen were fully aware of all its consequences. *The Pride of Canada*, 1 Asp. 406.

904. *Quare*, whether, if a valid agreement of such a kind existed, salvage remuneration would be awarded for the services in respect of which there had been such an agreement. *Ibid*.

905. *Held*, that sect. 182 of the M. S. Act, 1854 (c. 104), and sect. 18 of the M. S. Act Amendment Act, 1862 (c. 63), do not fetter the discretion of the court on the subject of these agreements, but that their effect is to render such agreements not illegal and to place them on the same

footing on which they stood before any legislation on the subject. *The Ganges*, L. R. 2 A. & E. 370; 38 L. J. Adm. 61; 3 Asp. 342.

906. The plaintiff was temporary master of a steam-tug in the place of B., and without any extraordinary exertion or peril rendered salvage services to a vessel in distress. The steam-tug belonged to a company whose business it was to render towage and salvage services. The seamen were, according to a special agreement, paid certain fixed wages and a fixed rate of poundage on all towage and salvage money earned by the tug. The plaintiff knew that B. was employed under this agreement, but he claimed salvage independently of the agreement. *Held*, that the agreement, as it did not appear to be inequitable, was valid, and that the plaintiff was bound by it, and therefore could not claim salvage. *Ibid*.

906a. See also Nos. 1097—1119, p. 1891.

907. An agreement for salvage assistance can be legally made, and will be binding, between a master of a vessel in distress and persons affording such assistance, provided there is a clear understanding of the nature of the agreement, that it is made with fairness and impartiality to all concerned, and that the parties to it are competent to form a judgment as to the obligations to which they are binding themselves. It would be the duty of the Court of Admiralty to enforce the fulfilment of such an agreement. *The True Blue*, 2 W. Rob. 179; 7 Jur. 756; 2 Notes of Cases, 413; and *The Mulgrave*,

Cowell v. The Brothers, Bee, Adm. 136; *Schutz v. The Ship Nancy, Ibid.* 139. [AMERICAN.]

(271) In salvage cases if a contract is made between the parties under circumstances where there is no such necessity as to require immediate relief at any expense or hazard on the one side, and on the other there is no obligation to lend the required assistance, and no motive to take advantage of the urgency of the peril in driving an unconscionable bargain, the court will adopt and enforce the contract as just and conscientious. *Bearse v. The Three Hundred and Forty Pigs of Copper*, 1 Story, 314. [AMERICAN.]

(272) An extortionate agreement, made in distress at sea respecting salvage is void. *Cowell v. The Brothers, Bee*, 136; *Schutz v. Ship Nancy*, 139; *Taylor v. The Friendship, Bee*, 175. [AMERICAN.]

(273) The rate fixed by the contract for salvage remuneration is looked at in determining the amount proper to be awarded,

and would be disregarded if disproportionate or unreasonable, or if extorted through the pressure of impending calamity. *The A. D. Patchin*, 1 Blatch. Ct. Ct. 414. [AMERICAN.]

(274) A barge, in tow of a steamer on the Mississippi, ran aground on a bank, and the captain abandoned her to a salvor, agreeing that he should have 50 per cent. on all property saved. *Held*, that in the absence of any danger to life, which on the ocean might have been an ingredient, this proportion was exorbitant, and that one-sixth was a fair allowance. *The Jenny Lind*, 1 Newb. Adm. 443. [AMERICAN.]

(275) When the service rendered is in its nature a salvage service, it will not bar salvage compensation to show that the service was undertaken at the request of the owner, and upon a promise to pay the bill if thought reasonable, otherwise to refer the claim. *The Independence*, 2 Curtis, C. C. 350. [AMERICAN.]

therein cited; *The Firefly*, Swabey, 240; *The Helen and George*, *Ibid.* 368; *The Arthur*, 6 L. T. N.S. 556; *The Nuova Loanese*, 17 Jur. 263; *The Resultatet*, *Ibid.* 354; *The Enchantress*, 30 L. J. Adm. 15.

907a. Where solicitors are duly authorized by seamen to settle a claim of their clients for their share of salvage, after the whole reward to be paid is ascertained, and to make an agreement for that purpose, and the solicitors accept a sum in full satisfaction, such agreement is not void under the M. S. Act, 1854 (c. 104), s. 182, even if the amount accepted is less than the seamen would be entitled to recover in an action for distribution of salvage. *The Afrika*, 5 P. D. 192; 4 Asp. 266.

908. *Semble*, the fraud or concealment or an extravagant disproportion between the amount actually received and the amount strictly due, is necessary to induce the court to reopen such an agreement. *Ibid.*

909. When the execution of an agreement for salvage has been proved it is *prima facie* binding, and the burthen of proof falls on those who dispute its validity. *The Helen and George*, Swabey, 369.

910. An agreement in writing for salvage services repudiated by the owners, alleging that it was extorted from the master, and that no salvage services were rendered, pronounced for. *Ibid.*

911. In a salvage suit when an agreement is set up, the *onus* of proof is upon those relying upon it, and if the evidence is evenly balanced the court will pronounce against the document, but does not thereby declare it to be a forgery. *The Resultatet*, 17 Jur. 354; *The Nuova Loanese*, *Ibid.* 263; *The Arthur*, 6 L. T. N.S. 556.

912. The court is very much indisposed to set aside an honest agreement, and where there is any doubt its rule is to adhere to the agreement, but it must be satisfied that it is honest. *The Theodore*, Swabey, 352.

913. It is not for the master before entering into an agreement for salvage services to point out every circumstance that has occurred during the voyage, though concealment of circumstances of importance might vitiate the agreement. *The Jonge Andries*, Swabey, 227.

914. The master did not inform the salvors that the bowsprit was sprung and that the vessel made water. Held immaterial, the injury to the bowsprit being

slight and the quantity of water made inconsiderable. *Ibid.*

915. When an agreement for salvage services is clearly proved the court will uphold it, unless clearly inequitable. It will not set it aside on the ground that it is a hard bargain. *The Firefly*, Swabey, 241.

916. A binding agreement may be constituted between the master of a steam vessel and the master of a vessel requiring her assistance, although the one does not specifically consent to the terms proposed by the other, provided the one leads the other to receive the assistance required on the fair presumption that it is rendered on the terms of his proposal; but the proof of such an agreement lies on the party setting it up, and should be clear and satisfactory. An agreement set up in bar of a salvage claim, held not sufficiently proved. *The Graces*, 8 Jur. 501; 2 W. Rob. 294.

917. The general principle with respect to agreements for salvage services is that it lies on the party setting it up to prove two things: first, that the agreement was made; and, secondly, that it was just. Where there has been a definite distinct agreement, with ample time for the parties to consider what they are doing, the court would be reluctant to interfere with it; but only under these circumstances. *The British Empire*, 6 Jur. 608.

918. There are two ways only by which agreements for salvage can be annulled. The first is, by proving that the contract was founded in fraud and misrepresentation, in which case it would be void *ab initio*; the second, by showing that it was cancelled by mutual consent. *The Repulse*, 2 W. Rob. 397.

919. Whoever takes upon himself to establish the fact that an admitted agreement has been invalidated by consent of parties, is bound to prove by clear preponderance of testimony that it was so cancelled. *The Betsy*, 2 W. Rob. 172.

920. An agreement may be vitiated by the concealment of any facts which might affect the service, and therefore have operated upon such agreement at first. *The Kingalock*, 1 Spinks' Eccl. & Adm. Rep. 265; 18 Jur. 409; *The Briton*, 5 Ir. Jur. 170.

921. An agreement made between salvors and the crew of a vessel in distress will not be considered binding on the salvors unless it is perfectly understood by them, and not depending upon recol-

lection of what occurred in loose conversations. *The Jane Anderson*, 3 Jur. 293. [IRISH.] See also *The Briton*, 5 *Ibid.* 170.

922. Special agreements between owners and masters and seamen of a steam-tug for a percentage on the earnings of the tug, or increased wages, for foregoing all claims for salvage, will not be upheld by the Court of Admiralty as being repugnant to general principle and prejudicial to the public interest, and as tending to take away from salvors the motives to enterprise and energy. *The Mary Anne*, 2 Asp. 127.

922a. A derelict barquo and cargo, which sold for £2,700, was saved from total destruction, but without risk, the court, considering it a case of meritorious salvage, although not of first-class merit, awarded to the salvors, notwithstanding such an agreement, the sum of £1,080, or two-fifths of the value. *Ibid.*

923. A loose conversation between the masters of the salvor and the vessel salvaged, the former offering to accept, at the commencement of the service, a remuneration at the rate of two dollars a day for his men; held, not conclusive of the merits of the case, or of the quantum of reward. *The Salacia*, 2 Hagg. 265.

924. A vessel laden with 750 casks of tallow and some lathwood, took the ground on the Hasboro' sand. Some salvors agreed to lighten the vessel and to take the cargo so discharged and the vessel to Yarmouth, for 12s. per cask of the casks taken to Yarmouth, and as to the rest of their services for such an amount as the agent of the owners should think fit. They lightened the vessel, took her to Yarmouth Roads, and left her at anchor, there not being sufficient water to enable them to take her into harbour. The owners' agent afterwards endeavoured to take her into the harbour, when she took the ground and broke up, and ten tons of tallow were then saved by other salvors, and upwards of 120 casks by the first salvors. Held, that the agreement had been abandoned by the owners' agent, and £250 and costs awarded to the first salvors, in addition to £84 previously paid to them. *The Samuel*, 15 Jur. 410.

925. Salvors able to effect the salvage unaided, met a tug-steamer at sea, and offered her a specified sum to tow the derelict into harbour. The crew of the tug replied in language calculated to lead the salvors to suppose that their offer

was accepted. The court considered such language as an acceptance of the offer. (See *The Berlin*, 4 Jur. 11.) *The Elizabeth*, 8 Jur. 340. [IRISH.]

926. An agreement was made for the services of a steamer to assist a vessel aground. The services were completed under it, but the agreement was subsequently cancelled by the mutual consent of the masters of the two vessels. Held, that the owners could not set up the agreement as a bar to a suit for salvage. *The Africa*, 1 Spinks' Eccl. and Adm. Rep. 299.

927. An agreement set aside as being exorbitant. *The Theodore*, Swabey, 352.

928. A vessel was wrecked in the Red Sea about three days' voyage from Jeddah, and her crew, with a large number of pilgrims on board, escaped on to a rock where, had bad weather set in, they would have been exposed to great danger. The master of a passing steamer offered to take them to Jeddah for £4,000, and this offer was ultimately accepted by the master of the vessel wrecked, as no better terms could be made. Held, by the Court of Appeal (affirming the decision of the court below), that the agreement was obtained by compulsion, and must be set aside as inequitable, and £1,800 awarded. *The Medina*, 1 P. D. 272; 2 *Ibid.* (C. A.) 5; 45 L. J. P. D. & A. 81; 3 Asp. N.S. 219; *Ibid.* (C. A.) 305.

929. An agreement for the sum of eight shillings and sixpence as remuneration for salvage services set aside as insufficient, there being some risk to the salvors, and the vessel salvaged being in reasonable apprehension of danger. £10 awarded. *The Phantom*, L. R. 1 A. & E. 58; 2 Asp. 442.

930. The barque A. rendered material salvage services to the steamship M. Payment of £27 was made to the master of the A., who gave a receipt for the sum as "being the whole amount due for services this day rendered." The reply alleged that this receipt was drawn up on board the M., and was signed by the master of the A. under the impression that it was a simple receipt for £27. The master of the A. could not be called as a witness, being dead. Held, that the document was not an agreement, but a receipt; and, having regard to evidence which showed that a minor service was the only service referred to in the receipt and to the inadequacy of the remuneration, £273 awarded in addition to the £27. *The*

Macgregor Laird, L. R. W. N. 1867, p. 308.

931. The defendants in a cause of salvage tendered, in addition to the amount agreed upon prior to the rendering of the salvage services, a further sum on account of damage sustained by the salving vessel. *Held*, that the tendering of the additional sum did not annul the original agreement. *The Waverley*, L. R. 3 A. & E. 369; 40 L. J. N.S. 42; 1 Asp. N.S. 47.

932. *Quere*, whether the commander and crew of a Queen's ship can make an agreement as to the amount of salvage to be paid? *Seemle*, they cannot. *The Cargo ex Woosung*, 1 P. D. 260.

933. The master of a disabled ship, about 340 miles from Queenstown, agreed in writing with the master of a mail steamer for towage of his ship to Queenstown for £15,000, and the service was performed. The court declined to enforce the agreement, and awarded as salvage £7,000, in addition to the penalties payable by the owners, by reason of the vessel deviating to perform the service. *The Silesia*, 5 P. D. 177.

See also No. 936, *infra*.

(b) *Fraud*.

934. A Portuguese vessel got on shore at Dungeness. The master, not being able to speak English, accepted the services of the agent of the Portuguese vice-consul, who agreed with a steam-tug to tow her into a place of safety for £600, on the condition that £50 should be returned. The service was performed, but the owners disputed the agreement, and tendered £250. The court set aside the agreement as corrupt, and pronounced for the tender. *The Vera Cruz*, 1 Lushington, 583.

935. An agreement dishonestly made by the master of a ship to secure, to so called salvors, an excessive reward, is not valid against the owner of the ship. *The Theodore*, Swabey, 351.

936. The plaintiff hearing from an English captain coming from the Black Sea that he had passed a ship abandoned and in distress, gave notice to the master of the defendant's steam-tug and entered into an agreement with him that he, the plaintiff, should receive 15 per cent. of the net profits of the sum awarded as salvage remuneration. Plaintiff's claim dismissed, as contravening public policy. *Higley v. Smart* (The Supreme Consular Court of Constantinople), February 27th, 1874.

937. The master of a ship in distress agreed to pay the salvors £100 for their proposed services. He represented to them that the cargo was of small value. This statement was found to be false, but the court nevertheless pronounced for the agreement, with costs. *The Henry*, 15 Jur. 183; 15 L. T. 533.

938. See also Nos. 908, 918, 920, p. 1874.

939. As to the diminution or forfeiture of salvage on the ground of fraud, see c. 9, p. 1864.

(c) *Subsequent Circumstances*.

940. It is no argument on the one side or the other against the validity of a salvage agreement that much greater or fewer difficulties than were anticipated in consequence of the change of the weather, &c., attended its performance. *The True Blue*, 2 W. Rob. 179; 7 Jur. 756; 2 Notes of Cases, 413, and *The Mulgrave*, therein cited.

941. If an agreement for salvage remuneration is clearly established, the court will uphold it, unless wholly inequitable, and will not set it aside on the ground that it is a hard bargain. *The Firefly*, Swabey, 240; *The Helen and George*, *ibid.* 368; *The Arthur*, 6 L. T. N.S. 556.

942. Agreements for salvage services are, when validly entered into, always respected and upheld by the Court of Admiralty, though perhaps subsequent circumstances may have rendered such an agreement more or less favourable to either party than was originally expected. *The Nuova Loanese*, 17 Jur. 263. See also *The Resultatet*, 17 Jur. 354.

943. If there has been an agreement made between the salvors and the owners of a vessel, whatever may be the consequences, whether the service is attended with great risk and danger, or not, both parties must be bound by it. *The Jan Hendrik*, 1 Spinks' Eccl. and Adm. Rep. 182. See also *The Africa*, *ibid.* 299.

944. But if the agreement is repudiated by the owners, it is considered as if no agreement at all had been entered into. *Ibid.*

945. An agreement to perform for a certain sum a service of a salvage nature is not to be lightly set aside either because the weather was tempestuous, or because the vessel was longer in arriving at a port of safety than might reasonably have been anticipated. *The Jonge Andries*, Swabey, 226, 303; 11 Moore, P. C. C. 313; 30 L. T. 251.

946. A foreign vessel, fifty miles off the Dutch coast, being in difficulties from the boisterous state of the weather and leaky, engaged the assistance of a smack, by written agreement, "To pilot and to sail ahead for £50." After four days' boisterous weather, during which the master of the smack worked at the pumps, the vessel was got into port. The owners of the smack refused a tender of £50, and claimed salvage. *Held*, that salvage was barred by the agreement. *Ibid*.

947. An agreement for salvage services originally valid will not be invalidated by the mere fact that the services took a longer time to be performed than the salvors originally expected. *The Cato*, 35 L. J. Adm. 116.

948. Nor will the salvors be entitled to additional remuneration. *Ibid*.

949. As to subsequent circumstances as affecting a towage agreement, see c. 6, p. 1838.

6. *For Abandonment, Transfer, or Advance of Salvage.*

950. See c. 16, pp. 1891, 1892.

11. Lien.

1. *Generally.**

951. As to agreements by the commander or crew of any of her Majesty's ships, or of any other ship, with the master of the ship salvaged for abandoning the salvors' lien upon the property salvaged,

* (276) Salvors have a right to retain the goods saved until the amount of the salvage is adjusted and tendered to them. *The Royal William*, Stuart's Vice-Adm. Rep. 111 (Lower Canada). See also *Troplong des Privilèges et Hypothèques*, tome premier, No. 175, p. 256; No. 264, p. 386; *Pardessus Cours de Droit Commercial*, Tome 3ème, No. 955, p. 557; *Voet ad Pand de Compens*, No. 20. See also note 45, p. 1792.

(277) The law of England has provided that salvage shall be a lien upon the goods saved. Cross on Liens, 291; and see the cases there cited.

(278) The finder of goods derelict, who takes possession with the intention of saving them, gains a right of possession, which he may maintain against the true owner, and a lien upon them for salvage. *The Bee*, Ware, 332. [AMERICAN.]

(279) But the owner's exclusive right of possession is not lost by temporarily leaving the goods for the purpose of obtaining aid, and with the intention of returning to save them. *Ibid*.

(280) The rights of the owner are not divested by abandonment, but the finder becomes the legal possessor, and acquires a privilege against the property for his salvage, which takes precedence of all other liens. *Lewis v. The Elizabeth and Jane*, Ware, 41. [AMERICAN.]

(280a) The title of salvor arises from actual possession of property in peril, with power to save it, and the actual employment of means to that end. *The John Wurts*, *Ibid*. 462. [AMERICAN.]

(281) A brig in going out of the harbour of New York grounded on the Outer Middle, below the Narrows, in a north-east storm of wind and snow, and bilged. The master and crew left her in the evening, and went up to the city. The salvors, who were wreckers and kept a vessel and crew in readiness to go out during the winter to the assistance of

vessels in distress, hearing at Staten Island of the condition in which the brig had been left, immediately proceeded to her and commenced saving the cargo and materials. The next morning the master returned to the wreck in a steam-tug, but without lighters, which were necessary to save the cargo and materials, and demanded of the salvors surrender of possession. They refused, asserting that they were legally in possession as salvors. In the afternoon an agent of the owners arrived and demanded possession, which demand the salvors disregarded, but they employed all the men who came down and were willing to work in saving the property. *Held*, that possession being thus taken when the vessel was in fact abandoned and quite derelict under peril of instant destruction, the salvors had a right to retain it until the salvage was completed, and that no other person could interfere against them forcibly, provided they were able to effect the purpose, and were conducting the business with fidelity and vigour. *The John Gilpin*, Olcott, 77. [AMERICAN.]

(282) A lien for salvage does not exist with regard to goods wrecked upon a navigable river at a great distance from the main sea, although the tide there ebbs and flows. *Baker v. Hoag*, 3 Barb. Sup. Ct. R. 203. [AMERICAN.]

(283) A canal boat with property on board was sunk in the Hudson River where the tide ebbed and flowed; it was afterwards found, and the property saved. *Held*, that the salvors had a lien on it for salvage. *Ibid*. 3 Seldon (N. Y.) 555. [AMERICAN.]

(284) It is not necessary that salvors should retain the vessel saved in order to preserve their lien. Delivering up a boat to its master after raising it, and allowing it to proceed on its voyage, can have no effect to destroy the lien. *The H. D. Bacon*, 1 Newb. Adm. 247. [AMERICAN.]

on the latter consenting to abide the decision of the Court of Admiralty or of any Vice-Admiralty Court, and on security given for payment of the salvage to be adjudged, see the M. S. Act, 1854 (c. 104), s. 497.

952. As to the statements on both sides to be thereupon made and transmitted, *Ibid.*, and Nos. 277—287, p. 1812.

953. A salvor has a lien on the property saved at sea, though it would be otherwise in a river. *Hartford v. Jones*, 1 Ld. Raym. 393; *Baring and others v. Day*, 8 East, 57; 2 Hen. Black. 294; 1 Saund. Rep. 265; and see No. 111, p. 1793.

954. When a vessel has been abandoned by her master and crew in consequence of real damage, whatever persons first get possession of her and are competent to render salvage services, have a right to retain possession of her until she is either voluntarily given up or they are divested by due course of law, though the Court of Admiralty is desirous of holding out to salvors the expediency of not standing by their strict rights in that respect where they have adequate security for their salvage reward. *The Tritonia*, 5 Notes of Cases, Supp. iv.

955. When salvors have possession of a derelict they are entitled to keep possession, though the master and crew return to her. It is, however, expedient to permit the master and crew to approach their own ship. *The Gertrude*, 30 L. J. N.S. Adm. 131; *The Glasgow Packet*, 8 Jur. 675; 2 W. Rob. 306.

956. Salvors may, under certain circumstances, be justified in keeping possession of the vessel, and taking her into port without delaying to take on board the crew which had abandoned her. *The Orbona*, 1 Spinks' Eccl. and Adm. Rep. 165.

957. A ship which has been assisted into a roadstead is not to be removed without the consent of the salvors. *The Nicolai Heinrich*, 17 Jur. 330.

958. A foreign vessel so assisted was removed from one towards another English port, and the salvors thereupon arrested her, and incurred an expense of

£10 for a yawl to take the warrant to her. The expense of the yawl was allowed to the salvors. *Ibid.*

959. Salvor's title to remuneration is not impaired or in any way affected by their quitting possession of the vessel salvaged. *The Eleanora Charlotta*, 1 Hagg. 156.

960. Recaptors from pirates have a lien on the property for salvage. *The Mariana*, 3 Hagg. 201.

961. The derelict property salvaged ought, until payment of salvage, to be in the custody of the actual salvors, and not of the owners of the salvaging ship. The latter are neither entitled to the property nor the custody of it. *The Princess Helena*, 30 L. J. N.S. Adm. 140; 4 L. T. N.S. 869. But see No. 962.

962. It is laid down by some authorities that there is a right of possession in salvors, but it would be a rule most mischievous to commercial interests and property salvaged, to hold that under whatever circumstances it was the duty of salvors to retain the property. Claim of salvors pronounced forfeited on the ground, *inter alia*, of their improper retention of the property when an agent of the owner was on the spot. *The Lady Worsley*, 2 Spinks' Eccl. and Adm. Rep. 255.

963. The court will issue an attachment against salvors seeking to retain possession of a vessel after the production to them of the release of the court. When a release issues, instantaneous obedience must be paid to it. *The Towan*, 8 Jur. 222.

964. A shipowner who has paid a sum of money, under 9 & 10 Vict. c. 99 (now repealed), in order to release the ship and cargo from a claim for salvage, has a lien on the cargo for the proportion of those expenses payable to him by the owners of the goods, and an insurable interest in the cargo in respect of such lien. *Briggs v. Merchant Traders Ship Loan and Assurance Association*, 13 Q. B. 167; 13 Jur. 787; 18 L. J. Q. B. 178.

965. Salvage services were rendered by a Queen's ship, for which a bill was

(285) An assignment of a claim for salvage divests the lien which originally existed in favour of the salvor. A libel by the assignee claiming such share will be dismissed for want of jurisdiction. Where the share of the salvor turns out to be greater than the consideration of the assignment, he will be entitled to the surplus. *The Geo. Nicholas*,

1 Newb. Adm. 449. [AMERICAN.]

(286) A box of bullion was saved by the *Constellation*, and afterwards, while at sea, transferred to the *Constitution*, to be taken to a port of safety. *Held*, that the lien for salvage was not lost by delivery of the box of bullion to the master of the *Constellation*. *Box of Bullion*, Sprague, 57. [AMERICAN.]

given by the master on the owners, who had in the meantime sold the ship, which was lost on the homeward voyage. Payment of the bill having been refused, application on behalf of the salvors for monition against the purchasers of the ship and cargo to show cause why salvage should not be paid, rejected, the court observing that such monitions were usually decreed only in cases where the property had been allowed to go into the hands of the owners, and in lieu of the salvors attaching the property itself, and that in no case had a monition issued against the owners of property lost. *The Chieftain*, 4 Notes of Cases, 459.

966. A claim for salvage preferred by a King's ship, after a delay of eight months, not *in rem*, but by monitions against owners and consignees, dismissed, the salvors being *held* (the salvage being very slight) to be barred by lapse of time. *The Rapid*, 3 Hagg. 419. But see *The John*, 8 Jur. 276.

967. C. employed T. to convey in his barge a quantity of copper ore from Liverpool to Birkenhead, and to deliver the same to L. who had undertaken to indemnify C. from all risk of transit. The barge having sunk, owing to stress of weather, T. applied to C. to know whether he should raise the ore. The answer was, that he must ask L. who said he was insured, and referred him to the insurer. The insurer ordered him to raise it. *Held*, that as C. had never employed T. the latter could have no lien upon it, nor could he recover as against C. for salvage or general average. *Castellain v. Thompson*, *Thompson v. Castellain*, 1 Asp. 259; 7 L. J. N.S. 424; 32 L. J. C. P. 79.

968. As to the duties of salvors to give up salvaged property to receivers of wreck, and as to the powers of the receivers to take bonds from owners for payment of salvage, see c. 4, p. 1794.

968a. As against subsequent salvors, see c. 5, s. 16, p. 1815.

969. In respect of assignment or advance of salvage, see c. 17, s. 2.

2. Priority.

(a) *Life*.

970. Salvage, in respect of the preservation of life, is payable in priority to all other claims for salvage. See the M. S. Act, 1854 (c. 104), s. 459, and No. 665, p. 1849.

970a. As to payments by the Board of Trade in respect of salvage of life, *Ibid*.

971. Where there has been a salvage of life and property, if the property saved is insufficient to reward both classes of salvors, the salvors of life would have a prior claim on the fund. *The Coromandel*, Swabey, 208.

972. As to salvage of life generally, see c. 7, p. 1847.

(b) *As against Subsequent Salvors*.

See c. 5, p. 1820.

(c) *As against other Liens*.

See tit. LIENS, p. 830.

12. Payment.

1. *Generally*.

973. The court is unwilling to discourage the settlement of questions of salvage on the spot in a distant port in a fair and liberal manner, and inclines to support such settlements. *The Sir Francis Burton*, 2 Hagg. 157.

973a. A ship was let to freight from London to Lima, under a charterparty, at so much per ton per month, payable after the ship should have reported at the Custom House in London. The outward cargo was delivered, and a homeward cargo taken in at Lima, with which she sailed, was captured, but recaptured, arrived, and reported in London. Certain expenses were incurred in obtaining restitution of the ship and cargo, and salvage had been decreed to the recaptors. The proceeds of the homeward cargo fell short of the freight due: upon the question as to who was liable for payment of the salvage and the expenses of obtaining restitution; *held*, that the shipowner alone was liable for salvage, since salvage is due from those alone who are benefited by the recapture; and in this case, had there been no recapture, the freighter would not have been liable for freight, for the ship could not then have reported in London, upon which condition alone freight was payable; and that though by the recapture he recovered his goods, their value was exceeded by the freight, so that he was a loser by the recapture. *Cox v. May* (1815), 4 M. & S. 152.

974. *Held*, also, that the freighter alone was liable for so much of the charges as

were paid to obtain restitution of the cargo, since he alone was benefited by the restitution; for had the cargo never been restored, the shipowner would not have suffered, since his freight was payable, not on delivery of the cargo, but on reporting in London, and it was therefore immaterial to him if he came home in ballast; but the freighter was benefited, since thereby he acquired a fund wherewith to discharge a portion of the freight. *Cox v. May* (1815), 4 M. & S. 152.

974a. As to the owners of the ship salvaged not being primarily liable to pay salvage on the cargo salvaged, and as to their not having bound themselves to do so by their agreement for salvage with the salvaging ship, see *The Raisby*, No. 878, p. 1870.

2. Before the M. S. Act, 1854 (c. 104).*

975. Before the stat. 9 & 10 Vict. c. 99 (since repealed), it was held that owners of vessels salvaged could not effect a settlement of salvage without a general release. *The Sarah Jane*, 3 W. Rob. 110.

975a. £800 had been paid as salvage to the master of the salvaging vessel, a part owner, in the presence of the owners and mate, and a receipt given by him on behalf of himself, owners, mate, and crew. Some of the crew, who were dissatisfied, commenced proceedings to enforce a different distribution. *Held*, that the parties were not estopped by the receipt, nor by applications made by some of them to the owners of the salvaging vessel for their share of the salvage; but that the mate who signed the receipt along with the master, and afterwards received of him and gave him a receipt for his share of the salvage, though, as averred, under misapprehension, *held* estopped. *Ibid*.

976. By 3 & 4 Vict. c. 65, s. 5 (since repealed), where an award had been made by the magistrates in a cause of salvage, the parties were not at liberty to resort to the Court of Admiralty for a distribution, unless an application for an order of dis-

tribution had been made in the first instance to the magistrates; at the time of the award, or within fourteen days afterwards; and unless the appeal to the Court of Admiralty was made within fourteen days from the award or payment of the money. *The Hope*, 1 W. Rob. 265.

977. Prior to the 9 & 10 Vict. c. 99, s. 26, the owner of a salvaging vessel received a specific sum for salvage, under an agreement made by the master of the salvaging vessel and purporting to bind him and the crew. This agreement *held* not conclusive against the crew. *The Britain*, 1 W. Rob. 45, n.

3. Since the M. S. Act, 1854 (c. 104).

978. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed £200, the party liable to pay the amount so due may apply to the receiver of the district for liberty to pay it to him; and the receiver may receive the same accordingly, and grant a certificate of the fact of such payment and the services in respect of which it is made; and such certificate is a full discharge and indemnity against claims in respect of the services therein mentioned; and if the amount exceeds £200, it shall be apportioned by the court as therein mentioned. See the M. S. Act, 1854 (c. 104), s. 466.

979. As to the custody of the salvaged property by the receiver until payment or process, or security for payment of salvage taken by him, *Ibid*. s. 468.

980. As to the power of the receiver, under certain limitations, to sell the salvaged property, pay expenses and salvage, and deliver the balance to the owners, see No. 159, p. 1798, and tit. PRACTICE, Pt. II. p. 1674.

* (287) Whenever it shall appear that any sum awarded or agreed to be paid for salvage services shall have been duly paid to the appointee of the justices, commissioners, or arbitrators making the award, or under any agreement, or, in default thereof, to the master or owner of the salvaging ship or boat,

or the nominee of the salvors, any claimant of any share in such sum thinking himself aggrieved by the insufficiency of the share allotted to him, or otherwise, shall be precluded from enforcing such claim against the ship or goods salvaged, or the owner thereof. See 9 & 10 Vict. c. 99, s. 26.

13. Derelict.

1. Generally.*

981. Derelict does not mean in all cases an abandonment *sine animo recuperandi*; and a ship may, for the purposes of salvage, be considered a derelict, though the expectation of recovering her may exist. *The Genesse*, 12 Jur. 401.

982. Derelict being *sine spe recuperandi*, is distinguishable from salvage in the amount awarded. *The Inca*, 12 Moore, P. C. C. 189; Swabey, 370.

983. By the *spes recuperandi* in cases of derelict is meant the hope and ex-

pectation entertained by the master and crew of returning to their vessel, not what was the precise state of things, but what was the intention by which they were actuated at the time. *The Sarah Bell*, 4 Notes of Cases, 146.

984. There is a wide distinction between an abandonment at sea and a quitting of the ship on the coast when the *spes recuperandi* is not improbable. *The Florence*, 16 Jur. 572.

985. A mere quitting the ship for the purpose of procuring assistance from the shore, or with the intention of returning to her again, is not such an abandonment

* (288) Derelict signifies a boat or other vessel found abandoned at sea without any person in her. 2 Brown's Civil Law, 51; Palmer on Wreck, 3.

(289) Goods cast overboard to lighten the ship are not to be deemed derelicts, so as to become the property of the first finder, unless utterly abandoned *sine spe recuperandi*. Laws of Oleron, cited in Godolphin's Adm. Jur. ext. 32.

(290) *Primâ facie*, property found at sea, in a situation of peril, and not in the possession of any person, is derelict, and it belongs to the owners to show that it was left *cum animo revertendi*. Marvin on Wreck and Salvage, 134. [AMERICAN.]

(291) When a vessel is found at sea deserted, and has been abandoned by the master and crew, without the hope or intention of returning and resuming the possession, she is, in the sense of the law, derelict. In like manner, goods abandoned at sea by the master and crew, without the hope or intention of returning and resuming the possession of them, whether flotsam, jetsam, or ligan, are derelicts. But where the master and crew leave the vessel or goods temporarily, without any intention of a final abandonment, but with the intent to return and resume the possession, such vessel or goods are not considered as legal derelicts. Marvin on Wreck and Salvage, 133; *The Bee*, Ware, 339; *Roue v. Brig*, 1 Mason, 373. [AMERICAN.]

(292) Property is derelict when the owner has abandoned it without the intention of returning and resuming the possession. *The Bee*, *ibid.* [AMERICAN.]

(293) Vessels sunk at sea are not "wrecks," but when found are derelict, and he who finds and recovers them has a lien on them for salvage. *Baker v. Hoag*, 3 Seldon (N. Y.), 555. [AMERICAN.]

(294) A vessel with slaves on board, but no white person, considered as derelict, and one-third given as salvage to the person bringing her in. *Flinn v. Leander*, Bee, 260. [AMERICAN.]

(295) Derelict can only occur under an abandonment without hope or intention of recovery. *Tyson v. Prior*, 1 Gallis. 133.

[AMERICAN.]

(296) Where a vessel at sea is not abandoned, but those on board are both physically and mentally incapable of doing anything for their safety, this constitutes a case of *quasi derelict*, and calls for a liberal compensation to salvors, especially if life as well as property has been saved. *The Geo. Nicholas*, 1 Newb. Adm. 449. [AMERICAN.]

(297) Restitution upon payment of salvage will be adjudged in all cases, if the original owners can be found. *British Consul v. Smith, Bee*, 178. [AMERICAN.]

(298) The master and crew had left their vessel in a sinking condition and taken to the long boat, and were picked up by another vessel while yet in sight of the wreck; the vessel and cargo thus left were considered as derelict. *The Boston*, 1 Sumner, 328; see also *the Henry Ewbank*, *Ibid.* 400. [AMERICAN.]

(299) A vessel imbedded in the ice was drifting towards a shoal, and if she had struck upon it, she would probably have gone to pieces. The crew left her with the intention of returning if the danger should be escaped. *Held*, that the vessel was not a derelict. *Clarke v. Brig Dodge Healy*, 4 Wash. C. C. 651.

(300) A captain whose vessel was on fire, surrendered her into the hands of salvors, to save her if they could, but was present with his crew when the services were performed. *Held*, that this was not such an abandonment as would make it a case of derelict. *The Delphos*, 1 Newb. Adm. 412. [AMERICAN.]

(301) An abandonment of a burning steamboat on the Mississippi by the master, to another steamboat for the purpose of saving her, does not constitute a case of derelict. *The T. P. Leathers*, 1 Newb. Adm. 421. [AMERICAN.]

(302) Property sunk in a steamboat, and unclaimed for twenty-three years, *held* to be derelict. *Creery v. Breedlove*, 12 La. An. 745. [AMERICAN.]

(303) Salvors are not to be driven out of court upon the suggestion that if they had not touched a derelict ship and cargo she might otherwise have been saved. *The Charles*, 1 Newb. Adm. 329. [AMERICAN.]

as to constitute derelict. *The Aquila*, 1 C. Rob. 40; *The Clarisse*, Swabey, 130.

986. Whenever an act of abandonment of a vessel in distress at sea comes in question, a mixed question of law and fact arises for the court to determine, and the *quo animo* is in all such cases the material point. *The Cosmopolitan*, 6 Notes of Cases, Supp. xxvi. [IRISH.]

987. The master and crew of the abandoned vessel were prevented by the master of the vessel in which they had taken shelter from returning to their vessel, and salvors took possession of her. *Held*, that the vessel was not a derelict, but that the case was one approaching derelict. See the law of derelict elaborately reviewed in this case. *Ibid*.

988. If the master and crew leave the ship for the safety of their lives, a mere intention of obtaining assistance to save the vessel does not take away from the legal character of derelict. *The Coromandel*, Swabey, 209.

989. When on the alarm attending a collision, the crew of one vessel jumps on board the other, such abandonment does not of itself constitute a derelict. *The Fenix*, Swabey, 13; *The Cosmopolitan*, 6 Notes of Cases, Supp. xxii. [IRISH.]

990. A vessel in distress abandoned by her crew, who in attempting to reach the shore were drowned, *held* to be a derelict. *The Minerva*, 1 Spinks' Eccl. & Adm. Rep. 273.

991. Whilst salvors were rendering salvage assistance to a vessel and towing her she took the ground, when they left her to procure further assistance. During their absence other salvors took possession of her. *Held*, as against the second salvors, that the vessel was not a derelict. *The Atlas*, 1 Lushington, 521; 1 Asp. 168.

992. After a derelict had been in the possession of salvors for five days, a Queen's ship came up and was allowed to join in the remaining service. *Held*, that the vessel was not a derelict at the time when such latter services were rendered. *The Lady Kennaway*, 7 Notes of Cases, 130; 13 Jur. 944.

993. The master and crew of a vessel had lost their reckoning, and upon approaching a strange coast left their ship at anchor, and went on shore for the purpose of ascertaining their position, and not with the intention of abandoning her. The vessel got adrift, and was taken in charge by salvors. *Held*, not a case of derelict. *The Hercule*, 8 Ir. Jur. 412; *The Fenwick*, 16 July, 1841; *The Mary*, 12 March, 1841.

994. If the master and crew of a ship in great danger abandon her *sine spe recuperandi* to preserve their lives, and subsequently make abortive efforts to return on board in company with intended salvors, the case will still be one of derelict, for if a vessel be once abandoned, even a return of the crew, under new circumstances, would not alter the nature of the original abandonment, the intention at the time of leaving being the point upon which the question of derelict must be decided. *The Berlin*, 3 Jur. N.S. 34. [IRISH.]

995. A ship laden with lead and iron sank on the Shipwash Sand and was there left by the master and crew. The ship being immovable and the place where she was sunk being well known, *held* that she was not a derelict. *The Barefoot*, 14 Jur. 841. See also *The St. Petersburg*, 5 May, 1853; *The Sophie*, 10 March, 1841.

996. The master and crew of a vessel left her with 4½ feet of water in her, having carried away her compasses and their clothes. *Held*, that the vessel was a derelict, though it did not appear that the crew had left her *sine spe recuperandi*. *The Gertrude*, 30 L. J. N.S. Adm. 131.

997. The master and crew abandoned their vessel three days after a collision with another vessel; *held*, that the vessel so abandoned was a derelict. *The Pickwick*, 16 Jur. 670; and see *The Livingstone*, 30 June, 1853.

998. A Dutch ship, having gone to the assistance of a British merchant vessel almost in a sinking state, and whose crew refused to stay by her any longer, received on board the master, officers, passengers, and crew, and valuable treasure, and brought them to England. *Held*, that the salvors were entitled to salvage as for a derelict. *The Columbia*, 3 Hagg. 428.

999. A ship having broken up, and her cargo washing out, the master being on the spot, the property is considered to be in his possession, and not derelict; but any part of the cargo drifting out to sea, out of the master's reach, may become derelict. *The Samuel*, 15 Jur. 407.

1000. A vessel derelict, waterlogged, and very disabled, was met with by another vessel, the master and mate of which fished down the hatchway of the derelict, and dragged up certain property, a moiety thereof decreed to the salvors. *The King v. Property Derelict*, 1 Hagg. 383.

1001. For an award of salvage on recapture of a vessel from a prize crew, and

navigating her with the assistance of a frigate into port, see *The Beaver*, 3 C. Rob. 292; and tit. SALVAOE AWARDS, No. 229.

1002. As to salvage by a Queen's ship, bound to Heligoland, of a derelict vessel taken to Heligoland instead of an English port, see *L'Esperance*, 1 Dodson, 48; and tit. SALVAOE AWARDS, No. 18.

1003. So, also, in a case of salvage of a foreign vessel derelict and rescued from pirates and taken to an English port, see *The Calypso*, 2 Hagg. 212.

1004. As to the abandonment of a derelict by salvors and consequent loss of salvage by them, see *The Killeena*, 6 P. D. 193; 51 L. J. P. D. 11; 4 Asp. 472.

1004a. As to droits of Admiralty, see tit. WRECK.

See also c. 8, p. 1851.

* (304) The rule of salvage in cases of derelict usually is, to give one-half, and it has rarely been below two-fifths of the value of the property. *The Boston*, 1 Sumner, 328; *The Henry Erubank*, *ibid.* 400; *Rowe v. Brig* —, 1 Mason, 372; *Bell v. Sloop Ann*, 2 Pet. Ad. 278; *Hindry v. The Priscilla*, Bee, 1; *Morehouse v. The Jefferson and Cargo*, 1 Pet. Ad. 45, note; *Taylor v. Ship Cato*, 1 Pet. Ad. 48. One-third, in another case; *Warder v. Goods saved from La Belle Creole*, 1 Pet. Ad. 31. [AMERICAN.]

(305) In general a moiety is the rule of salvage in cases of derelict, but it is a flexible rule, yielding to circumstances. *Rowe v. Brig* —, 1 Mason, 372; *Sprague v. 140 Barrels of Flour*, 2 Story, 195; *The Elizabeth and Jane*, Ware, 35; *Post v. Jones*, 19 How. 150, 161; *Flinn v. The Leander*, Bee, Adm. 260; *The Blaireau*, 2 Cranch, 240; *Cross v. The Bellona*, Bee, 139. [AMERICAN.]

(306) In cases of derelict, it was the ancient rule of the Admiralty to give the salvors a moiety; and from authorities it may perhaps be gathered as the general sense of the maritime world at the present day, that the rate of salvage on derelicts should not, in ordinary cases, range below a third nor above a moiety of the value of the property. *Rowe v. The Brig* —, 1 Mason, 377; *Tyson v. Prior*, 1 Gall. 133, 136. [AMERICAN.]

(307) It seems that a moiety still continues to be the favourite proportion of judicial tribunals. In cases of derelict the old rule ought still to be considered as a subsisting but flexible rule, and that *primâ facie* the salvors are entitled to a moiety, thus making it incumbent upon the claimant to establish that under the special circumstances of the case a different measure ought to be applied. *Rowe v. The Brig* —, 1 Mason, 377. [AMERICAN.]

(308) When it is said, however, that the rule is flexible, it is not meant that it bends

2. Amount awarded.*

1005. There is no fixed amount of salvage to be decreed in cases of derelict. The *quantum* rests in the discretion of the court. If there ever was an ancient rule fixing the amount at a moiety in all cases it has now become obsolete. *The Aquila*, 1 C. Rob. 42.

1006. No particular proportion ought to be awarded in cases of derelict, but the fact of derelict ought to be considered an ingredient, as it were, in the degree of danger in which the property saved was situated. *The True Blue*, L. R. 1 P. C. 250; 4 Moo. P. C. N. S. 96.

1007. By the old law, in cases of derelict, half the value was always given, but it has been long held that the proportion is discretionary and dependent on circumstances. Seldom, however, more than one-half or less than one-third is given.

to every slight change of circumstances; but cases may occur of such extraordinary peril and difficulty, of such exalted virtue and enterprise, that a moiety, even of a very valuable property, might be too small a proportion; and, on the other hand, there may be cases where the service is attended with so little difficulty and peril, that it would entitle the parties to little more than a *quantum meruit* for work and labour. *Ibid.*

(309) In case of absolute derelict, the habit of maritime courts favours an equal partition of what is saved, one moiety to the salvor, the other to the owner, after deducting the costs of suit. *The John Wurts*, Olcott, Adm. 462. [AMERICAN.]

(309a) But there is no rule that the amount shall be a moiety of the property saved. Where the service was performed by a tow-boat without any risk and almost without detention, one-third was held to be a fair compensation. *The Charles*, 1 Newb. Adm. 329. [AMERICAN.]

(310) The amount of salvage to be allowed in derelict cases should be governed by the same principles as other salvage cases, and rests in the discretion of the court according to the circumstances of each case, namely, the danger to property, value, risk of life, skill, labour, and the duration of the service. *Post v. Jones*, 19 How. (U. S.) 150. [AMERICAN.]

(310a) The considerations which should govern the court in adjusting the amount of salvage compensation and its distribution amongst the salvors in case of timber found adrift and rescued, stated. *A Raft of Spars*, 1 Abb. Adm. 291. [AMERICAN.]

311. The French law still allows one-third of a derelict, whatever its value, as salvage, under the Ordinance of 1681. See note 4, p. 1781, and Nos. 1225—1239, p. 1903.

311a. See also notes 5—8, p. 1781.

The Effort, 3 Hagg. 167; *The Thetis*, 2 Knapp, 410.

1008. The former practice of the court to allow one-half of the value of the derelict property in salvage awards is no longer observed; the court is now guided by the degree of merit of each case. *The Martin Luther*, 2 Asp. 216.

1009. In cases of derelict the court not unfrequently gives one-half of the value of the property salvaged. *The Blendenhall*, 1 Dodson, 423.

1010. It is only in very particular cases that the court gives more than a moiety. *The Reliance*, 2 Hagg. 90, n.

1011. There are no cases of salvage of derelict, except for salvage to a King's ship, or where the property is small, or no claim has been given for a private owner in which more than a moiety has been awarded. *The Britannia*, 3 Hagg. 154; *L'Esperance*, 1 Dodson, 49; *The Cosmopolitan*, 6 Notes of Cases, Supp. xxxii.

1012. In derelicts where an owner appears there is no instance in which more than half or less than one-third is given. *The Ewell Grove*, 3 Hagg. 221; *The Splendid*, *The Thomas Bailey*, and *The Queen of the East v. The Martin Luther*, 12 L. T. N.S. 585—Adm.

1013. It was the ancient practice to award to the salvors a moiety of the property found derelict, but for a long time that practice has been departed from in these courts. The salvage awarded bears no fixed proportion to the property salvaged, but the amount is regulated upon the principle of giving an adequate reward according to all the circumstances of the case. *The Florence*, 16 Jur. 578; *The Aquila*, 1 C. Rob. 42; *The Minerva*, 1 Spinks' Ecl. & Adm. Rep. 274; *The Berlin*, 4 Ir. Jur. 11; *The Jane*, 5 *ibid.* 31; *The Magdalen*, 1 Asp. 189; 5 L. T. N.S. 807; *The Martin Luther*, *supra*; *The Scindia*, L. R. 1 P. C. 241; 2 Asp. 216; 35 L. J. P. C. 53; 2 Asp. 232.

1014. In a case where the vessel was derelict, and her value, with the cargo on board, exceeded £30,000, was salvaged by two vessels, one of which, with her cargo on board, was worth £150,000, and the other above £3,000, the Vice-Admiralty Court awarded £2,000; the Judicial Committee increased the amount of salvage by £1,000. *The Scindia*, *ibid.*

1015. In a suit for salvage of a derelict ship and cargo worth £6,694, the service being of extraordinary merit, the court, after allowing the salvors their expenses, awarded them also more than a moiety of

the residue. *The Rasche*, 42 L. J. N.S. Adm. 71; L. R. 4 Adm. & Ecc. 127.

1016. A derelict vessel was found in the North Atlantic Ocean, 800 miles from land, in a seriously damaged condition, and was navigated into Queenstown by salvors, who incurred great risk and hardship in rendering the service. The value of the derelict was £5,100. The court awarded £2,300. *The Craig*, 5 P. D. 186.

1017. Salvors having by meritorious services, rendered at the risk of their lives, salvaged a derelict vessel, her cargo and freight, valued together at £750, the court awarded them £360. *The Hebe*, 4 P. D. 217.

1018. In derelict cases it had been uniformly and properly the course to give more than in ordinary salvage cases, but it proceeds on the same principle as in other salvage cases, viz., the danger of the property. *The Sarah Bell*, 4 Notes of Cases, 147.

1019. In cases of derelict the true reason for a larger reward is danger to the property in the highest degree, and the reward in derelict cases should be governed by the same principles as in salvage cases, viz. danger to property, value, risk of life, skill, labour, and the duration of the services. *The Florence*, 16 Jur. 578.

1020. A moiety of the value of the ship and cargo, even in cases of derelict, will only be given where both considerable energy and great exertion have been displayed. In this case two-fifths only awarded. *The Sansone*, 3 Jur. 258.

[IRISH.]

1021. In the case of a derelict, where the proceeds were small, and the owners did not appear, the Court of Admiralty awarded the entire funds realized by the sale amongst the salvors. *The Castletown*, 5 Jur. 379; *The Rutland*, 3 *ibid.* 283.

[IRISH.]

1022. In a case of salvage of a derelict unknown, the proceeds thereof decreed to eight-two salvors, subject to the costs of the Crown in relation thereto. *The William Hamilton*, 3 Hagg. 168, n.

1023. In a case of very meritorious salvage of the cargo of a total derelict, and where there was constant attention, risk, ready invention, and a mechanical apparatus contrived in a very elaborate and highly creditable way, the estimated value of the property recovered being £14,352, the court directed payments and charges incurred by salvors, amounting to £2,300, to be paid, and allotted to them £9,000 (rather more than two-thirds) as

salvage. There were eight principal and seventy-eight subordinate salvors. *The Jubilee*, 3 Hagg. 43, n.; and see tit. SALVAGE AWARDS, No. 5.

1024. In a case of derelict salvage of extraordinary merit, the court awarded as salvage two-thirds of the property salvaged. The value of the property was £3,400. *The Jonge Bastiaan*, 5 C. Rob. 324.

1025. In a case of salvage of a derelict, the service being one of extraordinary merit, the proceeds being £600, and the number of salvors 400, the court inclined to give a larger sum than a moiety; but, as no precedent for the allowance of a larger sum than a moiety in such cases could be produced, finally decreed a moiety only, directing the costs of the salvors to be paid out of the other moiety. *The Francis Mary*, 2 Hagg. 89.

1026. A moiety of the nett value of a derelict awarded to salvors who brought the vessel to this country but could not bring her into port. The expenses of bringing the vessel into port allowed as a deduction from the nett value. *The Watt*, 2 W. Rob. 71.

1027. A moiety of the property salvaged awarded to salvors in a case approaching to derelict. *The Elliotta*, 2 Dodson, 75.

1028. In a case of money found derelict, no owner appearing, a moiety was granted to the salvor. *The King v. Property Derelict*, 1 Hagg. 383.

1029. In a case of salvage of ordinary merit of a derelict, two-fifths given, the court observing that had there been any considerable danger it would have given a moiety. *The Fortuna*, 4 C. Rob. 194.

1030. In a salvage of a very meritorious character, the value of the vessel salvaged being £4,600, the court awarded £1,000, intimating that if it had been a derelict one-third at least would have been given. *The Albion*, 3 Hagg. 255.

1031. The master of a Norwegian brig bound to Cardiff, with a crew of nine men, fell in, in the North Sea, between Heligoland and the Dogger Bank, with a derelict vessel in a very crippled condition, and put his mate and two of his crew on board her. The mate and the two men on board the derelict, shortly after they had boarded her, fearing that she was about to founder, endeavoured to leave her,

but their boat was swamped, one of the men drifted astern, and was picked up by a fishing smack. The mate and the other hand succeeded in bringing the derelict safely into the English Channel, and within three miles of Dungeness; she was then taken in tow by a steamship and towed to the entrance of Dover Harbour, within which she was subsequently placed in safety. The court awarded a moiety of the value of the property proceeded against, and apportioned three-fifths of the amount to the owners, master and crew of the brig. *The Liviatta*, 8 P. D. 24; 5 Asp. 132.

1032. It is not the general rule in cases of salvage of derelicts to give one-half the value of the property saved, although in some cases where values are small and the services meritorious, it may be proper to do so. *The Anna Helena*, 5 Asp. 142.

1032a. The court having, out of the proceeds of ship and cargo, amounting to the gross sum of £608, awarded one-half to the salvors of property, awarded £150 to life salvors who took off the crew, with costs. *Ibid.*

1033. See also No. 1072, p. 1889, and as to the amounts awarded in cases of derelicts, tit. SALVAGE AWARDS, p. 1921.

14. Consequential Loss.

1. Losses or Damages in rendering Salvage Assistance.*

1034. In a salvage case it was proved that the salving vessel, a valuable steamer, in performing the salvage services, received damage to her screw, which occasioned her detention and consequent losses. The court, besides awarding salvage, decreed payment of the damages and losses, and referred the accounts to the registrar and merchants to ascertain and report the amount. *The Gladiator* (No. 6), Nov. 1863.

1035. Similar decision and reference. *The Oscar*, 3 Hagg. 261; *The Salucia*, *ibid.* 269. See also *The Watt*, 2 W. Rob. 72.

1036. *Held*, that a vessel injured, without any fault on her part, while engaged in salvage services, is entitled to the costs of repairs and to demurrage in addition

* (312) A vessel was wrecked on Charleston Bar, and her cargo of cotton, &c., cast ashore on the islands, and there secured by great labour and risk of life and health on the part of the salvors. The court, in estimating the quantum of salvage, took into its considera-

tion the fact, that, while employed in this service, and in securing and drying the cargo on shore, the growing crops of the salvors suffered from neglect. *Stephens v. Ship Argus*, 170. See *Ryan v. Cato*, Bee, 241. [AMERICAN.]

to salvage remuneration. *The Mud Hooper* (No. 4), 4 Asp. 103.*

1037. The question of the allowance of damages in such cases fully considered, and the salvors' right thereto, and to produce evidence thereon, pronounced for by the Court of Appeal. *The City of Chester*, 9 P. D. 182; 53 L. J. P. 90; 51 L. T. 485; 33 W. R. 104; 5 Asp. 311; and see this case set forth more fully in tit. REGISTRAR AND MERCHANTS, Nos. 151, 152, p. 1734.

1038. Decision to the same effect by the Privy Council. *The De Bay*, 8 App. Cas. 559; 52 L. J. P. C. 57; 5 Asp. 156; 49 L. T. 414; and see this case set forth more fully in tit. REGISTRAR AND MERCHANTS, Nos. 149, 150, p. 1734.

1039. During the performance of a towage contract, the tug rendered salvage services and sustained damages. The court, in awarding salvage, included the repayment of the damages and losses to the tug. *The Saratoga*, 1 Lush. 322.

1040. Evidence of the loss of profits and damage sustained by the salving vessel is admissible as an element to be considered in awarding remuneration; but evidence of loss of profits is not to be taken in ordinary cases as a fixed figure always to be allowed as in the nature of damages. This rule does not apply with the same force to actual damage sustained. *The Sunnyside*, 8 P. D. 137; 5 Asp. 140.

1041. The damage is to be repaired, or paid for to the extent of its actual value or cost price, and not at the trade profit price. *The Augusta Jesse*, 4 Jur. N.S. 227. [IRISH.]

1042. To entitle owners of a salving vessel to a primary lien on the property salvaged for compensation for losses, such losses must be actual. If speculative merely and consequential, they are only ingredients in estimating the salvage remuneration, of which they receive an allotment. *The Martha*, 3 Hagg. 436.

1043. The presumption is, that the injury or loss was occasioned by the necessities of the service and not by the default of the salvors. And the burden of proof lies upon the defendants. *The Thomas Blyth*, 1 Lushington, 16.

1044. Claims for salvage remuneration must rest on the ordinary grounds, such as risk, length of service, &c., and are not to be swelled by demands for compensation, upon grounds which are hypothetical or uncertain. *The Eliza*, 4 Jur. N.S. 58. [IRISH.]

1045. The court will decline entertaining a claim as against the owners of the vessel salvaged for repairing damage done to the salving vessel, if that damage was not necessarily incurred in the salvage service, but resulted from a struggle with another vessel seeking to assist in the salvage. *Ibid.*

1046. In awarding salvage remuneration to a passenger steamer, the court will not take into its consideration the possibility of damages being recovered against its owners, for the delay occasioned by the rendering of those services. *Ibid.*

1047. A vessel ignorant of her whereabouts struck a shoal, but got off and came to anchor. A steamer coming by gave her information of her position and attempted to tow her to a place of safety, but the hawser breaking no further attempt to tow was made, but the steamer guided the vessel out to sea clear of all shoals, being with her about five hours. The steamer being thus delayed, arrived in the subsequent prosecution of her voyage at a dangerous place about low water, which, but for that delay, she would probably have reached in safety, but it being low water she struck a rock and was very seriously injured. *Held*, that such damage was too remote to be considered as an element in estimating the amount of salvage. *The Cornelius Grinnell*, 2 Asp. 140.

1048. The court will not allow charges for repairs of the vessel salvaged, asserted to be so mixed up with the salvage as to be inseparable. *The Ranger*, 2 Hagg. 42.

1049. In a case of salvage by King's ships, a claim of the Admiralty made prior to the M. S. Act, 1854 (c. 104), s. 485, for wages and victualling of the men, and for wear and tear of the ships, amounting together to £13,800, allowed, as not being opposed by the owners, but only by some of the salvors, the court holding that the salvors had no reason to complain of being so supplied; but it declined to give any opinion on the claim beyond drawing the distinction between the assistance afforded in ordinary cases by public vessels, for which nothing had been charged, and the appropriation of them, with additional supplies of men and stores, for eighteen months together, to an exclusive service, as in this case. *The Thetis*, 3 Hagg. 62. Affirmed on appeal, 2 Knapp, 409; but see the M. S. Act, 1854 (c. 104), s. 484.

* (313) As to the consequential losses of freight and demurrage allowable in such

cases, see tit. REGISTRAR AND MERCHANTS, note 251, p. 1761, and notes 268, 269, p. 1763.

2. *Fishing Vessels.*

1050. When a vessel has been actually called off from a lucrative employment in order to render a salvage service that fact forms an essential ingredient in the estimate of the salvage award. Otherwise the court considers the salvage remuneration awarded to her to be sufficient to compensate for any detention she may have suffered, or for any earnings of which she might probably have been deprived while rendering the salvage service. *The Louisa*, 3 W. Rob. 99; 6 Notes of Cases, 531; *The Catharina Anna Helena* (1839), 5 Monthly Law Mag. (Notes of Cases), 43.

1051. The owners of fishing vessels are entitled to a more liberal allotment than the owners of other vessels, because their occupation is interrupted, and the expense of navigating them is larger than in ordinary cases, so far as regards the wages of the mariners. *The Louisa*, *ibid.*

1052. When a vessel is actually engaged in a fishing occupation at the time, the court takes into its consideration the interruption of the fishing voyage. *Ibid.*

1053. Seven sixteenths awarded to the owners of fishing vessels, the court offering to make that scale of apportionment for such vessels a rule of court. *The Albion*, 3 Hagg. 254; *The Louisa*, 2 Notes of Cases, 151; 2 W. Rob. 26; and see *The Deveron*, 10 Monthly Law Mag. (Notes of Cases), 219.

1054. Fishermen salvors cannot claim large sums as compensation for the loss of their fishing, unless before their services are accepted they clearly state to the master their intention to make such a demand, and enforce it in the Admiralty Court. *The Hedwig*, 1 Spinks' Ecl. & Adm. Rep. 24; 17 Jur. 977.

1055. Even when the service is not dangerous, the owners of fishing smacks employed in a salvage service have a right to sue for remuneration in respect of the detention of the smacks. *The Norden*, 1 Spinks' Ecl. & Adm. Rep. 185.

1056. Salvors, owners of fishing vessels,

must be indemnified for any loss which is proved to have been sustained by them in rendering salvage services. Claim sustained for loss of fish in rendering salvage services. *The William*, 18 June, 1849.

1057. In a case of salvage of great merit, the court allotted, besides salvage, £1,000, pursuant to the report of the registrar and merchants, for losses of salvors in losing the seal fishing season, &c. *The Salacia*, 2 Hagg. 270.

1058. In a claim for salvage preferred by fishing boats, the court has to consider what has been the loss which the salvors have experienced in deserting their occupation of fishing and rendering the salvage service. This is to be treated with some tenderness, but the principle of taking into account the loss they have sustained is not to be carried too far. In cases of imminent danger, whatever amount of gain they might have acquired by fishing, would undoubtedly be taken into consideration, but not in ordinary cases. *The Nicolai Heinrich*, 17 Jur. 330; and note to 1 Spinks' Ecl. & Adm. Rep. 24.

1059. On salvage of a fishing smack, frozen up in Davis's Straits, effected by three other whaling vessels, £700 awarded in addition to the bounties given by the treasury. Such bounties, however, held to be a sufficient recompense and bar to all claim for demurrage and payment of stores, and for early sailing. *The Swan*, 1 W. Rob. 68.

1059a. In estimating the amount of salvage reward due to four fishing smacks the court took into consideration the loss of ice with which they were laden and bound for vessels on the fishing ground. *The Houthandel*, 1 Spinks' Ecl. & Adm. Rep. 25.

1060. See also No. 66, p. 1788.

1060a. As to claims for loss of fish in actions of damage by collision, see tit. REGISTRAR AND MERCHANTS, p. 1767.

3. *Deviation.**

1061. As to the forfeiture of insurance by deviation to save property, but not to

* (314) Deviation to save life does not vitiate a policy of insurance in the United States, unless there is a further stoppage for the purpose of saving property. *The Henry Ewbank*, 1 Sumner, 424. [AMERICAN.] See also Phillips on Insurance (4th ed.), 1027.

(314a) The maritime law, looking to the general benefit of commerce, does not prevent the master from deviating to save property in distress, if he deem it fit in a sound exercise of his discretion. As between him-

self and his owners, the usage of the world has clothed him with this authority, and in return for such extraordinary hazards, it has enabled the owner to partake liberally in the salvage reward for the meritorious service, when it is successful. *The Boston and Cargo*, 1 Sumner, 328. [AMERICAN.]

(315) It seems to be agreed that stopping upon the high seas for the purpose of saving life or of transhipping shipwrecked persons, is not a deviation from the voyage, so as to

save life, see *Scaramanga v. Stamp*, 5 C. P. D. 295, 304, and tit. MARINE INSURANCE, p. 843.

1061a. It has never (prior to the case of *Scaramanga v. Stamp*, *supra*) been directly decided by any court in this country what is the effect of a deviation on a policy of insurance where the object of that deviation has been the performance of salvage with reference either to life or to property. *The True Blue*, L. R. 1 P. C. 250; 4 Moore, P. C. N.S. 96.

1062. *Semble*, the court in awarding salvage will take into consideration the probable vitiation of her insurance by the salving vessel in rendering the services. *The Waterloo*, 2 Dodson, 443.

1063. When there is any risk deviation might vitiate the policy, and in estimating the amount of salvage that is not to be left out of consideration. *The Arabian*, 7 February, 1853.

1064. The master of a steam ship carrying mails and passengers should not deviate from the usual employment of the ship to render salvage services, except in strong cases of urgent necessity, and in doing so he incurs a great responsibility, for which he and the owners should be suitably rewarded. *The Martin Luther*, Swabey, 289.

1065. As to deviation for the purpose of succouring ships in distress, it is for the common advantage of all persons, underwriters, and others to give and receive assistance to and from each other in distress, see *Laurence v. Sydebotham*, 6 East, 54; *The Orbona*, 1 Spinks' Eccl. and Adm. Rep. 161; *The Beaver*, 3 C. Rob. 292; *The Hope*, 17 Feb. 1838.

1066. In apportioning a salvage remuneration between the owners and crew of

a salving vessel, the court will not take into consideration the probable vitiation of a policy of insurance effected on the salving vessel. *The Deveron*, 1 W. Rob. 180; *The Medora*, 22 Nov. 1839; *The Jeannette*, 24 March, 1853.

1067. In all such cases it will consider every vessel as uninsured. *Ibid.*

1068. When the master of a vessel undertakes the responsibility of deviating from his course, and so imperilling his insurance for the purpose of rendering salvage service, he is entitled to considerable reward. *The Aletheia*, 13 W. R. 279.

1069. In estimating salvage reward to the owners of the salving vessel, the circumstances that the salving vessel's deviation from her course might have vitiated the insurance, the possibility of being answerable to the owners of the cargo for such deviation, and the exposure to danger of the salving ship, in rendering salvage services, are elements to be taken into consideration. *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454.

1070. The question how far a deviation in a vessel's course, in the performance of salvage services to life or property, may be the voidance of a policy of insurance, is not satisfactorily settled, though the risk may operate on the judge's mind in determining the amount to be awarded for salvage services. *The Scindia*, L. R. 1 P. C. 241.

15. Awards.*

1. Generally.

1071. It is hardly possible to make a precedent of any one case in deciding

discharge the underwriters upon ship, freight, or cargo. But any further stoppage, for the purpose of saving property, is said to be a deviation from the voyage, which discharges the insurers, and puts the ship, cargo, and freight completely at the risk of the shipowner. *Marvin on Wreck and Salvage*, 245. See *The Boston*, 1 Sumner, 329; *The Henry Ewbank*, *ibid.* 424; *The Nathaniel Hooper*, *ibid.* 578; *The Ship Blaireau*, 2 Cranch, 240; *The Brig Cora*, 2 Washington, 80; *Williams v. Box of Bullion*, 6 Law Rep. 363. [AMERICAN.]

(315a) *Held*, that it was no deviation for a vessel to go out of her course three miles to speak another at sea, on seeing a signal for that purpose; nor to delay three hours to take from a foreign ship, bound to a foreign port, shipwrecked mariners of the United States, for the purpose of bringing them direct to the United States. *Williams v. Box*

of Bullion, 6 Law Rep. 363. [AMERICAN.]

(316) If the only means of saving life are by saving property also, as where a vessel was taken in tow and the crew could not be rescued in any other way, this will not constitute a deviation. 2 *Parsons on Maritime Law*, 622, and *Crocker v. Jackson*, therein cited. [AMERICAN.]

(316a) A steamer being delayed by rendering a salvage service, arrived in the subsequent prosecution of her voyage at a dangerous place about low water, which, but for that delay, she would probably have reached at about high water, and have passed in safety, but it being low water, she struck a rock, and was very seriously injured. *Held*, that such damage was too remote to be considered as an element in estimating the amount of salvage. *The Cornelius Grinnell*, 11 L. T. N.S. 278. [AMERICAN.]

* (317) As to the amount of compensation in

another when the question is one of merely money compensation, so infinitely various are the shades of difference resulting from the comparison of the details of one case with another. *The Genessee*, cited in *The Hebe*, 7 Notes of Cases, Supp. xv.

1072. Where the services were rendered by a steam vessel with complete success, but without any personal risk, the court awarded one-fourth of the value of the salvaged vessel and her stores, together with costs of suit. *The Rothsay Castle*, 9 Jur. N.S. 360 [IRISH]; 2 Asp. 206.

1072a. As to the principles of salvage reward generally, see c. 1, p. 1781; and in cases of derelict, c. 14, p. 1883.

1073. As to amounts awarded, see tit. SALVAGE AWARDS, p. 1921.

2. Life.

1074. Salvage services of a highly meritorious character having been performed by salvors, in saving the lives of the crew, and the ship and cargo, valued at £46,000, the Admiralty Court awarded £1,000 as salvage for such services. On appeal, *held*, that the sum was insufficient, and the remuneration increased to £2,000, in consideration (1) of the great danger the salvors incurred; and (2) of the fact of the saving of lives, and the value of the ship and cargo. *The Glenduror*, L. R. 3 P. C. 589; and see tit. SALVAGE AWARDS, No. 151.

salvage cases, there is no fixed rule. It is to be determined by the discretion of the court, under the peculiar circumstances of each case. A compensation *in numero* may be awarded, or a fixed per-centage or proportion of the property saved. *McGinnis v. Steamboat Pontiac*, 5 McLean, 359. [AMERICAN.]

(317a) As far as the author's inquiries extend, when a proportion of the thing saved has been awarded, a half has been the maximum and an eighth the minimum; below that it is usual to adjudge a compensation *in numero*. In some cases indeed more than a half may have been awarded, but they will be found to be cases of very extraordinary merit, or on articles of very small amount. *Marvin on Wreck and Salvage*, 182 (citing *The Adventure*, 8 Cranch, 221; *The Pontiac*, 5 McLean, 359); 1 Conkling's Adm. Practice (2nd ed.), 362. [AMERICAN.]

(318) Courts in awarding salvage do not look at the precise *quantum* of service performed, but to the general interests of navigation, and the policy of encouraging the practice of equipping such boats with suitable pumps and embarking in salvage services. *The Delphos*, 1 Newb. Adm. 412. [AMERICAN.]

3. Derelict.

1075. A steamer laden with a valuable cargo, and having passengers on board, fell in with a derelict brig in the Bristol Channel, and with great difficulty, in spite of a strong wind and heavy sea, succeeded in towing her into port. The value of the brig, together with her cargo and freight, amounted to nearly £2,800. The court awarded £900 to the salvors. *The Andrina*, L. R. 3 A. & E. 286.

1076. In a suit of salvage of derelict cargo, no appearance in the suit was given for the owners, and consequently it became necessary to sell the cargo. The gross proceeds amounted to about £400, but after deducting the expenses of warehousing, sale, &c., the net proceeds amounted to about £189 only. The court was pressed to give salvage on the gross proceeds, but it declined to make such a precedent, and awarded £85, without stating whether that sum was calculated upon the gross or net proceeds. *Cargo ex The Kepler*, 26th April, 1860.

4. Deviation.

See c. 14, p. 1887.

16. Apportionment.

1. Generally.*

1077. As to the distribution of salvage under £200, by the receiver of wreck,

(318a) The rate of compensation is governed by no determinate rules of law. The principle sought to be enforced is to make a fair division of the salvaged property between its owners and the salvors. *The John Wurts*, Olcott, Adm. 462. [AMERICAN.]

(319) Salvage never should exceed one half of the property saved. *British Consul v. Smith*, Bee, 178; *Cross v. Ship Bellona*, *ibid.*; *Hobart v. Drogan*, 10 Pet. 193. [AMERICAN.]

(319a) The maritime policy is to make a liberal allowance in salvage cases. The highest compensation which is ordinarily allowed in the most meritorious cases is one moiety, and that is rarely given. There are some exceptions, as when the property saved is very considerable, and the danger and difficulty of the service are so great as to require an extraordinary compensation. *Bearse v. Three Hundred and Forty Pigs of Copper*, 1 Story, 314. [AMERICAN.]

(320) When salvors encounter more than usual difficulty and trouble, and the value saved is small, the proportion allowed them will be greater. *Smith v. The Stewart*, Crabbe, 218. [AMERICAN.]

* (321) As to the duties of receivers of wreck in regard to apportionment of salvage,

among the persons entitled thereto, see the M. S. Act, 1854 (c. 104), ss. 466, 467; and Nos. 152, 153, p. 1797.

1078. As to the apportionment of salvage exceeding £200 by courts having Admiralty jurisdiction, *Ibid.* s. 498; and see tit. PRACTICE, Pt. III. p. 1694.

1079. The 498th section of the M. S. Act, 1854 (c. 104), imposes a duty on the Court of Admiralty on application made to it to decree an equitable apportionment of salvage. *The Enchantress*, 1 Lushington, 95; 2 L. T. N.S. 575; 30 L. J. Adm. 16.

1080. In exercising that jurisdiction the court will only be restrained by clear proof of an equitable agreement or of an equitable and sufficient tender. *Ibid.* 30 L. J. Adm. 15.

1081. Salvage by a fishing smack of Hull. The crew consisted of a master, two able seamen, and a boy. The master and seamen were paid by shares of the earnings, the boy by weekly wages. In a suit by the boy for a distribution of the salvage it was alleged that a custom existed at Hull, whereby when persons are engaged in the fishing trade those who receive wages are excluded from reward for salvage services. *Held*, that no such custom can be recognized as a bar to salvage. *The John*, 28th January, 1846.

1082. The court will not as a matter of course apportion the salvage awarded, but will leave it to the salvors to divide it amongst themselves amicably. It will, however, if applied to, proceed to a distribution. *The John Bryant*, 5 Jur. 233. [IRISH.]

1083. The court has no power to direct advances made to the salvors by their agent to be deducted from the salvage money already paid into court. The agent's claim is for the payment of a debt contracted solely upon the personal security of the salvors, and the court would be exceeding its jurisdiction in converting that claim into a lien upon the property in the hands of the court. *The Louisa*, 3

W. Rob. 100; 6 Notes of Cases, 531; 12 Jur. 946.

1084. When the owner appeals from a salvage award and there is no appeal by the salvors, the court, although it may reduce the award, will not interfere with the proportions. *The Berlin*, 4 Jur. 11a. [IRISH.]

1085. When the owner of the salvaging vessel thinks that a proper share of the salvage reward has not been paid to him by the master, his proper course is (as prescribed by the 498th section of the M. S. Act, 1854 (c. 104), to bring into court the share so paid to him, to pray for a monition to the master to do the same, and to apply for an order of distribution. *The Princess Helena*, 1 Lushington, 190; 4 L. T. N.S. 869; 30 L. J. N.S. Adm. 137.

1086. Applications for apportionment should be made at the time of or shortly after the award, while the circumstances are fresh in the mind of the court. *The Spirit of the Age*, Swabey, 287.

1087. A party dissatisfied with the tender made to him in the apportionment of a salvage reward, is not precluded from applying within a reasonable time for an apportionment by the court. The question of time will not be pressed against a person in a humble class of life. *Ibid.*

1088. No action is maintainable at common law by a seaman for his share of salvage awarded by two justices, under the M. S. Act, 1854 (c. 104), s. 460, and paid to the owner of the salvor vessel. *Atkinson v. Woodhall*, 1 H. & C. 170.

1089. The owner of a vessel, to whom the aggregate amount of salvage had been paid, offered a seaman less than he claimed as his share, which the seaman refused. *Held*, no evidence of money received to the seaman's use, or of an account stated. *Ibid.*

1090. The captain of a Queen's ship sent a transport steamer that had been chartered to the government to the assist-

see Instructions to Receivers of Wreck and Officers of Customs and Coastguard, issued by the Board of Trade, and published by the Queen's Printers, anno 1859.

(321a) The cases of *The Blaireau*, 2 Cranch, 240; *The Henry Eubank*, 1 Sumner, 400; *The Nathaniel Hooper*, 3 *ibid.* 577, are leading cases on the subject of apportionment. [AMERICAN.]

(322) Though embezzlement by a salvor works a forfeiture of his claim of salvage, it does not prejudice his co-salvors, who are

innocent. *Rising Sun*, Ware, 378. [AMERICAN.]

(323) Though the master and all the crew are implicated in the embezzlement, that will not work a forfeiture of the shares of the innocent owners. *Ibid.*

(324) Shares so forfeited do not accrue to the co-salvors. *Ibid.*

(325) As to the apportionment of salvage in general average, see Marvin on Wreck and Salvage, 174. [AMERICAN.]

ance of a vessel in distress. In addition to her own crew, the transport took with her a naval officer and some extra seamen. The captain of the Queen's ship could not have ordered the transport to render these services except with the consent of the master, nor, on the other hand, could the master of the transport have rendered them without the permission of the captain. Of the £1,000 salvage the court awarded £400 to the owners, master, and crew of the transport, £200 to the naval officer who went with her, and £400 to the captain and extra seamen who went with the transport. *The Nile*, L. R. 4 A. & E. 449; 44 L. J. Adm. 38; 3 Asp. N.S. 11.

1091. A vessel constructed entirely for the purpose of conveying the obelisk, known as Cleopatra's Needle, from Alexandria to England, was, with the obelisk on board her, abandoned in the Bay of Biscay by her master and crew, and by the steamship employed to tow her to England, and the next day was found floating on her beam ends about ninety miles north-east of Ferrol by another steamship, which succeeded in towing her into Ferrol in safety. The judge, by consent, fixed the value of the property salvaged at £25,000. £2,000 awarded as salvage to the plaintiffs, and apportioned:—£1,200 to the owner of the salvaging vessel; £250 to her master; and the residue among her crew according to their rating and services as salvors. *The Cleopatra*, 3 P. D. 145.

1091a. £4,000 awarded for salvage services by a steamship, apportioned:—£3,000 to owners, £400 to master, and £600 to crew. *The Kenmure Castle*, 7 P. D. 47.

1092. See, further, as to such apportionment, tit. APPORTIONMENT OF SALVAGE AWARDS.

1093. As to the practice in actions of distribution of salvage, see tit. PRACTICE, Pt. III. c. 16, p. 1694.

2. Agreements.

(a) *Since the M. S. Act, 1854 (c. 104).*

1094. For the statutory provisions protecting seamen from abandoning their right to salvage, see the M. S. Act, 1854 (c. 104), s. 182; and No. 901, p. 1873.

1095. As to the above 182nd section not applying to stipulations by seamen of a ship which is by the agreement to be employed in salvage service, see the M. S.

Act Amendment Act, 1862 (c. 63), s. 18; and No. 902, p. 1873.

1096. No assignment or sale of salvage made prior to the accruing thereof shall bind the party making the same; and no power of attorney or authority for the receipt of any such salvage shall be irrevocable. See M. S. Act, 1854 (c. 104), s. 233.

1097. As to the effect of the above sections, to leave such agreements to the discretion of the court as before any legislation on the subject, see *The Ganges*, L. R. 2 A. & E. 370; 38 L. J. Adm. 61; 3 Asp. 342; and Nos. 905, 906, p. 1873.

1098. The burden of proof is upon those who assert such an agreement to show, not merely the existence of the agreement, but that the seamen were fully aware of all its consequences. *Ibid.*

1099. But neither the agreement for the vessel to be employed in salvage services, nor the stipulation that the seaman shall waive his claim for salvage, need be in writing to satisfy the 18th section of the statute. *Ibid.*

1100. *Quære*, whether, if a valid agreement of the kind existed, salvage would be awarded for services in respect of such an agreement? *Ibid.*

1101. A receipt for 11s., "in full of all demands," held not to bar a salvor, he being an ignorant person, and having formed an erroneous opinion of his services. £50 awarded to him. *The Sir Robert Peel*, 8 Dec. 1854.

1102. The 182nd section of the M. S. Act, 1854 (c. 104), includes cases where seamen having actually performed salvage services consent to abandon their claim to salvage remuneration. Such stipulations are inoperative. *The Rosario*, 2 P. D. 41; 46 L. J. 52; 3 Asp. N.S. 334.

1103. Certain of the crew of the N. instituted a cause of distribution of salvage against the owners, who had received a sum of money for services rendered by the N. and her crew. A plea by the defendants that before the sum had been paid them or agreed upon, the plaintiffs had, in consideration of certain sums paid them by the defendants, assigned to the defendants their interest in the salvage remuneration due or to become due in respect of the services, held bad on demurrer. *Ibid.*

1104. Agreement by salvors for apportionment of salvage upheld. *The James Armstrong*, 3 Asp. N.S. 46.

1105. See also as to agreements generally, c. 10, p. 1867.

(b) *Before the M. S Act, 1854*
(c. 104).*

1106. By the ancient law of the Court of Admiralty, as well as by statute law prior to the M. S. Act, 1854 (c. 104), any stipulation by which a seaman agreed to abandon a claim for salvage was invalid. *The Pride of Canada*, 9 L. T. N.S. 546.

1107. *Held*, that not only all agreements, barring salvage, are wholly inoperative, but agreements limiting the proportion of salvage money are to be maintained only so far as they are really equitable. *The Enchantress*, 1 Lushington, 97; 30 L. J. Adm. 15; 2 L. T. N.S. 575; *The Louisa*, 2 W. Rob. 22; 3 *Ibid.* 100; 6 Notes of Cases, 531; 12 Jur. 946.

1108. Local and customary agreements if equitable, such as in the case of a life-boat company, that those who stay shall be rewarded as those who go, the court will always view favourably; but it is otherwise in the case of vague special agreements between salvors and persons of contrary interest. Special agreements to be such as the court will sanction, must be clearly equitable and clearly proved. *The Enchantress*, *Ibid.*

1109. Agreement between salvors and owners of salving ship to leave the apportionment of the salvage award to the determination of the latter, *held*, inequitable and void. *Ibid.*

1110. Action by masters of three fishing luggers sent in a steam-tug with her crew to render assistance to a vessel in distress for apportionment of £375 paid as salvage to the steamer. £14:17s. 6d. tendered by owners, alleging an agreement with the claimants. Tender pronounced against, and £45 awarded with costs. *Ibid.*

1111. The court has no power to direct advances made to the salvors by their agent to be deducted from the salvage money already paid into court. The agent's claim is for the payment of a debt contracted solely upon the personal security of the salvors, and the court would be exceeding its jurisdiction in converting that claim into a lien upon the property in the hands of the court. *The Louisa*, *Ibid.*

1112. The court declined to take notice for the benefit of an agent of advances made by him on account of salvage to certain of the salvors, being minors and apprentices, under an agreement for the apportionment of salvage, which agreement was overruled by the court. *Ibid.* 2 W. Rob. 26.

1113. In apportioning a salvage award the court will not consider itself bound by an agreement, made anterior to the salvage in question, between the owners and the crew, respecting the relative apportionment of all salvage awards between them. A scale of apportionment drawn up under such an agreement overruled, and a fresh apportionment made by the court. *Ibid.*

1114. An ignorant salvor receiving a sum utterly inadequate to the services performed, and signing a receipt in full of all demands, is entitled to relief in a Court of Admiralty, and is not barred of his suit for fair and proper remuneration of such services. *The Silver Bullion*, 2 Spinks' Eccl. and Adm. Rep. 70.

1115. The court would be reluctant to disturb an arrangement carried on previously with satisfaction to all parties, especially when it is part of the arrangement that the seamen receive their wages, whether in sickness or in health. When there has been great risk and extraordinary labour, the court will do so, but otherwise it will not be disposed to disturb the arrangement. *The Beulah*, 2 Notes of Cases, 64; 1 W. Rob. 477; 7 Jur. 207.

1116. Special agreements with the owners by the master of a tug-steamer, for a percentage on the earnings of the tug, and by seamen for increased wages, for foregoing all claims for salvage, will not be upheld by the Court of Admiralty, as being repugnant to general principles and prejudicial to the public interest, and as the effect of such agreements would be to take away from the actual salvors the motives to all enterprise and energy. *The Mary Ann*, 9 Jur. N.S. 60 [IRISH]; 11 L. T. N.S. 85.

1117. A claim of the owners of the salving vessel to the shares of the appren-

* (326) A contract was made between the United States consul at Havana, acting as agent for the owners of a wrecked ship, and the master of another ship, stipulating for a compensation of fifty per cent. salvage for services to be rendered by the latter. *Held*,

that this contract did not compel the court to award the whole amount to the master and owner of the salving vessel, but that a proportionate part would be awarded to the crew. *The John Taylor and Tackle*, 1 Newb. Adm. 341. [AMERICAN.]

tices who were on board overruled. *The Columbine*, 2 W. Rob. 186.

1118. Even if a previous contract to that effect had been made, it would be void as against equity and public policy. *Ibid.*

1119. Prior to the 7 & 8 Vict. c. 112, s. 5 (repealed but re-enacted by the M. S. Act, 1854 (c. 104), s. 182), an agreement for an equal distribution of a salvage reward, signed by the mate, the second in command in the salvaging vessel, but placed in the chief command over the vessel salvaged (a derelict) and the parties (part of the crew of the salvor) effecting the salvage, was held to bind those under him, he being by such circumstances, in point of fact, master of the derelict. *The Baltimore*, 2 Dodson, 137.

3. Officers and Crews of her Majesty's Ships.*

1120. In a case of salvage effected by a King's ship and crew, one-tenth of the value of ship, cargo, and freight, having been awarded, the court directed the

same to be distributed according to the prize proclamation then in force. *The Mary Ann*, 1 Hagg. 158.

1121. The proportion of salvage due to the admiral of the station, who had contributed effective salvage assistance, beyond the performance of his mere official duties, settled by the court according to the proportions laid down in the prize proclamation. *The Thetis*, 3 Hagg. 61; 2 Knapp, 409.

1122. The Court of Admiralty has power to distribute salvage amongst Queen's ships and their crews, and the Queen's proclamation only applies to the distribution of salvage where there has been no apportionment by a competent court. *The Mary Adeline*, 13th June, 1854.

1122a. As to the distribution of salvage among officers and crews of Queen's ships, see tit. PRACTICE, Pt. III. p. 1694.

See also No. 1090, *supra*.

4. Officers and Men of the Coastguard.†

1123. In cases where services are ren-

* (327) The Naval Prize Proclamation now in force is dated 29th December, 1853. It is printed in the Navy List, published quarterly.

† (328) Rewards for salvage *inter alia* are to be distributed to officers and crews of coastguard cruizers and stations, agreeably to the following scheme:—

CRUIZERS.	Shares.
Officers in command - - - -	100
Chief officers of cruizers (not in command) - - - -	45
Senior mates (not in command) - - -	40
Engineers - - - -	35
Second mates (not in command) - - -	30
Assistant engineers - - - -	25
Chief quartermasters and quartermasters - - - -	25
Pilots - - - -	25
Shipwrights - - - -	15
Carpenters, crew, and able seamen -	10
Ship's stewards, assistants, and ordinary seamen - - - -	7
Boys and supernumeraries - - - -	5

STATIONS.	Shares.
Officers of stations - - - -	25
Chief boatmen and others acting in charge, during absence of officer -	25
Chief boatmen - - - -	10
Commissioned boatmen - - - -	8

	Shares.
Divisional carpenters - - - -	8
Boatmen - - - -	6

See the Special Instructions for the Coastguard Service, anno 1875, p. 124.

(329) When officers and men belonging to coastguard cruizers are temporarily employed in aid of the force on shore, rewards are to be distributed agreeably to the following scheme:—

	Shares.
Officers in command of cruizers, chief officers and chief boatmen in charge of stations - - - -	25
Senior mates of cruizers' boats (not in command) - - - -	15
Second mates of cruizers and chief boatmen - - - -	10
Chief quartermasters, shipwrights of cruizers, divisional carpenters, and commissioned boatmen, of coastguard	8
Carpenters, crew, boatmen, and extra men - - - -	6
Ship's stewards, assistants, and ordinary seamen - - - -	5
Boys and supernumeraries - - - -	2

Persons acting in superior situations will, on producing the captain of the district's order, be entitled to the proportion of rewards for seizures allotted to the superior rank. *Ibid.*

dered by officers or men of the coast-guard service in watching or protecting shipwrecked property, then, unless it can be shown that such services have been declined by the owner of such property or his agent at the time they were tendered, or that salvage has been claimed and awarded for such services, the owner of the shipwrecked property shall pay in respect of the services remuneration according to a scale to be fixed by the Board of Trade, so, however, that such scale shall not exceed any scale by which payment to officers and men of the coast-guard for extra duties in the ordinary service of the Commissioners of Customs is for the time being regulated; and such remuneration shall be recoverable by the same means and shall be paid to the same persons and accounted for and applied in the same manner as fees received by receivers appointed under the M. S. Act,

1854. The M. S. Act Amendment Act, 1855 (c. 91), s. 20.

5. Owners of Salvaging Vessels.*

(a) Generally.

1124. It is a general rule that a party not actually occupied in effecting a salvage service is not entitled to share in a salvage remuneration. The exception which not unfrequently occurs to this rule is in favour of owners of vessels which, in rendering assistance, have either been diverted from their proper employment, or have experienced a special mischief, occasioning to the owners some inconvenience and loss for which an equitable compensation may reasonably be claimed. *The Vine*, 2 Hagg. 2; *The Charlotte*, 2 W. Rob. 72; 6 Notes of Cases, 299.

(330) As to cases of joint salvage by the officers and men of two or more cruisers or stations, see the General Instructions for the Coastguard of the United Kingdom, 1864.

(331) As to the charge and use by the coastguard of the rocket and mortar apparatus, life-belts, and as to life-boats, *Ibid.* cc. 5 and 6, Nos. 530—541, pp. 129—131.

* (332) The owners of a salvaging ship have a just claim to share in the salvage compensation not merely as an indemnity for the risk of their property, but as an inducement to them to permit their captains to render such services, and also as a check on the latter from deserting the owner's interest for his own. *The Charles*, 1 Newb. Adm. 329. [AMERICAN.]

(333) The courts of the United States, looking to the common safety and interest of the whole commercial world, bestows on the owner of the salvaging vessel a liberal salvage reward, not merely as an indemnity for deviation, but to stimulate him to a just zeal in the common cause, and not to clog his voyages with narrow instructions interdicting his master from any salvage service. *The Henry Ewbank*, 1 Sumner, 425; *The Nathaniel Hooper*, 3 *Ibid.* 579.

(334) In ordinary cases, that is, where there have been no peculiar services rendered, no uncommon sacrifices made, and no extraordinary perils encountered by the salvaging ship while engaged in the salvage service, where no voyage is broken up, nor serious damage or loss sustained by the owner, the more usual proportion allowed the owner by the courts of the United States, is one-third. Marvin on Wreck and Salv-

vage, 246; *The Henry Ewbank*, 1 Sumner, 424; *The Boston*, *ibid.* 330; *The Ship Blaireau*, 2 Cranch, 240; *The Brig Cora*, 2 Washington, 80; *The Amethyst*, Davis, 28; *The Brigantine Harmony*, 1 Peters, Adm. Dec. 43. [AMERICAN.]

(335) Sometimes a moiety is allowed. *The Rising Sun*, Ware, 385. [AMERICAN.]

(336) The master of a ship and cargo valued at 72,000 dollars, bound from Havana to Cadiz, fell in with a derelict of the net value of 22,000 dollars, and took it in tow and proceeded to New York, thereby interrupting and retarding the voyage to the great injury of the owner. Two-thirds of the salvage awarded to the owner. *The Waterloo*, 1 Blatch. & How. 115. In another case three-fourths allowed to the owner. *La Belle Creole*, 1 Peters, Adm. Dec. 45. [AMERICAN.]

(337) A vessel in imminent danger of destruction by fire was saved by the exertions of the crews of tow-boats belonging to the Union Tow-boat Company, which corporation prosecuted a libel for salvage, but none of the actual salvors were before the court. *Held*, that the quantum of salvage must be fixed as if every salvor was before the court, one-third of which amount would be decreed to the libellants as owners of the boats. *The Delphos*, 1 Newb. Adm. 412. [AMERICAN.]

(337a) Where a captain and pilot declined to assert their claim, it was *held*, that their share did not enure to the benefit of the owners, who were only entitled to one-third of the whole amount which would have been decreed if all the claims had been asserted and proved. *The Charles*, 1 Newb. Adm. 329. [AMERICAN.]

1125. In cases of large value, and where the services rendered have been attended with risk to the property of the owners of the salving vessels, the court, both in civil and military salvage, will allot a portion to the owners; but *aliter*, where there has been no risk or damage to their property. *The Salacia*, 2 Hagg. 264.

1126. The ancient principle was that the court gave salvage reward for personal services, and for a long time the claims of the owners of the salving ship were not much regarded. *The Enchantress*, 1 Lushington, 96; 30 L. J. Adm. 16; 2 L. T. N.S. 575.

1127. Salvage awarded to owners, master and crew of a vessel, whose mate had gone on board another vessel on the high seas to supply the place of the master of the latter, who had been drowned. *The Janet Mitchell*, Swabey, 111.

1128. The crew of the A., a stranded vessel, having taken to their boats, in making for the nearest land, fell in with the B., also abandoned, and rendered salvage services to her. Claim by the owner of the A. to share in the salvage, on the ground that the salvors were enabled to reach the vessel saved solely by means of his boats, sails, and compass, and that some of the salvors were his apprentices, rejected. *The Two Friends*, 8 Jur. 1011; 2 W. Rob. 349.

1129. In a cause of salvage £100 was claimed for loss by damage and detention of the salving vessel. The court having awarded the sum of £1,000, the owners claimed to deduct before apportionment, besides the sum of £100, a further sum for working expenses and for pilotage and other dues paid during the detention of the salving vessel. *Held*, that these expenses ought to have been claimed, if at all, in the petition, but that they were not proper deductions as between co-salvors. *The Wigtownshire*, 36 L. J. Adm. 11.

1130. The owner of the salving steamer is justified in deducting from the sum awarded before distribution the amount of damage done to his steamer, and a reasonable sum for the loss of her services while repairing. *The Spirit of the Age*, Swabey, 287; 30 L. T. 189.

1131. On appeal by owners from an award of magistrates, which the court *held* to be rightly brought, it will take into consideration the owners' expenses of the appeal (being considerable) in ap-

portioning a salvage remuneration. *The Oscar*, 2 Hagg. 260.

1132. In the apportionment of a salvage remuneration the nature of the apprentices' connection with the vessel is to be taken into reasonable consideration, and to a certain extent the owner should be benefited from that source. *The Columbine*, 2 W. Rob. 186.

1133. The master had received for a salvage service effected by his vessel and her crew the sum of £800. He remitted £500 to the owners, distributed £100 amongst the crew, and retained £200 for himself on taking the accounts. In a suit by him for wages the owners claimed to set off this £200 as their own property. *Held*, that they were not entitled to do so, but must apply for an order of distribution in the ordinary way. *The Princess Helena*, 1 Lush. 191; 30 L. J. N.S. Adm. 137; 4 L. T. N.S. 869.

(b) *Steam Vessels.*

(aa) *Generally.*

1134. In later times the introduction of steam power has effected a considerable change in the practice of the court. In cases of salvage by steamers it is equitable that the owners, on whom the chief risk and all the expense fall, should be rewarded in a much higher proportion than formerly. *The Enchantress*, 1 Lushington, 96; 30 L. J. Adm. 16; 2 L. T. N.S. 575; *The Spirit of the Age*, Swabey, 287; 30 L. T. 189; *The Beulah*, 1 W. Rob. 477; 7 Jur. 207; 2 Notes of Cases, 61.

1135. The owners of salving steamers should be rewarded in a much higher proportion than owners of sailing ships. *The Enchantress*, *ibid.*; *The Spirit of the Age*, *ibid.*

1136. The owners of steamers carrying mails and passengers ought to share liberally in a salvage award, because such large steamers are able to perform the most efficient services, and they would otherwise discourage their masters in rendering them. *The Martin Luther*, Swabey, 289.

1137. The court, in estimating the amount of salvage to be awarded, will not overlook the fact that the salving vessel was a passenger ship. *The Vanguard*, 5 Ir. Jur. N.S. 364.

1138. The court, in distributing an award of salvage, will award very liberal remuneration to a steam vessel specially built for and devoted to salvage services,

inasmuch as she is not employed in general trade for the conveyance of goods and passengers, and depends entirely on her chances for public encouragement and support. *The Mary Anne*, 11 L. T. N.S. 85.

1139. As a rule, very seldom deviated from, the owners are not to take more than a moiety of the net sum received after expenses are deducted.* *The Enchantress*, 1 Lushington, 96; *The Spirit of the Age*, Swabey, 287; 30 L. T. 189.

1139a. The Court of Admiralty has never, except under special circumstances, given to the owners of the salvor's vessel more than a moiety of the salvage remuneration. *The Princess Helena*, 1 Lush. 191; 30 L. J. N.S. Adm. 137; 4 L. T. N.S. 869.* But see the cases below.

1140. Where the efficiency of the steam power of the salving vessel was a main ingredient in the salvage service, the court, out of £4,000 awarded, apportioned £3,000 to the owners. *The Kenmure Castle*, 7 P. D. 47.

1140a. Out of £3,500 awarded, £2,000 apportioned to the owners of the salving steamer. *The Castlewood*, 4 Asp. 278, 358.

1141. For the ranges of proportion allotted to owners, see tit. APPORTIONMENT OF SALVAGE AWARDS.

1142. In a service mainly rendered by the steam power of the salving ship, and occasioning a deviation in point of law, though the crew were exposed to some peril, an apportionment of two-thirds to the shipowners was altered to five-ninths to them and four-ninths to the master and crew, the sum awarded being £900. *The Farnley Hall*, 4 Asp. 499.

1143. Where a Vice-Admiralty Court had apportioned £3,500 salvage as follows:—£1,500 to the owners (of steamer), £900 to the master, and £1,100 to the crew, the Privy Council varied the apportionment as follows:—£2,000 to the owners, £700 to the master, and the balance to the crew. *The Castlewood*, 4 Asp. 278.

(bb) *Vitiation of Insurance.*

1144. In apportioning a salvage remuneration between the owners and crew

of a salving vessel, the court will not take into consideration the probable vitiation of a policy of insurance effected on the salving vessel. In all such cases it will consider every vessel as uninsured. *The Deveron*, 1 W. Rob. 180; *The Medora*, Nov. 22, 1839; *The Jeannette*, March 24, 1853; but see *The Arabian*, Feb. 7, 1853. As to deviation, see c. 14, p. 1887.

1145. In fixing the proportion of salvage remuneration to which owners are entitled, the circumstance that the salving vessel deviating from her course might have vitiated her insurance and might have rendered the owners liable to the owner of cargo, must, together with the actual risk to the salving vessel, be taken into account. *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454; 4 Moore, P. C. N.S. 374.

1146. The general principle of law is, that the claim of owners to salvage is generally very slight, unless from the circumstances of the case their property becomes exposed to danger, or they incur some real loss or inconvenience. In a case where there was no danger to the salving vessel, a whaler, but where she had been detained by the service with a consequential risk, damage, and expenses, claim of the owners to salvage held to be well founded. *The Jane*, 2 Hagg. 343.

1147. When the masters and part of the crews of smacks are employed to perform salvage services, the owners of the smacks have a right to remuneration for the detention of the smacks, even when the service is not dangerous. *The Norden*, 1 Spinks' Eccl. and Adm. Rep. 185.

1148. In apportioning salvage between the owners and crew, the distribution must depend upon the peculiar circumstances of each individual case. Where no risk has been incurred by the vessel rendering assistance, it is not usual to decree to the owners any large portion of the salvage, which more properly belongs to the individuals whose services have effected the preservation of the vessel salvaged. *The Nicolina*, 2 W. Rob. 175.

1149. In apportioning salvage remunerations the owners of a sailing vessel will not generally be entitled to as large a proportion as if their vessel had been a

* (338) It will be seen by reference to Nos. 1140, 1140a, and 1142 in the text, and to the tit. APPORTIONMENT OF SALVAGE

AWARDS, that the rights of owners of salving steam vessels have been more fully recognized of late years.

stoam vessel. *The Palmyra*, 1 Asp. N.S. 182.

(cc) *Consequential Loss.*

1149a. In respect of consequential loss, see c. 14, p. 1885.

(c) *Fishing Vessels.*

1150. *Ibid.* p. 1887.

6. *Owners of Cargo in salving Vessels.**

* (339) The owner of cargo on board the salvor ship is not entitled to share in the salvage on the ground of the exposure of his property to peril, nor on the ground of the loss of insurance by the deviation, unless he has expressly assented thereto, and thereby released the shipowner from his responsibility. *Marvin on Wreck and Salvage*, 249; *The Nathaniel Hooper*, 3 Sumner, 577; *The Brig Cora*, 2 Peters, Adm. Dec. 361; *The Blaireau*, 2 Cranch, 240. [AMERICAN.]

(339a) The owners of goods on freight on board a vessel which renders salvage services, have no claim for salvage, unless they release the owners of the vessel from their responsibility to carry the cargo safely. *Bond v. The Cora*, 2 Pet. Ad. 361; 2 Wash. C. C. 80; *The Nathaniel Hooper*, 3 Sumner, 543. [AMERICAN.]

† (340) As between the master and the officers, the usual course has been to allow the master a larger proportion than the mate, and commonly twice as much; but the rule in this, as in other cases, yields to circumstances of a peculiar nature. *The Henry Ewbank and Cargo*, 1 Sumner, 400. [AMERICAN.]

(341) In apportioning the salvage among the officers and seamen, the master's share is, usually at least, double the amount of the mate, on account of his superior responsibility, although the latter may have been put in charge of the wreck, and the mate is usually allowed at least double the share of an ordinary seaman. The seamen who navigate the derelict into port have usually a larger sum, frequently double the amount, allowed than those that remain on board their own vessels. (*The Henry Ewbank*, 1 Sumner, 429; *La Belle Creole*, 1 Peters, Adm. Dec. 45; *The Cato*, *ibid.* 69.) But these proportions are often varied according to circumstances, so as to reward superior zeal, energy, and gallantry, and to discourage indifference and selfishness. *Marvin on Wreck and Salvage*, 248; 1 Conkling's Adm. Practice (2nd ed.) 366. [AMERICAN.]

(342) As between the master and crew, about one-fourth of the salvage is usually allowed to the former after deducting the owner's proportion. 1 Conkling's Adm. Prac. (2nd ed.) 367. Such a proportion awarded

7. *Personal Salvors.*

(a) *Master and Crew.†*

1151. Although it is equitable in cases of salvage by steamers that the owners on whom the chief risk and all the expenses fall should be rewarded in a much higher proportion than owners were formerly, yet the court will not lose sight of its ancient principle of adequately and liberally rewarding the personal services of the men engaged. The master con-

the master. *The Blaireau*, 2 Cranch, 240; 1 Curtis, S. C. Dec. 479; *The Cora*, 2 Washington, 80. [AMERICAN.]

(343) In cases of great perils, sacrifices, and hardships incurred by the mate as commander of the actual salvors, his proportion is permitted to approach nearer to that of the master. *The Henry Ewbank*, 1 Sumner, 400, 429. Under these circumstances about two-eighths was awarded to him. *The Blaireau*, 2 Cranch, 240; 1 Curtis, S. C. Dec. 479; *The Cora*, 2 Washington, 80, 87. [AMERICAN.]

(344) When the pretensions of the seamen composing the crew are very unequal, it is usual to discriminate between them. But it is against the policy of the maritime law to make what may be felt to be invidious distinction in this respect upon light grounds, and the amount allowed as salvage is deemed to be much more important than the ratio of apportionment. This principle is applicable to cases in which several vessels and crews are concerned in the salvage service. 1 Conkling's Adm. Prac. (2nd ed.) 367; *The Henry Ewbank*, 4 Sumner, 400, 443; *The Cora*, 2 Washington, 88. [AMERICAN.]

(345) The master had selfishly overlooked the true interests of his owner, and had, under the circumstances, unjustifiably engaged in the salvage enterprise, and had put his vessel and cargo to an excessive and improvident risk, by taking in tow a derelict and carrying her to New York, he being bound to Cadiz. His share was reduced to that of a common seaman. *The Waterloo*, 1 Blatch. & How. 115. [AMERICAN.]

(346) In an action by one of the crew of a vessel against the owner for his share of salvage money, paid by the owner of goods saved from a wreck without any deduction for embezzlement, the owner of the vessel cannot set up in defence that the plaintiff had embezzled a portion of the goods. *Blake v. Patten*, 3 Shep. 173. [AMERICAN.]

(347) When the master of a vessel, in the course of a voyage, engages in a salvage service, he cannot oppose to the claim of any of his crew for a share of the salvage their misconduct during the voyage, if they are guilty of no misconduct during the time they are engaged in the salvage. *The Centurion*, Wars, 477. [AMERICAN.]

ducting the enterprise receives a handsome reward, and the seamen in proportion. *The Enechantress*, 1 Lushington, 96; 30 L. J. Adm. 16; 2 L. T. N.S. 575; *The Spirit of the Age*, Swabey, 287.

1152. The master of a steamer carrying mails and passengers incurs very great responsibility in deviating from his course to render salvage services, and ought not to do so unless the necessity is imminent. In the apportionment therefore of a salvage award the court ought to reward him liberally. *The Martin Luther*, Swabey, 289.

1152a. Out of £3,500 awarded, £700 allotted to the master for his skilful navigation of the salving steamer in dangerous circumstances. *The Castlewood*, 4 Asp. 278, 358.

1153. In the apportionment of salvage remuneration, the court will order usually that portion allotted to the crews of the salving vessel to be divided according to their respective rates of wages. *The Howard*, 3 Hagg. 256, n.; *The Earl Grey*, *ibid.* 364; *The Columbia*, 3 Hagg. 428; 2 Monthly Law Mag. (Notes of Cases), 117; *The Hope*, 3 Hagg. 423; *The Jane*, 5 Ir. Jur. 31.

1154. A boy held entitled to share equally with seamen in a salvage remuneration, the court presuming (his age not being stated) that he performed the same amount of duty as the other seamen. *The Caroline*, 7 Jur. 660.

1155. The fact that a considerable sum has been awarded to the owners of the salving vessel, does not diminish the amount to which the master and crew are entitled. *The Aletheia*, 13 W. R. 279.

1155a. Salvage by a steamer of another steamer, disabled by the breaking of her crank shaft. The service consisted in towing the other steamer about thirty miles without risk or danger. Both steamers were valuable, and belonged to the same owners. Fifteen of the crew of the salving steamer brought an action for distribution of salvage. The court awarded them £1 each, and condemned them in costs, for arresting the property, in £5,000, and proceeding in the superior court. *The Agamemnon*, 5 Asp. 92.

1156. Held, that the allotment of salvage among the crew of the ship rendering assistance could not be submitted to a jury, but is essentially a matter of Admiralty jurisdiction. *The Columbine*, 2 Rob. Adm. Rep. 186, referred to by Pollock, C. B. *Atkinson v. Woodall*, 1 Asp. 224; 6 L. T. N.S. 361; 8 Jur. N.S. 720; 31 L. J. 352; 1 H. & N. 170.

1157. A cause of distribution of salvage was instituted on behalf of some of the crew of a steamship against the owners. The owners alleged in effect that, subsequently to the salvage services, but before any amount had been paid in respect thereof, fourteen of the plaintiffs had by deed, in consideration of sums varying from £1 to 10s. paid them by the defendants, assigned to the defendants all their respective shares of salvage reward. The plaintiffs demurred to these allegations, and the court sustained the demurrer. *The Rosario*, L. R. 2 P. D. 41.

1158. The 182nd section of the M. S. Act, 1854, does not prevent seamen who are entitled to recover salvage remuneration from entering into an arrangement through their solicitor for the apportionment of the amount due to them. *The Afrika*, 5 P. D. 192.

1159. As to second salvors, see c. 5, s. 17, p. 1820.

(b) Apprentices.*

1160. The apprentice, and not his master, is entitled to the share of salvage earned by the personal services of the apprentice. Claim of the master to the share of an apprentice rejected. *The Two Friends*, 2 W. Rob. 353; 8 Jur. 1011.

1161. A claim of the owners of the salving vessel to the shares of the apprentices who were on board overruled, the court holding that, even if a previous contract to that effect had been made, it would be void as against equity and public policy; but in the apportionment of a salvage remuneration the nature of the apprentices' connection with the vessel is to be taken into reasonable consideration, and, to a certain extent, the owner should be benefited from that source. *The Columbine*, 2 W. Rob. 186.

* (348) When salvors are apprentices their masters are not entitled to their share of the salvage, but it shall be paid to the apprentices themselves. See *Mason v. Blaireau*, 2 Cranch, 239. [AMERICAN.]

(348a) It is the general practice of the American Admiralty Courts in cases of salvage to decree that a minor's share of the reward shall be his own property. Dunlap's Adm. Practice (2nd ed.), 98. [AMERICAN.]

1162. In apportioning a salvage award among the crew in proportion to their wages, the court directed the apprentices' wages to be taken at two-thirds of those of able seamen. *The George Dean*, Swabey, 291.

1162*a*. A boy held entitled to share equally with seamen in a salvage remuneration, the court presuming (his age not being stated) that he performed the same amount of duty as the other seamen. *The Caroline*, 7 Jur. 660.

(c) *Passengers.*

See c. 5, pp. 1805 and 1808.

8. *Amounts.*

1163. A salvage service was mainly rendered by the steam power of the salving ship. It occasioned a deviation in point of law, and in rendering the service the crew were exposed to some peril. £600 awarded by the court below was increased on appeal to £900. An apportionment of two-thirds to the shipowners and one-third to the master and crew, altered to five-ninths to the shipowners and four-ninths to the master and crew, viz. £500 to the owners, £100 to the master, and £300 to the crew according to their ratings. *The Farnley Hall*, 4 Asp. 499.

See also tit. APPORTIONMENT OF SALVAGE AWARDS.

17. Evidence.

See tit. EVIDENCE, p. 458.

18. Practice.

See tit. PRACTICE, p. 1462.

19. Costs and Damages.

See tit. COSTS, p. 371.

20. Costs.

Ibid. p. 406.

21. Appeals.

See tit. APPEALS, p. 12.

22. Wreck.

See tit. WRECK.

Part II.—IN BRITISH COLONIAL COURTS.

1. Generally.

1164. As to the jurisdiction as to salvage of Vice-Admiralty Courts, see tit. JURISDICTION, p. 688.

1165. For a list of such courts, *Ibid.*

1166. As to the practice of such courts in salvage actions, see tit. PRACTICE, p. 1713.

1167. As to the jurisdiction of naval courts in cases of a ship being abandoned, wrecked, or otherwise lost, see tit. JURISDICTION, p. 690.

1168. As to the jurisdiction generally of the various British courts in colonial or foreign possessions not enumerated below, *Ibid.* p. 634.

2. Isle of Man.

1169. As to the jurisdiction as to salvage in the Isle of Man, *Ibid.* p. 693, No. 510.

3. Heligoland.

1170. As to the jurisdiction of the Wreck Court of Heligoland in cases of wreck, salvage and the like, see Ord. No. 8 of 1864; No. 12 of 1865; No. 7 of 1868, and No. 1 of 1876.

1171. For provisions as to wreck, and as to vessels and boats of the colony rendering assistance to vessels in distress, that no agreement made by the master of a vessel in distress shall be binding; and as to receiver of wreck, see Ord. No. 7 of 1868; No. 1 of 1876.

1171*a*. The maximum salvage to be awarded by the magistrate, court of sessions, or governor, is not to exceed one-third. See Ord. No. 7 of 1868, s. 14.

1172. Salvage is to be paid for the preservation of life. *Ibid.*

4. Ceylon.

1173. For provisions as to salvage in Ceylon, see Ord. No. 5 of 1861 (analogous to the British M. S. Act, 1854, c. 104).

5. The Bahama Islands.

1174. For provisions for the licensing and regulating of vessels, boats, and persons employed in rendering assistance to ships, persons, and goods in distress off

the Bahama Islands, see Prov. Acts, 27 Vict. cc. 1 and 24; 28 Vict. c. 14; 29 Vict. c. 16; 37 Vict. c. 9; and 38 Vict. c. 18.

1175. Decree of the Vice-Admiralty Court of the Bahamas awarding 76 per cent. in kind for a most meritorious salvage service, attended with loss of life, varied upon appeal, by reducing the amount to 50 per cent. upon the whole cargo, stores and materials. *Gore v. Bethell*, 12 Moo. P. C. C. 189.

1176. In no instance, however meritorious the service performed, has the Court of Admiralty in England decreed more than a moiety for salvage. *Derelict sine spe recuperandi* is distinguishable from salvage in the amount awarded. *Ibid.*

6. The Bermuda Islands.

1177. For provisions continuing an act to ascertain the extent of the jurisdiction of justices of the peace in cases of salvage, and for other purposes connected with salvage, see Bermuda Act, No. 9 of 1870.

7. Canada.

1. Generally.

1178. Where within the limits of the Dominion of Canada any vessel is wrecked or abandoned, stranded, or in distress, and services are rendered by any person in assisting such vessel, and where such services are rendered by any person in saving any wreck, there shall be payable to the salvor by the owner of such vessel or wreck, as the case may be, a reasonable amount of salvage, including expenses properly incurred. See Canada Act, 1873 (c. 55), s. 24, in 14 Hertslet's Treaties, p. 804.

2. Of Life.

1179. Where services are rendered within the limits of the Dominion of Canada in saving life from any vessel, there shall be payable to the salvor by the owner of the vessel, freight, cargo, stores and tackle, a reasonable sum for salvage and expenses, in priority to all other claims, if any, for salvage; and in cases where such vessel, stores, tackle, and cargo are destroyed, or the value thereof with the freight, if any, is insufficient, after payment of the actual expenses incurred, to pay the amount of such salvage, the Minister of Marine and

Fisheries may, in his discretion, award to the salvor, out of any funds at his disposal for the purpose, such remuneration as he thinks fit. *Ibid.* s. 23, in *Ibid.* p. 808.

3. Receivers of Wreck.

1180. The Minister of Marine and Fisheries shall, throughout Canada, have the general superintendence of all matters relating to wreck and shipping casualties; and the governor may from time to time appoint any officer of customs, or, where it appears to him more convenient, any other person to be a receiver of wreck; and may from time to time remove any receiver; and may from time to time, by Order in Council, establish, alter, or abolish districts, for the purposes of the act, and assign a district to any receiver, and vary such district from time to time; and if at any time there is not any receiver appointed for the district in which the city of Quebec, or the city of Halifax, or the city of St. John is included, the agent of the department of marine and fisheries at such city shall be the receiver for such district; and if at any time there is not a receiver appointed for any other district, then the principal officer of customs at the principal port in the district shall be the receiver of the district. See Canada Act, 1873 (c. 55), s. 24, in 14 Hertslet, p. 805.

1181. As to the powers and duties of receivers in respect of wreck and vessels in distress, *Ibid.* ss. 5 and 10.

1182. Where the owner of wreck is known to have established his title to the same, but neglects to pay the salvage fees or expenses due thereon for twenty days after notice in writing from the receiver, the receiver may sell such wreck, or a sufficient part thereof, and may, out of the proceeds of such sale, after defraying the expenses of such sale, pay the salvage fees and expenses due, and shall pay or deliver the surplus, if any, of the proceeds, or of the wreck, to the person entitled to receive the same. *Ibid.* s. 14, sub-s. 2.

1183. As to sale by the receiver, if he considers it for the advantage of the parties, *Ibid.* sub-s. 1.

1184. Wreck unclaimed for a year after it comes into the possession of the receiver may be sold, and the proceeds, after payment of expenses, costs, fees, and salvage, shall be paid over to the receiver-general, to form part of the Con-

solidated Revenue Fund of Canada. *Ibid.* s. 15.

1185. In any case where two or more persons claim any wreck, or its proceeds, of what value or amount soever, in the possession of a receiver, any court sitting, and having jurisdiction in civil matters to the value or amount of the wreck or proceeds in question in the district of the receiver, may, on the application of such receiver, or any such persons, summon such persons before it, and may hear and adjudicate upon their claim, and may make such order as to such court may seem fit. *Ibid.* s. 18.

8. Jamaica.

1. Generally.

1186. As to the Courts of Judicature of Jamaica, see tit. JURISDICTION, p. 727.

2. British Honduras.

1187. For provisions as to wrecks, casualties and salvage in British Honduras, see Honduras Act, No. 22 of 1878.

3. Turks and Caicos Islands.

1188. For provisions as to wrecks and salvage, see Ords. No. 6 of 1860, and No. 9 of 1861.

9. Trinidad.

1189. For provisions as to salvage and wreck, and the duties of receivers of wreck, see Ords. No. 20 of 1875 and No. 8 of 1883.

Part III.—IN BRITISH COURTS IN FOREIGN COUNTRIES.

1. Generally.

1190. As to the jurisdiction generally of British courts in foreign countries other than those mentioned below, see tit. JURISDICTION, p. 635.

2. H.M. Supreme Consular Court of Constantinople.

1191. The court has jurisdiction in cases of salvage. See *Hamilton v. Aquilina*, 2 L. T. N.S. 90.

1192. The court has also Vice-Admiralty jurisdiction; see Order in Council of 12 December, 1873, No. 88; and follows the procedure in Admiralty matters of the English Court of Admiralty. *The Fingal*, 3 Asp. 306.

3. H.M. Supreme Court for China and Japan.

1193. The court has jurisdiction in respect of salvage. See rules of procedure in Admiralty, of the court, of 5 June, 1867, approved by H.M. Minister of Foreign Affairs, in Despatch, No. 8 of 9 September, 1867.

1194. See for its rules of procedure *in rem* therein, *Ibid.*

1195. In other respects it follows therein the procedure in the English Court of Admiralty. *Ibid.* No. 17.

Part IV.—IN FOREIGN COURTS.

1. Generally.

1196. As to the jurisdiction generally of the various foreign courts not enumerated below, see tit. JURISDICTION, p. 635.

2. America (United States).

1197. See the various American cases cited throughout this Title.

3. Belgium.

1198. Salvage of a vessel constitutes work and labour or industry, of which the price ought to be fixed by the importance of the work done, taking into account the difficulty and danger of doing it, the losses and expenses incurred, the promptitude of the service, and the peril of the vessel salvaged. Also as an accessory the value of the property salvaged, but this value must not be the basis of the award. Tribunal of Termonde, 24 July, 1880, Jour. de Droit Inter. Privé, 1882, p. 436.

1199. When the Court of Appeal is of opinion that the sum awarded exceeds "the equitable proportion between the service rendered and the remuneration earned" it will reduce it. *Huygens v. Delva Katulle*, Jour. de Droit Inter. Privé, 1882, p. 436.

1200. A ship, under charter, was got off the ground by a steamer, the salvage was apportioned in accordance with (1) the importance of the service rendered by each salvor; (2) the expenses incurred by each; (3) the risks and perils to which each salvor and his property were exposed: 60 per cent. to the owners, 30 per cent. to the charterers, 5 per cent. to the master, 5 per cent. to the crew. *Vleeschouwer v. John Best & Co.* Termonde, 24 July, 1880, Jour. de Droit Inter. Privé, 1876, p. 483.

1200*a*. See also for provisions as to wrecks and salvage the 19th Article of Treaty with Belgium, of July 23, 1862, in 11 Hertslet's Treaties, 71.

4. Denmark.*

1201. The provisions as to stranding and salvage are to be found partly in the 4th volume of King Christian the Fifth's Code and partly in a Royal Edict of 28th December, 1836, which, according to public directions, is translated into most of the principal foreign languages, including English.

1202. If wreck is found ashore, the salvage takes place under supervision of the authorities, and thereupon a public notice is issued, in which the owner is requested to report himself and prove his claim to the property within a year and a day (*viz.*, one year and six weeks). If he reports himself and proves his claim within this time, he receives the property; or, if it has previously been disposed of by auction, the net proceeds of it after deducting salvage. If the owner does not report himself within this time, the property, or the net proceeds of it, falls to the State, which has the right to stranded goods.

1203. If wreck be found in the open sea, a public notice is likewise issued; thereon the salvors receive a salvage of from one-third to a half of the value of what is saved, and if the owner does not report himself, the salvaged goods fall to the State.

1204. It is permitted to any body to pick up property at the bottom of the sea with the assistance of diving apparatus or by other means. The owner will also in this case be advertised for, and he may receive the property after payment of salvage and expenses. Should he not report himself, the goods become the property of the finder.

1205. With regard to the picking up of anchors, it is commanded by the law of 22nd of December, 1876, that the finder must, at the latest on the following day, report the same to the inspector of police, who, if the anchor is furnished with a buoy, causes a public notice to be issued, and if the owner does not report himself within a short time and pay the salvage ordered, the property passes to the finder.

1206. In case of shipwreck it is the duty of all seeing a ship in danger or

wrecked goods washing up on the beach, to do all they can to save life and property, and the coastguard and others concerned are to be informed immediately. The State has established along the coast stations with rocket apparatus and life-boats.

1207. It is a duty to save goods found ashore, but beyond the shore the obligation is voluntary. Salvage assistance must not be pressed upon anyone, but may only be rendered when it is asked for by the master, mate, or other duly authorized persons accompanying the property. The payment for the assistance rendered depends upon arrangement.

1208. If the property is stranded, and the master, mate, or other duly authorized person is on board, nobody must effect salvage without his permission. And it can be demanded that the salvage shall be taken in hand by the authorities. If the master chooses to effect the salvage himself, he appoints an agent, who concludes a contract about the salvage with those residing in the neighbourhood. In order that this contract may be binding on the master, it is to be drawn up in the presence of a superior magistrate, who looks to the interest of the master. And if the master and the contracting parties cannot agree, the magistrate fixes the amount of the salvage, which must never exceed one-third of the value of the property salvaged.

1209. If the master leaves it to the authorities to decide the salvage, they proceed according to the same rules applicable to the case of no person accompanying the stranded goods.

1209*a*. For provisions as to wrecks and salvage, see 7th, 8th, 14th and 15th Articles of the Treaty with Denmark, of February 13, 1660-1, in 1 Hertslet, 180, 182, and Articles 6, 10 and 25 of the Treaty of July 11, 1670; *Ibid.* 187, 196, 200, renewed by Treaty of January 14, 1814.

5. France.

1. Generally.

1210. For international regulations as to salvage of ships and goods wrecked on the shores of France and England, see Convention between England and France, dated June 16, 1879, in 14 Hertslet, 1202.

1211. In all cases except where the property salvaged has been found derelict, in or upon the open sea, the salvor is entitled, not to a share of the property, but to salvage

* (349) A new Danish Code has been some years in preparation, but has not yet been promulgated.

remuneration. *Caumont, vo. Epaves, No. 6, and other authorities therein.*

1212. *Held*, that as long as a vessel stranded is not entirely unseaworthy, and may be got off, the master is entitled to full authority over his vessel, and he is free to refuse a tender of assistance made by the maritime authorities, and especially so where the vessel is foreign, nor can the master be compelled to call for the interference of his consul. *Havre, February 16, 1863; J. H. 1863:1:83.*

1213. *Held*, that the salvor of a vessel in distress has no claim against the shippers of the goods, but if the service constitutes a case of general average, they may be sued by the master for contribution. *Havre, June 15, 1868; J. H. 1868:1:121; see also Bordeaux, March 7, 1865; J. H. 1865:2:142.*

2. The Services.

1214. Salvage remuneration should be in proportion to the value of the property salvaged, the peril it was running, and the peril and losses which the salvaging vessel has incurred. *Havre, May 30, 1863; J. H. 1863:1:212.*

1215. Salvage remuneration is to be rated according to the circumstances of the case, particularly the danger to the vessel in distress, the difficulty and peril of the assistance given, and the joint value of the vessel and cargo. *Caumont, vo. Epave, No. 6, and other authorities therein.*

1216. *Held*, that a fishing vessel which had left its fishing to tow a vessel in distress into port, is not only entitled to remuneration for the assistance rendered, but also to an indemnity for hawsers and ropes lost or damaged in doing so, and for the loss of its fishing. *Havre, December 17, 1868; J. H. 1869:1:14.*

1217. *Held*, that where goods are salvaged, the proportionate remuneration promised to the salvors on the net price of the sale, is calculated upon the produce of the sale, deducting the expenses, but not the freight which the goods may have to pay. *Rouen, May 18, 1858; J. H. 1859:2:53.*

1218. Towing of a ship in danger is not a salvage service, but it is remunerated beyond ordinary towage rates. *Rouen, 4 July, 1871; J. H. 1872:2:166; contra, Havre, 15 June, 1868; J. H. 1868:1:121.*

1219. Where assistance is afforded by a steam-tug to a disabled vessel, such assistance should be remunerated in proportion to the value of the vessel and

cargo, and the fact of towing being the trade of the tug is to be taken into account. *Havre, November 9, 1871; J. H. 1871:1:175.*

1220. *Held*, that remuneration was due to a tug for attempting, though unsuccessfully, to draw off a stranded vessel which was in peril. *Ibid. February 13, 1858; J. H. 1858:1:38.*

1221. *Held*, that a steamship called to the assistance of a vessel in distress, was entitled not to a third, but to salvage according to the circumstances of the case. *Caen, February 5, 1859; J. H. 1859:2:48. See also No. 1218, supra; Caumont, vo. Epaves, No. 6, and other authorities therein.*

1222. Remuneration is due to a vessel for putting its second officer on board another vessel to navigate it, in consequence of the death of the master, besides the remuneration to that officer for his services. *Havre, July 17, 1872; J. H. 1872:1:165.*

1223. *Held*, that the remuneration to the salvaging vessel was to be proportionate to the risk run by that vessel from being so deprived of its second officer, and to the benefit to the vessel so assisted. Therefore, when the salvaged vessel was in a good condition, and in no present danger, the salvage was not to be as high as if the salvaged vessel had been found in immediate peril. *Ibid.*

1224. A master is entitled to remuneration for having gone to the assistance of a vessel, though such assistance was unasked for, if it was in reality required. *Havre, May 30, 1863; J. H. 1863:1:212.*

3. Derelict.

1225. On salvage of property found derelict in or upon the open sea, one-third belongs to the salvors. See Ordinance of 1681, Book 4, tit. 9, art. 27, and *Caumont, vo. Epaves et Sauvetege.*

1225a. *Held*, that the expression "effets naufragés" comprehends entire vessels and their cargo. *Rouen, 2 Dec. 1840; S. V. 41:2:38. See Caumont, vo. Sauvetege, No. 5.*

1226. *Held*, that the desertion of a vessel by its crew is tantamount to wreck. *Ibid.*

1226a. *Held*, that the one-third to be awarded under the Ordinance of 1681 applies only where the case falls exactly under its terms, that is, where the property was finally abandoned at the mercy of the sea and wind, and where it was accidentally met with on the open sea.

Rennes, 30 November, 1868; J. H. 1870:2:11. See also Rouen, 4 July, 1871; J. H. 1871:2:166. See Caumont, vo. Sauvetage, No. 4.

1227. The rule of one-third salvage applies only in cases of derelict found at sea. Douai, 20 May, 1863; J. H. 1864:2:120; Bordeaux, 7 March, 1865; J. H. 1865:2:142.

1228. The property derelict must have been deserted by the ship's company without intention to return, it must have been discovered on or in the open sea, that is, out of sight of land, and must have been effectually salvaged. D. A. Organisation Maritime, Vo. 684, and Caumont, vo. Epave, No. 6, and the authorities therein.

1229. The salvor is entitled to one-third of the property or money saved on a body found drowned. Caumont, vo. Epave, No. 5.

1230. Anchors found at the bottom of the sea, without buoys or other marks, become the property of those who have discovered them, if not claimed within two months. *Ibid.*

1231. The salvor is entitled to two-thirds where the derelict property salvaged is enemy's property. Law of the 26 Nivose, Year 6; Articles 1 and 2, D. A. *Ibid.*

1232. Where the salvor receives one-third of the property salvaged it is in full satisfaction of all claims for salvage; but he may waive his right to this third and claim the amount of such expenses as he can prove to have been useful to the vessel salvaged. Circular of the 16th Nov. 1821. D. A. Organisation Maritime, No. 624.

1233. The third of the property found derelict is to be immediately delivered to the salvors free of costs. D. A. vo. Organisation de la Marine, No. 684, and Caumont, vo. Epave, No. 5.

1234. Where their share cannot be delivered to them in kind they are entitled to one-third of the proceeds of the sale. *Ibid.*

1235. *Held*, that a vessel was derelict so as to entitle the salvor to one-third of the gross value of the vessel and cargo, when it was found abandoned at sea, though the master, who with his crew had been taken on board another vessel and carried into port, was taking measures to have his vessel sought after, if those measures had not been successful when the salvors came up. Marseilles, 11 October, 1867; J. H. 1868:2:157; Aix, 23 March, 1868; J. H. 1869:2:240.

1236. *Held*, that the vessel was not derelict where it had been abandoned only for a time and in sight of land, and for the purpose of seeking assistance there. Douai, 20 May, 1863; J. H. 1864:2:120. See also Rennes, 30 Nov. 1868; J. H. 1870:2:11.

1237. *Held*, that a vessel was not derelict which was anchored some distance from the shore, and temporarily abandoned by its crew for the purpose of seeking assistance. But that in such a case a remuneration is due to the salvor proportionate to the service he rendered and the risk run. Bordeaux, 7 March, 1865; J. H. 1865:2:142; Rennes, 30 Nov. 1868; J. H. 1870:2:11.

1238. Where a man had remained on board whose signals attracted the attention of the salvors, *held*, that the salvors were not entitled to one-third of the property, but only to remuneration proportionate to their services. Rennes, 22 May, 1867; J. H. 1868:2:52.

1239. Same decision where a vessel was disabled unmanageable and ready to sink, but had not been deserted by the ship's company. Havre, 18 Feb. 1865; J. H. 1865:1:64.

4. Agreements.

1240. *Held*, that an agreement entered into by the master of a stranded vessel which was not entirely unseaworthy, and could be got off, for the salvage of the vessel, cannot be disclaimed by the underwriters, but must be carried out; at least, where it is reasonable. *Ibid.* 16 February, 1863; J. H. 1863:1:83.

5. Maritime Authorities.

1241. It is the duty of all who take possession of salvaged property wrecked or derelict on the open sea, or on the coast, to put the same in safety, and to declare it to the maritime authorities within twenty-four hours. D. A., vo. Organisation de la Marine, Nos. 674 and 683.

1242. Where a vessel is wrecked or lost on the coast, or in sight of it, the duty of the maritime authorities is to direct the salvage, and collect and put the property in safe keeping, and employ the necessary labour. *Ibid.* Nos. 663, 664, 666, 667 *et seq.*

1243. And they alone are entitled to do so to the exclusion of all except the owners, or the representatives or the underwriters, save where the vessel belongs to a nation, the consuls of which are by treaty entitled to salvage and collect the property of its subjects in jeopardy

from perils of the sea. *Ibid.* Nos. 668 *et seq.*, 679, and 680.

6. *Tunis.*

1244. For provisions as to the protection and assistance of British vessels stranded or wrecked on the coast of the Regency of Tunis, the delivery up of the property salvaged, on payment of salvage, to be awarded by the Tunisian authorities, and the punishment of marauders, see Convention between Great Britain and Tunis of July 19, 1875, in 14 *Hertslet's Treaties*, p. 551.

1245. As to the French courts, now established in Tunis, see *tit. JURISDICTION*, p. 784.

6. Germany.

1. *Generally.*

1246. In the absence of agreement, the amount of the salvage or assistance shall be fixed by the judge in money, all the circumstances of the case being taken into consideration. German General Maritime Law Code, Art. 744.

1247. And see a translation thereof in *Papers on Maritime Legislation*, by Dr. Wendt, of London, 2nd edit.

1248. And compare the minutes of the Commercial Law Conference, pp. 2814, 2815, 2843, 4144.*

1248a. See further as to salvage and assistance, the German General Mercantile Law, and the minutes of the Commercial Law Conference, pp. 2800, 2805, 2810—14, 2830, 2833, 4142, 4144, 4148, 4150.

1249. See, for provisions for naval courts for the investigation of accidents at sea, Decree of July 27, 1877, in 14 *Hertslet*, 1206.

1250. See also the provisions as to wreck and salvage, the 3rd Article of the Treaty between the United Kingdom and Prussia of 16th August, 1865, in 12 *Hertslet*, 765.

2. *Salvage or Assistance.*

1251. When, in case of distress, a ship or its cargo, being no longer under the control of the crew, or having been aban-

doned by them, is taken charge of wholly or in part by third parties and brought into safety, then such parties have a claim for salvage. See G. G. M. C. Art. 742.

1252. When a ship or its cargo is rescued from a state of distress in any other case by the help of third parties, then such parties have only a claim for assistance. *Ibid.*†

1253. The amount awarded for assistance is always less than the amount of salvage would have been in the same circumstances. In considering the amount to be awarded for assistance, the value of the articles rescued is only of secondary importance. *Ibid.* Art. 749; and Dr. Wendt's translation thereof, in *Papers on Maritime Legislation*, 2nd edit. p. 272, and compare minutes of the Mercantile Law Conference, pp. 2820, 2843, 4145.

3. *Salvors.*

(a) *Crew of salvaged Vessel.*

1254. The crew of the vessel which is lost or in danger can have no claim for salvage or assistance. See G. G. M. C. Art. 742, and *Papers on Maritime Legislation*, by Dr. Wendt, 2nd ed. p. 271.

1255. The crew are not entitled to claim for salvage or assistance, in order not to tempt them to bring about purposely a case of salvage or assistance. They are, however, entitled to a continuation of their wages for services rendered during the salvage, as against the owners personally. The crew are bound to render these services, although the contract, according to sect. 56 of the German Marine Law is ended with the loss of the vessel. See as to the captain, sect. 526 of the Mercantile Law; and as to the crew, sect. 32 of the German Marine Law.

(b) *After Collision.*

1256. Claims for salvage or assistance can be demanded by a vessel which, without being herself to blame, collided with another ship, although the German Law of the 15th August and 1st September, 1876, respecting the duties of seamen

* (350) This article deals only with the final award.

† (351) The law is based upon the assumption that a case of salvage can only be established when the objects saved have actually come into the possession of the claimants of salvage. See *The Baltimore*, Bremen Collection of the Superior Court of Appeal

Judgments, vol. 1, p. 22 b ff; *The George Caning*, 1853, Hamburg Collection, vol. 2, p. 1002 ff; *The Andrew Lovitt*, Decisions of the Reich's Oberhan delsgesricht. See Superior Court of Appeal of the Empire, vol. 4, p. 441; and Dr. Wendt's *Maritime Legislation*, 2nd edit. p. 271.

after a collision between vessels at sea makes it obligatory for each concerned to render assistance. But the latter law being of a public character cannot nullify the claims enumerated by Art. 742, which are of a private nature. See *steamers Teal and Weser*, *Hanseatische Gerichtszeitung* (Hanseatic Law Journal), 1881, Nos. 1, 2.

(c) *Misconduct.*

1257. No person has any claim for salvage or assistance who has forced the acceptance of his services, or has gone on board the ship without permission of the master when present, or who has not immediately given notice to the master, the proprietor, or the proper authorities respecting the objects saved. See G. G. M. C. Art. 752, and Dr. Wendt's translation, 2nd ed. p. 273; and compare the minutes of the Commercial Law Conference, pp. 2828, 2833, 4145.

4. *Lien.**

1258. With respect to the salvage and assistance expenses included in the amount awarded, the creditor has a lien on, and may detain, the salvaged articles until security for the amount has been given. See G. G. M. C. Art. 753.

1259. Salvage and the rendering of assistance do not of themselves impose a personal responsibility for payment of salvage and assistance expenses. But the receiver of goods, when it is known to him at the time he received them that they were liable for salvage or assistance expenses, becomes personally liable for such expenses so far as they could have been satisfied out of the goods themselves, if they had not been delivered. *Ibid.* Art. 755.

1260. If other articles have been salvaged or preserved together with the goods which have been delivered, then the personal liability of the receiver only extends to the amount which falls upon the goods delivered when the expenses are divided among the whole of the articles. *Ibid.*

1261. Compare the minutes of the Commercial Law Conference, pp. 2834—4228.

See *The Louise*, Hamb. H. G. Z. 1868, No. 172. See also tit. LIENS, p. 835.

5. *Agreements.*

1262. When during the danger an agreement has been made as to the amount of salvage or payment for assistance, the agreement may nevertheless be disputed on the plea that the amount is excessive, and a reduction demanded. See G. G. M. C. Art. 743, and Dr. Wendt's *Maritime Legislation*, 2nd edit. p. 271; and compare the minutes of the Commercial Law Conference, pp. 2805, 4144.†

6. *Amount.*

(a) *Generally.*

1263. The award for salvage or assistance shall not be fixed at a proportion of the value of the salvaged or rescued articles, unless all parties agree thereto. See G. G. M. C. Art. 747, and Dr. Wendt's translation, 2nd edit. p. 272; and compare minutes of the Mercantile Law Conference, pp. 2819, 2820, 4145.

1264. The amount of the salvage shall not exceed one-third of the value of the articles salvaged. In exceptional cases only, the amount may be increased up to half the value, when the salvage was accompanied with unusual exertions and risks and the value was only small. *Ibid.* Art. 748, and Dr. Wendt's translation, 2nd edit. p. 272; and compare minutes of the Mercantile Law Conference, pp. 1817, 2820, 2841, 2842, 4145.

1265. The amount to be awarded for salvage or assistance has to be arrived at by judicial decision *ex æquo et bono* within the limits prescribed by law. *The Ubrich*. See *Rechts Erkenntnisse* (Marine Law Decisions), vol. 1, p. 92; vol. 2, pp. 36, 321, 324, 330; *Hamburger Gerichtszeitung* (Hamburg Law Journal), vol. 4, pp. 28—96.

1266. In settling the amount of salvage or assistance there are to be taken into consideration the zeal proved, the time expended, the service rendered, the outlay incurred, the number of persons assisting, the danger to which they and their vessels were exposed, the danger which

* (352) Sect. 8 applies to Art. 753. See Dr. Wendt's *Maritime Legislation* (2nd ed.), p. 273.

† (353) This law is intended to prevent the ship in a position to render assistance from taking advantage of the disabled state of the other vessel by exacting exorbitant remuneration. Everything done to circumvent the

law in this respect is liable to be set aside. See *Ship Andrew Lovitt*, *Decisions of the Reichs Oberhandels gericht* (Superior Court of Appeal of the Realm), vol. 4, pp. 435, 436; *Ship Jansina Catharina*, *ibid.* vol. 9, pp. 370, 389; *Ship Jacob Holzerland*, *ibid.* vol. 14, pp. 302, 305; *Ship Schiller*, Hamb. H. G. Z. 1876, p. 182.

threatened the salvaged articles and their value after deduction of expenses. See G. G. M. C. Art. 746, and Dr. Wendt's Maritime Legislation, 2nd edit. p. 272; and compare minutes of the Mercantile Law Conference, pp. 2815, 2817, 2841, 4144.

1267. Respecting Arts. 746—749, see *The Lincoln* and *The Vienna* (assistance), collection of the decisions of the Superior Court of Appeal of the free Hanseatic towns at Lübeck, vol. 3, 1867, pp. 705, 720.

(b) *Amount awarded.*

See tit. SALVAGE AWARDS.

7. *Awards.*

(a) *What including.*

1268. The amount awarded for salvage or assistance includes compensation for any outlay which may have been made for the purposes of salvage or assistance. See G. G. M. C. Art. 745.

1269. It does not include, however, the costs and fees of the legal authorities, the duties and charges to which the salvaged articles may be liable, or the expenses of storing, preserving, valuing and disposing of the same. *Ibid.*; and see Dr. Wendt's Maritime Legislation, 2nd ed. p. 271; and compare minutes of the Mercantile Law Conference, pp. 2836—2841, 4144.

1270. See also *Ships Lincoln* and *Vienna*, Collection of the Decisions of the Superior Court of Appeal, Lübeck, vol. 3, pp. 705, 720; *Ships Rencka* and *Alster*, Hamb. H. G. Z. 1879, pp. 177—182.

(b) *Amounts.*

See tit. SALVAGE AWARDS.

8. *Apportionment.*

1271. When several persons have taken part in the salvage or assistance, the amount awarded shall be divided in proportion to the services each may have rendered personally or with his property, and in case of dispute, according to the number who have to participate. Those who, in the same casualty, devoted themselves to the saving of human life, are entitled to participate equally with the others. See G. G. M. C. Art. 750; and Dr. Wendt's Maritime Legislation, 2nd ed. p. 272; and compare the minutes of the Commercial Law Conference, pp. 2800—2814, 2825, 4145.

1272. Among the crew the amount

shall be divided in proportion to their rate of pay. See G. G. M. C. Art. 751.

1273. When a ship or its cargo is wholly or in part salvaged by another ship, the amount awarded for salvage or assistance is divided between the owner, master, and crew of the other ship (unless otherwise specially agreed), and in such proportion, that the owners shall take one half, the master one quarter, and the rest of the crew the other quarter. *Ibid.*; and Dr. Wendt's Maritime Legislation, 2nd ed. p. 273; and compare the minutes of the Commercial Law Conference, pp. 2825—2828, 4145. See Hamburg, H. G. Z. 1874, pp. 337, 338, *Britannia* and crew.

9. *Receivers of Wrecks: their Powers and Duties.*

1274. See the Regulations as to Wrecks of the German Empire of the 17th May, 1874, and 1st January, 1875, which prescribe the course of proceedings respecting salvage and assistance in cases of distress; as also the non-judicial settlement of the awards to be paid for salvage and assistance claims.

1275. The most important clauses are the following:—

1276. Whoever sees a vessel ashore or otherwise in distress is bound to report the fact immediately to the proper coast-guard authority or to the nearest receiver of wreck. The person who makes the first report is entitled to an adequate remuneration. Sect. 4.

1277. The receiver of wreck, on receipt of the information, immediately proceeds to the place of distress and takes the necessary measures to preserve order and for the salvage or assistance. He must take care that the nearest wreck office as well as the nearest customs authorities are promptly informed, and until arrival of the latter he must guard the interest of the department. Sect. 6.

1278. No steps for salvage or assistance can be taken against the wish of the captain. It is specially prohibited to go alongside or on board without the captain's permission. If the vessel has been abandoned by her crew, the permission of the receiver of wreck for this purpose must be obtained, unless immediate danger would be caused by delay. These rules do not apply to the associations for saving wrecked persons. Sect. 7.

1279. The captain may at any time take the direction of affairs out of the hands of the receiver after he has given

the necessary security for the salvage and assistance charges, including those already incurred by the officer of the wreck office. Sect. 8.

1280. The officer of the wreck office is above all things to attend to the saving of life. In case of salvage he must first of all secure the ship and cargo papers, especially the log-book, and close the latter with date and his signature, and return all the papers eventually to the captain. Sect. 11.

1281. Without the captain's permission nothing is allowed to be taken out of the vessel. The captain has also to decide where the articles taken away are to be stored, as also where the vessel herself should be brought. The former permission, as well as the latter decision, rests with the receiver of wreck, if he has charge of the proceedings. If no decision has been made by either the captain or the receiver the property must, if practicable, be brought to the nearest German port or landing-place, and notice must at once be given to the police authorities or to the wreck office, or all claims to salvage or assistance will be forfeited. Sect. 12.

1282. The property saved is to be given up to the captain, or, in his absence, to the person who establishes his right to receive them. The delivery can, however, only take place after payment of the salvage charges, inclusive of the claims for salvage, or after security has been given for the same, and after the custom-house authorities have granted permission. Sect. 16.

1283. In case articles not belonging to a vessel in distress drift or are thrown ashore by the sea and are saved, the salvors have a right to remuneration. They must give immediate notice to the nearest police office or to the receiver of wreck of the articles salvaged, and place them at their disposal, or forfeit all right to salvage. Sect. 20.

1284. The same rights and duties apply to salvors who raise sunken wreckage or other articles from the bottom of the sea, or to a vessel which saves an abandoned ship or other objects drifting about in the open sea. In the latter case the above rules apply as soon as the salvaging vessel has brought up on the German

coast or anchored, but are without force if the vessel has previously brought up or anchored in foreign parts, and the salvors have placed the articles salvaged at the disposal of the owners or the proper authorities. Sect. 21.

11. Wreck Offices.

1285. The wreck office hears the parties concerned and reports to the head wreck office; the latter then examines the demands in conformity with the mercantile law and by decree makes an award. Appeal must be lodged against such award within fourteen days, and the award being appealed against is without force. The judge at the place of salvage has jurisdiction. See G. G. M. C. Art. 744.

1286. Art. 756 of the Mercantile Law left it to the laws of the various States (*i. e.*, those States which adopted the Mercantile Law Code) to decide whether the liability to pay claims for salvage or assistance or the amount thereof should be ascertained by other than legal authorities, *reserving the right of appeal to law.* *Ibid.**

1287. According thereto everyone pressing forward a claim for salvage or assistance, or for payment of salvage charges, is bound, in the absence of an amicable agreement, to lodge his claims with the wreck office.

7. Holland.

1. Generally.

1288. The law of Holland on salvage is contained in chapter 7 of the second part of the Commercial Code, containing Arts. 545, 567, under the head of shipwreck, stranding, and flotsam.

1289. Salvors are entitled not only to a salvage reward but also to a compensation for all expenses incurred and damage sustained during and on account of the salvage services. Trib. Alkmaar, March 19, 1861; R. B. xi. 547; P. in voce 7, No. 28.

1290. *Held*, that anchors and other heavy goods cast out and sunk at sea tied to a buoy or something that will not sink (*ligan*) are not derelict, and no salvage is due when they are picked up. J. P., Flushing, May 19, 1843; W. No. 420; Leon, 416.

* (354) The orderly settlement of this reservation has since been taken in hand by the German Government by the Decree of

the 17 May, 1874, 1 January, 1875, called "Regulations as to Wrecks."

1291. The salvors have a claim for salvage only against the master of the vessel to which they have rendered assistance, not on the consignee or owners of the cargo, unless they have contracted with them. C. A., North Holland, Dec. 28, 1848; R. B. xi. 10, 13.

1292. When salvors have taken a vessel, abandoned at sea by the master and crew, into a safe port, they are entitled to salvage, though the master has afterwards retaken possession of the vessel and denies that she has ever been in danger. Trib. Alkmaar, Nov. 4, 1852; R. B. iv. 157.

1293. The freight and all expenses of forwarding the goods from the spot where they are salvaged under the circumstances defined in the previous articles to their destination shall be paid by the persons receiving them. Art. 549, C. C.

1294. The *onus probandi* that the vessel would have been damaged but for the assistance rendered, and that the assistance was asked for and not obtruded, is upon him who claims a salvage reward. Trib. Amsterdam, Dec. 5, 1850; Leon, 415.

1294a. For provisions between the United Kingdom and the Netherlands as to wreck and salvage, see 6th Article of Treaty of October 27, 1837, in 5 Hertslet, 616, and 9th Article of the Convention of March 6, 1856, in 10 Hertslet, 478.

2. Jurisdiction.

1295. The competent tribunal in salvage cases is:—(1) The tribunal of the place of destination, should the ship be destined to a port in the realm. (2) At the option of the claimant, the tribunal of the place where the vessel took in cargo first, or from whence she sailed in ballast, or of the residence of the defendant, should the ship be destined from a port in the realm to a foreign country. (3) The tribunal of the place where the vessel is stranded, or the port she is brought into in safety, or, when the vessel is lost where the goods are salvaged, should the ship not have been destined to a port in the realm, nor have sailed from any such port. Art. 567, C. C.

3. Bergloon.

1296. Salvage called bergloon is due when a ship or goods are found derelict, or picked up at sea or on shore. Art. 562, C. C.

1297. When goods are salvaged from a ship stranded in the surf, or on the coast, in such a dangerous position that the

crew and cargo are no longer safe in her. *Ibid.*

1298. When goods are salvaged from ships thoroughly broken and smashed to pieces. *Ibid.*

1299. When a ship, left by the crew for the safety of their lives, and on account of the dangerous position she was in, or from which the crew is rescued by the salvors, is taken possession of by the salvors, and brought with her cargo, together or piecemeal, into a safe port. *Ibid.*

1300. In awarding bergloon, regard is to be had not only to all the circumstances mentioned in Art. 561 (*vide* No. 1306, *infra*), but also to the danger and distress from which the property is rescued, and to the value of the property salvaged, to be estimated by an expert. Art. 564, C. C.

1301. In case of dispute between the persons concerned the salvage (aulploon or bergloon) shall be awarded, and the expert appointed by the competent tribunal. *Ibid.*

1302. The amount of salvage called bergloon is by custom generally one-third of the value of the property saved, except when the property is very small; more than one-half of that value is never awarded.

1303. To be entitled to claim a salvage reward called "bergloon," it is not necessary, according to the Commercial Code, that the ship should be brought into a safe port, but it is sufficient that she is brought into a safe place on the sea in such a condition that she can reach from there, without danger, a safe port. Trib. Alkmaar, Nov. 4, 1852, P.; *ibid.* No. 10.

1304. The value of the ship and cargo, and the danger from which they are rescued, are elements to be taken into consideration when "bergloon," not when "aulploon," must be awarded. Trib. Amsterdam, April 11, 1879, W., No. 4419.

4. Aulploon.

1305. For salvage services rendered to any ship or goods in distress, "aulploon" (assistance-money), or "bergloon" (salvage-money), is due. Art. 560, C. C.

1306. Salvage called aulploon is due whenever a ship and her cargo, after being discharged or not, is brought into a safe place in sea, or into a safe port, by the assistance and services rendered. The amount of aulploon to be awarded depends on the celerity with which the

assistance is rendered after the discovery of the distress of the vessel, the time the salvors have been occupied, the number of persons necessarily employed, the nature of the services rendered, and the risk and perils incurred. Art. 561, C. C.

1307. Salvage called "aulploon" is due when a ship is in such a place, or in such a situation, that danger, though not actual, must ensue from it, and the assistance rendered serves to bring her into a safe port or to any other place, where she is in safety, *e. g.*, when a ship having lost her steering gear, and being therefore unmanageable, is in a very dangerous and unsafe place at sea, though at the moment wind and weather are not favourable. C. A. North Holland, June 6, 1872, reversing Trib. Amsterdam, Dec. 2, 1870; W. No. 3545; M. C. L. xiv.; 90 Trib. Appingadam, July 1, 1876; W. No. 4062.

5. Rights and Duties of Salvors.

(a) Generally.

1308. Whenever any ship is left by the master and crew, and taken possession of by salvors, the master may return at any time to the ship and resume command, and the salvors must, under penalty of forfeiting all salvage and liability for damages, give up the command without prejudice, however, to their claim for salvage. Art. 565, C. C.

1309. Nobody is allowed to come on board any ship as a salvor or otherwise to render assistance without the express consent of the master or person in charge. Art. 545, C. C. Pt. II.

1310. Whenever any ship is stranded or breaking on shoals, or goods are picked up in sea or on shoals, nobody shall render salvage services without the consent of the master or person in charge if either is present. Art. 546, C. C.

1311. The master, commander, shipper or consignee being present, the ships and goods are to be put at their disposal, and the salvors shall restore them immediately on receiving sufficient security for the amount of salvage due. Art. 547, C. C.

1312. Salvors who detain any ship or goods stranded or salvaged, or do not comply immediately with the demand of the master, his representative, the consignee or the shipper, to give up the goods on tender of sufficient security, shall lose all claim to salvage, besides being liable for all damage caused by this detention. Art. 548, C. C.

(b) Pilots.

1313. The masters of the pilot boats and the pilots are expressly bound to render to ships in danger or distress all possible assistance compatible with a due performance of the pilotage service. Agreements made by these persons in respect of salvage remuneration are strictly prohibited and stand void like all promises enacted or given to the same purpose. The compensation due to the masters, the pilots and their company for extraordinary assistance rendered, or when they have picked up goods, or taken into a safe port a derelict vessel, is to be adjusted amicably between the persons concerned by interference of the inspector of pilotage, or is otherwise to be determined according to the provisions of the Commercial Code. From the salvage paid, seventy-five per cent. is to be distributed among the company of the pilot boat, and the remaining twenty-five per cent. to be paid to the Treasury as an indemnity for the use of the materials of the State. Art. 27 of the General Pilotage Regulations, Royal Decree of the 23rd Jan. 1879 (St. No. 25).

1314. The pilots and crew of the pilot boats are rigorously prohibited from rendering salvage services unless asked for by the master or commander of the vessel in distress. Art. 29 of the same Regulations.

6. Agreements.

1315. All agreements for the performance of salvage services, or to render assistance to any ship or goods in distress entered into at sea, or in the moment of the stranding, by the master, commander or shipowner, may be altered or cancelled by the tribunal. Nevertheless everybody is at liberty to make an agreement about salvage compensation when the danger is over. Shipowners, consignees and underwriters are not bound by such agreements unless they are made with their sanction or concurrence. Art. 568, C. C.

1316. The master of the vessel may dispute the agreement entered into for salvage services, upon the sole ground that the vessel was in distress at the time the agreement was made. Upon this defence it is the duty of the court to set aside the agreement, and to award irrespective of it the amount it thinks a reasonable and equitable compensation, having regard to all the circumstances of the

case. Trib. Alkmaar, 31 May, 1866, R. B. 1869, 292 P. *Ibid.* No. 44.

1317. A steam-tug company, having made an agreement for the towage of a vessel is not entitled to salvage in addition to the sum named in the agreement. Only unforeseen and extraordinary circumstances arising afterwards, and changing the character of the services agreed upon, would entitle the owners of the tug to "aulploon." The tug is not relieved from her obligations because the performance of her task is interrupted. Arbitrators, Amsterdam, 31 July, 1877, W. No. 4143.

7. Value of Property saved.

1318. When ships or goods saved and restored to the owner on tender of security are afterwards lost before a valuation is made for the purpose of salvage apportionment, the experts shall take an equitable sum as the supposed value of the property saved before the restitution. Art. 566, C. C.

8. Lien.

1318a. As to the priority of liens, see C. C. Art. 313.

9. Awards.

1319. A ship, after encountering heavy storms, lost through the boisterous weather and high seas all her masts, and was drifting in a disabled state with a signal of distress hoisted, when an agreement was made to assist her and to anchor her in a safe place on payment of one-third of the value of the ship and cargo. The owners disputed the agreement, and tendered 3,000 florins. *Held*, that the agreement was not binding, and that the tender was a sufficient compensation. Claim dismissed accordingly, with costs. W. No. 2467; P. *Ibid.* No. 35.

See also tit. SALVAOE AWARDS.

10. Receivers of Wreck or Magistrates.

1320. Any ship or goods saved or picked up in sea or on shoals, the master, commander, owner of the cargo or consignee not being present or known to the salvors, shall be delivered as soon as possible to the receiver of wreck in the nearest place, or in places where no receiver has been appointed, to the magistrate. Salvors violating this article forfeit salvage, and become liable for payment of damages, besides incurring a penalty, as the case may be. Art. 550, C. C.

1321. Whenever any ship is stranded or breaking, or goods are picked up on

shore, and the master, commander, owner of the cargo or consignee is not present and has not given any directions about the salvage, the salvage services shall be rendered exclusively under the command and directions of the receiver of wreck, or in his absence and where no receiver is appointed, of the magistrate of the communal district within which the place of accident is situated. The receiver of wreck or the magistrate has also the exclusive superintendence of all salvage operations when the goods are unidentifiable or their ownership is disputed. Art. 551, C. C.

1321a. The receiver of wreck or magistrate is bound, whenever he has directed the salvage operations, to draw up an accurate list of the property saved. Art. 552, C. C.

1322. He is under the same obligation to release the goods as the salvors of any ship or goods in sea or on shoals (*vide ante*, Nos. 1311, 1312), and is entitled to the fees provided for in royal decrees. *Ibid.*

1322a. The owners of the property saved are liable for the salvage to the receiver of wreck or the magistrate in like manner as they are liable to the salvors in the circumstances defined in sect. 1. *Ibid.*

8. Italy.

1. Generally.

1323. The regulations as to salvage in Italy are contained in the Mercantile Marine Code (Codice per la Marina Mercantile) as modified by the Law of May 24, 1877, and are to be found almost entirely in Pt. I. Tit. II. Chap. XII. of that Code.

1323a. It is the duty of the court and port officials to render assistance to vessels wrecked on the coast, and to take charge of salvaged goods. M. M. C. Arts. 122, 123.

1324. It is the duty of an Italian ship to render assistance when required, even to foreign and enemy vessels. *Ibid.* Art. 120.

1324a. If the salvaging vessel or crew have been exposed to risk they are entitled to a salvage reward; but it must not exceed one-tenth of the value of the property saved. C. C. Arts. 671 (2), 673 (2), 675 (2); M. M. C. 122.

1325. Damage sustained by the salvaging vessel in rendering assistance is recoverable. *Ibid.*

2. *Jurisdiction.*

1326. The salvage award where the amount claimed does not exceed 400 lire = £16, is decided by the captain of the port summarily, and without appeal. Above this amount the captain of the port is to endeavour to arbitrate between the parties; but if he fails he is to draw up a report, and send it to the ordinary tribunal of commerce, which adjudicates upon the case. M. M. C. Arts. 14—16, 126.

3. *Agreements.*

1327. No agreement for salvage made on the high seas, or at the time of the accident, is binding on the parties. *Ibid.* Art. 127.

4. *Lien.*

1328. For a salvage reward there is a lien or privilege on the salvaged ship, freight and cargo. This lien ranks after the lien for judicial costs, and before all other liens. C. C. Arts. 671 (2), 673 (2), 675 (2); M. M. C. 122.

5. *Wreck and Derelict Property.*(a) *Generally.*

1329. If a derelict vessel is fallen in with out of sight of land and salvaged, notice must be given to the maritime authority within twenty-four hours of arrival, the salvors are entitled to one-eighth of the value of the ship and cargo in addition to their expenses. M. M. C. Art. 134.

1329a. If a derelict vessel is fallen in with in sight of land, the provisions of Art. 121 apply, and the salvor is entitled to one-tenth. If, however, no claimant appears or proves his claim within five years, the residue of the proceeds goes to the salvors. *Ibid.* Art. 134, 136.

1330. In case of wreck of a foreign ship the court officials must at once communicate with the consular officer of the state to which the ship belongs. *Ibid.* Art. 124.

1330a. If a vessel is entirely submerged, and no steps are taken by the owner to recover her, or only inefficient steps, the vessel is, after the lapse of four months, treated as abandoned, and belongs to the state. *Ibid.* Art. 137.

1331. All persons finding shipwrecked goods must deliver them up to the maritime authority, upon which they are entitled to their expenses and a salvage reward. *Ibid.* Art. 125.

1331a. See also, for provisions as to

wreck and salvage, 9th Article of the Treaty between the United Kingdom and that of June 15, 1883, in 15 *Hertallet*, 779.

(b) *Sale.*

1332. The port official has power to sell goods which are subject to deterioration, or which cost a great deal to preserve. He must advertise the goods salvaged, and if no claimant appears for a year, the goods are sold and the proceeds paid into the marine fund; and if no claimant appears, or if any who has appeared has not proved his claim in five years, the proceeds become the property of the state. M. M. C. Arts. 130—132.

6. *Apportionment.*

1333. The master, officers and crew of Italian ships share in salvage rewards according to their rates of pay, the owners taking half. *Ibid.* Arts. 128, 138.

9. *Norway.*1. *Generally.*

1334. In cases of distress the master and crew are bound to do their utmost to avert disaster, and not to leave the ship as long as there is any hope of saving it. If it is evident that no rescue is possible, and if an imminent danger compels the master and crew to leave the ship, they shall as soon as possible attend to the salvage of ship and goods, either by returning to the wreck, or by procuring necessary assistance. For services rendered in the salvage of shipwrecked goods or ship, the master and crew are entitled to a salvage, which, in default of an amicable agreement, is fixed by the court. They are, moreover, entitled to an equitable compensation if after the landing of the goods and ship's appurtenances, they are employed in their supervision or future transport. See Law of Navigation of 1860, Art. 82.

1334a. Arts. 83—87 contain particular instructions to the lensmand (sheriff's officer) and to the proprietors of the shore; Art. 88, instructions to the sheriff; and Arts. 89, 90, leaves the prefect authority to decide, whether the saved goods in the absence of their owners or of the captain are to be stored or sold by public auction.

1335. If the compensation for salvage cannot be settled by amicable agreement, and if the value of the goods salvaged does

not exceed 400 kroner (£22), the salvage is fixed by the prefect. If the value is greater, it is decided by the court. *Ibid.* Art. 91.

1335*a*. In fixing the amount of salvage it is proper to consider (a) whether the salvors have been exposed to considerable danger and exertions; (b) whether their health has been injured or their implements damaged; (c) whether the ship was abandoned by the crew, in which case a little larger award is to be given; (d) whether the goods salvaged are of considerable value and have been exposed to imminent danger, from which they have been rescued by the exertions of the salvors. *Ibid.*

1336. Pursuant to the provisions of Art. 131 the estimate of the court as to the amount of the salvage, made irrespectively of any previous agreement between the parties or otherwise, may be appealed from to the Supreme Court, but in these cases a new estimate by a double number of men is not to take place. *Ibid.*

2. *Derelict.*

1337. If shipwrecked goods or a ship, abandoned by the crew, are found floating on the sea, or sunk in it, every one who brings such goods or ship into safety is bound to give immediate notice to the lensmand or nearest magistrate. Afterwards, if circumstances require, such measures are to be taken as are prescribed by Arts. 85, 88, 89, and 90. The reward for the salvage is determined according to the provisions of Art. 91, but without special reasons it is not to be fixed at less than a fourth, nor more than half of the value of the goods saved. In this case the prefect, on behalf of the absent parties, decides whether the estimate of the court shall be appealed from to the Supreme Court for account of the saved goods. *Ibid.* Art. 92.

3. *Agreements.*

1338. Even after an agreement has been made as to amount of salvage, the court, on the demand of the master or owners of the saved goods, may reduce the amount, if the agreement has been entered into before, during, or within twenty-four hours after, the salvage, and if it is found to contain exceedingly unfair conditions. *Ibid.* Art. 91.

4. *Apportionment.*

1339. If the salvors cannot agree as to the distribution of the salvage, the question is settled according to the provisions of Art. 91 by the prefect or the court in proportion to the exertions and skill of each, the implements each brought with him and employed, and the danger to which each was exposed. *Ibid.* Art. 93.

1339*a*. A sailing vessel effecting a salvage at sea, is entitled to half the salvage award if a ship has been saved, and in other cases to a third, besides an indemnity for damages which it may have suffered. The remainder of the award is divided amongst the master and crew in proportion to their wages. *Ibid.*

5. *Liens.*

See tit. LIENS, p. 839.

10. Portugal.

1. *Generally.**

1340. No one is allowed to board or enter any vessel to succour or save it, or on any other pretext, except with the express consent of the master or his substitute. C. C. Art. 1584.

1340*a*. No one may save or rescue ships stranded or breaking up on the banks, or goods fished up at sea, or on sandbanks, whilst the master or his substitute is present, without his consent. *Ibid.* Art. 1585.

1341. Goods and ships salvaged must be delivered to the owners and consignees, and master, on appearance, or security for salvage being given. *Ibid.* Art. 1586.

1341*a*. On pain of forfeiture of salvage. *Ibid.* Art. 1587.

1342. The charges and freight for goods from the place of salvage to their destination are payable by the people who receive them, saving any remedy over which they may have against others. *Ibid.* Art. 1588.

1342*a*. Where ship or goods salvaged are lost between the place of salvage and their destination, and security has been given for them, but their actual value has not been ascertained, expert arbitrators shall fix their probable value at the place at which the arrangement was made. *Ibid.* Art. 1605.

1343. The salvors must in any case allow the master and crew to retake possession and charge of the ship salvaged

* (355) The following have been kindly contributed by Dr. Raikes.

should they desire it, on pain of losing all claim to salvage already earned, and also of damages. C. C. Art. 1604.

1343*a*. There are also decrees on the subject of salvage of June 28, 1842; January 12, 1843; July 26, 1843; December 6, 1858, and August 16, 1866, but they are generally minute details of practice.

2. Jurisdiction.

1344. See also the provisions as to wreck and salvage in the 14th Article of the Treaty between the United Kingdom and Portugal of July 3, 1842, in 6 Hertslet, p. 606, and still in force.

1345. Disputes as to salvage are settled by the proper judge. C. C. Art. 1595.

1345*a*. In case of dispute, the amount of assistance or salvage money, as well as the appointment of experts as arbitrators, is made and determined by the proper judge. *Ibid.* Art. 1603.

1346. Questions of assistance and salvage are decided within the realm by the commercial judge (president of the tribunal of commerce) of the place to which the ship is bound. When the ship is bound to a foreign port such questions are within the cognizance of the commercial judge of the place where the ship took in her cargo. When she is bound from a foreign port, but not Portugal, then by the judge of the port into which the ship comes or is brought. The former rule applies if the captain has changed his destination to a port in this realm. *Ibid.* Arts. 1606, 1607.

3. The Services.

1347. The remuneration for succouring ships or goods in distress is of two sorts, (1) that for rendering assistance, (2) that for salving or salvage. The first includes bringing ships and cargoes together or separately into a safe port, and is settled by expert arbitrators, who take into consideration the promptitude with which the service was rendered after the danger was discovered, the time occupied, the number of people necessarily employed, and the nature and danger of the service. *Ibid.* Art. 1600.

1347*a*. The second, or salvage proper, includes services rendered to ships or goods derelict at sea or on the shore, preservation of the cargo of a ship on or near the shore, and in such a position of peril as not to be a safe place for the cargo or crew to remain in, and getting goods out of a ship which has practically broken up. *Ibid.*

1348. Finally, ships abandoned in consequence of imminent peril, and taken into a port with the whole or a part of the cargo on board. *Ibid.* Art. 1601.

1348*a*. In estimating salvage remuneration, the addition to the considerations mentioned where only assistance is rendered (see *ante*, C. C. Art. 1600), the danger of the articles salvaged, and their value must also be looked at and settled by skilled arbitrators. *Ibid.* Art. 1602.

4. Agreements.

1349. All salvage agreements made at the time of the danger are subject to revision by the judge, but after the peril is over the parties may enter into any agreement they choose, but agreements made without the consent of the owners, consignees, or insurers do not bind them. *Ibid.* Art. 1608.

5. Remuneration.

1350. By an Order of April, 1836, salvage of anchors is fixed at one-third of their value.

6. Derelict.

1351. Derelict must be taken to the nearest place and put in charge of the proper authority, under pain of forfeiting salvage and paying for the damage sustained, in addition to a criminal prosecution, if grounds for such proceeding appear. *Ibid.* Art. 1589.

7. Lien.

1352. Wreck and goods salvaged from a wreck or vessel stranded are specially subject to pay the salvage reward as a privileged debt, and the amount of this privileged debt is taken out of the money produced by their sale. *Ibid.* Art. 1609.

8. Owner's Claims to Property.

(a) Generally.

See Nos. 1341—1343, *supra*, and Nos. 1353—1355, *infra*.

(b) Limitation.

1353. If, after four monthly notices, no owner appears, the goods are sold, salvage and expenses paid out of the proceeds, and the balance paid into court. *Ibid.* Art. 1596.

1354. The claim of the owner to the proceeds is not barred for ten years unless he be an enemy. *Ibid.* Art. 1597.

9. Local Functionaries.

1355. The reciprocal obligations of the

public authority and the captain, owners and consignees are the same as those of the latter towards private salvors. *Ibid.* Art. 1591.

1356. Salvage of wreck is to be carried on entirely under the orders of the proper local authority. Ships beached on purpose or by such an accident that they can, notwithstanding, ultimately go on their voyage, are not wreck in this sense. *Ibid.* Art. 1590.

11. Russia.*

1. Generally.

1357. Within the boundaries of the Russian empire all things salvaged from the wreck of Russian and foreign ships or vessels, whether men, cattle, birds or other animals, goods, cargo, tackle, and the ship itself, after having been wrecked, are under the immediate protection of the Czar, and must remain inviolable. Commercial Code of Russia, Art. 1136.

1358. All foreign goods which have not paid duty in a Russian custom-house, and which formed the cargo of a wrecked ship, or are cast ashore, must be taken in charge by the custom-house. *Ibid.* Art. 1139.

1359. Every ship wrecked or stranded, Russian as well as foreign, and also all tackle and goods saved, which were exported from Russia, are taken charge of by the local police authorities, and afterwards, by arrangement of the provincial government authorities, are either retained by the police or transferred for safe custody to the town magistrates, town hall, or other civil magistrates. *Ibid.* Art. 1140.

1360. Any person observing a wreck or destruction of a vessel on the Russian coasts must give information, if he cannot render assistance himself, to the village police or the town police, as the case may be, and they are bound to do everything they can to render assistance. *Ibid.* Art. 1146.

1361. On the occasion of a shipwreck, as soon as the person commanding the police in that place, or the proprietor of a demesne along the sea coast at that place, or the steward of the property or his agent arrives, the officer of the coast-guard, under whose direction the salvage was carried on up to that time, hands over to such person the further superintend-

ence of the salvage and preservation of proper order, and turns all his attention to the actual salvage of articles and goods. *Ibid.* Art. 1147.

1362. If the master is saved, everything touching the preservation of salvaged articles must be done with his consent and wish. *Ibid.* Art. 1148.

1363. See as to the duty of the custom-house officials to make an inventory of all goods salvaged, and to forward a report of the salvage, *Ibid.* Arts. 1152—1154.

1363*a*. See also as to the rules for restitution to owners of property salvaged, *Ibid.* Arts. 1186—1193.

1364. As to the property in articles submerged and picked up in clearing roadsteads, and the salvage payable for picking them up, *Ibid.* Arts. 1194—1212.

1365. As to salvage of anchors, cables, masts, &c., *Ibid.* Arts. 1169, 1170.

1366. See further the Commercial Code of Russia relating to salvage set out in the Nautical Magazine of 1884, pp. 1075—1082; and of 1885, pp. 54—64, 183—186, and 521—523.

1366*a*. See, also, for provisions as to wrecks and salvage between the United Kingdom and Russia, the 16th Article of the Treaty of January 12, 1859, in 10 Hertslet, 1062, and Circular of 16—28 March, 1864, in 13 Hertslet, p. 738.

2. Life.

1367. Life salvage should be gratuitous, from pity and humanity alone, towards a person near being drowned; but if in doing this special exploits deserving attention are performed, then, if performed by men of the custom-house, the officers of the custom-house districts are bound to make representations to the Minister of Finance; and if by other persons, the governors make representations to the Minister of the Interior, who takes steps to reward those who have distinguish themselves in the salvage of the men and their property. Commercial Code of Russia, Art. 1167.

3. Derelict.

1368. When a ship is abandoned by her crew for any cause, whoever finds such ship and brings it into a town, port, or harbour has a right to receive an award for salvage, and preservation on the basis of the general rules expressed in the foregoing articles. *Ibid.* Art. 1168.

* (356) Extracted from articles by Dr. Raikes in the Nautical Magazine.

4. *Agreements.*

1369. A contract to pay one quarter the price of ship and cargo to salvors for getting a ship off a sandbank, upheld as not contrary to the law of Russia to fix the price of salvage services. *Hamberger v. Schütz*, Jour. de Droit Inter. Privé, 1875, c. 161.

5. *Remuneration.*

1370. Everyone aiding in the salvage of a ship, vessel, goods and other articles, and in the preservation and keeping of things salvaged, has a right to receive a reward, provided he did not appropriate the smallest portion of what was saved, and gave notice of the salvage to those to whom it was due. Commercial Code of Russia, Art. 1160.

1371. Coast inspectors, and generally everyone serving in the customs department, if they take an active part in the preservation of a ship which has been wrecked, or of the goods, have also a right to receive reward. *Ibid.* Art. 1161.

1372. If a ship or goods be wrecked or destroyed at a distance of one verst or farther from the shore, the salvage award should be one-fourth, and if nearer than one verst, or on the shore, one-sixth of what is saved. *Ibid.* Art. 1162.

1373. If the property salvaged is warehoused in special establishments expressly constructed for the purpose, or given without agreed hire, the owner of the establishment has a right to half of the portion of the reward due for preservation, and the other half of this portion is divided among the watchmen. *Ibid.* Art. 1163.

1374. Similarly, if the direction of the salvage be commenced by an officer of the coastguard and completed in conformity with Art. 1147 by the proprietor of a demesne on the sea-coast, or the officer of local police, one-half of the portion due to the person in charge is received by the officer of the coastguard, and the other half is given to the proprietor or the officer of local police. *Ibid.* Art. 1165.

1375. The requisite portion of what was saved must, if the owners do not themselves satisfy by agreement those who have a right to salvage reward, be sold by public auction to reward the salvors and preservers of property. *Ibid.* Art. 1178.

1376. If the owner or master do not in the course of four weeks from the day of the salvage service to the goods show that he has duly rewarded the salvors and

preservers of the property, the town or provincial police of the place where the salvage occurred will pay the stated reward to those to whom it is due, with the permission of the provincial administration. *Ibid.* Art. 1179.

1377. After a portion, amounting to one-fourth or one-sixth in value, according to the place where the salvage took place, of what has been salvaged is set aside for payment of salvage to salvors, the articles so set apart for reward are sold by public auction, and all the moneys received, less the duty, are distributed to those having a right to salvage. The owner of what has been salvaged, or his agent, should either be present, is allowed to indicate which of the valued articles should be taken for the payment of reward. *Ibid.* Art. 1181.

1378. In case of a dispute about salvage between the salvors and preservers of property, or between them and the owners, the case is brought before the proper court by order of the provincial administration, and the moneys in dispute are placed on deposit at interest in a credit establishment until the final decision. *Ibid.* Art. 1183.

6. *Apportionment.*

1379. The one-fourth or one-sixth part of what is salvaged, due as a reward, is divided into four portions, of which two are given to those who engaged in the salvage operations afloat in equal shares, one to those of the inhabitants of the coast, custom-house guard, and local police, who preserved the property salvaged until the inventory was made of it, in equal shares, and the remaining fourth to the person directing the salvage and preservation of the ship and cargo, and people on board it, should he wish to take it. *Ibid.* Art. 1163.

12. *Spain.*

1380. Where a ship is stranded or shipwrecked, each owner of ship or goods stands by his own loss, and no freight is due; but if the goods are salvaged freight *pro rata itineris peracti* is due, and if they are ultimately carried to their destination the whole freight is due. C. C. 787, 788, 982.

1381. If the shipwreck was occasioned by the perversity, negligence, or ignorance of the captain or his pilot, the owners of the ship and cargo have a right to an indemnity from the captain in all cases,

and from the pilot when his fault. *Ibid.* 676, 693, 983.

1382. The term "pilot" has a threefold signification—1. *Piloto de altura*, an expert navigator, and also the officer on board a ship whose special duty it is to navigate her, and who takes rank and command after the captain, and equivalent, as a seafaring term, to "mate." 2. *Piloto practico*, a public officer to conduct vessels in and out of harbour, answering to the English "pilot." 3. *Piloto de corta*, a person specially qualified to assist in navigating a vessel along any particular coast from practical knowledge—our North Sea or Channel or coasting pilot. S. & R. & Ed.

1383. If the ship was unseaworthy at starting, the loss falls on the shipowner. This unseaworthiness, in fact, may be proved, notwithstanding certificates of seaworthiness. C. C. 779, 984.

1384. Goods salvaged are liable, in the first instance, to the salvage expenses, which must be settled by the owners before taking possession, and are preferred to all other charges if the goods are sold. *Ibid.* 985.

1385. When it is impossible to tranship (for salvage purposes) the whole cargo, the captain, in consultation with his officers, must select the articles of most value and least bulk. *Ibid.* 987.

1386. When a captain receives shipwrecked goods, he shall proceed to his own port of discharge and deposit the goods there in charge of the judicial authorities for the good of all concerned; but if he can, without deviation or special risk, take them to their own port, he may do so with the consent of his own officers and passengers and persons interested in his own cargo, if they are on board. *Ibid.* 988.

1387. Salvage expenses in default of agreement between the parties are settled by the judgment of arbitrators at the port of discharge, who will consider the distance the goods were brought, the delay, the difficulty, and risk of the service. *Ibid.* 987.

1388. If the goods are depreciating in value, or if no owner appears in the course of a year, the judge under whose authority they are placed shall proceed to sell them, paying the salvage expenses out of

the proceeds, and placing the residue on deposit for the benefit of those concerned. *Ibid.* 990.

1389. If the owners do not appear, the proceeds lapse to the state, as in other cases of vacant possession. S. & R.

1390. A similar judicial sale may be had of part of the goods salvaged to pay salvage at any time. C. C. 991.

1391. For provisions as to wreck and salvage, see Decree of 17 Nov. 1852, in 12 Hertslet, p. 794, and Law of 14 May, 1870, in 14 Hertslet, p. 482, and for provisions as to salvage of British or foreign vessels wrecked on the coasts of Spanish colonies, see Law of July 4, 1870, of the Regent of Spain, in 14 Hertslet's Treaties, p. 482, and Order of the same, dated August 23, 1870, in *Ibid.* p. 483.

13. Sweden.

1. Generally.*

1392. If the parties cannot agree upon the amount of salvage, it must be decided by the court. See Maritime Law of February, 1864, s. 181.

1393. The amount of salvage which the owners of the ship or cargo or the master have agreed with the salvors at the time of the accident, and the stated expenses of the salvors in rendering their assistance, when they considerably exceed a fair sum, and when the owners of the salvaged property demand it, shall be adjusted by the court. *Ibid.*

1394. In adjusting salvage, the court is to take note of the circumstances that have happened, such as—1. Whether the salvage was performed with special risk and danger to the salvors. 2. Whether the salvors suffered in health, or whether the implements used by them have been damaged. 3. Whether the vessel had been abandoned by the crew. 4. Whether the salvage was effected by special implements of the salvors for that purpose. 5. The value of the goods salvaged. *Ibid.*

1395. The amount of salvage must not exceed the value of the property salvaged. *Ibid.*

1395a. See, also, for provisions as to wreck and salvage, Arts. 6 and 7 of the Treaty between the United Kingdom and Sweden, of April 11, 1654, in 2 Hertslet,

* (357) The Swedish law as to salvage is to be found in the Maritime Law of Feb. 1864, ss. 176—185. See further thereon C.

J. Hambro's Private Maritime Court according to Swedish Law, vol. 1, pp. 215—238, 293—298; vol. 2, pp. 302—316, 392.

p. 312, and of October 21, 1661, in 2 Hertslet, p. 326, renewed by Treaty of July 18, 1812, in 2 Hertslet, p. 335, and declaration as to salvage dues of April 24, 1874, in 3 Hertslet, p. 389.

2. Duties of Master and Crew.

1396. If a vessel falls into distress at sea, the master and crew are to do all in their power to avoid accident, and are not to abandon the vessel so long as there is hope of saving it. *Ibid.* s. 176.

1397. If it is impossible to save her, and the danger is so threatening that they are obliged to abandon her, the master and crew should as soon as possible take steps for the saving of ship and cargo, partly by themselves returning to the wreck and partly by securing necessary assistance. *Ibid.*

3. Duties of Master.

1398. The master is bound to superintend the saving of ship and cargo unless his doing so is forbidden by the law of the place. *Ibid.* s. 177.

1399. He is also bound to ascertain and certify under his hand the correctness of all the accounts of expenses of and previously to the salvage, and obtain as quickly as possible a survey and value of the salvaged goods. *Ibid.* s. 178.

1400. The master must himself, or through the mate of the ship, take exact note of all that has been saved, and of the number of men and boats employed in the salvage, and accompany the conveyance of the goods to their place of storage. *Ibid.*

1401. If there is danger that the wrecked vessel or cargo will sustain further damages before the orders of the respective owners or their agents can arrive, it is the duty of the master, if not contrary to the law of the place, to make, after previous survey, provision for the sale of the property by public auction after notice published at the nearest church, in the newspapers of the place, or in any other customary manner, but the master in selling such goods as are subject to customs duty, must obey the rules applicable thereto. *Ibid.* s. 179.

1402. The master has a right, should he find it necessary, to appoint an agent for ship and cargo, but he is still obliged to remain on the spot until all the salvaged goods have been sold, if his personal attendance is to the advantage of the owners, unless the owners give other directions. *Ibid.* s. 180.

1403. The master must not sell salvaged goods which can, without risk of damage, be valued, without having previously obtained the instructions of the owners or their agent, unless the value is so small that the greater part of it will be consumed in the expenses of storing the goods. *Ibid.* s. 179.

4. Duties of Public Functionaries.

1404. When an accident happens, and notice thereof is given to the burgomaster or crown official, this person ought, if required, to repair to the place and assist by obtaining the required help. *Ibid.* s. 177.

5. Crew of Vessel salvaged.

1405. The crew of a vessel salvaged are entitled to claim a reasonable amount of salvage, and the amount, in case of dispute, is to be decided by the court. *Ibid.* s. 181.

6. Derelict Property.

1406. Anyone who at sea, within the Swedish jurisdiction, or upon the coast, or in the navigable lakes, rivers, or canals, saves any derelict vessel, wreck, goods or gear belonging to any vessel, whether picked up from the bottom or while afloat or aground, is bound to report the fact to the nearest coastguard or customs' officer, who must, without delay, give information thereof to the custom-house of the district. *Ibid.* s. 184.

1407. If any such person omits to make such report, or conceals or disposes of anything saved, he forfeits all claim to salvage, and is punishable by law. *Ibid.*

1408. If any vessel has picked up anything at sea, the master must deliver it to the custom-house at the first Swedish port at which he arrives. *Ibid.*

1409. Should he not call at a Swedish port, he must notify the fact to the Swedish consul at the first foreign port at which he arrives, or if there is no such consul there, to some proper authority, and cause the property saved to be sold by public auction, notifying the circumstances to the owners, and advising them of the amount realized. *Ibid.*

1410. It then becomes the duty of the owners to cause the proceeds to be sent to the royal authority of the town, who thereupon acts as stated in sect. 185. *Ibid.*

1411. It is the duty of the custom-house officials to give notice of what has been found to the royal authority in the

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county, who advertises the property three times in the official gazette. *Ibid.* s. 185.

1412. If the owner makes a claim within a year and a day after the last advertisement, and proves it, he receives the property claimed, paying the salvage and expenses. *Ibid.*

1413. If the owner does not do so, the goods rescued at sea belong to the salvor; but goods stranded to the crown, salvage and expenses being first deducted. *Ibid.*

1414. If the property cannot be kept without danger of deterioration, it is sold by public auction and the proceeds deposited in the county savings bank. *Ibid.*

7. Lien.

1415. The owner may not take possession of the salvaged goods before the salvage has been paid or security given for the payment. *Ibid.* s. 182.

8. Apportionment.

1416. If the salvors cannot agree as to the apportionment of salvage, it is decided by the court. *Ibid.* s. 183.

1417. If a ship picks up anything at sea, half the salvage on it falls to the owners, one-fourth to the master, and the remainder is divided among the crew according to their ratings. *Ibid.*

14. Tunis.

See c. 5, p. 1905.

Part V.—UNDER TREATIES, &c. WITH FOREIGN POWERS.

Europe.

AUSTRIA. For provisions as to wrecks and salvage, see 3rd Article of the Treaty of 30 April, 1868, in 12 Hertslet's Collection of Treaties, p. 1110.

GREECE. *Ibid.* see 5 Hertslet, p. 290; and 14 *Ibid.* p. 377.

ROUMANIA. *Ibid.* see 15 Hertslet, p. 320.

TURKEY—THE DANUBE. *Ibid.* see 12

Hertslet, p. 900; 13 Hertslet, p. 858; and 15 Hertslet, pp. 1076 and 1083.

Asia.

AVA. *Ibid.* see 9 Hertslet, p. 137.

BORNEO. *Ibid.* see 14 Hertslet, p. 1018.

CHINA. *Ibid.* see 11 Hertslet, p. 90.

COREA. *Ibid.* see 15 Hertslet, p. 886.

JAPAN. *Ibid.* see 11 Hertslet, p. 399.

MUSCAT. *Ibid.* see 5 Hertslet, p. 618.

SIAM. *Ibid.* see 8 Hertslet, p. 708; and 10 *Ibid.* p. 566.

Africa.

ALGIERS. *Ibid.* see 1 Hertslet, p. 60; renewed by Treaty of 28 August, 1816.

JOHANNA (one of the Comora Islands). *Ibid.* see 9 Hertslet, p. 549.

KANABAK (on the Gambia). *Ibid.* see 12 Hertslet, p. 64.

LIBERIA. *Ibid.* see 8 Hertslet, p. 738.

MADAGASCAR. *Ibid.* see 12 Hertslet, p. 637.

MOROCCO. *Ibid.* see 10 Hertslet, pp. 912, 920.

SIN (on the Gambia). *Ibid.* see 12 Hertslet, p. 65.

SOCOTRA, Island of. *Ibid.* see 14 Hertslet, p. 1002.

America.

BRAZIL. *Ibid.* see 14 Hertslet, p. 204.

CHILI. *Ibid.* see 9 Hertslet, p. 954.

COLOMBIA. *Ibid.* see 12 Hertslet, p. 377.

THE DOMINICAN REPUBLIC. *Ibid.* see 8 Hertslet, p. 984; and 12 *Ibid.* p. 410.

NICARAGUA. *Ibid.* see 11 Hertslet, p. 454.

PERU. *Ibid.* see 9 Hertslet, p. 626.

SALVADOR. *Ibid.* see 11 Hertslet, p. 885.

Australasia.

SANDWICH ISLANDS. *Ibid.* see 9 Hertslet, pp. 687 and 691.

SALVAGE AWARDS.

I. By Queen's Ships—

Nos. 18, 20, 26, 30, 40, 55, 103, 105, 148, 190, 205, 229, 266, 283, 288, 352, 366, 379, 402, 498, 620, 858, 731, 794, 817, 837, 862, 863, 974, 1081, 1256, 1291, 1366.

II. By Revenue Cutters and Coast Guard—

Nos. 305, 310, 375, 391, 396, 514, 561, 572, 692, 695, 600, 615, 660, 663, 793, 845, 850, 855, 914, 983, 1015, 1028, 1050, 1068, 1073, 1101, 1313, 1355, 1364, 1442, 1474.

III. By Special Apparatus—Nos. 1, 5, 395.

IV. By Large Steamers—

Nos. 9, 10, 13, 14, 16, 17, 19, 21, 22, 23, 25, 30, 33, 41, 42, 44, 46, 47, 56, 57, 68, 59, 60, 61, 63, 68, 72, 73, 79, 81, 90, 94, 96, 101, 102, 109, 113, 116, 117, 120, 123, 126, 139, 142, 160a, 193a, 198, 216, 218, 222, 233, 236, 239, 240, 243, 245, 247, 256, 259, 261, 285, 286, 295, 300, 334, 337, 339, 341, 370, 381, 392, 393, 461, 471, 504, 528, 557, 604, 621, 624, 654, 656, 661, 697, 744, 752, 778, 885, 965, 1001, 1013, 1450.

V. By Large Steam-tugs—

Nos. 161, 165, 278, 336, 507, 733, 870, 967, 968.

VI. By Ordinary Steamers—

Nos. 3, 28, 31, 32, 35, 36, 45, 50, 52, 62, 64, 67, 69, 70, 74, 75, 86, 95, 97, 100, 107, 108, 111, 114, 118, 121, 131, 132, 133, 135, 143, 145, 146, 149, 157, 159, 160, 162, 173, 176, 180, 182, 183, 187, 194, 195, 202, 204a, 206, 211, 217, 220, 226, 234, 250, 253, 267, 258, 264, 268, 269, 272, 275, 280, 290, 291a, 294, 298, 307, 308, 312, 314, 316, 317, 324, 327, 335, 340, 343, 344, 347, 348, 354, 359, 361, 364, 375, 376, 382, 385, 386, 397, 399, 401, 408, 411, 412, 415, 423, 425, 427, 429, 432, 435, 442, 443, 445, 447, 449, 453, 455, 459, 462, 468, 469, 487, 488, 489, 492, 493, 494, 500, 501, 509, 510, 511, 516, 521, 524, 526, 529, 531, 536, 540, 541, 542, 550, 552, 573, 574, 577, 586, 594, 595, 600, 601, 605, 606, 607, 611, 615, 633, 636, 638, 642, 646, 665, 667, 672, 683, 684, 698, 703, 706, 730, 737, 741, 746, 763, 776, 781, 784, 785, 791, 798, 801, 809, 820, 839, 856, 865, 868, 873, 892, 898, 902, 908, 911, 912, 923, 924, 931, 936, 937, 951, 952, 953, 975, 993, 1002, 1005, 1037, 1039, 1045, 1048, 1051, 1054, 1055, 1062, 1066, 1075, 1080, 1085, 1089, 1105, 1107, 1113, 1117, 1118, 1148, 1203, 1254, 1257, 1264, 1276, 1303, 1312, 1340, 1350, 1369, 1380, 1385, 1435, 1443, 1446, 1449, 1502.

VII. By Ordinary Steam-tugs—

Nos. 6, 11, 38, 52, 76, 86, 88, 92, 98, 106, 111, 119, 125, 134, 154, 158, 163, 164, 167, 208, 209, 215, 228, 230, 244, 254, 282, 275, 297, 299, 301, 304, 317, 320, 322, 325, 326, 331, 342, 346, 350, 362, 368, 388, 399, 409, 416, 417, 420, 421, 426, 430, 431, 436, 437, 438, 439, 441, 448, 457, 463, 465, 467, 474, 477, 478, 480, 481, 490, 491, 496, 499, 502, 505, 506, 508, 512, 525, 534, 543, 546, 551, 553, 555, 556, 559, 560, 564, 565, 566, 569, 570, 572, 575, 578, 579, 580, 582, 588, 596, 597, 598, 602, 610, 614, 618, 622, 626, 631, 632, 637, 641, 644, 648, 649, 653, 657, 662, 665, 667, 671, 674, 677, 679, 685, 686, 688, 698,

VII. By Ordinary Steam-tugs—*continued.*

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VIII. By Steam-yachts—No. 1205.

IX. By Tugs and Sailing Vessels—

Nos. 3, 15, 27, 29, 30, 115, 172, 177, 186, 191, 193, 203, 210, 212, 227, 231, 238, 284, 289, 317, 345, 357, 373, 378, 380, 398, 400, 417, 424, 434, 440, 450, 454, 456, 478, 479, 482, 484, 545, 562, 563, 617, 625, 850, 681.

X. By Tugs and Smacks, Luggers or Yawls

—Nos. 15, 27, 29, 191, 193, 203, 210, 212, 227, 238, 284, 289, 317, 345, 357, 373, 378, 380, 398, 400, 417, 424, 434, 440, 450, 454, 456, 478, 479, 482, 484, 545, 562, 563, 617, 625, 681, 694, 708, 710, 747, 750, 764, 765, 797, 803, 808, 816, 841, 842, 844, 846, 855, 867, 876, 904, 919, 921, 922, 930, 944, 950, 978, 980, 986, 1017, 1022, 1047, 1056, 1074, 1076, 1078, 1087, 1095, 1096, 1097, 1098, 1133, 1182, 1186, 1207, 1209, 1220, 1237, 1282, 1356, 1368, 1397, 1401, 1411, 1416, 1448, 1490, 1519, 1520.

XI. By Sailing Ships—

Nos. 12, 26, 32, 43, 45, 49, 50, 66, 83, 84, 86, 99, 108, 122, 124, 127, 138, 140, 152, 156, 163, 169, 178, 184, 197, 225, 237, 252, 263, 265, 270, 271, 273, 274, 291, 306, 308, 319, 321, 329, 333, 351, 352, 355, 358, 363, 365, 369, 373, 377, 384, 390, 394, 405, 427a, 428, 451, 452, 468, 468, 518, 541, 548, 583, 584, 587, 629, 634, 643, 645, 651, 673, 675, 682, 716, 767, 773, 783, 810, 811, 813, 841, 865, 890, 896, 909, 927, 928, 929, 958, 963, 985, 988, 1003, 1023, 1025, 1070, 1082, 1094, 1100, 1131, 1187, 1259, 1269, 1285, 1297, 1335, 1341, 1390, 1404, 1444, 1467.

XII. By Light Ships—No. 877.**XIII. By Wracking Vessels—**

Nos. 39, 53, 77, 78, 87, 104, 110, 136, 170, 213,
223, 241, 358, 520, 539, 576, 709, 780, 1027.

XIV. By Whaling Vessels—No. 1043.**XV. By Smacks, Luggers and Yawls—**

Nos. 11, 29, 51, 71, 80, 91, 129, 141, 150, 174,
186, 199, 200, 201, 214, 246, 248, 249, 251,
255, 260, 267, 279, 286, 292, 293, 310, 311,
313, 315, 328, 332, 338, 367, 383, 387, 390,
407, 410, 413, 416, 418, 419, 422, 444, 448,
460, 464, 466, 470, 471, 473, 483, 485, 489,
497, 515, 519, 523, 527, 532, 534, 537, 538,
554, 558, 559, 560, 567, 571, 580, 581, 589,
592, 598, 602, 603, 605, 608, 609, 612, 618,
623, 628, 630, 632, 635, 639, 640, 641, 642,
644, 647, 652, 658, 668, 669, 676, 679, 680,
690, 891, 694, 695, 696, 699, 700, 701, 703,
710, 711, 714, 715, 718, 719, 720, 722, 725,
734, 735, 736, 738, 739, 740, 745, 753, 757,
762, 763, 766, 774, 782, 784, 787, 792, 793,
798, 799, 805, 821, 823, 826, 831, 836, 840,
843, 849, 858, 860, 868, 874, 875, 878, 881,
882, 883, 897, 900, 901, 905, 906, 913, 915,
917, 920, 926, 932, 937, 941, 943, 948, 952,
954, 956, 960, 970, 973, 977, 987, 994, 996,
997, 999, 1005, 1006, 1010, 1011, 1012,
1014, 1016, 1026, 1032, 1033, 1034, 1038,
1046, 1049, 1053, 1058, 1060, 1064, 1065,
1068, 1068, 1073, 1079, 1083, 1084, 1085,
1090, 1092, 1099, 1102, 1104, 1108, 1111,
1112, 1113, 1120, 1125, 1126, 1128, 1130,
1136, 1137, 1144, 1145, 1146, 1148, 1149,
1152, 1155, 1158, 1159, 1162, 1164, 1170,
1172, 1177, 1178, 1181, 1184, 1188, 1194,
1196, 1196, 1198, 1201, 1202, 1208, 1210,
1212, 1213, 1214, 1215, 1219, 1221, 1222,
1223, 1224, 1226, 1228, 1232, 1233, 1234,
1236, 1239, 1244, 1248, 1251, 1258, 1261,
1266, 1270, 1274, 1275, 1279, 1280, 1281,
1283, 1284, 1287, 1288, 1293, 1294, 1295,
1296, 1301, 1305, 1307, 1311, 1313, 1315,
1318, 1319, 1321, 1322, 1323, 1324, 1325,
1326, 1327, 1330, 1333, 1334, 1337, 1342,
1345, 1346, 1347, 1352, 1354, 1357, 1360,
1369, 1371, 1380, 1382, 1386, 1389, 1391,
1394, 1399, 1402, 1403, 1406, 1408, 1409,
1418, 1424, 1428, 1430, 1431, 1440, 1442,
1449, 1452, 1455, 1457, 1458, 1459, 1462,
1465, 1466, 1469, 1472, 1483, 1484, 1488,
1492, 1494, 1495, 1496, 1504, 1507, 1513,
1515, 1517, 1522, 1524.

XVI. By Passengers—Nos. 89, 670, 896, 1316.**XVII. By Divers—Nos. 1, 8, 1207.****XVIII. By Pilot-boats and Pilots—**

Nos. 26, 27, 37, 52, 309, 323, 330, 349, 391,
485, 533, 535, 547, 563, 593, 599, 626, 653,
663, 664, 666, 676, 713, 762, 771, 775, 822,
830, 845, 857, 866, 888, 918, 949, 964, 969,
982, 991, 1015, 1017, 1021, 1031, 1046,
1049, 1084, 1088, 1091, 1104, 1119, 1133,
1140, 1142, 1151, 1166, 1171, 1192, 1206,
1216, 1217, 1220, 1262, 1309, 1313, 1331,
1336, 1350, 1351, 1353, 1374, 1393, 1412,
1426, 1433, 1438, 1453, 1461, 1469, 1470,
1471, 1477, 1480, 1490, 1497.

XIX. By Life-boats—

Nos. 15, 27, 45, 55, 151, 165, 293, 389a, 433,
448, 450, 454, 467, 470, 473, 484, 502, 514,
516, 544, 545, 575, 580, 590, 595, 599, 614,
642, 665, 699, 758, 792, 803, 852, 884, 893,
904, 910, 916, 921, 940, 961, 992, 1029, 1032,

XIX. By Life-boats—continued.

1051, 1072, 1086, 1093, 1098, 1132, 1138,
1143, 1161, 1175, 1179, 1189, 1218, 1225,
1246, 1255, 1263, 1271, 1292, 1308, 1310,
1365, 1381, 1423, 1434, 1460, 1498, 1505.

XX. By Boatmen, Beachmen or Fishermen—Nos. 15, 37, 54, 82, 277, 404, 412, 446, 465,

474, 475, 492, 514, 516, 517, 535, 568, 591,
593, 615, 625, 687, 712, 721, 754, 761, 763,
768, 770, 788, 791, 800, 802, 804, 806, 815,
818, 827, 829, 847, 872, 879, 891, 893, 895,
905, 914, 925, 935, 945, 962, 969, 989, 1007,
1024, 1028, 1040, 1044, 1050, 1061, 1063,
1096, 1109, 1124, 1138, 1143, 1150, 1156,
1159, 1169, 1175, 1183, 1197, 1199, 1204,
1229, 1230, 1242, 1245, 1249, 1252, 1264,
1267, 1298, 1302, 1309, 1310, 1314, 1329,
1331, 1337, 1344, 1348, 1367, 1373, 1374,
1377, 1379, 1382, 1384, 1393, 1407, 1410,
1415, 1417, 1419, 1421, 1431, 1432, 1436,
1439, 1447, 1454, 1475, 1481, 1482, 1493,
1495, 1499, 1500, 1501, 1507, 1508, 1510,
1511, 1514, 1516.

XXI. By Landsmen or Labourers—

Nos. 91, 200, 360, 372, 522, 678, 755, 984, 990,
992, 1046, 1190, 1216, 1499.

XXII. By putting on Board Anchors and Chains—Nos. 238, 489, 520, 618, 632,

668, 821, 822, 854, 838, 844, 848, 900, 905,
915, 916, 946, 1017, 1063, 1068, 1079, 1090,
1155, 1158, 1159, 1162, 1163, 1199, 1244,
1258, 1270, 1307, 1334, 1338, 1352, 1366,
1398, 1399, 1402, 1408, 1411, 1430.

XXIII. By unloading or transhipment of Cargo—Nos. 40, 53, 54, 77, 80, 93, 104,

110, 118, 136, 155, 177, 205, 221, 223, 228a,
242, 249, 260, 276, 281, 293, 310, 371, 389,
422, 429, 433, 439, 457, 473, 491, 492, 498,
517, 520, 539, 576, 617, 639, 678, 731, 745, 755,
770, 788, 826, 835, 852, 863, 874, 904, 910,
917, 937, 949, 951, 980, 982, 984, 989, 990,
994, 998, 1019, 1023, 1057, 1071, 1144, 1152,
1180, 1190, 1211, 1218, 1220, 1234, 1249,
1255, 1259, 1260, 1264, 1287, 1301, 1358,
1405, 1414, 1421, 1432, 1441, 1444.

XXIV. To Vessels derelict—

Nos. 2, 3, 4, 10, 12, 18, 26, 29, 32, 35, 37, 50,
51, 70, 81, 83, 84, 85, 99, 103, 105, 106, 108,
114, 121, 124, 128, 129, 130, 138, 150, 154,
156, 174, 175, 184, 187, 189, 193, 197, 231,
236, 252, 255, 263, 265, 288, 291, 299, 302,
303, 305, 309, 327, 336, 345, 348, 353, 358,
359, 366, 369, 383, 385, 391, 395, 396, 400,
404, 408, 416, 417, 420, 427a, 452, 461,
468, 471, 482, 486, 487, 495, 497, 499, 503,
518, 521, 523, 528, 530, 531, 532, 541, 544,
559, 581, 595, 600, 604, 620, 624, 627, 646,
673, 699, 701, 707, 722, 736, 738, 740, 749,
751, 753, 757, 767, 768, 774, 794, 798, 802,
830, 835, 840, 843, 845, 851, 857, 860, 861,
876, 879, 896, 902, 909, 918, 923, 927, 928,
941, 957, 977, 978, 981, 985, 988, 998, 1000,
1007, 1012, 1014, 1015, 1022, 1029, 1038,
1050, 1074, 1076, 1089, 1095, 1109, 1134,
1135, 1136, 1149, 1182, 1207, 1212, 1239,
1263, 1267, 1274, 1291, 1311, 1380, 1381,
1406, 1427, 1483, 1487, 1497.

XXV. To Cargo derelict—

Nos. 5, 7, 8, 39, 40, 51, 71, 78, 82, 87, 118,
228a, 242, 310, 333, 360, 539, 678, 692, 835,
984, 1071, 1190, 1405.

XXVI. To Steamers with Machinery disabled—Nos. 9, 13, 14, 16, 17, 19, 25, 28,

30, 36, 41, 42, 44, 46, 47, 57, 58, 59, 60, 61, 63, 68, 72, 73, 74, 75, 89, 90, 94, 96, 101, 109, 113, 116, 117, 120, 121, 123, 126, 131, 132, 133, 135, 139, 142, 144, 146, 147, 157, 160, 160a, 168, 176, 180, 182, 194, 196, 198, 204, 204a, 209, 216, 218, 226, 232, 233, 234, 239, 242, 245, 248, 259, 261, 264, 268, 272, 275, 280, 285, 286, 290, 291a, 294, 295, 298, 307, 308, 312, 314, 315, 316, 318, 330, 334, 335, 337, 350, 354, 364, 370, 376, 379, 382, 389a, 392, 397, 401, 403, 407, 418, 425, 426, 428, 438, 442, 445, 469, 472, 488, 496, 501, 504, 507, 510, 524, 526, 529, 540, 546, 550, 551, 552, 557, 566, 574, 575, 594, 601, 607, 611, 621, 636, 652, 653, 654, 667, 679, 684, 697, 703, 706, 714, 716, 744, 747, 752, 766, 776, 778, 781, 785, 809, 820, 839, 856, 878, 908, 936, 953, 965, 993, 1039, 1051, 1060, 1097, 1131, 1176, 1203, 1276, 1278, 1284, 1300, 1418, 1426, 1446.

XXVII. To Vessels dismantled—

Nos. 32, 37, 45, 50, 70, 95, 137, 159, 166, 169, 178, 195, 217, 222, 224, 257, 269, 274, 309, 311, 321, 338, 339, 361, 381, 390, 406, 436, 440, 446, 447, 461, 471, 483, 493, 502, 508, 530, 538, 541, 545, 555, 558, 585, 593, 609, 615, 627, 629, 636, 661, 665, 672, 691, 696, 698, 718, 734, 765, 771, 798, 806, 810, 816, 842, 852, 923, 948, 981, 991, 1003, 1016, 1026, 1042, 1047, 1054, 1055, 1062, 1070, 1078, 1089, 1113, 1117, 1140, 1146, 1149, 1165, 1185, 1215, 1219, 1275, 1291, 1315, 1319, 1323, 1331, 1333, 1341, 1370, 1389, 1391, 1397, 1416, 1426, 1448, 1477, 1515, 1518, 1522.

XXVIII. To Vessels Water-logged or Leaking badly—Nos. 29, 31, 35, 45, 62, 84,

97, 111, 114, 115, 119, 152, 161, 183, 187, 189, 190, 193, 199, 201, 205, 248, 255, 257, 268, 300, 302, 304, 316, 327, 330, 336, 340, 348, 373, 374, 377, 386, 408, 416, 417, 424, 432, 436, 438, 440, 443, 461, 464, 471, 472, 479, 491, 494, 497, 503, 530, 598, 605, 609, 623, 628, 652, 657, 683, 694, 700, 707, 708, 719, 720, 732, 735, 757, 762, 768, 773, 774, 787, 795, 799, 812, 829, 843, 845, 860, 862, 869, 884, 887, 892, 920, 923, 929, 943, 949, 962, 967, 973, 975, 982, 992, 996, 1006, 1009, 1014, 1024, 1032, 1040, 1047, 1056, 1074, 1076, 1080, 1091, 1096, 1108, 1112, 1119, 1120, 1153, 1155, 1169, 1170, 1178, 1186, 1216, 1227, 1251, 1277, 1284, 1299, 1311, 1312, 1316, 1321, 1337, 1340, 1342, 1347, 1355, 1370, 1374, 1375, 1383, 1384, 1390, 1394, 1396, 1407, 1412, 1450, 1453, 1461, 1472, 1481, 1482, 1489, 1493, 1495, 1504, 1512, 1521.

XXIX. To Vessels with disabled Rudders

—Nos. 19, 23, 24, 34, 36, 43, 56, 69, 85, 89, 102, 127, 128, 150, 173, 181, 211, 219, 235, 247, 256, 284, 301, 348, 349, 368, 374, 380, 408, 411, 420, 442, 450, 455, 460, 461, 467, 479, 486, 511, 536, 573, 598, 600, 622, 638, 644, 674, 683, 686, 696, 707, 720, 748, 759, 762, 784, 786, 791, 821, 822, 829, 831, 841, 860, 862, 939, 952, 961, 986, 998, 1006, 1047, 1085, 1088, 1106, 1133, 1149, 1167, 1195, 1207, 1256, 1297, 1303, 1354, 1368, 1369, 1374, 1385, 1424, 1469, 1526.

XXX. To Vessels on or near Rocks—

Nos. 20, 22, 27, 40, 53, 55, 66, 76, 77, 79, 80, 93, 98, 108, 119, 122, 136, 144, 155, 171, 192, 193a, 202, 203, 213, 223, 227, 228a, 239, 241, 277, 283, 371, 412, 414, 427, 432, 449, 456, 480, 487, 492, 494, 506, 520, 525, 529, 535, 544, 554, 568, 572, 582, 600, 615, 638, 640, 641, 663, 676, 690, 698, 712, 748, 749, 758, 789, 791, 827, 832, 835, 850, 873, 890, 905, 916, 924, 934, 940, 1008, 1043, 1046, 1052, 1064, 1084, 1107, 1110, 1118, 1124, 1125, 1180, 1205, 1211, 1216, 1232, 1267, 1269, 1293, 1355, 1364, 1413, 1425, 1444, 1450, 1451, 1471, 1498, 1499, 1524.

XXXI. To Vessels on or near Sands—

Nos. 15, 38, 82, 86, 92, 134, 163, 212, 221, 228, 246, 249, 251, 260, 263, 267, 293, 297, 304, 326, 332, 345, 347, 350, 367, 380, 404, 411, 428a, 434, 444, 448, 454, 466, 467, 470, 479, 484, 515, 522, 531, 537, 562, 576, 577, 581, 590, 592, 598, 605, 608, 612, 616, 619, 630, 642, 644, 649, 651, 659, 661, 665, 669, 680, 681, 687, 693, 695, 705, 713, 715, 720, 722, 725, 726, 727, 738, 745, 746, 751, 759, 762, 763, 765, 770, 779, 780, 782, 784, 792, 793, 801, 804, 807, 814, 817, 822, 823, 826, 829, 831, 833, 836, 841, 844, 846, 847, 848, 853, 858, 860, 864, 867, 868, 870, 874, 875, 877, 881, 887, 894, 895, 897, 900, 906, 907, 913, 919, 921, 925, 926, 930, 937, 938, 941, 943, 944, 947, 951, 956, 966, 970, 973, 976, 977, 980, 986, 987, 989, 994, 999, 1004, 1005, 1006, 1007, 1010, 1011, 1024, 1027, 1028, 1030, 1033, 1034, 1035, 1037, 1038, 1040, 1044, 1048, 1049, 1050, 1058, 1061, 1067, 1068, 1072, 1074, 1076, 1083, 1086, 1089, 1093, 1096, 1098, 1102, 1106, 1127, 1138, 1141, 1143, 1147, 1148, 1151, 1152, 1153, 1156, 1159, 1168, 1172, 1173, 1175, 1182, 1183, 1188, 1190, 1194, 1197, 1200, 1201, 1213, 1214, 1217, 1222, 1225, 1227, 1228, 1231, 1234, 1236, 1242, 1243, 1245, 1247, 1249, 1252, 1256, 1258, 1261, 1262, 1263, 1264, 1266, 1280, 1282, 1283, 1287, 1289, 1301, 1303, 1307, 1308, 1310, 1314, 1326, 1346, 1348, 1361, 1357, 1359, 1360, 1363, 1368, 1377, 1378, 1379, 1380, 1382, 1384, 1394, 1395, 1401, 1402, 1408, 1410, 1419, 1422, 1423, 1424, 1428, 1432, 1439, 1440, 1442, 1445, 1452, 1458, 1460, 1461, 1475, 1480, 1504, 1506, 1507, 1516, 1517, 1519.

XXXII. To Vessels ashore or aground, or nearly so—Nos. 6, 54, 91, 103, 104, 110,

118, 125, 148, 152, 167, 170, 172, 177, 185, 186, 200, 206, 210, 215, 231, 238, 254, 281, 282, 284, 288, 306, 310, 313, 323, 325, 341, 349, 356, 372, 375, 378, 379, 389, 399, 400, 402, 410, 415, 416, 417, 428a, 429, 433, 435, 439, 450, 457, 459, 462, 465, 473, 478, 481, 496, 498, 500, 513, 514, 517, 561, 563, 573, 580, 583, 588, 589, 599, 603, 610, 617, 620, 625, 633, 637, 639, 647, 656, 660, 662, 666, 667, 668, 670, 678, 683, 686, 688, 699, 709, 710, 729, 730, 731, 732, 734, 742, 754, 761, 788, 803, 811, 819, 824, 830, 849, 855, 863, 872, 891, 898, 902, 904, 910, 912, 914, 929, 935, 959, 960, 964, 971, 974, 984, 990, 1001, 1017, 1021, 1036, 1041, 1047, 1057, 1073, 1082, 1094, 1101, 1111, 1116, 1126, 1132, 1133a, 1142, 1161, 1166, 1191, 1204, 1206, 1218, 1219, 1253, 1255, 1259, 1260, 1272, 1290, 1304, 1309, 1313, 1330, 1349, 1362, 1378, 1393, 1414, 1441, 1479, 1486, 1500, 1508, 1511, 1514, 1521, 1525.

XXXIII. To Vessels breaking from Anchors or driving—Nos. 88, 111, 151, 188, 208, 214, 219, 254, 262, 287, 289, 317, 325, 326, 342, 362; 431, 463, 476, 477, 480, 489, 508, 512, 525, 537, 543, 554, 555, 556, 560, 570, 571, 573, 579, 580, 582, 590, 602, 605, 615, 618, 621, 632, 640, 845, 661, 667, 671, 685, 693, 717, 724, 758, 769, 790, 796, 797, 815, 818, 821, 827, 828, 832, 834, 837, 844, 848, 880, 881, 883, 885, 886, 887, 897, 899, 915, 931, 933, 938, 940, 950, 966, 972, 979, 1018, 1035, 1057, 1059, 1079, 1090, 1103, 1106, 1115, 1124, 1150, 1154, 1158, 1202, 1230, 1235, 1240, 1243, 1244, 1245, 1248, 1258, 1273, 1302, 1303, 1317, 1324, 1331, 1334, 1338, 1371, 1383, 1387, 1388, 1392, 1398, 1399, 1417, 1435, 1438, 1463, 1464, 1465, 1468, 1487, 1494, 1510.

XXXIV. To Vessels without Masters or Mates—Nos. 21, 179, 225, 250, 319, 329, 335, 355, 363, 365, 384, 394, 509, 645, 651, 658, 670, 760, 771, 777, 882, 1099, 1123, 1279, 1285, 1322, 1404, 1450.

XXXV. To Vessels with Crews diseased—Nos. 207, 238, 240, 250, 270, 274, 289, 363, 381, 384, 431, 453, 458, 566, 664, 760, 846, 1008, 1053, 1081, 1122, 1295, 1474.

XXXVI. To Vessels otherwise short-handed—Nos. 95, 111, 222, 235, 335, 352, 387, 408, 451, 458, 485, 519, 533, 547, 567, 591, 623, 645, 672, 693, 696, 775, 813, 892, 893, 1016, 1023, 1025, 1099, 1119, 1124, 1241, 1311, 1347, 1367, 1370, 1386, 1455, 1469.

XXXVII. To Vessels with Mutinous Crews—Nos. 271, 300, 882.

XXXVIII. To Vessels short of Provisions—Nos. 196, 324, 352, 664, 1023, 1129.

XXXIX. To Vessels in or after Collision—Nos. 29, 49, 51, 64, 108, 149, 158, 162, 164, 220, 230, 278, 279, 297, 301, 322, 344, 351, 353, 362, 388, 421, 441, 443, 451, 477, 490, 491, 505, 507, 516, 519, 532, 533, 534, 542, 551, 552, 560, 585, 587, 596, 597, 604, 613, 631, 643, 644, 648, 655, 657, 673, 704, 712, 724, 728, 739, 741, 743, 750, 755, 756, 764, 772, 800, 808, 812, 857, 859, 861, 866, 871, 876, 880, 882, 886, 889, 892, 896, 901, 903, 917, 932, 933, 956, 957, 962, 967, 971, 983, 995, 1009, 1012, 1016, 1017, 1020, 1029, 1055, 1059, 1069, 1075, 1077, 1087, 1100, 1104, 1109, 1114, 1126, 1127, 1130, 1135, 1141, 1147, 1174, 1177, 1184, 1187, 1193, 1198, 1202, 1209, 1210, 1226, 1229, 1238, 1239, 1250, 1260, 1265, 1270, 1274, 1291, 1298, 1320, 1329, 1332, 1344, 1347, 1356, 1361, 1365, 1372, 1373, 1375, 1376, 1386, 1389, 1400, 1403, 1406, 1409, 1421, 1429, 1431, 1443, 1447, 1448, 1454, 1464, 1470, 1472, 1473, 1476, 1478, 1485, 1490, 1492, 1503, 1513, 1518, 1521, 1522, 1523.

XI. To Vessels on or near Fire—Nos. 52, 100, 140, 191, 244, 253, 346, 393, 419, 426, 427, 430, 517, 689, 825, 942, 1000, 1013, 1022, 1509.

XII. To Vessels in Ice—Nos. 458, 591, 911, 928, 960, 1192.

XLIII. To Vessels in Harbours or Docks—Nos. 320, 346, 421, 474, 475, 505, 508, 514, 522, 535, 551, 555, 640, 704, 724, 733, 796, 825, 827, 837, 854, 859, 871, 872, 899, 933, 967, 968, 971, 1035, 1036, 1088, 1077, 1109, 1151, 1154, 1168, 1238, 1272, 1300, 1320, 1332, 1339, 1343, 1349, 1373, 1388, 1417, 1421, 1476, 1494.

XLIII. To Vessels in the Mersey—Nos. 6, 38, 111, 158, 164, 165, 208, 254, 278, 297, 301, 320, 325, 331, 342, 362, 426, 441, 474, 543, 547, 551, 556, 564, 569, 578, 631, 671.

XLIV. To Vessels in the Thames—Nos. 346, 367, 534, 728, 1209, 1329, 1491.

XLV. To Vessels in other Rivers—Nos. 372, 395, 402, 633, 643, 645, 731, 786, 811, 824, 863, 880, 1000, 1001, 1020, 1031, 1094, 1253, 1265, 1380.

XLVI. To Caissons—No. 1139.

XLVII. Associated Vessels—Nos. 65, 795.

XLVIII. Of Life alone—Nos. 416, 471, 841, 842, 869, 1013, 1095, 1149, 1166, 1218, 1310, 1460, 1472.

XLIX. Of Life and Property—Nos. 11, 13, 14, 17, 29, 31, 32, 33, 34, 45, 52, 55, 64, 91, 100, 101, 107, 134, 151, 153, 166, 170, 251, 292, 328, 433, 466, 467, 473, 475, 491, 513, 527, 591, 616, 642, 650, 702, 718, 731, 765, 779, 783, 819, 850, 852, 907, 911, 924, 990, 1019, 1077, 1142, 1151, 1364, 1370, 1406, 1423, 1452.

L. Of Specie—Nos. 1, 13, 16, 28, 30, 34, 64, 276, 278, 328, 491, 702, 1364.

LI. Of Cattle—Nos. 19, 42, 1045, 1479.

LII. Cases of Loss of Life or Personal Injury to Salvors—Nos. 47, 55, 133, 246, 541, 588, 619, 689.

LIII. Cases in which Damages and Expenses were incurred in rendering the Salvage Services—Nos. 1, 5, 6, 17, 21, 22, 39, 43, 60, 74, 76, 80, 81, 83, 86, 94, 101, 109, 117, 127, 181, 236, 300, 584, 701, 704, 728, 737, 740, 741, 753, 765, 909, 920, 931, 1036, 1060, 1089, 1181, 1191, 1248, 1312, 1327, 1342, 1444, 1458, 1488, 1504.

LIV. Cases of Towage subsequently Salvage—Nos. 536, 569, 584, 597, 723, 726, 799.

LV. Cases of Misconduct of Salvors—Nos. 14, 725, 1482.

1. The British frigate *T.*, with bullion, struck upon a rock on the coast of Brazil, and was driven into a very dangerous cove, and sunk. The hull went to pieces, leaving the treasure upon the bottom in five and six fathoms water. The admiral on the station and the captains and crews of four sloops of war were engaged for eighteen months in recovering the treasure. The service was attended with great skill, labour, and danger, and four lives were lost. The salvors also constructed very efficient mechanical apparatus for the service. £25,800 allowed for expenses besides award. *The Thetis*, 3 Hagg. 14; 2 Knapp. 390.

Value 157,349*l.*—Award £29000

2. In April, the iron screw steamer *A.*, 4,600 tons, 1,100 h.-p., from New York for Havre with passengers and a general cargo, had sprung a leak, and been abandoned by the master, crew and passengers, and was found derelict by the steamer *S.* and the barque *A.*, in lat. 47°40' N. and long. 6°25' W. The *A.* put two men on board, and proceeded on her voyage. The mate, engineer, fireman, and two seamen of the *S.* boarded her, and she was towed under sail. Next morning they met the *F. T. B.*, and made arrangements with her to help to tow the *A.* When about thirty miles from Plymouth a steam-tug was procured, which brought her to an anchorage; but another bad leak being discovered, and the water increasing, the tug, with two government tugs helping, took her to Catwater. The services lasted three and a half days. £9,300 to the *S.*, £8,400 to the *F. T. B.*, £300 to the *A.* *The Amerique* (P. C.), M. M. R. Dec. 25, 1874, p. 1646; L. R. 6 P. C. 468.

V. 190,000*l.*—A. £18000

3. The vessel *J. C.*, derelict and very leaky, about 2,000 miles from land, was fallen in with by the *M.*, with a crew of twenty-three hands. The mate and nine men were put on board the *J. C.*, and they navigated her to Liverpool in eighteen days. *The James Cheston*, S. G. June 5 and 20, 1855.

V. 56,000*l.*—A. £16000

4. In April, the *F. of A.* was found derelict about eighty leagues N. of Madeira, and taken possession of by the *B.*, which put a mate and four hands on board and conveyed her to Madeira. Forty men were sent to assist from the French fleet. *The Falls of Afton* (Nantes Tribunal of Commerce), M. M. R. Dec. 29, 1882, p. 1650.

V. 38,260*l.*—A. £12882

5. The *J.* was sunk in deep water and ten feet in the sand, near Margate. Several attempts by the agent of the underwriters to raise the vessel failed. A company of salvors made a second attempt, which also failed. They then purchased a vessel of 248 tons, fitted machinery on board at considerable expense, laboured a month, and raised the vessel, when the gear gave way and she again sank. About three months afterwards they raised her again, but her top separated from her bottom. They, however, saved all her valuable cargo of brandy. There were eight principal and thirty-eight subordinate salvors. The award included £2,300 for expenses, and salvors were to pay out of the award £850 to forty other men who had picked up and brought in some goods. *The Jubilee*, 3 Hagg. 43, in note.

V. 14,352*l.*—A. £11300

6. The screw steamer *S.*, of 1,500 tons, from Alexandria, with cotton, for Liverpool, in a very heavy sea, wind W.N.W., grounded in November on the *Libra Flats*, at the entrance of the Mersey, and hoisted signals for assistance. The steam-tugs *U. K.* and *H.* succeeded in getting her off. Soon afterwards she touched on the *Little Burbo Flat*. The steam-tug *R.* then came up, and the three tugs got her into the channel. The steam-tug *Relief* then came up, and, with her assistance, the *S.* was prevented from getting on *Taylor's Bank*. The four tugs then towed the *S.* up the Mersey and docked her. The *S.* was in considerable danger, and the tugs suffered some damage, and several of their hawsers were destroyed. £3,000 to the *U. K.*, £2,800 to the *R.*, £2,500 to the *H.*, £2,000 to the *Relief*. *The Syrian*, M. M. R. March 31, 1866, p. 401.

V. 120,000*l.*—A. £10300

7. The ship *A.* was lost on the *Tortugas*. Twelve large wrecking vessels, carrying in all about 120 men, were employed between two and three weeks in saving the cargo. *The America*, Files of Court, 1838, cited in *Wreck and Salvage*, 216. [American.]

V. 30,292*l.*—A. £9594

8. The ship *I. A.*, with cargo, struck upon the *Florida Reef* in a hurricane, drove over, and sank in five fathoms water. Over 400 persons, about twenty of whom were divers, were engaged for six weeks in saving the cargo. Portions of it were

saved by fishing with iron hooks or pegs attached to the end of long staves; but the larger portion was saved by divers, who, without any artificial apparatus, in the natural way, dived into the hold of the ship. *The Isaac Allerton*, Files of Court, 1856, cited in Marvin, 219. [American.] Value 19,200*l.*—Award £8770

9. The steamer C. of B., 5,491 tons register, broke her crank shaft, and was towed by the V. d'A. for nine hours, forty-five miles; but the V. d'A. not being strong enough, the S. took her in tow for 700 miles. The S. suffered ten days' detention, and was worth, with the cargo and freight, £88,000. The values of the V. and her cargo and freight were £67,000. £8,000 to the S., £500 to the V. *The City of Berlin*, M. M. R. April 28, 1882, p. 526. V. 237,198*l.*—A. £8500

10. In October, the ship M. L. was found, derelict and in a very disabled state near Gaspar Island, in the East Indies, by the barque F. Y. The chief mate and four hands of the F. Y. took the M. L. into Batavia in twelve days, after much personal hardship and at considerable risk; the F. Y. bearing company for five days. The F. Y. was worth £70,000. *The Maggie Leslie*, P. C. M. M. R. June 19, 1869, p. 786. V. not stated.—A. £8250

11. In December, the steamship S., during a gale from the N.W. with heavy sea, being about seventy-three miles S.E. of Yarmouth, and on her broadside, burnt blue lights. The smack S. H. came up, and with great difficulty got off twenty-five hands, hauling them through the water, eight of whom a passing Torbay smack took on board, and the remainder were landed by the S. H. in Yarmouth harbour three days afterwards. The master of the S., his son, and the rest of the crew, remained on board. The W. and E., the C. T., and the steamship Sheffield, in answer to the blue lights, also bore down on her, remained by her for a day, and attempted several times to tow the S., but the weather was too bad, and the master and the rest of the crew reluctantly abandoned her. The S. was fallen in with two days afterwards by the steamship W., which attempted to tow her, but was obliged to obtain the assistance of the steamship R., which, having new ropes, took the S. in tow, attended and assisted by the W., into Brouwershaven Gap, where she grounded, the tow rope having parted. Subsequently she was towed clear of the ground and into Brouwershaven by two tugs. £1,500 to the S. H., £1,600 to the W. and E., £1,600 to the C. T., £2,800 to the R., £300 to the W. *The Smyrna*, M. M. R. June 20, 1868, p. 787. V. 50,000*l.*—A. £7800

12. The ship B. H. was in lat. 42° 30' N. and long. 11° 20' W., damaged and derelict. The master and ten men from the ship E. boarded the B. H., and conducted her into Plymouth in six days. *The Blenden Hall*, 1 Dod. 414. V. 72,000*l.*—A. £7000

13. In November, the full-rigged screw steamer C. R., 2,840 tons nett and 4,623 gross, 133 hands, between forty and fifty cabin and 400 and 500 steerage passengers, a general cargo, about £350,000 in specie, and a large mail, about 700 miles from New York, broke her shaft and proceeded under sail with a W. wind on the port tack. The screw steamer C., ninety hands, twenty-seven cabin and 150 steerage passengers, and a general cargo, her value being £150,000, from Glasgow for New York, came up. The C. R. had drifted about 69 miles to leeward, and the state of the weather precluded all chance of her reaching New York under sail. The C. was asked to take the C. of R. in tow to New York, but as she had not coal enough it was agreed that she should take her to Halifax, distant 240 miles, and after fifty-four hours' towing the C. of R. was got to a safe berth in Halifax harbour. *The City of Richmond*, M. M. R. Feb. 27, 1880, p. 271. V. 509,929*l.*—A. £7000

14. In March, the schooner-rigged screw steamer S., 3,156 tons gross, 2,199 nett register, ninety-five hands, sixty-two passengers, and general cargo, from New York for Hamburg, when about 300 miles from Queenstown, broke her propeller shaft seven feet inside the screw, and lay on the wind beating across the Channel from N. to S. with square sails and fore and aft sails set for five days. She then put up signals of distress, and in answer thereto the iron screw steamer V., 2,748 tons register, with engines of 300 horse power working up to 1,800, and of the value, with freight and cargo, of £72,000; from Antwerp to Philadelphia, seventy-six hands, 274 passengers, a general cargo, and the Belgian mails, came up and was boarded by the master of the S., who agreed with the master of the V. to tow the

S. to Queenstown for £15,000, the master of the V. threatening to leave the S. unless that sum was agreed to. The V. deviated from her course for six days. The weather was fine and the sea smooth. No costs allowed in consequence of the conduct of the master of the V. *The Silesia*, M. M. R. June 25, 1880, p. 809; and July 2, 1880, p. 847. Value 108,000*l.*—Award £7000

15. In January, the ship Lord S., from Calcutta, with jute and oilcake, for Dundee, was hard and fast on the Goodwin Sands. Thirty-six Deal boatmen came to her, got out a kedge and warp, and hove on it. The Ramsgate lifeboat and a tug then came up, and shortly afterwards the tugs P., S., Sussex and E., who together succeeded in getting her off. Some Cinque Port men also saved some of the cargo. £1,000 to the Deal boatmen, £1,200 to the P., £250 to the E., £1,000 to the S., £350 to the Sussex, £950 to the lifeboat and the Ramsgate tug, £2,150 to Cinque Ports men. *The Lord Strathmairn*, M. M. R. May 21, 1875, p. 648. V. 32,000*l.*—A. £6900

16. In March, the three-masted screw steamer City of C., from New York to Liverpool, with 108 passengers, 200,000 dollars in specie, mails, and a general cargo, broke her shaft in the stern tube about 660 miles off Sandy Hook. She was taken in tow for twenty-six hours by the steamer S., but then the hawser parted, and the S., being short of coals, proceeded on her way. Three days later, in about lat. 42° 13' N. long. 59° 40' W., the screw steamer M., from Boston, for Liverpool, value £189,000, with seventy hands, a general cargo, passengers, 400 cattle and 454 sheep, took the City of C. in tow. After twenty-one miles' towing the wind freshened to a gale with a high sea, and the City of C. sheered very much. During a squall the hawser parted and the City of C. was lost sight of for an hour, but eventually she was discovered, two hawsers were made fast, and in about forty-eight hours she was taken into Halifax harbour. *The City of Chester*, M. M. R. May 4, 1883, p. 558. V. 179,535*l.*—A. £6500

17. In December, the screw steamer D. B., 1,085 tons register, 160 h.-p., thirty-seven hands, and general cargo, for Rangoon, and having five adult passengers and three children on board, lost her propeller, and was heading towards the coast of Sicily, ten miles off. In answer to her signals the screw steamer M. L., 1,287 tons register, 200 h.-p., and twenty-six hands, two days out from Marseilles, with ballast, for Girgenti, in Sicily, came up and was requested to tow. The M. L. agreed to do so on account of the danger to the D. B. and those on board, at the risk of forfeiting her charter-party. A steel hawser and a new 13-in. Manilla rope were then got out from the D. B. and made fast to the M. L., and the towing commenced. After thirteen hours' towing, first the steel hawser and then the rope parted, and there was great danger of their fouling the propeller of the M. L. The wind meanwhile gradually increased to a gale, and the towage could not be renewed. The M. L. tried to remain by the D. B., but lost sight of her, and after twenty hours found her again, when the hawser and rope were again made fast and the D. B. was taken to Valetta, the steel hawser parting once more during the towing. The services lasted sixty-two hours, during the earlier part of which time they were rendered in circumstances of great difficulty and some danger. The M. L. showed great perseverance in her attempts to stand by the D. B. and in seeking for her during the time she was lost sight of. The Vice-Admiralty Court of Malta awarded £5,000 and £3,500 for damages. On appeal, the Privy Council awarded £1,000 as salvage, and the damages, which they proposed to refer to the registrar and merchants, unless the salvors agreed to accept a reduced award of £6,000 in all, which they did. *The De Bay* (P. C.), 8 App. Cas. 559; M. M. R. August 3, 1883, p. 972. V. 67,000*l.*—A. £6000

18. A sloop with a transport under convoy discovered a derelict, supplied her with necessary sails and rigging, and worked her into a place of safety. £4,500 to the sloop, £1,500 to the transport. *L'Esperance*, 1 Dod. 46. V. 12,000*l.*—A. £6000

19. In June, the screw steamer O., 2,447 tons nett, from Montreal to London, with forty-five hands and general cargo, 836 head of cattle, and passengers, when seven days out and in the middle of the Atlantic broke her propeller shaft close to the stem, fracturing her stem tube. Next day the propeller moved, jammed the rudder so that it would not work, and she lost her power of steering, as well as her propelling and steaming powers, and when she came up to the wind would not go off again. She

had only provisions for the cattle for ten days, and it had just been decided to throw 260 of those on deck overboard, when, in answer to her signals, the screw steamer A., 4,173 tons gross, from Glasgow to New York, with 350 passengers, ninety-six hands, and a general cargo—value with cargo and freight £100,000—came up and by request took her in tow to St. John's, Newfoundland, a distance of 700 miles. There was a moderate gale during part of the service. *The Camona*, S. G. Feb. 20, 1885, p. 118. Value 64,000*l.*—Award £6000

20. In February, the screw steamer W., from Calcutta for London, with general Indian cargo, struck on the coral reef off the Island of Kotama in the Red Sea, 299 miles from Aden and thirty miles from the route of ships. Her crew and passengers were put on a desert island, whence they were rescued by the C. A Greek trader from the town of Soheia agreed to provide men and boats to save the cargo, he to have one-third the net value of the property salvaged. His Arabs plundered so much that H.M.S. K. was sent to protect the property. The Greeks having no appliances wherewith to break up the deck, which was a necessary step to get at the cargo, the captain of the K. agreed to let his men do it, entering into an agreement to have the value of half the amount thus salvaged. The services lasted six days. *The Cargo ex Woosung* (C. A.), M. M. R. May 12, 1876, p. 586. V. 25,900*l.*—A. £6000

21. In August, the screw steamer J., from Singapore to Jeddah, with a general cargo and 953 passengers, abandoned by all her officers and crew except the second engineer, who knew nothing of navigation, the serang, supercargo and clerk, four klassies, and thirteen firemen, was fallen in with by the screw steamer A., 1,644 tons, from Shanghai to London, with 680 passengers, who towed her to Aden, a service lasting four days, and involving for the first five hours great labour and afterwards much skill, care, and perseverance. The expenses incurred by the A. amounted to £258. *The Jeddah* (Straits Settlements V.-A. Court), M. M. R. December 2, 1881, p. 1522. V. 29,000*l.*—A. £6000

22. On the 27th May, 1882, the steamer L., 1,145 tons nett, 1,746 tons gross, twenty-five hands, from Bombay to Dunkirk, took the ground off Ras Gharib, 95 miles from Suez, and, in spite of jettisoning the cargo, could not be got off, but struck repeatedly. Two passing steamers were signalled but refused assistance. On the 30th May, however, the steamer O., 1,200 tons, from Suez to Tuticorin, in ballast, came up, and at much risk, owing to the proximity of coral reefs and the state of the weather, got her in tow, took her off the reef on which she had settled, towed her to within five miles of Suez, and stood by her until she made that port in safety. Had she remained a few hours longer in the position in which the O. found her she would have been lost with all on board. The O. sustained damage and expenses to the amount of £100. *The Lancaster*, 5 Asp. 58, 174; 8 P. D. p. 65; 9 P. D. C. A. 14; 48 L. T. N.S. 679. V. 62,000*l.*—A. £6000

23. In February, the screw steamer S., 4,376 tons gross register, 640 h.-p. nom., 2,200 actual, lost her rudder and rudder post. Two outward-bound steamers refused to tow her, but took off nineteen of her passengers. The steamer B. tried to tow her but failed. The steamer T., 2,783 tons, 350 h.-p., working up to 1,600, value £85,365, came up with her east of Queenstown in a very helpless and unmanageable condition. The T. took her in tow, and after seven days and four hours brought her, with great risk of damage to herself, 850 miles, safely into port. *The Sardinian*, M. M. R. April 28, 1882, p. 526. V. 96,600*l.*—A. £6000

24. In February, the screw steamer S., 2,436 tons, from Savannah for Liverpool, with thirty hands, and a cargo of cotton, was lying in about lat. 48° N., helpless in the trough of the sea, which was breaking over her. She was dangerously injured by the loss of her stern-post, rudder, wheelhouse, and other damages, and was quite unmanageable. In answer to signals the screw steamer L. C., 1,927 tons gross, from New York for Bristol, with twenty-eight hands, and a general cargo, altered her course and came up to the S., but owing to the severity of the weather could not board her, so stayed by her all night. Next day the L. C. agreed to steer the S. by being made fast astern, the S. proceeding under her own steam. This was done for six hours in a strong S.W. breeze with a heavy sea, till the hawser parted for the second time, when the L. C. lay by the S. for the night. Next day the L. C. towed ahead of the S. for a short time, but the wind increasing to a strong S.S.W. gale

both hawsers parted, and owing to the weather the vessels could only communicate by signals till February 24, the S. drifting to E. The weather having then moderated towing recommenced, and on February 28 the S. was got safely to Queenstown, where three tugs took charge of her. *The Strathleven*, M. M. R. May 23, 1884, p. 325. Value 90,000*l.*—Award £6000

25. In January, the mail steamer S. was found by the mail steamer A., belonging to the same owners, lying at Ascension disabled, having her main shaft broken inside the after bearings. She had reached Ascension under sail from lat. 3°57' S. and long. 7°40' W., where the accident had happened. The A. took her in tow to Gorea, thence, after coaling, to St. Vincent, where the A. and the S. were both put into five days' quarantine. Thence the A. towed her to Netley, and there anchored her in safety. The distance for which the S. was towed was 4,500 miles, and great risk, difficulty, and extra labour were incurred in the towage, which with the quarantine took forty-three days. *The Syria*, M. M. R. July 10, 1874, p. 880.

V. 22,500*l.*—A. £6000

26. On the 19th of November two Danish vessels, each of 200 tons burthen, found the L. K. abandoned in the Bay of Biscay. They took possession of her, putting six of their men on board, and one of the vessels staying with her. On the 24th H.M. brigantine D. came up and placed seven of her crew and a midshipman on board along with the Danes. The L. K. then made for Plymouth Sound. The men on board her were exposed to hardships and imminent danger. The disabled state of the vessel was observed on the 1st of December by the pilot cutter H., which offered its services, and was employed in helping to get out the anchors, &c. Finally, the port-admiral at Plymouth, on the application of the midshipman on board the L. K., despatched to her assistance H.M. steamer C., by which she was towed into Plymouth on the 2nd December. £4,000 to Danish ships, £1,500 to the D., £50 to the pilot cutter, £200 to the C. *The Lady Kennaway*, S. G. Nov. 22, 1848.

V. 14,346*l.*—A. £5750

27. In November, the screw steamer R. H., with a crew of sixty hands, twenty passengers, and a general cargo, from Liverpool to Bombay, stuck fast on the Clipera Rocks during a W.N.W. gale and in a heavy sea. In answer to signals a lifeboat and pilot put off to her, and shortly afterwards the tug C., 172 tons register, and the F. C., 92 tons, came up and found her lying broadside on, heading N., and with her stern deep in the water. They were quickly joined by the tugs K. and B. S. Hawsers were attached, and after some seven or eight hours she was got off, and the tug discharged. The K. landed some of the passengers and then started with her for Liverpool for repairs. At Salt Island the F. C. was again engaged to assist. When east of Point Lynas the wind freshened and the sea increased. In about twelve hours they got S. of the Bar lightship, a pilot was taken on board, and the steamer anchored, the tugs standing by till the morning, when she was towed across the bar. After this a tow-rope parted, and the F. C. had to hold on with the starboard rope for some little time. Assisted by the tug G., she was got in about nineteen hours to Woodside stage, and docked in Morpeth Dock, Birkenhead. £150 to the lifeboat, £50 to pilot, £1,500 to the F. C., £1,500 to the K., £1,200 to the C., £1,200 to the B. S. *The Rydal Hall*, M. M. R. Dec. 8, 1882, p. 1554.

V. 60,000*l.*—A. £5600

28. In April, the screw steamer P., 1,958 tons gross register, from Buenos Ayres for London, thirty-six hands, cargo, wool hides, linseed and other goods, and two boxes of specie, broke her crank-shaft off Ushant. The wind stormy from S.S.W., and the tide about a quarter ebb. The screw steamer G., value £22,000, from Bilbao to Cardiff, fifteen hands, cargo iron ore, agreed to tow the P. After some difficulty tow-lines were made fast, but soon parted, and the G. stayed by the P., which was drifting broadside to leeward in a S.E. direction. The G. tried to fix a tow-line, but was thrown by the sea right under the stern of the P., which crashed with her counter into the starboard midships of the G., doing considerable damage. The weather clouded over and became squally, and the P. was found to have drifted bodily S.E. within five or six miles of the rocky French coast. After some trouble and danger the G. towed the P. till a pilot was taken aboard. The P. was then towed into Plymouth. The service lasted three days. *The Pascal*, M. M. R. June 2, 1882, p. 685.

V. 102,750*l.*—A. £5320

29. In March, the ship *M.*, from Baltimore to Bremen, with 6,125 barrels of petroleum oil, came into collision with the Norwegian barque *P.*, and was so damaged that her master and crew deserted her. They were picked up about three miles from the Royal Sovereign lightship and taken to Dover by the steamer *Malleable*. The Norwegian barque *F. L.* found the *M.* waterlogged and without her main braces. The chief officer and two hands boarded her, and got her under sail. The *F. L.* kept close to her until she was under command, and then proceeded on her voyage. In about two and a-half hours the fishing smack *Q. V.* came up, and was sent to Nowhaven for a tug. Meanwhile the *M.* was kept under the shelter of the English coast, two hands from the lugger *B. N.*, two hands from the smack *L.*, both of which came up and stayed by her, and three hands from the lugger *A.* being put on board. The *L.* was sent to Portsmouth for a tug, and spoke the tug *R. H.*, which came up with the *M.* off the Nab lightship, and took her in tow to Portsmouth, but she took the ground on the bar, and it was necessary to get the services of the tug *V.* She was then dragged over the bar and brought into harbour. £700 to the *M.*, £2,000 to the *F. L.*, £600 to boatmen, £1,750 to tugs. *The Maryland*, M. M. R. June 15, 1877, p. 755. Value 12,000*l.*—Award £5050

30. In October, the screw steamer *A.*, 3,137 tons, 130 hands, 197 passengers, a general cargo, and a large quantity of specie and stores for the army in Afghanistan, bound for Calcutta, broke her after-crank shaft, had her engines disabled, and was drifting about under sail within thirteen miles of the coast *W.* of Ushant, there being a fresh breeze blowing. The screw steamer *T. H.*, with 39 hands, 5 passengers, and a cargo of jute, wheat, and tea, from Calcutta to London, and of the value of £108,700, came up, and was requested to tow the *A.* into Plymouth. Two hawsers were made fast, but immediately parted, but others having been bent on, towing commenced, and continued for about 100 miles during bad weather, continuously becoming worse, till the afternoon of the 18th, when both hawsers again parted. A fog coming on, and the bad weather increasing, the *T. H.*, after having tried again to tow the *A.* by means of a chain, which parted at once, went for assistance to Plymouth, and brought the tug *T.* and *H.M.S. V.* The *T. H.* proceeded on her voyage, and the *T.* and *V.* took the *A.* into Plymouth, four hawsers parting, and it being twice necessary to anchor on the way. *The Australia*, M. M. R. July 23, 1880, p. 936.

Value 530,000*l.*—A. £5000

31. In December, the steamer *C.*, 1,583 tons gross, from Rotterdam to London, laden with steel rails and railway materials, and manned by 33 hands, was about ten miles *S.W.* of the *Owers* lightship, when water was discovered coming into her engine-room, and shortly afterwards was reported to have come up to the stoke-hole plates, and to be increasing. Orders were given to steer for the *Isle of Wight*, and all boats got ready, but the majority of the crew lowered the boats and deserted the master, who got into a boat and went to the lightship. The *C.* was found by the steamer *Clierden*, 1,723 tons gross, from Riga to Newport, Monmouth, with twenty-two hands, and railway sleepers, which rounded-to and lowered her cutter, in which the second and third mate, the steward and two seamen, went in a heavy sea to the *C.*, and took off the third engineer and five firemen, who had been left in the stoke-hole, when the other hands deserted and could not get off, having no boat. After coming to anchor, and inspecting the *C.*, it was found that the sea-cock of the donkey-pump had been opened before the ship was abandoned, and the donkey-engine had been pumping in the sea, that the main injection valve had also been left open, and the condenser was leaking badly, causing the water to overflow from the hot-well in the bilges; the *C.* was ultimately cleared of water on the evening of the 16th, and on the 17th proceeded on her voyage. *The Carranza*, S. G. February 27, 1885; affirmed on appeal, April 26, 1885, pp. 135, 214.

Value 30,000*l.*—A. £5000

32. In April, the sailing vessel *B.*, 1,350 tons, from Liverpool to Barbadoes, with twenty-five hands, and a general cargo, during a severe gale, was thrown on her beam-ends, her master was drowned, and several of the crew were seriously injured. The mainmast and mizenmast were cut away, and the vessel partially righted herself. The first officer and crew were taken on board the barque *O.*, and landed at Madeira. Two days afterwards the *B.* was found, about 170 miles off Cape Ortegale, on her

beam-ends, with the lee side of her 'tween decks full, by the iron-built barque, C. F., 882 tons, value £14,150, from Penarth Roads for Sumatra. The C. F. stayed by her during the night, and put her mate and eight hands on board. The steamship S., 2,085 tons register, value £207,000, from Bombay to Liverpool, with a general cargo, then took charge of the B., and, after considerable difficulty, towed her into Falmouth in seven days, the hawsers parting once on the way. *The Boyne*, M. M. R. June 23, 1882, p. 782. Value 14,859*l.*—Award £5000

33. In November, in latitude, by account, 35°48' N., and longitude, by account, 19°40' E., the screw steamer C. was observed signalling by the screw steamer, G., 749 tons register, 100 horse-power, from Gibraltar, with railway iron and chains for Alexandria. The G. and cargo was valued at £25,000. The C. was in a position of desperate peril to human life and property, and by the exertion of those on board the G., was rescued therefrom. *The Cleopatra*, M. M. R. February 15, 1868, p. 213. V. 24,500*l.*—A. £5000

34. In January, the C., from Bombay to England, was in a disabled state in the middle of the Atlantic, her rudder being useless, and she was at the mercy of the wind and waves, with no hope of saving her. A foreign ship, herself disabled, with great skill and labour, and some danger, saved the crew, passengers and specie. *The Columbia*, 3 Hagg. 428. V. 10,000*l.*—A. £5000

35. In January, in the Bay of Biscay, about lat. 50° N. long. 6°20' W., the sea running high, wind fresh with rain, and squally, the steamer S. from Sulina to Bristol with barley, derelict, was boarded by the second mate and some of the crew of the steamship M., who found that the steering gear of the S. was washed away, the rod of the circulating pump broken, and the water over the floor in the cabins. She was taken in tow and brought to Corunna in three days. Two hawsers were broken. *The Scio*, M. M. R. June 4, 1875, p. 710. V. 29,191*l.*—A. £5000

36. In September, the brig-rigged screw steamer V., 1,686 tons nett and 2,588 tons gross register, with engines of 350 h.-p., forty-two hands, from Montreal and Quebec to London with a general cargo, broke her after engine. Next day her forward engine turned ahead, and her propeller dropped out and disappeared. She was picked up seven days afterwards, about 750 miles from Plymouth, by the screw steamer G., twenty-three hands, 1,692 tons, registered from New York to Delaware Breakwater in ballast. The G. took her in tow, and in seven days brought her to Plymouth. The weather was bad, the hawsers parted eight times, and during the towage there was a fierce hurricane. The G. was detained thirty-three days. Her value with cargo and freight was £24,000. *The Viking*, M. M. R. Dec. 24, 1880, p. 1646. V. 63,904*l.*—A. £5000

37. A derelict, dismasted and much damaged, at sea off Loophead, near the mouth of the Shannon, and drifting towards the cliff on a lee shore, was discovered, and with some danger boarded, by eighteen men, pilots and others, of the coast. She was by these parties, at considerable danger and with much labour, towed round the cliff, where a heavy sea was running, to the mouth of the Shannon, where being joined by seventeen other salvors she was, with their united assistance, towed up the Shannon, and brought to a safe anchorage, where they protected her from plunder and guarded her for several weeks, until the owners came forward and received possession of her. *The Windsor Castle*, 2 Notes of Cases, 53, Supp. (High Court of Adm. of Ireland). V. 20,000*l.*—A. £5000

38. The ship C. S. got upon a sand-bank in the river Mersey during a storm, and was in very considerable danger. She was rescued and towed off the bank by the united efforts of three steam-tugs, the U. K., the E., and the R., without any risk to the lives or property of the salvors. *Champion of the Seas*, S. G. June 6, 1862. V. 152,890*l.*—A. £4600

39. The British ship C., laden with cotton and grain, was lost on Ajax Reef, near Cape Florida, 120 miles from Key West. Fifteen wrecking vessels, having an aggregate tonnage of 1,161 tons, carrying 152 men, saved the ship's materials and 2,916 bales of cotton. They were employed thirteen days. One of the wrecking

schooners too, valued at £1,600, while loading alongside of the ship, took fire from the accidental upsetting of a lamp among the cotton, and was totally consumed. *The Crown*, Files of Court, 1857, cited in Marvin, 220. [American.]

Value 26,200*l.*—Award £4600

40. In July, the steamer A., 1,158 tons, was found, by H.M.S. D., ashore on the rocks E. of Perim, making water, and in a helpless condition. After ineffectual efforts to move her, the D. commenced to tranship the cargo. In five days 800 tons had been transhipped, which the D. took to Aden, leaving her second officer, a corporal, seven marines, and five lascars, on board the A. In six days the D. returned, and the rest of the cargo was got out, during boisterous weather and through a nasty sea, with the thermometer at 93° under double awnings. The D. left after seventeen days, but returned in fifteen days, and having tried unsuccessfully for two days to get her off the rocks, had to abandon her. *The Azalea*, 3 Asp. N.S. 240, n.; M. M. R. June 11, 1875, p. 744.

V. 22,400*l.*—A. £4500

41. In January, the Cunard steamer B., 1,628 tons, was disabled and lying hove-to under her main trysail and main topsail, and making signals of distress. The steamer C., 1,322 tons, from London to Halifax and Boston, with twelve passengers and a general cargo, value £57,000, bore down upon her, and after much difficulty towed the B. into Fayal Bay. During the towage the hawsers parted several times. *The Batavia*, *The Times*, May 6, 1881.

V. 72,500*l.*—A. £4500

42. In June, the screw steamer C. M., 2,014 tons gross and 1,388 tons nett register, from New York to London with a general cargo, including live cattle and sheep, in lat. 44°35' N. and long. 42°29' W., weather being fine and wind N.N.W., with a moderate breeze, was discovered with her propeller loose in the shaft and her engines disabled. She had been two days under sail on a N.N.E. course, when the screw steamer St. B., 2,222 tons gross, 1,447 tons nett, with engines of 300 h.-p., nominal working to 1,300, value £101,300, seven days out from Baltimore, bound for Liverpool, with thirty-two hands and a general cargo, including cattle, came up with the C. M., and took her in tow, under an agreement, for Queenstown; but owing to the propeller of the C. M. not revolving, and to the bad steering, the progress of the vessels was much delayed. The towing continued two days, until the Douats Rock lightship was reached, when pilots were taken aboard and a tug lashed to the C. M. to improve her steering power. The two vessels then proceeded into Cork harbour, where next day the C. M. was safely anchored. The St. B. had only one ton of coal left, and had exhausted all her provender for the cattle. *The Celtic Monarch*, M. M. R. July 22, 1881, p. 904.

V. 60,000*l.*—A. £4500

43. In July, the ship C. G., from Moulmein for London, the weather squally and bad, was sighted by the H. C., with her rudder gone, bow started, and otherwise damaged, and flying signals of distress. Her master, crew and passengers were taken off by the H. C., which succeeded in getting the C. G. into Cape Town in six days, though she was so damaged that to repair her would cost £2,400. £500 allowed, besides salvage for the expenses of the H. C. at Cape Town. *The Charlotte Gladstone* (Cape Town Vice-Adm. Ct.), M. M. R. June 25, 1880, p. 810.

V. not stated.—A. £4500

44. In December, the screw steamer F., 4,281 tons gross, from London for New York, broke the main shaft of her propeller in lat. 44° N. and long. 53°30' W., and was in considerable peril, the weather being severe, and the vessel drifting. In answer to signals the screw steamer M., value £61,600, from Hull to New York, with thirty-six hands and a general cargo, came up, and by request stayed by her all night. Next morning the M. took her in tow, and in four days got her to Halifax, 187 miles distant. The services involved no danger and but little difficulty to the salving vessel. *The France*, M. M. R. May 16, 1884, p. 310.

V. 127,000*l.*—A. £4500

45. In January, the ship I., 975 tons register, with rice for Liverpool, from Rangoon, was lying broadside to the sea, which was making a clean sweep over her, and with a heavy list to starboard, her foremast, maintopsail yard, maintop gallantmast, and jibboom gone, and with no sail at all except her spanker. The steamer C., from

Cork, with passengers and cargo, came up with her some twenty miles N.W. by W. of the Smalls, the wind blowing strong from W.S.W. with heavy seas. There were six feet of water in the hold of the I., and those on board her requested to be taken off. The C.'s lifeboat was lowered, manned by the chief mate and three seamen, who, with great difficulty and risk, succeeded, in two hours time, in getting the survivors of the crew of the I. on board the C. The C., owing to the severity of the weather, could not tow the I., but having only just enough coal to last her to Newport, proceeded thither and landed the crew of the I. Two days after the screw steamer E., 554 tons register, 120 h.-p., from Glasgow for Antwerp with a general cargo, fell in with the I. about twenty miles north of South Bishop's Light. The chief mate and four hands boarded the I., and found six or seven holes, of 1½ inch diameter, in the deck on the starboard side, close to the water-ways, through which the water was running into the hold. These were stopped up. Two hawsers were made fast and four hands left on board. After six and a-half hours' towing, when some twenty-five miles from Milford, the hawsers parted one after another. The E. stood by, and the chief mate and two men returned to her, but two stayed on in the I. During the night the E. and the I. parted, and the two men succeeded in preventing the I. from going ashore, and navigated her till she was fallen in with by the steamer R., 137 tons nett, 40 h.-p., from Portmadoc for Liverpool with slates, &c. Next day, with the assistance of a lifeboat and some men from five small schooners, the I. was got into St. Tadwal Roads, whence she was towed to Liverpool. £300 to the C., £500 to the E., £2,000 to the R., £500 to the lifeboat, £200 to the masters of the five schooners, £1,000 to the men who stayed in the I. *The Ireland*, M. M. R. May 3, 1872, p. 561. Value 16,522*l.*—Award £4500

46. In December, the steamer R., White Star Line, 3,707 tons, from Liverpool to New York, with crew of 125 hands, 23 saloon and 143 steerage passengers, and a general cargo, broke her shaft, and her steam power became useless. The screw steamer C., 2,770 tons, of the Anchor Line, from New York to Glasgow, with passengers, mails, and a cargo of fresh meat and other commodities, towed the R. into Sandy Hook, a distance of 280 miles, during which the hawsers parted several times. *The Republic*, *The Times*, March 8, 1881. V. 144,338*l.*—A. £4500

47. In May, in about lat. 39 N., long. 50 W., the steamer V. C., 2,909 tons gross, 1,898 tons nett, from Havana to Cadiz, with 228 passengers, mails, sugar, and tobacco, was disabled by broken machinery. The iron screw steamer T., 1,356 tons nett, 2,077 tons gross, 200 h.-p. nom., 25 hands, value £53,500, from Coosau River, with phosphate rock, took her in tow to Delgada breakwater at St. Michael's Island. The weather was bad nearly all the time, and in a squall the J. was struck by a heavy sea, and her cargo shifted. The hawser parted twice, and the master of the J. broke his collar-bone during the towage, which lasted ten days. *The Vera Cruz*, S. G. August 14, 1885, p. 521. V. 96,868*l.*—A. £4500

48. A British ship captured by the French was recaptured off Bluefields, Jamaica, by some persons who put off to her in a boat from the shore. *The Dorothy Forster*, 6 C. Rob. 91. V. 25,000*l.*—A. £4333

49. The ship B. damaged by collision. The master and all the crew but one man abandoned her. Fallen in with by the ship F., valued at £2,000, and her cargo at £800. The master of the F. put a crew on board the B., who, with great peril and severe labour, took her into the Chesapeake, a distance of 3,000 miles. *The Blaireau*, 2 Cranch, 240, cited in Marvin, 189. [American.] V. 12,054*l.*—A. £4280

50. In October, the barque K., 795 tons, from New York to Liverpool, with Indian corn, in a heavy gale, lost her mainmast and foremast, became unmanageable, and was abandoned. She was sighted by the Norwegian barque N., 783 tons register, who put a crew of five hands on board; but next day this crew deserted her. The barque B., 521 tons register, came up, put men on board, and took her in tow for seven days, but lost sight of her on the eighth day. Those from the B. on board her, however, remained for fourteen days, and then accepted the services of the screw steamer L., which, after a towage of two days and six hours, brought her safely into harbour,

having deviated from her course to do so. £200 to the men put on board the K., £2,800 to the B., £1,200 to the L. *The Killeena*, M. M. R. March 11, 1881, p. 304. Value 12,633*l.*—Award £4200

51. In January, 1874, the three-masted barque K., with cotton, was found derelict about twenty miles N.N.W. of Etaples, and twenty miles W. of Boulogne, by nine luggers and the steam-tug P. She had been in collision with the M., and had a hole knocked in her port bow below the water-line; her foremast was gone, and her rigging-gear and sails were hanging over her bows. A French fishing-boat, the St. C., saved all that was portable of the cargo, and took it to Boulogne. The other salvors brought the K., after much trouble, into Dover harbour. £2,250 to the nine luggers, £1,500 to the P., £200 to the French salvors, and £200 to certain English salvors. *The Kathleen*, M. M. R. June 26, 1874, p. 816. V. 14,000*l.*—A. £4150

52. In May, the steamship W. was on fire at the back of the Isle of Wight. The 300 passengers and crew were rescued by the steamer S., the cutter M., and a Trinity pilot, and the ship was towed into Spithead by the tug C. £2,500 to the C., £25 to the pilot, £1,000 to the S., £600 to the M. *The Wilhelm III.*, M. M. R. Aug. 4, 1871, p. 979; 1 Asp. N.S. 132, n. V. 50,000*l.*—A. £4125

53. The ship R., laden with cotton and lead, struck heavily upon an inner reef, sprang a leak, and had several feet of water in her when boarded by the wreckers, who put a powerful steam pump on board, without which it would have been impossible to have prevented the ship's filling with water, lightened her of 1,825 bales of cotton, and hove her off. *The Rockland*, Marvin, 216. [American.] V. 26,000*l.*—A. £4108

54. The ship E. H., laden with 3,039 bales of cotton, was ashore about fifteen miles north of Cape Florida. Eighty men, having ten vessels, four of them, however, of the smaller class, lightened the ship of 961 bales of cotton, carried out her anchors, and hove her off. *The Ellen Hood*, 5 A. R. 1855, cited in Marvin, 215. [American.] V. 38,478*l.*—A. £4107

55. The P. and O. steamer A., 2,000 tons, on the 12th June, 1859, struck on a rock in the Red Sea. The life-boat went off for assistance, and on the 14th June met H.M.S. C., which furnished her with necessaries to enable her to proceed to Aden. The C. took an officer of the A. on board, and reached her on the 15th June. The crew and passengers were encamped on the highest part of the rock, and were much debilitated by the extreme heat and want of water. The C. took on board the A.'s mails and 172 persons, and a portion of the crew of the C. were left on the A. with the view of saving as much of the cargo, stores, and luggage as possible. On the 16th June the captain of H.M.S. F. was informed at Aden by the agent of the P. and O. Company of the position of the A. On the 17th June the F. reached the wreck, and, with the assistance of natives, used every endeavour to relieve her of her cargo. On the 20th the C. returned, with lighters, tanks, and Arab divers, and by the united efforts of the crews of the F., C., and A., a considerable portion of the cargo was taken on board the C. The persons on board the A. were in great danger, and the cargo for the most part was under water. The crews of the salving vessels were very much injured by their exertions, the salvage services being performed at the height of the hot season in that latitude. *The Alma*, S. G. Nov. 12, 1861. V. *Estimated by the plaintiffs at 45,000*l.*, and by the defendant at 22,000*l.**—A. £4000

56. In October, the screw steamer A., 1,279 tons nett, 1,953 tons gross register, from Cadiz for Halifax (N.S.), in lat. 42° 50' S., long. 39° 45' W., had her rudder disabled, the stock being broken in the trunk. Next day there was a gale, the steering-gear which had been shackled on was carried away, and she would not steer. She kept on her course till the 27th, and then signalled. She was then rolling very heavily in the sea. The screw steamer B., value 65,000*l.*, 1,274 tons nett, 1,913 tons gross, 250 h.-p., forty hands, some passengers and cattle from New York to Avonmouth, bore down to her about 300 miles from St. John's, Newfoundland, and agreed to tow her. After two hawsers had given way, two lengths of stream chain were made fast to them, and towing continued till the A. sheering out on the port quarter of the B. carried away one of them. The B. stood by the A. all night. Next morning there

was a hard gale blowing, and the sea was heavy, but another hawser was made fast. The B. towed her as far as the Amhurst Light; then a heavy gale springing up from the S., the head of the B. was put round, and she stood out to sea. When the weather moderated the services of a tug were engaged, and a pilot taken on board, and the A. was anchored in St. John's Harbour about 4 p.m. of the 31st. *The Avlona*, M. M. R. March 10, 1882, p. 303. Value 69,753*l.*—Award £4000

57. In June, the screw steamer C. of B., 2,960 tons, with 472 passengers, 137 hands, and a cargo of fresh beef, butter, new cheese, bacon, and general merchandise from New York for Liverpool, was in lat. 49° 88', long. 23° 30' W., about 600 miles from Queenstown, with a broken propeller shaft, drifting about unable to steer and heading S.S.W. The screw steamer S., 110 hands, 240 passengers, and a general cargo, including fresh beef, butter, and lard, from New York to Liverpool, took her in tow, and in three days she was anchored in safety outside Queenstown Harbour. *The City of Berlin* (C. A.), M. M. R. July 22, 1877, p. 946. V. 221,920*l.*—A. £4000

58. In November, the screw steamer E., 4,537 tons gross register, and rigged as a barque, 240 passengers and ninety hands, when about 130 miles from the Fastast Light, broke the blade of her screw propeller and had her funnel carried away in weather so boisterous that for six days she did not dare to put a boat on the water. She was found unmanageable and helpless by the screw steamer P., value £106,000, 2,867 tons gross register, with engines of 300 h.-p. nom. A boat was launched with great courage and gallantry from the P., and the P. agreed to and did stay by the E. for six days, until all danger was past. *The Erin*, M. M. R. Feb. 24, 1882, p. 237. V. 70,000*l.*—A. £4000

59. In November, the screw steamer K. C., 1,268 tons register, brigantine rigged, 180 h.-p., seventeen hands, from China to London, with a cargo of tea, twenty miles N.W. of the island of Jebel Zuker, in the Red Sea, broke her crank shaft and became a log on the water. The weather was fine, but if it had changed the K. C. would probably have been drifted by the currents on to the coral reefs. The screw steamer J. D., value £75,000, 1,807 tons gross register, 140 h.-p. nom. working to 500, from Bombay to London, took her in tow, and without deviation from her course or any danger to herself or crew, brought her to London in ten days. *The Kenmure Castle*, M. M. R. Feb. 24, 1882, p. 237; 7 P. D. 47. V. 75,144*l.*—A. £4000

60. In May, about 250 miles N. of the Azores, the steamer H., 2,572 tons gross, 1,749 nett register, 360 h.-p., fifty-four hands, four passengers, and a general cargo, from Bahia to Antwerp, having broken her propeller blades, was discovered by the iron screw steamer P. M., 2,568 tons nett, 3,923 tons gross register, 500 h.-p. nom. 2,500 h.-p. actual, value £145,000, with 100 hands, live cattle and sheep, and seven passengers, from New York to London. The P. M. had only eight days' supply of coal and of cattle food, but nevertheless took the H. in tow through a heavy sea and an E. wind to Falmouth. During the towage, which lasted seven days, two hawsers were broken and several of the sheep were hurt. *The Hanover*, Jan. 19, 1883, p. 81. V. 50,648*l.*—A. £4000

61. In April, the screw steamer P., 2,405 tons register, 600 h.-p., with a general cargo, 110 hands, 112 passengers, and the West India mails, seven days out from Barbadoes for Southampton, 600 miles E.N.E. of Fayal, broke her propeller shaft; but the weather being moderate, made her course for Fayal under canvas. A week later the screw steamer F., 1,500 tons register, from Philadelphia to Gibraltar, value £45,250, found her down by the stern and being pumped. By agreement the F. steered a course for St. Michael's, and kept near the P. The weather became rapidly worse and increased to a severe gale, in which the F. shipped large quantities of water and strained heavily. She, however, kept by the P. all night and till 1.30 p.m. next day, when the wind was blowing a hard gale from about N.; the island of Santa Maria was about ten to fifteen miles to the S.E. and the Formegas Rocks about ten miles to the E.S.E. of the P., which was lying with her head to the E., and making a great deal of leeway, unable to wear or tack, and in danger of stranding on the rocks. The F. got a tow-rope on board the P., towed her towards the land in a N.E. by E. direction, and on getting well under the land succeeded in turning the P., and at about 4.45 p.m. towed her to St. Michael's, stayed by

her outside the breakwater till next morning, when she was taken to a safe mooring inside the breakwater. The F. took the mails on to Lisbon, and the P., after repairs, was taken by a steam-tug to Cape Finisterre, thence to the Scillies, and ultimately to Southampton. *The Para*, M. M. R. July 23, 1880, p. 935.

Value 186,159*l.*—Award £4000

62. In September, the steamer R., 1,562 tons nett, and 2,288 gross, from Bombay for Dunkirk, with grain and seed, was about twelve miles south of the Chaussée de Sein, nine or ten miles from shore. She had had both lifeboats smashed, had sprung a leak, and the water was increasing in her hold and stoke-hole, in spite of all hands at the pumps. She had put out her engine-room fires, and was nearly on her beam-ends. She was found thus by the screw steamer G., 734 tons gross, from Cardiff for Bordeaux, with coal and sixteen hands, who by request took her in tow, and after forty-four hours got her safely through heavy wind and strong opposing currents to an anchorage off St. Nazaire, 120 to 130 miles distant. *The Raisby*, M. M. R. April 4, 1884, p. 215; S. G. May 22, 1885, p. 326. V. 35,000*l.*—A. £4000

63. In October, the screw steamer R., 2,366 tons register, from Antwerp to New York, with 521 passengers and 97 hands, which had lost her screw propeller through striking a sunken wreck when about 446 miles west of Bishop's Rock, was sighted signalling for assistance by the iron screw steamer M., value £27,000, 1,641 tons gross register, with engines 200 h.-p. nom. working up to 700 h.-p., from Shields for Havana, with coals. The M. herself had lost her after-wheel and three boats, and her jolly-boat was damaged in a recent storm. The M. took the R. in tow for Falmouth, about 180 miles W.S.W. of the Lizard Point. About midnight the two hawsers parted, and the R. had to lay by till about 9 a.m. or 11, when another hawser was got on board, and she was towed to Falmouth, arriving there about 9 p.m. The M. was delayed for sixty-four hours. The weather was most boisterous, and there was continual and imminent risk of collision. *The Rhynland*, M. M. R. March 25, 1881, p. 368. V. 106,000*l.*—A. £4000

64. In September, the iron screw steamer S., 1,556 tons, from Port Said to London, seventy-three hands, fifteen passengers, cargo of tea and general goods, and £28,000 in specie, came into collision with the J. D., about eighty-five miles S.W. of Ushant. The C., from London to Lisbon, with a general cargo, at considerable risk to life, took the eighty-eight persons off her and the specie. The C. had to go out of her way considerably, and was under two days' steam in taking the passengers to Falmouth. *The Sarpedon*, M. M. R. May 11, 1877, p. 597. V. 28,000*l.*—A. £4000

65. A vessel sailing in company with another under the same orders, rendered salvage services of a very meritorious and efficient character to her consort vessel when in distress in the course of the voyage. *The Waterloo*, 2 Dod. 443.

V. 275,000*l.*—A. £4000

66. The G. S., of 1,186 tons, got upon a rock called Gingerbread Rock, near the Birnini Islands, and thereby sustained considerable damage, and was in very imminent danger. The T., and nineteen other schooners, the crews of which numbered about 400, went to her assistance, and after fifteen days' services, attended with risk of life, succeeded in towing her to the port of Nassau, New Providence. *The Golden Star*, S. G. June 27, 1859. V. 7,546*l.*—A. £3773

67. The iron ship B. C., 1,785 tons, was towed in bad weather through a heavy sea, for forty hours, 250 miles, into Falmouth Harbour, first with one and then with two hawsers, from a position of great danger, and in a damaged state, by the screw steamer C., 667 tons. *The Brodrick Castle*, M. M. R. December 17, 1875, p. 1615.

V. 77,000*l.*—A. £3500

68. In January, the screw steamer C., 1,227 tons register, from Charleston to Revel with cotton, lost the blades of her propeller near the Bermuda reefs, and being disabled, signalled for assistance. The steamer Canina for New York with mails, came up and, after some difficulty owing to the roughness of the weather, towed the C. in safety to Bermuda. *The Castlewood*, M. M. R. 1880, p. 784—P. C.

V. 80,000*l.*—A. £3500

69. In February, in lat. 45 N. and long. 8° 13' W., the screw steamer H., 1,694 tons gross and 1,085 nett register, twenty-two hands, and a cargo of wheat from Bombay to Antwerp, lost her rudder in a S.S.W. gale, and was at the mercy of the wind and

sea. Sail was set and the engines kept at half speed. The steamer I., 861 tons register, 130 h.-p. nominal, from Leith for Odessa with coals, after some trouble got hawsers on board the H., and, following in her wake, steered her on her course for Falmouth for thirty-six hours. The hawsers parted three times, and the I. lay by the H. The I. then towed ahead of the H., but the hawser again parted. The H. then used her own steam power, and the I. steered her, following aft again for thirty-six hours more, during which two hawsers parted, and a fog impeded the progress of the vessels. The I. was then boarded by a Falmouth pilot, and in six hours more the H. was brought to anchor in Falmouth harbour. *The Hather-sage*, M. M. R. May 12, 1882, p. 590.

Value 4,400*l.*—Award £3500

70. In January, the iron barque J., 1,776 tons, from Liverpool for Calcutta with salt, was fallen in with, in lat. 49 N., long. 4° 38' W., by the screw steamer A. She was derelict, with ten feet of water in her hold, only three lower masts and bowsprit standing, and all the wreckage hanging over her side. There was a heavy sea running at the time. The J. was taken in tow, and with great skill, and after much difficulty, was taken to Plymouth. *The Jorawur*, M. M. R. June 4, 1875, p. 709.

V. 10,000*l.*—A. £3500

71. A quantity of derelict tallow, floating upon the high seas in the neighbourhood of the Kentish Knock lightship, was picked up by several luggers, smacks, and cutters, and taken into Ramsgate, without any risk to life, limb, or property of the salvors. The wind at the time was not blowing hard, nor was the sea rough. Salvors to pay the five per cent. to Ramsgate Harbour. *Cargo ex Regina*, S. G. May 27, 1862.

V. 9,500*l.*—A. £3500

72. In February, the screw steamer G., 1,867 tons gross, from Alexandria for Hull with a general cargo, when about sixty miles from Ushant, sprang a leak and broke her piston rod, disabling the engines. Two days afterwards, the screw steamer I. A., 1,148 tons gross, value £34,900, from Smyrna for London, with nineteen hands, and general cargo, found her about forty miles N.W. by W. of Ushant, helpless, unmanageable, leaking, and in danger of foundering, her well pumps only workable by hand. The I. A. towed her alone, and with great difficulty and danger, for sixty-eight miles towards Plymouth, the service occupying forty-four hours, during which the hawsers parted twice, the weather being bad. The I. A. then fouled her propeller with the hawser that parted. The I. A. then fetched the screw steamer B. K., 3,358 tons gross, value £167,500, with seventy-five hands, 400 h.-p., and 300 effective, from Lyttelton for London, which took the G. in tow for sixty or seventy miles, and in sixteen hours got her into safety. £2,000 to the I. A.; £1,500 to the B. K. *The Gamma*, M. M. R. April 4, 1884, p. 215.

V. 34,670*l.*—A. £3500

73. In April, the steamer H., 3,136 tons register, from New York to Bremerhaven, with general cargo, broke the thrust-shaft of her propeller, and being schooner-rigged, sail was set to keep her in the track of vessels. She was found by the screw steamer C., 1,361 tons gross, from New Orleans to Bremen, with cotton-seed and oil-cake, about 600 miles west of Falmouth. The C. lay by her for a time, and it being too rough to put out a boat, after some trouble got a hawser attached and began to tow, but after an hour the hawser parted. The C. lay by her all night, and at daylight made fast a hawser and two ropes, which however parted in a very short time. The strong wind and high sea prevented any further attempts to attach hawsers until the next morning, when, the weather having moderated, the C., which had lain by the H., managed to attach a hawser, and got the head of the H. round to the east. The hawser, however, very shortly afterwards parted twice, and the C. again had to lay by all night. Next day the weather moderated and the towing recommenced, and after five days the H. was brought to an anchorage in Falmouth. The H. was not in imminent danger of shipwreck or loss, and was met by several other vessels, and there was not any serious danger to the salvors, or pronounced deviation from their course. *The Habsburg*, M. M. R. August 10, 1883, p. 1005.

V. 60,000*l.*—A. £3500

74. In February, the screw steamer H., 1,754 tons, for Delaware in ballast, having broken her crank-shaft when about 500 miles W. of the Azores, and being unable to weather Trafalgar Shoals, came to anchor with both anchors out in a strong gale from W.N.W. dead on shore in a very high sea, within half a mile of dangerous reefs, and about four miles off shore. In answer to signals, the screw steamer T.,

1,249 tons gross, 98 h.-p. working up to 400, value £14,000, from Pavona to Huelva, in ballast, with twenty-one hands, came up, and with much danger and difficulty lowered a boat, with five hands, and the master boarded the H. The 2½ in. wire hawser was after considerable difficulty, and with damage to the boat, made fast to the H., the hawser of the H. made fast to the T., the anchors were hove, and towing commenced; but in three hours the wire hawser broke twice, and two hours later the hawser of the H. also parted. The H. was then clear of the Trafalgar shoals, and the T. stood by her all night as she drifted through the Straits of Gibraltar under storm-sail, the wind being W. At daylight two hawsers were made fast, and towing recommenced, but the gale increased so much that it took fourteen and a half hours to proceed fifteen miles, and it was not till twelve hours later that the H. was got safely to Gibraltar Bay. The T. was detained four and a half days, was severely strained, and incurred expenses to the amount of £63. *The Hartlepoons*, S. G. April 2, 1885, p. 215. Value 16,000*l.*—Award £3500

75. In July, the screw steamer S., schooner-rigged, from St. Thomas to Havre with a general cargo, passengers, and the West Indian mails, broke her main-shaft in the stern tube in lat. 34°51' N. and long. 44°57' W., about 970 miles from Punta Delgada in the Azores. Sail was set, and a course shaped for Punta Delgada. On the 2nd September she was within 170 miles of that place, when the screw steamer A. D., value £27,000, 1,107 tons gross register, 150 h.-p. nom., working up to 550 h.-p., twenty-one hands, cargo iron ore for Philadelphia, from Benisaf, in Algeria, found the S. out of command, lying with her head to the E. with square foresail, topsails, top-gallant sail, and fore-trysail set, making very little way, and steering very wildly. There was a strong sea running on her port quarter, and she was rolling heavily. She had been driving about the ocean for thirty-five days, and had drifted 500 miles to the eastward. After some hard towing, owing to the bad steering of the S. and her sheering, Punta Delgada was sighted on 3rd September, and on 4th September the S. was towed safely into harbour. *The Severn*, M. M. R. July 28, 1882, p. 941. V. 66,700*l.*—A. £3500

76. The barque S. A., being in the Downs during a violent gale, began to drive fast to leeward, with her head towards the rocky shore. The steam-tug S., at the greatest risk to herself, got a hawser from the barque when within a ship's length from the beach, and towed her into deep water. She sustained damages to the amount of £800. *The Spirit of the Age*, S. G. February 27, 1857; Swabey, 286. V. 62,000*l.*—A. £3500

77. The ship S. N., laden with sugar and tobacco, was three feet aground on Crocus Reef, an exposed and dangerous reef. The ship laboured and ground on the bottom, wearing off all the afterpart of her keel to the garboard streak, and several of her planks nearly through. It is probable that, in the course of another tide, she would have worn a hole through her, and filled with water. Eight wrecking vessels, of the aggregate burden of 687 tons, carrying in all ninety-two men, were employed thirty-six hours in lightening the vessel, and in carrying out the ship's anchor, and heaving her off. *The Sierra Nevada*, Marvin, 216. [American.] V. 17,000*l.*—A. £3400

78. The ship B., laden with cotton, was lost on Carysfort Reef. Twelve large vessels, carrying 133 men, saved the cargo. *The Brewster*, Marvin, 218. [American.] V. 10,081*l.*—A. £3360

79. In March, the screw steamer N., 1,296 tons nett, 2,010 gross register, got on a coral reef near the Gulf of Suez, lost three anchors, and had no means of getting off the reef. The wind and the sea were setting her further on it, and she was in a condition from which she could not be extricated without steam-power. She was surrounded by Arab dhows in the hope of plunder. The screw steamer B., 1,339 tons nett, 2,103 gross register, with 275 h.-p. engines working up to 1,200, and value £135,000, towed off the N. at considerable risk to herself. The services lasted eight hours. *The Newnham*, M. M. R. December 2, 1881, p. 1521. V. 33,444*l.*—A. £3300

80. On the 20th May the S. was driven on the rocks and thrown on her beam-ends on the Falkland Islands, where she was found on the 12th June, by the American ship W., engaged in fishing and sealing. The master of the W. took measures to get her off, and after unlading half her cargo, he got her afloat on the 21st June, and ready for sea on the 7th July, and carried her to Valparaiso, whither she was

bound. Salvage of ship settled by arbitration at £600; salvage of cargo, £1,500; allowed for contingent losses, £1,000; for master's expenses, £200. *The Salacia*, 2 Hagg. 262. Value 40,400*l.*—Award £3300

81. The brigantine R., 250 tons, derelict, was fallen in with by the iron screw steamer S., 836 tons, value £138,000, from Melbourne for London, about 220 miles west of the Lizard. The mate of the S. was sent on board with three hands, who navigated the R. for eighteen days under circumstances of great danger and hardship, and saved her from a total loss. The food on board was very bad, and for three days the men had to live on biscuits, and the S. was delayed very considerably on her way to London. Expenses, amounting to £600, were incurred by the owners of the S. in completing the service and allowed. *The Rasche*, L. R. 4 A. & E. 127; 42 L. J. Adm. 71. V. 6,694*l.*—A. £3290

82. The B. struck upon the Gunfleet Sand and was lost. Fifteen boats and sixty-seven men were employed fourteen days in getting out and saving the cargo. *The Brothers*, 2 Hagg. 195. V. 96,801*l.*—A. £3225

83. The barque C. observed the brig G. a wreck and derelict. Part of the crew of the C. were put on board the G., and she was taken to Madeira to be repaired, and then brought to London. The salvors had expended £1,000. *The Georgina*, S. G. December 18, 1856. V. 7,000*l.*—A. £3200

84. The brig C. found the brig C. in latitude 32° N. and longitude 74° 30' W., and put a salvor crew on board, who found five feet of water in her. They pumped her out, and with considerable difficulty got her into Delaware Bay in about ten days. *The Cora*, 2 Wash. 80; 2 Peters, Ad. Dec. 362, cited in Marvin, 191. [American.] V. 9,461*l.*—A. £3153

85. The H. E., in latitude 40° N., longitude 54° W., was derelict without a rudder; and had nine feet of water in her. The master of the H. put four seamen and six passengers on board the derelict as a crew to get her into port, the salvor crew constructed a rudder, but failed in shipping it. They steered by the sails with bad success, and were constantly pumping an entire month, when they were met with in a condition of exhaustion and discouragement by the brig P. After some consultation a new salvor crew was made up, consisting of part of the original salvors and some new men from the P., including the mate. A rudder was now constructed and hung, and at the end of another month they brought the H. E. into Boston. *The Henry Ewbank*, 1 Sum. 400, cited in Marvin, 190. [American.] V. 6,297*l.*—A. £3146

86. In December, 1879, the Italian screw steamer M., 2,425 tons register, seventy-one hands, seventeen passengers, general cargo from London to Calcutta, arrived off Dartmouth, making about 7 knots on a quarter to half flood tide, in foggy weather, with a fresh E.N.E. breeze, when she took the ground at the east end of the Skerries Shoal, on a bank of sand and shingle. The sea was smooth, with a slight swell, the flood tide was setting to the N. & E. over the shoal. The screw steamer U., with passengers and a general cargo, anchored close by the M. A hawser was secured on board the U., and after four hours' towing the M. was got off. Meanwhile the tug M. came up, stood by, and carried messages from the M. to the U. When the M. came off, the tow-rope was cut, but fouled the propeller of the M. Sail was made, and the vessel got into deep water. Another hawser was then passed on board the U., which began to tow, but the hawser soon slipped, and the M. had to anchor, at 10 p.m. till next morning, when the U. towed the M. to Plymouth in fourteen hours. £3,000 to the U.; £120 to the M. *The Manilla*, M. M. R. June 4, 1880, p. 720. V. 116,362*l.*—A. £3120

87. The ship Y., laden with coffee and pork, was lost on the reef near Cape Florida. Nine large vessels were employed in saving the cargo. *The Yucatan*, Marvin, 218. [American.] V. 7,030*l.*—A. £3023

88. In October, during a heavy gale from the westward, the A. was sighted off the North Foreland by the tug V., proceeding under three topsails, with an ensign flying at the peak and the union jack at the fore-royal masthead, followed by the steam-tugs N. and D. The V. got up to her, about two miles off the Elbow buoy, half an hour before high water. Both anchors were gone and her windlass was broken. Her master asked to be held. There was a very fierce gale, and the sea was very heavy;

but the engines of the V. were disconnected and a hawser got on board the A. Towing then commenced in a northerly direction. The hawser broke, and the master of the A. could not, as requested, set topsails and wear ship, because they were all split. Next morning the A. wore with her topmast staystail from N.N.E. to S.S.W., the gale from W.N.W. continuing with great violence. When the weather moderated a rope was made fast, and the V. recommenced towing. Soon after the H. came up, and assisted in the towage towards the Thames. Three hours after the last Goodwin light was passed they entered the Princess Channel, and the A. was there held until the tide flowed sufficiently to allow of her being towed across the shallow water. The A. had thirty hands on board and five passengers; the tugs had eighteen hands between them, and were of the value of £19,000. Steam power was absolutely necessary to save the A. from very grave peril, and the services of the V. lasted a day and a half; those of the H. three hours and a half. £2,000 to the V.; £1,000 to the H. *The Allanshaw*, M. M. R. Dec. 2, 1881, p. 1521.

Value 70,000l.—Award £3000

89. In September, the steamer G. E., with 400 passengers, a large cargo, and a crew of about 400 hands, while proceeding from Liverpool for New York, about 280 miles west of Cape Clear, encountered a heavy storm, which disabled her paddle-wheel and boats, and broke her rudder shaft. She fell into the trough of the sea, her sails were blown away, and she was quite unmanageable. Her crew exhausted all their resources to get her again under command. In this emergency the services of a passenger, a mechanical engineer, were accepted by the master. Under his instructions a temporary apparatus for steering was attached to the rudder shaft with great labour and danger. The court, holding that the services were of an extraordinary nature and beyond the line of a passenger's duty, awarded salvage. *The Great Eastern*, 2 Asp. 148; 11 L. T. N.S. 516. [American.]

V. 100,000l.—A. £3000

90. In May, the screw steamer B. C., 892 tons nett register, with twenty-three hands and a general cargo, from New York for Leith, broke her propeller shaft inside the boss of the propeller in lat. 45° 57' N. long. 48° 02' W. The weather was fine but cloudy, and there was a fresh breeze from N.W. She proceeded under sail under perfect command, making 1½ knots to 2½ knots per hour, on a course a little to the S. of her proper course, but was rolling heavily and driving to leeward, when the three-masted schooner-rigged screw steamer C., 4,135 tons gross and 2,214 tons nett register, value £108,425, seventy-eight hands, 952 passengers, and a general cargo, from London for New York, came up with her. A boat was sent to the B. C., and she was taken in tow towards Halifax, the B. C. steering very badly. The towage continued, and on the second day a fog came on so dense that the vessels could not see each other. On the third day a hawser parted; on the fourth the dense fog made it necessary to put the engines dead slow, and Halifax was reached after five days' towage for 876 miles. *The Bywell Castle*, M. M. R. Aug. 12, 1881, p. 1008.

V. 31,118l.—A. £3000

91. In November, during a terrific S.S.W. gale, with rain, sleet, and hail, and in a heavy sea, the barque C. struck the shore stern on in the middle of St. Margaret's Bay, and was beating heavily. Her master and crew were saved by a lifebuoy from the shore. Her starboard bower anchor, with a chain were hauled high up the beach and secured, and her port kedge anchor, with a hawser attached, taken out, at great risk, by the lugger *Friend of All Nations*, and laid in a S.S.E. direction. Her port bower anchor was laid in the same direction with much risk and skill by the tug A. She was lightened by the boats M. and J. and came off. She was then taken in tow by the A., and steered by means of two cables made fast to the lugger; gangs were employed in pumping; she was towed to Sandwich Flats and run on the mud there. Next day the A. and the tug Aid towed the C. safely into Ramsgate harbour, where she was found to have fourteen feet of water in her. *The Choice*, M. M. R. July 15, 1865, p. 879.

V. 37,000l.—A. £3000

92. In November, the ship C. S., 921 tons, from London to Sydney, with a general cargo, which had experienced a most severe gale the day before, had been in two collisions, lost both anchors, and had only forty-five fathoms of chain left, was drifting in the vicinity of very dangerous sands between four and five miles from the Kentish Knock, when she was discovered by the tug M., 74 h-p. The wind very

strong from W.S.W., and the sea very heavy. The M. took her in tow, but could only proceed at the rate of one mile an hour. In about six hours the tug B., 450 h.-p., came up, and, having disconnected her engines, took a rope on board. The two tugs then towed her up the Prince's Channel, and into the Thames to Greenhithe, in about nine hours, where she was moored for the night, and next day taken to the East India Docks. *The Cutty Sark*, M. M. R. November 30, 1877, p. 1526.

Value 85,000*l.*—Award £3000

93. The ship E. was ashore upon Carysfort Reef. Seven wrecking vessels, carrying in all 100 men, lightened her of 530 bales of cotton, and heaved her off. When off the reef, she was still in an intricate and difficult channel, requiring an expert pilot to extricate her. *The Euphrasia*, 4 A. R. 136, cited in Marvin, 214. [American.]

V. 9,294*l.*—A. £3000

94. In February, the steamer L., from Para to Liverpool, with passengers and a general cargo, was disabled by the breaking of her propeller shaft, when about 500 miles to the southward and westward of Cape St. Vincent. Sail was thereupon made, and she was put on a south-easterly course, in order to keep her in the track of steamers. The passengers and crew were placed on a reduced allowance of provisions, and the captain had given orders for the allowance to be still further reduced. The Belgian mail steamer P., for Monte Video, with mails for Belgian government, towed the L. in eight days to Pernambuco. In consequence of the delay caused by the services the owners of the P. had to pay a fine of £800 to the Belgian government. *The Lisbonense*, M. M. R. 1883, p. 1422.

V. 57,000*l.*—A. £3000

95. The iron ship M. S., 1,243 tons, off the south coast of Ireland, encountered a very severe gale, and lost her foretopmast and fore main and mizen topgallant masts; the second mate was killed, and six seamen disabled. The steamer E., 300 tons, ninety-eight nominal h.-p., with cargo and passengers, towed her in six hours to Queenstown, a distance of eleven miles. The tow ropes broke in the course of the service, and the E. incurred some danger in securing them. The crank pin of the engine was broken, and the E. was detained six days to repair and coal. *The Mary Stenhouse*, 8 Ir. Jur. N.S. 58.

V. 115,000*l.*—A. £3000

96. In April, the screw steamer P., 1,882 tons nett register, with engines 212 h.-p. nom., from Liverpool to New York, with eighty hands, 770 passengers, and a general cargo, in lat. 46° 47' N. and long. 39° 26' W., broke her propeller shaft and disabled her engines. She proceeded under sail through a heavy sea, the wind blowing a fine breeze from N.N.E. In answer to signals the screw steamer C. of B., 1,222 tons nett, 1,726 tons gross register, value £54,000, from New York to Bristol with American produce, 100 head of cattle, and twenty-seven hands, came up, and by agreement took her in tow, after some trouble, towards Halifax, but the coal threatening not to last out, by consent of the master of the P. took her to St. John's, which was reached in about two days. By these services the C. of B. was delayed nine days. *The Palmyra*, M. M. R. July 8, 1881, p. 841.

V. 39,690*l.*—A. £3000

97. In March, the screw steamer S., 1,060 tons gross, was discovered about lat. 48° 20' N. and long. 7° 20' W., by the screw steamer G., 778 tons gross, with her crew throwing cargo overboard and in a sinking state. The wind was blowing fresh from the S.S.W., and there was a heavy S.W. swell. After much danger and difficulty two hawsers were made fast. The G. then began to tow ahead slowly, got the head of the S. round, and towed her N.E. towards Falmouth. After brsaking the hawser three times she was, in forty-six hours, got to about six miles S.W. by S. of St. Anthony's Light. Here a pilot was got, and she was towed into Falmouth, with fourteen feet of water in her hold. *The Santorin*, M. M. R. June 1, 1877, p. 691.

V. 15,200*l.*—A. £3000

98. In October, the S., full-rigged ship, 1,176 tons register, struck on the Middle Mouse, with her head on the rocks and her stern afloat, with a list to starboard, and the sea breaking over her, during a moderate W.S.W. gale, with a heavy sea, at nearly low water. In this position, being left by her crew, she was found by the tug G. W., 300 tons and 130 h.-p., value £13,000, which had received information of her state from the tug K., then engaged in towing another vessel, but which left her tow to give the information. With great difficulty the captain of the G. W. and two men went ashore in a boat from the tug, and found that the ship's lamps, cabin

furniture, and other effects had been removed from her. Shortly afterwards she began to thump heavily on her port bilge. The G. W. sent off a boat with three hands, which made fast a 9-in. towing hawser, and the tug then began to tow the ship. A second hawser of thirteen inches was afterwards passed to the ship, and she was towed to Liverpool during a hurricane. The services lasted four days. £60 to the K., £25 to the mate who boarded the S., £40 to two seamen, £2,875 to the G. W. *The Sarah*, M. M. R. Jan. 18, 1878, p. 76.

Value 6,566*l.*—Award £3000

99. The S., derelict, was in a state of imminent danger, with her port holes and her scuttles open, three feet of water in her hold, and making water fast. The A., value £140,000, one of the salvors, came to the S., but was not strong enough to perform salvage service alone, and therefore agreed with the A. A. that the salvage should be shared by them equally, the A. A. being a large vessel and having a more numerous crew. Some of the A. A.'s and A.'s crews were put on board the S., and the vessel was conveyed into port, a distance of some fourteen or fifteen miles. *The Scindia*, M. M. R. September 8, 1866, p. 1136; L. R. 1 P. C. 241.

V. 31,000*l.*—A. £3000

100. The steamboat T. P. L. was aground, and extensively on fire in her hold, about sixty miles above New Orleans, when the steamboat R., provided with an extra steam-engine to furnish steam and water for extinguishing fires, came to her assistance, and took off her passengers and the cargo that had been got on deck. Finally Captain Montgomery, of the R., by great ingenuity, activity, hazard of life, and perseverance, seconded and aided by six or seven others, succeeded in extinguishing the fire and in saving the boat and part of her cargo, in a damaged condition. *The T. P. Leathers*, 1 Newberry, 421, cited in Marvin, 222. [American.]

V. 9,000*l.*—A. £3000

101. In December, the screw steamer V., 3,019 tons gross, schooner-rigged, with 145 hands, fifteen passengers, mails, and a general cargo, from Hong Kong for London, lost her propeller when in lat. 17° 33' N., and long. 40° 17' E., in the Red Sea. The weather was fine with a moderate breeze. She was under sail making four knots when the screw steamer St. B., 2,222 tons gross, thirty-three hands, cargo wheat, from Kurrachee for Cardiff, value £56,000, sighted her, and by request, after much difficulty, took her in tow. Two hawsers were required. During the towage the starboard quarter-bits of the St. B. were carried away, and the passengers and mails were transferred from the V. After a towage of 830 miles, lasting six days, and involving three days' delay to the St. B., the V. was got into Suez Bay. *The Verona*, M. M. R. March 28, 1884, p. 198.

V. 157,000*l.*—A. £3000

102. In February, the screw steamer V., 1,843 tons nett, which had broken her rudder-post and started some of the plates from the stern-posts, being unmanageable and unable to steer, was taken in tow some 150 miles E. of Malta, by the screw steamer L., 1,035 tons nett, valued at £91,000, and not without difficulty and some damage, brought after four days' and eleven hours' towing into Alexandria. *The Viceroy*, M. M. R. February 18, 1876, p. 204.

V. 150,000*l.* A. £3000

103. In December, the screw steamer V., 1,362 tons gross and 876 tons nett, from Liverpool and Marseilles to Zanzibar with passengers and a general cargo, went ashore off Ras Alutch, on the African coast of the Gulf of Aden, about thirty-one miles W. of Cape Guardafui, in the territory of Sultan Yusouf Ben Ali, a local chief of the Somalis, and, after eleven days, was abandoned by her master, passengers, and crew, who proceeded to Zanzibar and Aden. H.M.S. D., at the request of the agent of the Liverpool Salvage Association, set out with a dhow with seventy coolies on board, and found the V., lying on her port bilge at an inclination of ten degrees, with five and a-half feet of water at her bow, and nine feet at her stern at low water, and with her keel buried four feet in the sand. The weather was very hot, and the stench from the bilge most oppressive. The discharge pipes, and every particle of copper or brass on board, had been removed by the Somalis. After ten days' work she was got off, and to Aden. *The Vortigern*, M. M. R. March 5, 1880, p. 305.

V. 8,455*l.*—A. £3000

104. The ship M. was ashore on Loo Key Reef. Three wrecking vessels of the aggregate tonnage of 211 tons, carrying thirty-nine men, lightened the ship of about

thirty tons of cargo and about sixty tons of stone ballast. They laboured incessantly from four o'clock in the afternoon to six o'clock the next morning, when they hove the vessel off. *The Mississippi*, Files of Court, 1840, cited in Marvin, 215. [American.] Value 20,000*l.*—Award £2939

105. A derelict timber ship, of 600 tons, 300 leagues from shore, was, by great exertions and risk, towed by H.M.'s gun-brig V. to Plymouth. *The Reliance*, 2 Hagg. 90, n. V. 5,668*l.*—A. £2834

106. The steamer G. fell in with the P., a large barque, derelict, and towed her to Bridlington after two days' severe labour, assisted by captain and four foreign seamen, passengers on board the steamer; but a deduction was made for erroneously taking her into the harbour. *The Perla*, S. G. April 7, 1857; Swabey, 231. V. 15,000*l.*—A. £2800

107. The St. N., of 797 tons, with a general cargo and 140 passengers, when 120 miles to the west of Scilly encountered a storm which carried away nearly all her masts and rigging, and did her other damage, and she was in some danger. The master put the ship about and worked her up channel for three days. A steam collier, with some difficulty and strain to her engines, towed the St. N. from off the Start to Portland in twenty-two hours. *The St. Nicholas*, S. G. Feb. 13, 1860; 1 Lushington, 29. V. 52,000*l.*—A. £2800

108. The barque P., 400 tons, shortly after leaving Liverpool was run into, and sustained so much damage that her crew abandoned her. The schooner A. fell in with her about four miles from the Calf of Man, drifting towards the rocks. She turned her head, and took her in tow towards Liverpool, for which there was a fair wind. Half-an-hour afterwards the steamer P., which had been chartered to go out in search of the barque, came up and took possession of her. The A. was 75 tons, and manned by six hands, three of whom she put on board the barque. The tug towed the barque for fourteen or fifteen hours. £2,000 to the P., £700 to the A. *The Pickwick*, S. G. June 9, 1852; Nov. 19, 1852; 16 Jur. 669. V. 32,900*l.*—A. £2700

109. In October, the screw steamer S., 2,484 tons gross, from Japan and the China Seas to New York, with tea and general cargo, was found by the screw steamer Lady A., 2,066 tons gross, value £83,000, with thirty-one hands, and a valuable cargo, in the Red Sea, drifting, and disabled by her propeller shaft having broken and damaged her stern tube. The Lady A. stayed by the S. till next morning, when a hawser was made fast, and she was towed (the utmost possible speed being six miles an hour) through an increasing wind and sea to near the Newport Rock lightship, where both vessels anchored on the 20th, and next day the Lady A. took the S. to the Suez docks, having towed her 700 miles in six days, and sustained damage by straining during the service. *The Sussex*, S. G. March 13, 1885, p. 166. V. 153,000*l.*—A. £2700

110. The ship Y. was ashore on Viper Key shoal. Three wrecking vessels, with forty-two men, lightened her, carried out an anchor, and hove her off. *The York*, 3 A. R. 317, cited in Marvin, 214. [American.] V. 19,000*l.*—A. £2700

111. The ship V., 1,336 tons register, with cotton, was lying in the River Mersey abreast the Woodside landing-stage, anchored by starboard and best bower anchors, with sixty fathoms of cable, and in charge of a Liverpool pilot. A gale was blowing from S. to S.S.E., which increased to a hurricane, and there was a heavy sea, the tide being about half-an-hour ebb and fast running down. She began to drive, her starboard chain parted, and she dragged rapidly down the river with wind and tide. The ship was in very great danger. Two steam-tugs, C. No. I. and C. No. II., took her in tow, and with great difficulty and some danger took her safely into Birkenhead Docks. *The Vanguard*, M. M. R. June 9, 1866, p. 721. V. 121,172*l.*—A. £2570

112. The steamer A., 1,040 tons, encountered a tremendous gale, and was extensively damaged. The water extinguished the fires, and stopped the engines. The master, first and third engineers, carpenter, and a seaman were washed overboard and drowned, and the ship drifted towards the coast of Cornwall. The weather having moderated, the steamer Q., 350 tons, 170 h.-p., took her in tow and towed

her to Padstow Harbour, in entering which the A. struck on the Doombar Sand, and was left by the Q. The A. was got off and anchored in the harbour by assistance from the shore. Services lasted about six hours. *The African*, S. G. July 19, 1860. Value 158,867*l.*—Award £2500

113. In March, in lat. 45° 36' N., and long. 23° 17' W., 675 miles to the W. of the Fastnet, the schooner-rigged steamer A., 1,188 tons register, from the Tyne to New York, with a general cargo, broke her propeller shaft in the stern tube during a gale. She lay-to till the weather moderated, when sail having been set, she wore round and was put on a course for the nearest port on the Irish coast, and proceeded under sail with variable winds. When she was about 200 miles from Queenstown, the screw steamer M., 2,270 tons register, and 200 h.-p. nom., from Hull to New York, eighty-five hands, and a general cargo, bore down on her, kept by her till daylight, then got a hawser from the A. shackled on to the port cable of the M. secured for the purpose, and commenced to tow towards Queenstown. There was a strong breeze blowing, and the sea was rough. The towing lasted thirty-six hours, the hawser having parted once in the course of it, owing to the rolling of the vessels. The M. was delayed six days, and incurred expenses amounting to £500. Her value with cargo and freight was £67,559. *The Azalea*, M. M. R. July 2, 1880, p. 848. V. 40,407*l.*—A. £2500

114. The barque E., 751 tons, was fallen in with off Caldy Island, derelict, and in a position of imminent peril, by the steamer A. V., 422 tons, which took the barque in tow, and after some difficulty, from the state of the weather and from the hawser parting, brought her up off the Mumbles Light. *The Eliza*, S. G. July 22, 1863. V. 10,632*l.*—A. £2500

115. In December, the Dutch bomb W. B., the smacks A., W. and A., and F., and the steam-tug R., at some peril to themselves, rendered aid at sea to the G. K., 808 tons, which was in great danger, not only to herself but to other vessels, and had made a considerable quantity of water. The A. was of essential service in steering, as well as towing, the G. K. *The George Kendall*, M. M. R. May 16, 1868, p. 627. V. 8,600*l.*—A. £2500

116. In February, the steamship H., 714 tons register, from London for Calcutta with a general cargo, was in a disabled state in the Straits of Jubal in the Red Sea, three miles from the northernmost coral reef, and four miles from the Ushruffer Lighthouse, her propeller being adrift, from the keys of it having come out. The steamer S., from London for Bombay with general cargo of the value of £140,000, took her in tow to Suez, a distance of 130 miles, and left her there in safety. *The Hotspur*, M. M. R. Dec. 23, 1870, p. 1649. V. 77,000*l.*—A. £2500

117. In October, the steamer M., 1,356 tons nett, 2,085 tons gross, from Manilla to the United States with sugar, having lost three out of four blades of her propeller, was discovered steaming slowly in the Red Sea in calm weather by the screw-steamer A. D., 1,107 nett, 1,708 tons gross register, from Bushire to London with wheat, dates, and tobacco, and by her towed to Suez, 512 miles distant. The A. D. was delayed forty-eight hours, had twenty fathoms of her hawser, and 120 fathoms of running-gear chafed and rendered useless, and her engines heated and strained. *The Marian*, M. M. R. Feb. 9, 1883, p. 177. V. 65,823*l.*—A. £2500

118. In November, the British steamer P., with a general cargo, was disabled and stranded on the north end of Jibbelzughur, in the Red Sea. The British steamer H. A. from Newcastle to Singapore with coals and general cargo, fell in with her, and succeeded in saving the greater part of her cargo to the value of £28,000. The services lasted forty-seven days. *The Penguin*, M. M. R. 1882, p. 941; sub nom. *Hong Ann*. V. 28,000*l.*—A. £2500

119. In February, the steamer P., schooner-rigged, 2,239 tons gross, from Port Said to Kurrachee, with thirty hands, in water ballast, got hard and fast aground on Sintyar Reef, and was leaking. The Italian war vessel V. tried for two days to get her off but failed. The master and crew of the P. then deserted her, and she remained aground for eight or nine days. The steam-tug M., value £3,200, left Perim to succour the P., and the master of the M. persuaded the master and eleven hands of the P. to return. After four days the leak was discovered and stopped with materials fetched from Perim by the M., and in three days more by heaving on

hawsers from the port bow the P. was got off, taken next day to Perim Harbour and there beached for repairs. The M. ran considerable risk, twice touching on a reef during the service, which lasted eight days. *The Pharos*, S. G. June 19, 1885, p. 391. Value 25,000l.—Award £2500

120. In March the steamer S. was discovered in the Bay of Biscay, off Cape Finisterre, bearing S. about seventy miles, hove-to under canvas, by the steamer G., 3,036 tons gross, value £72,000, from Penarth to Singapore, with sixty-three hands and coals, and about 5 a.m. was taken in tow towards Lisbon for three or four days in a gale with a heavy sea, and the weather during part of the time being very bad. One hawser broke, but was made fast again. To avoid a lee-shore the S. had to be towed forty miles to seaward to get a larger offing, after which the G. lost the S., but still went in pursuit of her. Meanwhile, however, the steamer Isle of F., 1,600 tons gross, value £23,000, from Genoa to Bilbao in ballast, came up about thirty miles N.W. of Cape Rocca, found the S. helpless and unmanageable in the trough of the sea, and took her in tow to Lisbon. There was a brisk S.W. gale with squalls and a heavy sea. £1,700 to the G., £800 to the Isle of F. *The Scaramanga*, S. G. August 1, 1884, p. 487. V. 21,000l.—A. £2500

121. The steamer B., of 156 tons, fell in off Strumble Head with the barqus S. W. derelict, disabled, and in danger of going on shore on the rocky and dangerous coast in the vicinity. The B. towed the S. W. into Holyhead Harbour, a distance of seventy-five miles. *The Sea Wave*, S. G. March 12, 1860. V. 6,963l.—A. £2500

122. The barque S. H. P. having got upon a coral reef near the Island of Gaspar, was in a very dangerous position, and the neighbourhood was infested by pirates. The T. having seen her signals of distress, bore down to her, stayed by her during the night, and lent her fire-arms and ammunition, and the next day, by laying out anchors, succeeded in getting her off. *The Sir Henry Pottinger*, S. G. May 18, 1854. V. 37,611l.—A. 2500

123. In March the screw steamer T., 1,036 tons nett, 1,598 gross, from Alexandria to Antwerp, had broken her propeller-blades, and had been in tow of another steamer for three days, but owing to the heavy weather the other steamer had abandoned her. She was drifting to westward, and rolling heavily in the trough of the sea which was breaking over her after-deck, in about lat. 46°55' N., long. 8°37' W., when found by the steamer B., 2,182 tons gross, 1,399 nett, value £95,202, from Liverpool to Lisbon, with general cargo, four passengers, Brazil mails, and forty-two hands. With great difficulty and risk of collision a hawser was got on board, but it was too rough and dark to do anything that night but stand by the ship. The B. towed the T. for three days 490 miles to Lisbon harbour. *The Tagliaferro*, S. G. July 31, 1885, p. 486. V. 26,805l.—A. £2500

124. The ship S., of 580 tons, with a crew of fifteen hands, 100 miles off Ushant fell in with a large ship, the R. M. M. damaged and derelict. The mate and two hands worked her into Victoria Docks, London. The services were attended with considerable danger. The mate employed a pilot, a tug, and five men. Services lasted about thirteen days. *The R. M. Mills*, S. G. July 28, 1854. V. 4,950l.—A. £2475

125. In May the ship A. B., 1,413 tons, from Rangoon for London with 21,300 bags of rice, 800 bundles of rattans, and other cargo, took the ground on the Dungeness shore. The wind was blowing hard from the W.S.W., the weather clear, and there was a nasty surf breaking on the shore. After several attempts a rope was got from the tug V., 100 h.-p. nominal, which began towing. The tugs M. and R. came up shortly, and in about two hours the three tugs got her off, and into deep water. *The Aros Bay*, M. M. R. July 6, 1877, p. 850. V. 36,000l.—A. £2400

126. In January, the screw steamer H. 1,060 tons, from Baltimore to Sharpness, with wheat, broke her lower press crank shaft in the main bearing. In seven days she made over 300 miles under canvas. When 138 miles to the N. of Bermuda she signalled for assistance to get into the harbour. In answer to these signals the screw steamer Historian, from New Orleans for Liverpool, with cotton, oilcake, &c., and a crew of thirty-three hands, value £80,000, came up, and agreed to tow the H. into the harbour. There was a gale blowing S.W. by W. with a high sea, and dark, rainy weather. In rounding-to, to come up to the H., a heavy sea struck the Historian's rudder, carried away her bridge steering gear, and parted the wheel

chains. After repairing these damages the Historian made fast a hawser, and commenced to tow through increasingly bad weather till five p.m. on the 22nd, when, whilst shortening the scope of the towing hawsers, the bight of both of them fouled the rocks and stuck fast, causing them to part from the Historian. After failing to get another hawser made fast, the starboard anchor was let go, and the Historian stood by the H. all night. It was two days before a Government tug could bring the H. into harbour. The Historian was delayed six days. *The Horace*, M. M. R. May 16, 1884, p. 310. Value 32,000*l.*—Award £2400

127. The steamer C. from Macao with a general cargo for London, in March, when some 187 miles from the Lizard encountered bad weather, lost her rudder, and was making much water, having in vain attempted to ship a jury rudder. She was fallen in with by the schooner A. G., which stayed by her five days and towed her, sustaining considerable damage and loss in doing so. When the two vessels came in sight of Waterford Light, the steamer D. went to their assistance, and towed the C. for some way, but not being powerful enough, was sent for assistance, and on her way met the steamer T., whose master telegraphed to the owners of the steamer C. to send that vessel, of which he took command, leaving the T. in charge of a pilot. The Waterford steamer G., for Waterford from Bristol with troops, fell in with the C. at anchor, flying signals of distress, and with the schooner still hanging on astern, and towed her to Waterford Harbour, the C. attending, but not helping to tow. The T. made fast on the port side of the C., and the steam-tug W. W. made fast on the C.'s starboard side. The C. was safely brought to anchor off the Spit of Passage, and as she had only one anchor, the W. W. stayed by her until the afternoon of the next day. The A. G. sustained damage to the amount of £200, and loss by detention to the amount of £335. To the A. G. £1,500, for her damages and detention £535, to the G. £150, to the W. W. £70, to the D. £50, to the T. £50, to the C. £35. *The Chetah*, M. M. R. Dec. 28, 1867, p. 1648. On appeal (P. C.), M. M. R. Dec. 19, 1868, p. 1617; L. R. 2 P. C. 205. V. 50,000*l.*—A. £2390

128. In February, the ship C., 1,148 tons, from Pensacola to Greenock, with pitch pine, was found abandoned and disabled in lat. 48° N. long. 27° W., about 800 miles W. of Queenstown, the wind being N.E. and a heavy sea running, by the steamer T., 2,693 tons register, from New Orleans for Liverpool, with a general cargo and passengers. The C. had lost her rudder, her mainyard, and lower topsails, and had her upper fore and main topsails split. The main hatch was broken, and her fresh-water tank full of salt water; her port pump was out of order, and there was 4 ft. 6 in. of water in her hold. Hands from the T. were put aboard, a steel hawser made fast, and towing began, but the hawser soon parted. A volunteer crew were then put aboard to sail her into port. A jury rudder was constructed, and the C. was got under command; the water had risen to 7 ft. 6 in. and all hands had to work the pumps. Next day, as the C. was drifting to N.E., the bowsprit and head-gear had to be secured. A fresh gale with heavy squalls sprang up. The two next days were rough with strong variable winds, and the C. became unmanageable. The donkey-pump became choked with salt, and the C. began to make three inches of water per hour, which in two days, the wind having increased to a hurricane, rose to eight feet in the hold. A week later, the weather having moderated, on the 9th the C. was in lat. 52° 19' N. and long. 17° 30' W. For the next five days the winds were ahead, from S.E., and weather moderate. On the sixth day she was struck by a heavy sea and lost a steering-gear bolt, and on the next was veered to southward. The crew were for three days on short rations. Provisions were obtained from the I. In ten days the S.W. coast of Ireland was sighted, and next day the C. was towed into Monkstown and brought up by her anchors in Queenstown harbour. The crew of the T. remained on board pumping and repairing her gear for another week, when she was handed over to the underwriter's representative. The value of the T., her cargo, and her freight was 117,000*l.* £150 to crew left on board. *The Craigs*, M. M. R. June 25, 1880, p. 808; 5 P. D. 186. V. 5,100*l.*—A. £2300

129. The J. B. struck on a rock near Harwich, was much damaged, and deserted by her crew. Two smacks got her off, when she sunk; six other smacks by great exertions during five weeks weighed her, and took her into Harwich. The services were very meritorious. *The Jonge Bastiaan*, 5 C. Rob. 323. V. 3,400*l.*—A. £2266
P.

130. The ship G. D. was found derelict, and after being towed for 600 miles by the J. P., was taken into Lisbon. *The George Deane*, S. G. December 8, 1857; Swabey, 290. Value 4,500*l.*—Award £2250

131. In October, the screw steamer, I., 814 tons register, and 98 h.-p., from Palermo for London with a general cargo, having broken her shaft, was taken in tow, off Ushant, by the screw steamer Italia, 788 tons register, 160 h.-p., nominal, bound for London from the Mediterranean with a general cargo. The I. was in danger of going on the Ushant rocks had the wind veered to N. The Italia also ran some risk in the towage, and broke two hawsers. *The Ino*, M. M. R. March 31, 1871, p. 401. V. 31,000*l.*—A. £2250

132. In March, the screw steamer A., from the Tyne to New York, with a general cargo, broke her propeller shaft when about 670 miles west of the Fastnets. She was wore round and proceeded under sail till within about 200 miles of Queenstown. The screw steamer M. then came up with her, and a hawser was made fast, but directly the towage commenced, the hawser parted. The 11-inch hawser of the M. was then bent on to the broken hawser and made fast, the towage was resumed, and the M. and the A. arrived in Queenstown Harbour two days afterwards. *The Azalea*, M. M. R. 1880, p. 848. V. 40,000*l.*—A. £2200

133. In October, the screw steamer E., 1,031 tons, from Trieste and Venice for London, with a cargo of wood, broke her shaft, and lost her propeller. In answer to her signals, the steamer Lady B., 459 tons register, 98 h.-p., nominal, value £18,050, from Cardiff for Valencia, with iron rails, came up. There was a high sea running, and a heavy swell. A boat was launched and sent to the E., two of the men being injured, and the mate nearly losing his life in launching it. On boarding, they found her helpless, unmanageable, and setting towards the land, her sails being useless. The tow-ropes of the E. were made fast on the Lady B., and for two days the Lady B. towed the E. towards the British Channel, both vessels rolling much and being washed by the high sea. When Ushant was sighted, a course was shaped for Plymouth. Next day a gale sprang up, which increased, with much rain, the two vessels were brought head to wind, and a course shaped for Cowes, which was reached in two days more. *The Envoy*, M. M. R. April 5, 1878, p. 437. V. 30,650*l.*—A. £2200

134. The ship F., outward bound, with a general cargo and ninety-five passengers, struck on the 3rd December, in a fearful gale, upon the Girdler Sand. At 9 p.m. the steam-tug A. left Ramsgate with the lifeboat N. in tow, but for several hours could not find the F. At 1 a.m. of the 4th they ascertained her position, and the lifeboat at great risk took off all the passengers, and put them on board the A., which conveyed them to Ramsgate. By order of the master of the F. an anchor and chain, weighing thirteen tons, was obtained at Ramsgate, and put on board the luggers C., thirty-four tons, and the L., eighteen tons, which, with the lifeboat's crew, in addition to their own on board, were towed out by the A., and anchored near the F. At daylight of the 5th the A. assisted two other tugs in endeavouring to tow the F. off the sand, but her services not being longer required, she returned to Ramsgate at about midday. In the evening the gale increased, and the luggers were ordered to proceed to the Nore, where they arrived on the 6th, and subsequently on the 12th they conveyed the anchor and chain to London, and returned to Ramsgate on the 14th. The ship having been taken by two tugs to London under a separate arrangement for remuneration. £700 to the A., £700 to the lifeboat, £800 to the luggers. *The Fusileer*, S. G. June 14, 1864. V. 54,500*l.*—A. £2200

135. In September, the steamer T. was in the trough of the sea, off the Isle of Wight. As she was heavily laden and her engines had broken down she could not get her head round. The steamer A. W., also heavily laden, came up and stood by for nine hours, after breaking two hawsers in trying to tow. Two fresh hawsers were then made fast, which however broke in two hours. The A. W. stood by for five or six hours, and at daylight recommenced towing. After ten hours the two hawsers again parted, although the weather had moderated. After standing by for five hours the A. W. once more commenced towing, and got the T. to an anchorage off Gravelines in five hours. *The Tynemouth*, M. M. R. February 29, 1884, p. 135.

V. 11,760*l.*—A. £2200

136. The ship *H.* got ashore on Great Cench Reef. She was lightened of a considerable portion of her cargo by four wrecking vessels, the crews working unremittingly twenty hours. She was then hove off the reef by heavy strains upon the anchor. *The Hector*, Files of Court, 1832, cited in Marvin, 213. [American.]
Value 14,000*l.*—Award £2100

137. A vessel reduced to a mere hull, and without the means of getting into port, was towed by a steamer, herself so much damaged as to require to go into port to refit, a distance of 480 miles, in the course of four days. *The Sussex*, 3 Hagg. 339.
V. 10,500*l.*—A. £2100

138. A Spanish brig was found derelict, and in a very shattered condition, by the schooner *H.*, manned by four men, who, by great exertions—for three days encountering a severe storm and imminent danger—brought her into Boston. 1 Mason, 372, cited in Marvin, 190. [American.] *A moiety awarded, deducting costs and expenses.*
V. 4,190*l.*—A. say £2060

139. In October, the iron screw steamer *G. C.*, 1,539 tons nett, 300 nominal h.-p., was discovered by the screw steamer *J. B.*, 945 tons nett, value £200,000, in lat. 40° N., and long. 9° 40' W., in a disabled state, with her propeller injured, her steam power absolutely, her steering power almost, useless, and one of her stern-posts greatly damaged. The wind was blowing strongly, and a heavy swell was running. The *J. B.* took her in tow and brought her to Lisbon, 110 miles, being delayed two days on her voyage by doing so. *The Glamis Castle*, M. M. R. April 16, 1875, p. 486.
V. 201,435*l.*—A. £2060

140. In April, the barque *A. C.*, 356 tons, from Cochin for London with a general cargo, was bearded 110 miles S.W. of the Lizard, by the second mate and four men of the barque *H.* of the N., and found to be on fire. The *H.* of the N. towed her in three days to Plymouth. *The Annie Comrie*, M. M. R. December 2, 1865, p. 1520.
V. 14,000*l.*—A. £2000

141. A vessel in extreme danger, and during a very violent hurricane, was saved by several luggers and their crews by very meritorious exertions and skill. *The Branken Moor*, 3 Hagg. 373.
V. 10,500*l.*—A. £2000

142. In November, the screw steamer *C. M.*, 1,489 tons, from Glasgow to Colombo, broke down about twenty-two miles from Cape Aden. The steamer *K. E.*, 1,810 tons, from Amsterdam to Java with Dutch mails, passengers, and cargo, proceeded to her assistance, took her in tow, and on the following day arrived with her at Aden, where the *C. M.* was brought to a safe berth, having been towed ninety-one miles in all. *The City of Mecca*, *The Times*, May 5, 1881. V. 90,200*l.*—A. £2000

143. Salvage services were rendered to the *C.*, on her voyage from Liverpool to Oporto, by the screw steamer *C.*, which was detained thereby three or four days on her voyage. *The Castilian*, M. M. R. Feb. 29, 1868, p. 276.
V. 29,000*l.*—A. £2000

144. In April, the Spanish steamer *C.*, 608 tons, from Liverpool for Bilbao with general cargo, was drifting towards the dangerous reef of Ushant, driven by a strong S.W. wind, and a strong flood tide, with her boiler burst and otherwise damaged. The Baron *L.*, 612 tons, from Bordeaux, with wines, &c., for Antwerp, took her in tow, and, after much difficulty and some danger, brought her to Falmouth in twenty-six hours. *The Clara*, M. M. R. July 12, 1872, p. 881. V. 19,000*l.*—A. £2000

145. A vessel, with the "Cleopatra's Needle" obelisk on board, was abandoned in the Bay of Biscay. On the 15th October she was about 90 miles north-east of Ferrol on her beam-ends with her bridge awash, when she was found by the screw steamer *F.* of 297 tons register, bound for Valencia. Next morning a boat, with the chief officer and two men in a very heavy sea, put off, and the men boarded the *C.* at great risk, and got a deep sea-line fastened to the hawser of the *F.* with very great difficulty, arising from the *C.* having both a circular and a rolling motion, and from a portion of her old tow-line being fast under water. Some of the salvors, lashed by a rope to the sail, were often wholly submerged in the water in the process of clearing the obstacles. The *F.* then, towed by two hawsers, and after various minor adventures,

brought the C. in safety to Ferrol on the 17th, after 52 hours' service. *The Cleopatra*, M. M. R. April 5, 12, 19, 1878, pp. 436, 468, 499; 3 P. D. 145; 47 L. J. Adm. 72.
Value 25,000*l.*—Award £2000

146. In August, the steamer C., with 150 passengers on board, and a valuable cargo, when 131 miles from New York, and 200 miles from Nassau, N. P., having her machinery disabled, was taken in tow by the steamer E., and in six days brought to her berth in New York. The E. somewhat damaged her cargo by the delay, but the C. was not in much danger, as she was fully brig-rigged and had sails. She had also provisions for eleven months, was in the line of other steamers, and got under sail within half an hour of the accident. *The Colon* (New York Adm. Co.), M. M. R. Oct. 18, 1878, p. 1332.
V. 50,000*l.*—A. £2000

147. In September, the three-masted schooner C., 1,580 tons, 150 h.-p., twenty-nine hands, from New Orleans for Liverpool, with general cargo, broke her propeller. Sail was set, and she made 80 miles per day in fair weather; in all, some 1,200 miles. After driving about for twenty-five days she was fallen in with by the Co., value £22,500, from Santander to Baltimore, with twenty-one hands and laden with iron in lat. 4° 20' N. and long. 27° 25' W. Hawsers were made fast with considerable difficulty, and the C. was towed for forty hours, and then anchored in safety in St. Michael's harbour. *The Commander*, M. M. R. Feb. 3, 1882, p. 141.
V. 53,046*l.*—A. £2000

148. In June, the Earl of E., from Calcutta to London, with a general cargo, drove ashore in a squall in Simon's Bay, Cape of Good Hope, and was in very great danger. H.M.S. F. and P. assisted her off, and she proceeded safely to London. *The Earl of Eglinton*, S. G., Dec. 6, 1855.
V. 84,500*l.*—A. £2000

149. In April, the four-masted iron sailing ship C. of A., 1,865 tons register, was discovered by the iron screw steamer P., 196 tons, from London to St. Nazaire, in the English Channel, about forty miles south-east of the Isle of Wight, lying helpless, and apparently sinking, with her head up Channel, having been greatly damaged in a collision, and though not in imminent danger of total loss, there was great risk to her if in her disabled condition she were exposed to bad weather. Hawsers were made fast, and the P. commenced to tow her to Spithead, where, after some hours towing, and under the direction of pilots taken aboard, the C. of A. was brought safely to anchor. *The County of Aberdeen*, M. M. R. July 13, 1883, p. 878.
V. 51,217*l.*—A. £2000

150. The F., 640 tons, laden with a general cargo, having in very tempestuous weather unshipped her rudder, was, when nearly 40 miles from the coast of Spain, abandoned by her master and crew. The same night she was taken charge of by the smack R. S., and on the following day was boarded by seventeen of the original crew of the F., including Neal, the chief mate, and Cowan and Fuller (apparently two others of her officers), and with the aid of the R. S. the F. was taken into Malpico Bay, where she lay for some days in considerable danger, but was finally conducted into Corunna harbour, on the 30th of December. Lloyds' despatched an agent to Corunna, who took charge of the F., and dismissed fourteen of her crew for alleged misconduct, but for their extra service to the ship gave them £20 each. £1,200 to smack, £500 to Neal, £300 to Cowan and Fuller. *The Florence*, S. G. Feb. 23, 1852, and May 14, 1852; 16 Jur. 578.
V. 16,000*l.*—A. £2000

151. In February, the iron ship G., with a general cargo, from Batavia for Rotterdam, about 6.30 p.m., when anchored in the Downs during a strong gale, parted from her starboard cable. The port bower anchor was then let go, but the cable soon parted; and as it was impossible to weather the South Foreland, her master, by the advice of the pilot, beached her close to the lifeboat station at Kingsdown after great difficulty. The salvors in the Kingsdown lifeboat succeeded in rescuing the master, his wife and child, and the crew of twenty-seven hands. Part of the cargo was subsequently discharged, and a week later the G. was got off, and taken into safety. *The Glenduror*, L. R. 3 P. C. 589.
V. 50,000*l.*—A. £2000

152. The H., of 3,800 tons, got on the outer edge of a mud bank in Banca Straits, and was in some danger. The ship G., of 693 tons, anchored near the H. and

assisted in heaving her off. The services did not last long, but the G. ran some risk of being damaged. *The Himalaya*, S. G. November 3, 1859; Swabey, 517.

Value 107,497*l.*—Award £2000

153. The ship H. was twenty-five miles off Algoa Bay, with thirteen feet of water in her hold, her crew exhausted and a signal of distress flying. The ship Duke of R., 417 tons, twenty-four hands, with a cargo valued at £20,000, took out of the H. her crew, teas and silks, worth £7,000, and took them to St. Helena. The Duke of R. had to throw overboard some cargo to receive the goods. *The Hope*, 3 Hagg. 423. V. 7,000*l.*—A. £2000

154. The M. was abandoned by her crew near Llandudno Bay; the wind was blowing hard from N.W., and there was a probability of the M. driving on the West Hayle Bank, and becoming a total wreck. The steam-tug C. placed some hands on board, and towed her into Liverpool. Services from 9.30 a.m. to 7 p.m. *The Majestas*, S. G. March 29, 1858. V. 16,000*l.*—A. £2000

155. The barque M. ran ashore upon Carysfort Reef. Three wrecking vessels lightened her by transhipping on board their vessels 456 bales of cotton, when she swung off the reef. *The Manna*, Marvin, 213. [American.] V. 12,000*l.*—A. £2000

156. The brigantine M. J., 134 tons, from Harbor Grace to Queenstown, with a cargo of oil, sealskins, old junk and rags, was deserted by her master and crew. She was found derelict, by the barque A., of New Ross; four of whose crew, volunteers, boarded the M. J., and after severe toil and labour brought her and her cargo safely into New Ross. *The Margaret Jane* (Dublin Adm. Co.); M. M. R. Nov. 10, 1866, p. 1425. V. 5,628*l.*—A. £2000

157. In April, the screw steamer M., 2,287 tons, and 300 h.-p., from Malta for Liverpool, with a general cargo, grain and cotton, when in the Mediterranean Sea had broken her main-shaft some nine inches from her stern-posts, and fired rockets and blue lights for assistance. These signals were seen by the screw steamer R., 469 tons register, 90 h.-p., from Grimsby to Galatz, with iron bridge work. She immediately went to the assistance of the M., lay by her all night, and the next morning towing commenced. The tow-rope broke the R.'s steam winch. The M., dragging her propeller, could not be steered properly, and going first on one side and then on the other of the R., made it dangerous for the man at the R.'s wheel on the poop. Next day the R.'s maintopmast was struck. On the third day it blew a gale, and the R.'s cargo twice broke adrift in the hold. The M. forging ahead, when the R. stopped to repair the chafing-gear of the tow-rope, caused the R. to become girted on her port-bow, and made it difficult for her to regain her position for towing. On the 4th day the weather moderated, and the cargo of the R. was secured. On the fifth day the M. was brought into Algiers. The R. was detained at Galatz seven days in consequence of having rendered this service to the M. *The Memphis*, M. M. R. February 12, 1870, p. 210. V. 160,000*l.*—A. £2000

158. In February, the steamer M., with cargo and passengers, when going down the Mersey, struck on the screw-fan of the steamer W., which was about to anchor; the starboard side of the M. was torn open, and the water rushed in, put out the fires and drowned one of the firemen. Being thus in danger of sinking in deep water, she was rescued by the steam-tugs K. C., R. L., F. K., and E., and beached between Seacombe and Egremont. The services lasted about twenty minutes. Some of the passengers got on board the E., and were landed at Prince's Landing-Stage. £600 to the E., £700 to the K. C., £500 to the F. K., £200 to the R. L. *The Morocco*, M. M. R. June 9, 1871, p. 719. V. 100,000*l.*—A. £2000

159. In February, the ship O., 1,282 tons register (12 days out), from Plymouth to New Zealand, with 310 emigrants, 48 hands, and a general cargo, having lost her topmast and topgallant masts, with the yards attached, and been obliged by stress of weather to put back, was met by the screw steamer T., 526 tons nett register, from Androssan to St. Nazaire, with 15 hands, and pig-iron, about 6 miles N.N.W. of the Longships in the Bristol Channel, and taken in tow after several fruitless efforts to get a line on board. The hawser broke twice, but eventually the T. piloted the O. round Lundy Island, when a hawser was again made fast, and in twenty-six hours she was brought to a safe anchorage in the Penarth Roads. *The Oxford*, M. M. R. June 15, 1883, p. 750. V. 35,000*l.*—A. £2000

160. In March, the screw steamer O., 1,224 tons nett, and 1,879 tons gross register, from Liverpool to Alexandria, thirty-three hands, ten passengers, and a general cargo, in lat. 37° 40' N., long. 7° 30' E., broke the piston-rod of her high-pressure engine at the cross head, and the cylinder cover was blown off and broken, the engine thereby becoming useless. The wind was fresh from the W.; and all sail being set, the O. made 2½ knots. The ship could not gather enough way to allow the low-pressure engine to work, so she could not be kept to the wind, and she became unmanageable in the trough of the sea. The screw steamer S., 959 tons nett, 1,417 tons gross register, 140 h.-p. nom., value £22,630, with a crew of twenty-five, and coals from Cardiff to Malta, bore down on the O. and agreed to tow her to Malta. She stopped by the O. till next morning on account of the high tide running, and a hawser was then made fast. A heavy sea and a gale from the N. caused the ropes to part, but they were again made fast, and the weather moderating, the O. was again got into tow. After a towage in rough and squally weather, during which the rope again parted once, the O. was got safely to the Great Harbour of Valetta in three days. *The Osiris*, M. M. R. July 14, 1882, p. 877. Value 67,981l.—Award £2000

160a. In November, the screw steamer P., from Bombay to Antwerp with wheat, broke her shaft, and being rigged lightly as a schooner, was not under control, and had drifted eight miles out of her course away from the track of vessels. The screw steamer T., value £125,600, 1,667 tons nett, 280 h.-p., from Alexandria to Liverpool, with a crew of thirty-eight hands, two passengers, and a general cargo, took the P. to Valetta Harbour, which was reached in four days. The wind light. No danger to the T. *The Pallion*, M. M. R. April 6, 1882, p. 429. V. 41,341l.—A. £2000

161. In November, during a hurricane, the full-rigged ship P., 879 tons, with twenty-six passengers on board, drove from her anchors in the Downs forty or fifty miles to the neighbourhood of the Galloper Sands. She was in great distress, having lost two anchors and some sails, and signalled for assistance, in answer to which the tug C., fifty-four tons nett, and 209 tons gross register, with engines of 100 h.-p. nom., working up to 400 actual, came up, and after forty hours' towing, which required great courage and patience, extricated her from her difficulties. *The Parrora*, M. M. R. Dec. 30, 1881, p. 1648. V. 48,500l.—A. £2000

162. The French brig P., 161 tons register, laden with wool, was run into when off Ushant by the M. Her left bow was driven in, all the gear in the neighbourhood carried away, and she was in imminent danger. She was flying signals of distress, when the steamer B., of 1,142 tons nett register, 140 h.-p., from Alexandria to Liverpool, came in sight. She towed the P. for two days, in moderate weather, and brought her to St. Mary's, Scilly. *The Paul*, M. M. R. Feb. 24, 1866, p. 239. V. 10,327l.—A. £2000

163. In January, the steamer P. C., from London to Calcutta, with twenty-nine hands and general cargo, was driving through the Downs and approaching the Brake Sand during a gale with a heavy sea. The tugs L. W. and R. came up, and after one or two ineffectual attempts made fast and got the head of the P. C. round. After some five hours' towage, during which the tugs came into collision, and the L. W. suffered damage, the P. C. was got to Prince's Channel, when the wind increased to a hurricane, and it being impossible to make headway, the tugs anchored with steam up. Next morning the weather moderated, and the P. C. was brought to Gravesend. The services lasted fifty-nine hours. *The Pembroke Castle*, M. M. R. March 22, p. 365. V. 33,000l.—A. £2000

164. The ship R., 661 tons, with bale goods for the Mediterranean, after a collision with the screw steamer C., 816 tons register, in the river Mersey, in January, began to settle down. The tug E. took her in tow and beached her between Egremont and New Brighton. As she touched the beach the water was on her decks, and as she beached she sank. *The Rosetta*, M. M. R. April 20, 1867, p. 497. V. 42,889l.—A. £2000.

165. In January, the St. P., 814 tons, was in very great peril at the mouth of the Mersey, and her crew were taken off by the lifeboat, but they did not intend to leave her derelict. Two powerful tugs found her and took her to Liverpool. *The St. Petersburg*, S. G., May 5, 1843. V. 20,000l.—A. £2000

166. In April, the barque *Sir J.*, with iron and coal, was in distress and signalling for assistance, some 200 or 300 miles from Falmouth. The screw steamer *A.*, 1,111 tons register, from Alexandria for Liverpool, with cotton and grain, fell in with the barque in a very crippled state, with her foremast-head and three topmasts gone, her lower yards and sails all adrift, and rolling fearfully. There was a schooner hove-to under her lee, taking off her crew. The *A.* hove-to, and a boat from the barque brought some of her crew on board the *A.* The men refused to go back and fetch the master, mate and one of the crew of the barque who were left behind, and they were subsequently rescued by the steamer's crew. The first and second mates, the carpenter, and five of the *A.* hands then boarded the barque, which had six feet of water in the hold, and making fast the spars, &c., which were all adrift, rigged one of the pumps and set it going. With great difficulty a hawser was got on board the barque, and after two hawsers had parted, she was towed into Falmouth three days afterwards. *The Sir James*, M. M. R. March 27, 1869, p. 402.

Value 7,000*l.*—Award £2000

167. In November, the barque *V.* of N., in the Queen's Channel, broke the hawser with which she was being towed, drifted and grounded on the Little Burbo Bank. The tug *S. K.* fetched the lifeboat, and her crew were, after much difficulty, taken off. Two of the lifeboat's crew, at a great risk, got on board. By their aid two hawsers, bent one on another, were made fast to the barque, and, with the aid of the *K. E.* and the *R.*, she was towed safely off the bank to an anchorage off New Ferry. £1,100 to the *R.*, £900 to the *K. E.* *The Vale of Nith*, M. M. R. Jan. 31, 1873, p. 145.

V. 32,000*l.*—A. £2000

168. In July, the iron screw steamer *V.*, 2,810 tons, from Hamburg to New York, with a general cargo and 1,000 emigrants, off the west coast of Scotland, became unmanageable, from her engines breaking down, and was drifting with the ebb tide on to the land, about five miles distant. She was out of the ordinary track of steamers. The Russian barque *C.*, value £3,300, 336 tons register, with twelve hands, from Finland to Troon, passed two hawsers to her, and towed her till she was in a position of comparative safety, about eight miles from the shore. The *V.* was in a disabled state, and unable to steer; the weather was thick and squally and the sea high. The hawsers having been cast off the *C.* proceeded towards Stornoway to obtain steam assistance. On the way the mail steamer *E.* was met, and the master of the *C.* boarded her, and after the mails and passengers had been landed, directed her to where the *V.* was. The *E.* took the *V.* in tow, and was subsequently aided by the tug *C.* Between them they got the *V.* to Stornoway. The master of the *C.* was away from his ship twelve hours, and owing to bad weather coming on the *C.* was delayed fourteen days. *The Vandavia*, M. M. R. Dec. 16, 1881, p. 1584.

V. 200,000*l.*—A. £2000

169. The brig *W.*, from Cadiz to London, laden with wine and dismasted, was found by a schooner forty miles from Cadiz, and towed to Gibraltar in three days, with risk to the schooner's cargo, value £7,500. *The Williams*, S. G. Nov. 14, 1838.

V. 14,700*l.*—A. £2000

170. The barque *F. A. E.*, laden with an assorted cargo, stranded on the American Shoal in tempestuous weather. A large pilot-boat schooner went to her, but the master was unable, on account of the tempestuous weather, to board her. He lay by her during the day. In the afternoon several other wrecking vessels arrived, and one of the masters boarded the wreck with much difficulty and personal danger. The next day, the weather having moderated, the wreckers commenced saving the cargo and materials. Four wrecking vessels, carrying forty-nine men, were employed. Sixty per cent. was allowed to a few small boats on small amounts saved by them by diving. *The F. A. Everett*, A. R. 617, cited in Marvin, 218. [American.]

V. 6,243*l.*—A. £1999

171. In March, the ship *J. S. H.*, 543 tons, from Mobile to England with cotton, struck on some rocks in Westdale Bay. The screw steamer *A. V.*, 422 tons register, from Holyhead to Britonferry with iron ore, entering the Broad Sound, descried her, with the pilot boat *A.* near her. The *A. V.* with great difficulty, owing to the vicinity of rocks, got a hawser to her, towed her clear of her dangerous position, and then continued to tow her till the hawser parted, as the *J. S. H.* had no rudder and therefore sheered. The steam-tug *C.* then began to assist the *A. V.*, but her hawser was

cut, and the A. V.'s hawser parted. The J. S. H. was finally conducted to an anchorage off Milford. The pilot boat alleged that she discovered the position of the J. S. H., and signalled to the A. V., and during the whole time of towage aided materially with advice. The owners admitted that the A. V.'s services were important, but considered the services of the C. very slight, and contended that the pilot's claim should be ignored altogether, as being not salvage services, but entirely within the scope of his pilotage duties. £1,500 to the A. V., £400 to the C., £60 to the A. *The John S. Harris*, M. M. R. 1866, p. 913. Value 27,000*l.*—Award £1960

172. In March, the steamer B., 822 tons, from Hull to Cetta, with nineteen hands and pitch cargo, was aground on the Shipwash Sand and signalling for aid. The lifeboat C. G., in tow of the tug C., was put off, and her crew, twenty-five in number, tried to get the B. off the sand, while the C. went to Harwich. Meanwhile the yawls J. and D. came up, and all hands commenced to jettison the cargo, but after four or five hours had to leave off owing to the high sea. The tug C. then returned, and lay near the B., whose crew were taken off by the yawls and the lifeboat. The C. remained by the B. for two and a half hours, and then left. Next day the yawl D. again went to the B., and her crew plugged a pipe, through which water was entering the engine-room, laid out their own anchor, and by heaving on it shifted the head of the B., and at high water hauled her into deeper water, where she floated, but the rope breaking, she drifted aground on the swatch. The J., the C., and the C. G. then came up, the D.'s anchor was recovered, made fast to a hawser, and with a kedje belonging to the B., laid out and hauled on with the assistance of a donkey-engine of the B., while all hands threw cargo overboard. The tug H. then came up and took hold of the B., while the C. took hold of the H., and after so towing for an hour and a quarter, the B. was got off, but her engine being useless, she was towed round by the tug H., assisted by another tug, the R. O., to the S. end of the Shipwash, with the C. G. alongside, and after four hours was got into Harwich Harbour. *The Bedall*, S. G. May 8, 1885, p. 294. V. 9,350*l.*—A. £1900

173. The steamship C., on a voyage from Liverpool to Oporto, on the 13th June, came up with the steamer D., with a signal of distress hoisted. She had lost her rudder, and was being imperfectly steered with a drag. The master of the D. boarded the C., and requested to be towed to Falmouth or Plymouth. The C., after some difficulty, arising from the parting of the hawsers and the thickness of the weather, succeeded in taking the D. into Falmouth Harbour, on the 15th. The C. lost four days by the deviation from her voyage. *The Dido*, S. G. November 16, 1863. V. 82,000*l.*—A. £1900

174. In May, the A., from Oporto to London with wine, found derelict on Land Sand off Essex, was assisted into Harwich Harbour by a revenue cutter and seven smacks. *The Alert*, S. G. July 30, 1846. V. 5,442*l.*—A. £1814

175. A derelict was found drifting in the Irish Channel, with between two and three feet water in her hold, and brought into Holyhead, by three salvors, part of a crew of six persons belonging to a small schooner, which discovered the derelict, and accompanied her back to Holyhead. *The Carolina*, 2 W. Rob. 124. V. 15,000*l.*—A. £1800

176. In December, the screw steamer E., 464 tons, from Oporto for London, with twenty hands, general cargo, and 100 cattle, broke her propeller in lat. 47 N. long. 7 W., the weather being cloudy and squally, with strong N.N.E. gale and heavy sea. Having failed to get into port under sail, she hove-to. On 16th December, her head between N.W. and W.N.W., her foretopsail and jib foretrysail set, forging ahead a little, but rapidly making leeway, she was found by the screw steamer C., 2,554 tons gross, value £92,000, from Calcutta to Dundee, with forty-three hands and a cargo of jute. The C. stood by the E. during a strong gale till next day, when, after considerable difficulty, the C. took her in tow for Plymouth, the gale still blowing hard and the sea heavy. The E. steered badly, ranging from two to three points each way. On the 18th the course was by agreement altered for the Downs, the weather having cleared. The towage continued till 20th; in all, 470 miles in seventy-five hours. *The Egret*, M. M. R. Feb. 15, 1864, p. 103. V. 37,109*l.*—A. £1800

177. In March, the ship E., 1,296 tons, from Sunderland for Macassar with coals, stranded hard and fast on the North Knowl of Hasborough Sand. The weather was

fine, the tide half ebb, and the wind W.N.W. The E. was making water fast. She was boarded by the crew of the yawl S. (thirteen in all), who commenced throwing her cargo overboard, being aided by the crews of the yawls D. and F. An attempt to get her off, with the aid of the steamer H., failed. The discharging cargo continued for two days, when five tugs, who had been fetched or sent to the E., managed to get her off and to Yarmouth Jetty. 800 tons of cargo were got out of her. £1,000 to yawls, £800 to tugs. *The Ernestin*, M. M. R. July 2, 1875, p. 838.

Value 7,162*l.*—Award £1800

178. The ship G. C., when off the Azores, was dismasted, sustained other considerable damage from tempestuous weather, and was in very imminent danger. The schooner S., after a long and laborious service, succeeded in conducting her to Fayal. *The Gibson Craig*, S. G. January 22, 1857; and February 27, 1857.

V. 22,634*l.*—A. £1800

179. The *Granada*, 684 tons register, from Singapore for Liverpool, with a general cargo, when four days' sail from Chili, fell in with the barque G., of 473 tons register, bound from Chanaral to Swansea, laden with copper, and in distress; her master having jumped overboard while in a state of insanity, and her first and second mates having deserted her previously to her leaving Chanaral. The second mate of the *Granada* was, at the crew's request, put on board the G., and with great labour and difficulty brought her safely to Swansea in thirty-five days. *The Golondrina*, M. M. R. January 26, 1867, p. 117.

V. 26,000*l.*—A. £1800

180. In December, about seventy-seven miles S.W. by S. of Fastnet, the steamer L. O., 2,753 tons gross, 1,816 tons nett, with cotton, from Norfolk, Virginia, to Liverpool, broke her shaft and became unmanageable. The steamer N., 3,367 tons gross, 1,533 tons nett, 300 h.-p. nominal, thirty-two hands, from Liverpool to New York in ballast, towed her in two days to Queenstown harbour. The N. lost five days through the towage, and sustained damage by the breaking of hawsers, carrying away bits, and straining ballast bunker seams. *The Lord O'Neil*, S. G. Oct. 30, 1885, p. 697.

V. 110,454*l.*—A. £1800

181. In February, the iron screw steamship M., 1,210 tons gross, 823 tons nett, with a general cargo, 500 tons of silver ore, and twenty-eight hands, seven days out from New York for Liverpool, was found in about lat. 49°19' N. and long. 23°30' W. in a helpless condition drifting S.E. by the screw steamship H., 1,830 tons gross, 1,302 tons nett, 200 h.-p., nominal, working 1,000, value £45,680, from Liverpool to Belize, Progreso, Vera Cruz, and Tampico, with general cargo, two passengers, and thirty-five hands. The M. had become unmanageable, owing to a heavy sea and to her having disabled her rudder in a hurricane. The H. took the M. in tow, and after three or four days' difficult towing got her to off Queenstown, where the aid of tugs was obtained, and with great difficulty the M., which had driven some distance, was found and taken into Queenstown harbour. The H. was delayed five days, during which her captain only went off deck for meals. She incurred expenses to the amount of £163. *The Memnon*, S. G. July 31, 1885, p. 486.

V. 30,640*l.*—A. £1800

182. In January, the screw steamer S., 1,865 tons register and 250 h.-p., about 625 miles off Madeira, broke her main shaft. For four days efforts were made without success to sail her to Madeira. The screw steamer A., 1,066 tons nett register, then came up. The weather was bad, but the A. nevertheless took the S. in tow and in five days got her to Madeira, taking five days more to get back to her former position. *The Statesman*, M. M. R. May 7, 1880, p. 591.

V. 27,900*l.*—A. £1800

183. In November, the steamer T., with pig-iron, was lying in the trough of the sea about ten miles from, and driving on to, Walney Island. The fires had been put out, and the ship was settling down, when the steamer A., value £50,000, came up and succeeded in getting her into Barrow. *The Tynedale*, M. M. R. May 1, 1874, p. 560.

V. 12,000*l.*—A. £1800

184. The brig W. and M., 172 miles W. of Cape Clear, derelict, with 2½ feet water in her. The barque M., 1,534 tons, put her mate and six hands on board the brig, on the 27th of November, and they conducted her to Queenstown, where she arrived on the 1st of December. The owner of the M. proceeded to Queenstown and engaged

a master and crew of runners to take the brig to London, and incurred certain expenses, which were allowed. *The William and Mary*, S. G. March 9, 1859.

Value 9,785*l.*—Award £1800

185. In May, the *W.*, from Leghorn to St. Petersburg, got on the Long Sand, whence she was assisted off by H.M.S. *B.*, and seven or eight smacks' crews (thirty-five men in all), and towed into Ramsgate. £1,000 to the *B.*, £800 to the smacks. *The Wilson*, S. G., Jan. 13, 1841. V. 7,384*l.*—A. £1800

186. In January, the brig *S.*, 325 tons, with linseed, was aground fore and aft on the Goodwin Sands. Two lifeboats and a steam-tug got her off, and she was taken to Ramsgate harbour. It was agreed to accept £1,757 for the services, and the salvors came to the court to have it apportioned. £850 to tug, £907 to lifeboats. *The Sorri*, M. M. R. June 9, 1871, p. 719. V. not stated.—A. £1757

187. In October, the iron vessel *R.*, 422 tons gross register, from Glasgow to Vinaroy, in Spain, with iron rails, spikes, bolts, crossings, &c., deserted by the crew, and leaking, was found about twenty miles W.S.W. of Ushant by the steamer *U.*, 575 tons, 90 h.-p., value £15,000, from Shields to Savona with coals. There was a moderate gale N.W. and a very heavy sea. The crew of the *R.*, who, with her captain, were picked up by the *U.*, refused to return to her. The *U.* kept near her for about two hours, when they lowered a boat, manned by the chief mate, second mate, and three men of the *U.*, who got on board, and found she had a list to starboard, the water washed her deck, the cargo in the after-hold was adrift, the water in the engine-room was up to the furnace doors, and the pumps choked. A tow-line was got on board, and the *U.* towed her through a wind and sea growing heavier each hour for fourteen hours, when the tow-ropes broke, and she was lost sight of for an hour. The *U.* went to Plymouth for aid, and finding the tug *B. N.* in the Sound, sent her. The *B. N.*, with the master of the *U.* aboard, found the *R.* brought up with two anchors, about five miles S.S.E. of Plymouth breakwater, and three and a half from Byburg Bay. The wind was blowing very heavily, and some difficulty was experienced in getting a tow-line on board. Ultimately she was brought safely into Plymouth Sound. *The Rover*, M. M. R. Feb. 14, 1879, p. 211. V. 6,100*l.*—A. £1700

188. The barque *T.*, 778 tons register, from Liverpool to New York with a general cargo, parted from her anchors in bad weather, her fore and mainmasts were gone, and she was in danger of drifting on to the Little Burbo Bank. The steam-tug *H.* came up and took her in tow. Subsequently the *R. A.* arrived, and with the assistance of the two tugs the barque was docked. It was alleged that soon after leaving Liverpool, two days before, the master and second mate were drunk, and that the master never came on deck till two days after; that all the day before the shore lights were visible, but no one on deck could tell where the vessel was; that all hands were kept on deck, everything was in confusion, and spars and water-casks got adrift on the deck. £1,000 to the *H.*, £700 to the *R. A.* *The Twilight*, M. M. R. Dec. 29, 1866, p. 1647. V. 18,000*l.*—A. £1700

189. In December, the Italian ship *G. O.*, from New York for Queenstown with wheat, was fallen in with, derelict and waterlogged, about 117 miles from the Western Islands, and 1,100 miles from Queenstown, by the Liverpool vessel *B. I.*; the mate of which vessel, with seven men, contrived to bring the *G. O.* into Queenstown in eight days. *The Guiseppina Oneto* (Dublin Adm. Co.), M. M. R. April 17, 1874, p. 496. V. 9,289*l.*—A. £1670

190. H.M.S. *H.* fell in with the *N.*, of 686 tons, much damaged and disabled, with eight or nine feet of water in her hold. She had a signal of distress flying, the wind blew strong, and there was a heavy sea. The first lieutenant with sixteen hands boarded her, and worked at the pumps. The *H.* towed her into Bermuda. There was considerable risk to those who boarded the *N.* *The Norma*, S. G. Nov. 3, 1860; 1 Lush. 127. V. 5,000*l.*—A. £1666

191. The troop transport ship, *E. M.*, caught fire at Spithead. Three steam-tugs, a yacht, a pilot cutter, and four barges saved some of the cargo, and all the crew and passengers. *The Eastern Monarch*, S. G. April 19, 1860; 1 Lush. 84. V. 4,132*l.*—A. £1660

192. In February, the Dutch vessel *G. V. S.*, with wood, tallow, and hides, during a thick fog, ran on the Beechy Head Ledge. 112 men were employed, and by their assistance the property was salvaged. *The Gouverneur van Surieten*, M. M. R. July 13, 1867, p. 883. Value 5,690*l.*—Award £1641

193. In August, the Italian brig *G.*, from Marianople for Antwerp, with linseed, was found by the Norwegian barque *R.*, with 528 Norwegian lasts, leaking fast and derelict, about sixteen miles S.E. of St. Catherine's Point, heading E. with the wind fresh from N.W. She had thirteen feet of water in the hold. A boat's crew from the *R.* boarded her, and shaped her course to E. of Selsea, to make Dover. The pilot-boat *S.* was engaged off the Owers, to pilot the *G.* into port for £15. The pilot at first shaped her course for Dover, but afterwards, in fear of her sinking, ran for Shoreham. When within half-a-mile of the harbour, the tug *M.* was engaged and towed her towards the harbour, on entering which she grounded, but got off and was taken into harbour safely. The pilot cutter, *R.*, picked up eleven of her crew, and took them to Portsmouth. *The Genitore-e-Figli*, M. M. R. Dec. 21, 1877, p. 1619.

V. 4,000*l.*—A. £1640

193*a.* In March, the screw steamer *B.*, 1,627 tons nett, and 2,555 tons gross register, from Liverpool to Bombay, with a general cargo, got ashore on the Evora Reef, off the N. shore of Perim Island, in a position of great peril, aground for nearly her whole length on an uneven bed of coral, and hard and sharp rocks, and in danger of becoming a wreck if the wind blew from the north. After she had been some four or five hours in this position, the screw steamer *G.*, 1,412 tons nett, and 2,165 tons gross register, and 250 h.-p., value £160,000, from China and Ceylon, for London, with 39 hands and general cargo, came up. A boat was sent out, and the *B.* was boarded by the captain of the *G.* After great difficulty a steel wire hawser was made fast to the end of a Manilla hawser of the *B.*, which was then taken through the port quarter-pipe, and made fast to the *G.*, which towed for seven hours till high tide. There was a fresh S.E. breeze, and a strong current setting west. The *G.* anchored for some hours, and then steamed ahead for two hours, when the *B.* moved. The tide and wind were very strong, and shortly after the hawser parted, but was re-bent, and the towing proceeded for four hours, when the *G.* anchored for the night. Next morning, H.M. gun-boat *P.* came up and assisted to tow. The *B.* dragged her anchor, and drove towards the shore, dangerously close to the *P.*, so that her tow-line had to be slipped and buoyed, to enable her to swing to her anchor in deeper water, and about eighty tons of fire-bricks, part of her cargo, were thrown overboard. The tow-line was picked up, and another hawser bent, and at 5.30, p.m., the gun-boat and the *G.* succeeded in getting the *B.* clear of the reef. The services lasted forty-eight hours. *The Batavia*, M. M. R. May 14, 1880, p. 617.

V. 65,000*l.*—A. £1600

194. In September, the screw steamer *Y.*, 1,771 tons nett register, with engines, 250 h.-p., rigged as a three-masted schooner, from Philadelphia for Antwerp, with wheat in bulk and bags, in mid-ocean, broke her propeller shaft and had to proceed under sail for thirty days. She had then stores and provisions to last for a month, was making fair headway for the English Channel, and was making water. The screw steamer *T.*, 1,205 tons register, and engines of 700 h.-p., value £90,000, three days out from Liverpool for Alexandria, with Manchester goods and coals, besides seven passengers, in lat. 44°32' N., long. 10°30' W., about sixty miles W. of the usual track of vessels, steering S.S.W., and making ten knots per hour, sighted bright lights followed by rockets, which she found proceeded from the *Y.* The captain of the *T.* was asked to stand by the *Y.* till the morning. An attempt was made to get a tow line on board, but unsuccessfully, owing to the drift of the *Y.* and the heavy sea. During the night the *Y.* was seen to be drifting to leeward. Next day the wind and sea moderated and a hawser was got on board, but after half-an-hour's towing parted. The *T.* remained in attendance all night, and at seven next morning a wire rope and a hawser were made fast to the *Y.*, but parted in about a quarter of an hour. Two hawsers were then shackled to the main chains of the *Y.* about noon, and towage began against a head wind towards Ferrol, distant 160 miles, which was reached after much difficulty, and after four days' towage. The *T.* was delayed four days and seventeen hours. *The Yorkshire*, M. M. R. Jan. 23, 1880, p. 114.

V. 42,231*l.*—A. £1600

195. On December 8, 1884, the iron barque C., 254 tons, from Liverpool to Sydney, with twenty-four hands and general cargo, had lost her rigging and masts. She was found in a helpless and unmanageable condition in the trough of the sea by the screw steamer R., 1,525 tons, from Huelva for Liverpool, with nineteen hands and copper ore, about 100 miles W. by S. of the Scilly Islands, towards which the R. took the C. in tow; but when off St. Agnes Light it was found impossible to tow the C. into the Bristol Channel, and she was therefore taken towards Falmouth. After some forty-eight hours' towing she was got into smooth water near Falmouth, whence a tug towed her, in charge of a pilot, to a safe anchorage in Falmouth harbour. *The Carnmoney*, S. G. March 27, 1885, p. 198. Value 38,312*l.*—Award £1600

196. In November, the steamer C., in tow, from Sunderland to Kirkcaldy, to receive and have her engines fitted, broke away from her tug and was driven helplessly before the storm, with only her master and four runners on board, who had exhausted the provisions and had no oil wherewith to make signals. She was drawing nine feet of water, and had no ballast on board. The N. E. from Grimsby to Malmo, with coals, discovered her about 165 miles E.N.E. of the Spurn, and took her in tow, by two tow-ropes, but owing to the heavy sea and strong wind from the S.W. the vessels only made two knots per hour. The weather became worse, both ropes parted, and the C. was discovered lying in the trough of the sea, broadside on to the N. E. When the weather moderated, the C. was again sighted in lat. 56°10' N. and long. 3°46' E., in a part of the North Sea not much frequented by ships. A new rope from the N. E. was with much trouble made fast, and towing recommenced. She was kept in tow during heavy weather, and in about nine hours was dragged into Aberlady Bay and anchored. The N. E. then proceeded to Leith and engaged two tugs, which stayed by her during the night and then towed her to Leith Roads. The services lasted five days. *The Claremont*, M. M. R. June 23, 1882, p. 781. V. 8,300*l.*—A. £1600

197. In November, the D. was found derelict in the St. Lawrence and brought to Plymouth by part of the crew of the brig E. *The Devon*, 1 W. Rob. 180. V. 3,200*l.*—A. £1600

198. In April, in the Bay of Biscay, the steamer M., 566 tons register, 90 h.-p., from Odessa for London, with wheat and barley, exhibited signals of distress, her engines having broken down. The wind was heavy from S.W. and the weather thick. The mail steamer C., from Table Bay for Southampton, came up and took her in tow, and in spite of several breakings of the hawsers, and a collision caused by the C. being struck by a heavy sea, succeeded in getting her to the Solent in three days, whence she was towed by tugs to Southampton. *The Mary*, M. M. R. Nov. 10, 1871, p. 1425. V. 22,000*l.*—A. £1600

199. In January, the Italian barque P., laden with bones and bone-dust, was discovered about 135 miles off the Spurn, which bore S.W. by W., lying in the trough of the sea, with a quantity of water in her hold and in such danger of foundering that by request the smack S., 77 tons, which was herself disabled and had lost trawl gear and sail, took off her master and crew, thirteen in all. The smack G., hearing of the position of the P., went to her and lay by till morning, when some of her crew went aboard and rigged the pumps. At about ten a.m., the smacks L., 80 tons, and P. C., 80 tons, came up, and each put three men aboard. The three smacks then towed the P. towards Grimsby for seven days in rough and stormy weather, during which time she broke adrift once or twice, and then had to cast off for some time. A tug was at last obtained, and the P. was taken into Grimsby Dock. *The Pedro*, S. G. July 18, 1884, p. 454. V. 3,600*l.*—A. £1600

200. In August, the steamer C., 1,708 tons, from New York to Leith, with general cargo and twenty-nine hands, ran ashore on the Gunfleet Sands. The smacks R. and J. and thirteen yawls, assisted in getting the cargo out of her and into lighters, the weather being calm. They laid out an anchor to the S.E. to prevent the C. going farther on the sands, but failed to get her off by heaving on it. Two steam trawlers also failed to tow her off and left. Shortly before 11 a.m. the tug H. came up, and was engaged to tow the C., but the rope broke, and the tug H. then fetched the tug R. O. from Harwich. More assistance was eventually telegraphed for, and seventeen beachmen came and helped to jettison the cargo. At about 11 p.m. the tugs H. and

R. O., with the tug T., which then came up, tried but failed to tow the C. off. About 5 p.m. on the 15th, those three tugs, with the tugs W. and V., which had been sent for, tried to get her off, but only canted her head two points to the E. More beachmen were employed to take out her cargo, of which 800 tons had been removed by 2 p.m. on the 16th, when the tugs H., W., T., and V. passed hawsers on board the C., and after three hours' towing got her off. She was then taken to Harwich, which was reached about 6 p.m. Seventy-three men in all were employed in lightening her. £1,000 to the tugs, £574 to the beachmen. *The Crystal*, S. G. Nov. 13, 1885, p. 726. Value 29,667*l.*—Award £1574

201. The F. was found in November by four fishing smacks in the North Sea, disabled, with hatches stove in and a quantity of water in the hold. They towed her through hard gales, and with the loss of several hawsers, for five days before the wind until within about eighty miles of Heligoland, where the F., a calm having come on, took the assistance of the steamer B. in place of the smacks, which were, however, prepared to assist further. The B. brought her in twenty-seven hours to Cuxhaven, after about sixty hours' labour in all. *Ship Fenham and Four Fishing Smacks and Ship Bertha*, Hamb. 11 G. Z. 1879, pp. 17, 24. [German.] 800*l.* awarded to the four smacks; 750*l.* to the B. V. 20,000*l.*—A. £1550

202. The barque E. O., on the Skerries Rock in a perilous position, was towed into deep water, after two attempts, by the steamer M. Off Orme's Head the steam-tug V. came to her assistance, and the two, with considerable difficulty, took her to the Magazine beach on the Chester side of the Mersey. The V. afterwards took her to Collingwood Dock. £1,275 to the M., £250 to the V. *The Ellen Oliver*, S. G. July 10, 1857. V. 21,000*l.*—A. £1525

203. H.M.S. A. grounded on the Shingle Spit. Salvors, four smacks, five galleys, and three steam-tugs. The smacksmen carried the A.'s starboard bower anchor and chain over the sand, which was dry, and when the flood tide made they gave a heavy strain upon it. The pumps of the A. were worked by the crew on board. The steam-tugs then arrived, and she was conducted to Sheerness. *H.M.S. Alacrity*, S. G. May 8, 1858. V. 17,966*l.*—A. £1520

204. The L. fell in with the G. during stormy weather, with her screw broken, near the west coast of Jutland, drifting about rudderless, and therefore exposed to wind and waves. With considerable danger, and after thirty-five hours' hard labour, the L. succeeded in bringing the G. into safety. *The Luive v. The Germania*, Assistance, Hamb. H. G. Z. 1873, pp. 265, 266; and 1874, p. 137. [German.] V. 18,000*l.*—A. £1500

204a. In January, the A. lost her screw in a violent gale while on her voyage from Liverpool for Philadelphia, and was found thirty-five miles off the south-west coast of Ireland by the steamer P. in a crippled condition. After several collisions, a hawser was got on board, and the A. was towed round Kinsale Head towards Queenstown harbour, but before she could anchor the hawser parted, and she was taken by two tugs into Queenstown. *The Abbotsford* (Dublin Adm. Co.), M. M. R. June 4, 1875, p. 711. V. 73,618*l.*—A. £1500

205. The ship A., with a valuable cargo, was in a sinking state off the Island of Ascension, five feet of water in her, making twenty-four inches per hour. The master and crew were exhausted, and expressed their intention to abandon the ship. The crew of H.M.S. T. discharged 800 tons of the cargo on shore, and discovered the leak. The ship was repaired and the cargo re-shipped in seventeen days by the boats of the T. The services lasted from the 18th May to 22nd July. Number of salvors 111. *The Abyssinian*, S. G. May 27, 1858. V. 23,464*l.*—A. £1500

206. In November, the A. sustained serious damages by striking on the Fern Islands off Northumberland, and was taken in tow by the steamer H. Q., assisted by the M. Off St. Abbs Head the rope of the M. broke, and she, at the request of the master of the A., proceeded to Dundee to fetch two tugs to tow the A. up the Tay. The H. Q. towed her to Dundee. *The Anglia* (Edinburgh Co. of Sess.), M. M. R. July 13, 1877, p. 884. V. 48,000*l.*—A. £1500

207. The brig A. of 168 tons was in lat. 13 N. and long. 46 W., with a signal of distress flying, having lost seven out of a crew of eleven by yellow fever, and the

master being *in articulo mortis*. The mate and a seaman of the barque T. volunteered their services, and by great exertion conducted the brig to Falmouth. *The Active*, S. G. May 30, 1860; 14 Jur. 606. Value 4,300*l.*—Award £1500

208. The A., of 1,119 tons, was driven by boisterous weather from her moorings in the Mersey, and drifted against the Great Landing Stage, whereby she was damaged. Four tugs endeavoured to prevent her from driving, but could not. The A. cleared the stage and fell towards the dock wall, and was within about ten feet of it, when the steam-tug U. K., 125 tons, 240 h.-p., towed the A. away from the wall and to an anchorage, and remained by her for thirty-six hours. *The Argo*, S. G. July 5, 1860. V. 54,000*l.*—A. £1500

209. In February, the steamer C., 1,020 tons gross, twenty-one hands, from Liverpool to London with general cargo, lost her propeller about thirteen miles E.S.E. of Portland Bill, and was taken in tow by the steamer City of H., but the rope parted, and the C. brought up close to the Shambles. In trying to recommence towing, the ships came into collision, the C. breaking her stern plates, losing her towing hawser and the use of her windlass. The City of H. returned to Portland Roads. Next day the tug Q., in heavy squalls and rough sea, came to the C. and took hold of her by getting athwart the sea and passing the rope over her stern. Directly the towage began the hawser broke, and ship and tug drove towards the rocks at the back of Portland. After two more hawsers had been bent and had parted, and when the C. was within 100 yards of the rocks, the Q. got between the rocks and the ship, passed another hawser aboard, canted her head round, and towed her a short distance, when the hawser again broke, owing to the tremendous sea. Another hawser was made fast, which held, and when near the breakwater a second tug came up, and the C., after one more hawser had been broken, was safely anchored in Portland harbour. *The Cheerful*, S. G. July 3, 1885, p. 422. V. 17,504*l.*—A. £1500

210. In November, the barque D., 573 tons, from London to Shanghai, with iron, &c., got aground off Dungeness, the wind blowing strong from S., and the night being dark and thick, with heavy rain. On the next day the tugs G. P. and C. D. got her off the sand and into the Downs; the G. P. was disabled, and four tow-ropes broke during the service in the heavy gale. Her crew being exhausted, the lugger E. M. took off her master to Deal to engage twenty hands, who, with the crews of the E. M., the G. Q. and the G. K. pumped her; and the tug W. assisting, she was got into the East India Export Dock in about 2½ days. *The Deerhound*, M. M. R. Dec. 17, 1875, p. 1616. V. 15,373*l.*—A. £1500

211. The steamer C., 1,002 tons, from Liverpool for Lisbon and Trieste, when in the neighbourhood of the Bay of Biscay, fell in with the steamer D., of 418 tons, unmanageable, having lost her bulwarks, after-stern post, and rudder, and with a signal of distress hoisted. The C. towed the D. to Plymouth in forty-eight hours. During the service the D. ran into and damaged the C. to the extent of £1,106, which sum was allowed in addition to the salvage. *The Demetrius*, S. G. May 10, 1862. V. 17,000*l.*—A. £1500

212. The brig D., 165 tons, was in the middle part of the Hasborough Sands in great peril. The smacks A. and R., the steam-tug R. O., and ten beachmen went to her assistance, and with considerable difficulty and at great peril conducted her to Lowestoft Harbour. £500 to the R. D., £450 to the A., £350 to the R., £200 to beachmen. *The Dorothea*, S. G. Oct. 19, 1854. V. 9,045*l.*—A. £1500

213. The ship E. H., drawing twelve feet of water, was ashore on a reef in ten feet of water. The sea rolled in heavily, pressing her further on to the reef. Four wrecking vessels relieved her by lightening, and carried out two anchors. *The Ella Hand*, Files of Court, 1837, cited in Marvin, 214. [American.] V. 6,640*l.*—A. £1500

214. The G., in tempestuous weather, while at anchor in Margate Roads, drifted towards the Goodwin Sands. The lugger Q. was dispatched for an anchor and cable, with which she returned, but in consequence of the darkness of the night was unable to find the G. In the meantime the luggers P. and F. came up; one was sent for more chain, and the other remained near the vessel. The gale increasing, the master and crew abandoned the vessel, and on the following morning she was found by the luggers B., G., and M. S., who were subsequently joined by the Q. A steamer

having been procured, the master and pilot returned on board, and the G. was towed into Ramsgate Harbour. £1,200 to the Q., B., G. and M. S., £300 to the F. and P. *The Genessee*, S. G. April 20, 1848. Value 12,000*l.*—Award £1500

215. In November, during a heavy gale from N.W., with a heavy sea, the barque H., with ivory, palm oil, &c. from Africa for Liverpool, was found by the steam-tug U. K. driven by the wind on to the Victoria Pier Wall, beating heavily against and driving along the wall, and in great peril. With great difficulty and danger the tug's hawser was got on board the barque, and made fast. The tug pulled the barque away from the wall, and held her off while she tried to slip her anchor chains, coming into collision with another tug in so doing. She slipped her port chain, but before she slipped the starboard one she was found to be sinking. The tug then slacked the H. against the Pier Wall, and the crew climbing into the rigging got on the pier. The barque then turned over to the starboard, slid off the wall, breaking her masts, and lay with her port side about two feet out of the water. The H. was allowed to drop down the river, the hawser of the tug still being attached, and it was a matter of great difficulty, as the barque had no lights, no masts or rigging, to keep the vessels coming up clear of her. The wreck grounded on the spit of the bank near Canada Basin, and was left there till the next morning, when the tug came, took her to the other side of the river, and beached her. The tug kept by her seven days, until all the cargo was saved, and the wreck delivered up to the owners. *The Hind*, M. M. R. March 19, 1870, p. 369. V. 11,470*l.*—A. £1500

216. In March, the screw steamer H., 1,567 tons gross register, from Trieste to London, with green fruit, flour, and general cargo, was fallen in with in lat. 37°50' N. and long. 17°50' E. by the screw steamer A. D., 1,275 tons gross and 811 tons nett register. The H. had her ensign hoisted. She was taken in tow by the A. D. A moderate breeze was blowing at the time, which increased with a heavy swell to a strong gale, with heavy gales from the west next day, and obliged the A. D. to wear round and run for shelter under reefed canvas towards Sicily. After two days more towing, during which the weather continued very bad, the A. D. brought the H. to a safe anchorage in Valetta harbour. *The Hope*, M. M. R. June 29, 1883, p. 814. V. 23,000*l.*—A. £1500

217. The barque H. having lost her main and mizenmast, and her foretopmast having gone close to the cap, was found by the steamer M., engaged on special cable telegraph service, and towed in three and a half days a distance of between 400 and 500 miles. *The Hudson*, S. G. May 22, 1885, p. 326. V. 17,500*l.*—A. £1500

218. In May, the iron screw steamer I., 2,292 tons gross, 1,496 tons nett, schooner-rigged, from Bombay to Dunkirk, with linseed, rapeseed, ground nuts, cotton in bale, and with twenty-eight hands, had lost her propeller, and was lying with head to W. set in shore, with the current N. of Cape Finisterre, where she was found by the steamer M., 1,522 tons gross, 981 nett, 130 h.-p., with grain, and nineteen hands, value £32,712, from Ibrail to Dunkirk, and taken in tow during three days, for 400 miles, to Falmouth Roads. During most of the towage there was a fog, and the I. steered so badly, and the two vessels ranged so much, owing to a heavy increasing swell and the want of steering power of the I., that there was all the time a severe strain on the M. *The Inchrhona*, S. G. June 26, 1885, p. 406. V. 63,000*l.*—A. £1500

219. The steamer J. D., of 838 tons, was anchored a mile from Portland Race. The wind was south-west, and owing to the violence of the weather she lost her steering apparatus and received other damage, and drove towards the shore. She hoisted signals of distress. The steamer C., without danger, and in a short time, towed the J. D. into Portland Roads. During the time the J. D. was in tow the hawser broke three times, and the chief mate and three of the crew of the C. went in a small boat, with great risk to their lives, and refastened the hawser. *The James Dixon*, S. G. June 8, 1860; 2 L. T. N.S. 696. V. 23,000*l.*—A. £1500

220. In January, the barque J. A., 422 tons register, from Mauritius to Bremerhaven, with cotton and coffee, having sustained damage from a collision, was sighted about twenty-eight miles S.W. of the Eddystone Lighthouse, the wind being fresh, S.E. with a heavy swell, by the steamer A., 694 tons and 150 nominal h.-p., from Antwerp to Genoa with a general cargo. The J. A. had her foremast stay only standing, and she was quite unmanageable. A steel tow rope was got on board, and

about 1.30 p.m. the A. commenced to tow. The weather became thicker, about midnight the tow rope parted, and the A. lost sight of the J. A., finding her again at anchor in Plymouth harbour, her foresail and foretopmast staysail having in the meantime been set by the crew. *The Jane Avery*, M. M. R. May 2, 1879, p. 563.

Value 20,697*l.*—Award £1500

221. In December, the weather being fine but thick, the wind about N.W., blowing a stiff breeze, and the tide ebb, running at two and a half to three knots an hour, the iron screw steamer *Lady H.*, 447 tons register and 90 h.-p., from Newcastle to Rouen with coals, was aground on the Corton Sand off Yarmouth. The screw steamer *D.*, from Ostend to Goole in ballast, tried to tow her off, but, owing to the falling tide, failed. Eight of the *D.*'s crew, with the chief officer, boarded the *Lady H.* and lightened her. With the aid of four tugs engaged by the master of the *D.*, the *Lady H.* was got off the sand, and taken safely into Yarmouth Roads. The services lasted eleven hours. *The Lady Havelock*, M. M. R. 1874, p. 784.

V. 11,000*l.*—A. £1500

222. The ship *M. L.*, about twenty miles to the north of Ushant, dismasted, had 500 passengers on board, and had drifted upwards of 100 miles out of her proper course, nearly all her sails lost, only one mast left standing, ship rolling frightfully, signals of distress, weather rough. The boatswain and four of her crew had been lost, and all her lifeboats. Rescued by the steamer *T.*, during her voyage from Gibraltar to Southampton, with her Majesty's mails and sixty-two passengers on board. Two hawsers from the *M. L.* having with great difficulty been got on board the *T.* by her lifeboat, she towed the *M. L.* into Plymouth Sound in about twenty-four hours. One compartment of the *T.*'s lifeboat was crushed, and the lives of some of the salvors were thereby endangered. *The Martin Luther*, S. G. November 21, 1857; Swabey, 287.

V. 12,000*l.*—A. £1500

223. The ship *M. H.*, laden with cotton and corn, was on shore on Alligator Reef. Three wrecking vessels, carrying forty-three men, lightened the ship of 300 bales of cotton, and heaved her off. *The Mary Hale*, 5 A. R. 1855, cited in Marvin, 215. [American.]

V. 14,000*l.*—A. £1500

224. In September, the A., when about lat. 45° N., long. 48° W., descried the ship *P.*, from Liverpool to New Orleans, in distress. The A. accordingly altered her course, and coming up to the *P.* found her fore and main topmast and part of her mizenmast carried away; she was unmanageable, and deserted by eleven of her crew, and the master intended to abandon and scuttle her. The master of the A. prevailed on him to abandon that idea, and agreed to tow the *P.* into Falmouth, which he did after much difficulty and danger. *The Palmyra*, M. M. R. Jan. 26, 1872, p. 115.

V. 3,410*l.*—A. £1500

225. In September, the brigantine *R.* was met at sea by the schooner *E.*, whose master had died of yellow fever. The master and mate of the *R.* also had died of yellow fever, only one boy on board could write, and the crew did not know where they were. The second mate (acting first mate) of the *E.* took charge of the *R.*, and after encountering heavy gales took her safely to Plymouth. *The Richmond*, M. M. R. May 6, 1865, p. 561.

V. 4,037*l.*—A. £1500

226. In January, in the English Channel, ten miles from the Eddystone lighthouse, which was bearing N.E. by N., the screw steamer *T.*, totally disabled, was taken in tow by the screw steamer *C.*, in a heavy sea, with rain and squalls, the hawsers being got on board by the help of a pilot cutter. After breaking several hawsers, she was finally taken into Plymouth. £60 to pilot cutter, £1,440 to the *C.* *The Tiber*, M. M. R. June 4, 1875, p. 710.

V. 38,742*l.*—A. £1500

227. H.M.S. *R.* went on shore to the northward of Wells Harbour, and was in a dangerous position. The fishing boat *P.*, together with the Wells lifeboat, two yawls—the *R.* in *J.* and the *C.*, and the steam-tug *E.*, went to the *R.*'s assistance, and by laying out anchors, lightening the vessel, and adopting other measures, she was got off. The services lasted two days. *The Rosamond*, S. G. 12th July, 1855.

V. 18,500*l.*—A. £1500

228. In January, the screw steamer *V.*, 2,730 tons nett, 4,105 tons gross, from Boston to Liverpool, with fifty-five hands, general cargo and cattle, struck upon the Little Burbo Bank, near Formby lightship, and was hard and fast, heading E. with broad-

side exposed to increasing gale from N. and a heavy sea. The flood tide was making. The steam-tug K., 263 tons gross, 500 h.-p., came up in answer to signals, and by request went to Liverpool to fetch the tugs U. K., W. S., and C. On her return the K., with a great deal of difficulty, got a hawser made fast, and began to tow off the port quarter of the V., and in this manner got her head up Channel, and off the bank. Three other tugs had failed to get her off. *The Venetian*, S. G. 13th March, 1885, p. 166. Value 117,000*l.*—Award £1500

228*a*. Salvage effected by transhipment of a portion of a cargo of tea by three large steamers of the value of upwards of £30,000, with crews of fifty-eight men in all, and engaged, one for six days, another for four days, and another for three days, the cargo being at the time in danger of being lost, or at least much damaged, from the ship having struck on the rocks. *The Westminster*, 1 W. Rob. 229. V. 24,000*l.*—A. £1500

229. A. British vessel was taken by the French, who took out all the crew but the master and a boy, who, however, rose on the prize master and crew, and having regained possession of the vessel, made for England. A violent storm coming on, the master applied for and obtained assistance from an English frigate, by whose aid he continued to manage the vessel until it was thought dangerous to remain longer on board, when they all removed to the frigate. The storm abating shortly afterwards, the master and his assistants returned on board, and ultimately brought the vessel into port. £850 awarded to the master, £150 to the boy, and £500 to the frigate. *The Beaver*, 3 C. Rob. 292. V. 6,000*l.*—A. £1500

230. The ships W. A. and B. T. were in collision off S. Halifax, and the steam-tugs S. and C. went to their assistance—the B. T. being athwart the W. A.'s bows, and both driving to the northward. The two tugs got hold of the port bow of the B. T., and towed a-head with full steam to the S., but could not prevent the ships drifting N., and eventually the starboard side of the B. T. came in collision with the S. Halifax Buoy. Here the S. parted her hawser, but again got hold of the B. T. The tug R. coming up, after they had been towing for half-an-hour, the three tugs held the B. T., and prevented the two ships dragging; then pulled the B. T. sufficiently away from the W. A. to allow of her slipping her anchor; the W. A. was subsequently towed away and disappeared. The action of the tugs also prevented a collision between the two ships and G. N., which was anchored a little E. of the Halifax buoy. The B. T., with the aid of the tugs R. and C., got up one of her anchors, and was towed into Canada Dock. The S. and C. brought a claim against both ships, but the R. only against the B. T. The value of the W. A. was £24,741, and of the B. T. £131,241. £700 awarded against the W. A., £800 against the B. T. *The Woburn Abbey, The British Trident*, M. M. R. Jan. 16, 1869, p. 84. V. 155,982*l.*—A. £1500

231. In June, the ship M., from the Tyne to Bombay with coals, took the ground on Hammond's Knowl in hazy weather, the wind being fresh from N.N.E. Her master and crew deserted her, and were taken on shore by the tug M. and the lifeboat G. She was found thus by the Norwegian schooner J., 100 tons register, which remained by her till next day, when the M. floated off. A mate, an able seaman, and a boy were put on board her, who, in about an hour and a half got her head off shore and brought her up in the wind at a safe distance from the rocks. She was then, however, heading for the Cross Sands. The crew of the pilot cutter P. boarded her, her head was got round to S.E., and in about an hour and a half the J. P. lifeboat came up. Eighteen of her crew were put on board, and the united efforts of the salvors, who manned the pumps and got sail on her, resulted in her being brought, about 4 p.m. next day, to an anchor off Maplin. At 9.30 p.m. a tug took her in tow, and she was taken in safety to Millwall Docks. £250 to the two men and boy from the J., £380 to crew of the P., £800 to lifeboat J. P., £15 to the M., £15 to the G. *The Macnear*, M. M. R. 1876, p. 981. V. 8,915*l.*—A. £1460

232. In August, the screw steamer A., 697 tons, from New York to Glasgow with a general cargo, including sheep, lost her propeller when about 250 miles S.W. of Halifax. The screw steamer C., from New York for Dunkirk with grain, towed her into Halifax, where they arrived two days afterwards. *The Aetia*, The Times, Feb. 5, 1881. V. 22,000*l.*—A. £1400

233. In July, the steamer *A. N. H.*, 1,057 tons gross, 948 tons nett, from Palermo to Antwerp, her propeller lost, was discovered off Villano lighthouse by the steamer *P.* 1,781 tons gross, 1,153 tons nett, 150 h.-p., twenty-three hands, value £22,100, from Korman to Cardiff with mineral ore. The wind was strong from the E., with a slight fog and a heavy sea. The *H.* was taken in tow for Falmouth by the *P.* After twenty-four hours the hawser parted, at considerable risk a second was made fast by means of a boat, and she was taken into Falmouth. The services lasted four and a half days, and the master of the *P.* had to cut up and burn her shifting boards and other timber for fear of running short of fuel. The weather was bad during the greater part of the time, and had it continued so a few hours longer the *P.* would have been helpless for want of fuel. During the towage of 500 miles, the engines of the *P.* were much strained, her decks opened up, and her hawsers damaged. *The A. N. Hansen*, S. G. Dec. 11, 1885, p. 790.

Value 30,800*l.*—Award £1400

234. In May, the steamer *A.*, 1,123 tons gross, 709 tons nett, from Galatz to Antwerp, in a high cross sea and gale, with a broken shaft, was discovered by the iron screw steamer *J.*, 309 tons nett, 56 h.-p., twelve hands, from St. Ubes for Dlaardingen and Bremen with a general cargo. A hawser floated on a lifebuoy was made fast to the *A.*, but after an hour's towing parted, two others doing the same very shortly after, one of which fouled and jammed the *J.*'s propeller, and sail had to be set to keep the *J.* clear until the mate of the *J.*, held by his legs by three men over the stern, cleared the propeller, so that the engines could work. After several failures two hawsers were made fast, and the *A.* was got into Falmouth harbour. The services lasted fifty-two hours, and the *J.* was seriously strained, her injection valve and condenser injured, and other damages incurred. *The Athelstane*, S. G. Nov. 27, 1885, p. 758.

V. 15,000*l.*—A. £1400

235. In February, the Italian barque *E. M.*, from Cork to Philadelphia, was discovered, in about lat. 40 N. and long. 37 W., after a severe hurricane, with her bulwarks, steering-gear, and boats washed away, by the barque *N. W.*, which had itself been much strained by the tempest. The master, mate, and five of the crew of the *E. M.* had been washed overboard. The mate of the *N. W.* and one hand navigated her to Falmouth, which she reached on 14th February. *The Enrica Merello*, M. M. R. May 9, 1876, p. 621.

V. 6,952*l.*—A. £1400

236. In April, the *F.*, a Norwegian barque of 650 tons register, from Aux Cayes for Hamburg with logwood, was met by the American ship *P. R.*, 1,069 tons, from London for New York with a general cargo and 115 passengers. The barque had her sails torn, was unmanageable, and had been abandoned by her crew. The crew of the *P. R.*, with great personal fatigue and exertion, and at great risk to themselves, got the *F.* in safety to the Great Western Dock at Plymouth. The expenses incurred in so doing amounted to £419. *The Fido*, M. M. R. Nov. 30, 1867, p. 1524.

V. 3,500*l.*—A. £1400

237. In March, the brig *L.*, 230 tons, from Bremerhaven for Monte Video with a general cargo, was found in a position of considerable danger and risk at sea by the brig *S. A.*, 274 tons, from Pomeran for Liverpool with sulphur ore, and four out of the nine hands of the *S. A.* were put on board her. By their exertions she was brought to a place of safety in seven days. *The Lucien*, M. M. R. Nov. 11, 1865, p. 1424.

V. 3,600*l.*—A. £1400

238. In January, the ship *R.*, 1,056 tons, from Calcutta for London with a general cargo, brought up off Walmer Castle with both anchors, and signalled for a pilot. The wind was blowing a heavy gale from the S. The lugger *F.*, manned by twenty hands, was launched with great difficulty, twenty or thirty men assisting, and proceeding to the *R.* found her likely to strike the ground, deeply laden, and pitching bows under, with her anchors in only four or five fathoms, the sea having command of her deck. Six of her crew were sick, and the rest greatly fatigued. In about an hour's time she began to strike, and nine of the lugger's hands were put on board. The steam-tug *G.* came up, and, after great labour, the head of the *R.* was got round, enough to enable the lugger's men to slip the cables, and, having got before the wind, she was extricated. The master of the lugger then piloted her through the Gull Stream, the tug and lugger following the *R.* When off the North Foreland, a hawser was run out to the *G.*, who held her, the gale still continuing, while

the F. went to fetch anchors and chains from Margate. The harbour then being dry, to save time an anchor and chain were put on board the lugger L., and taken by her to the R., which was then off the Nore. The anchor and chain were put on board, and the R., towed by the G. and two other tugs, arrived at Gravesend, and was towed by the G. next day to the South West India Docks. *The Rutlandshire*, M. M. R. March 17, 1871, p. 336. Value 29,236*l.*—Award £1400

239. In February, the iron screw steamer S., 997 tons register, 150 h.-p., from London for Singapore and China, with a general cargo, took the ground on a coral reef in the Suez Canal, near Mount Akrab, broke her propeller, and became unmanageable. She tried in vain to get off under sail. In this plight she was found by the steamer N., 1,125 tons register, from Calcutta for London, with silk, cotton, tea, indigo, &c., and of the value of £150,000, which, in answer to guns from the S. came up, took her in tow, and towed her next day to Suez, 120 miles. The weather was fine, and the wind moderate meanwhile. *The Seagull*, M. M. R. 1871, p. 1425. V. 173,000*l.*—A. £1400

240. In July, the German brig S. N., 224 tons, from Oporto to Scilly, with palm oil, was discovered in lat. 12 N., and long. 25 W., with only one man fit for work on board, the rest of the crew, as well as the master, having died of fever, or else lying ill of it, and with three feet of water in her. The second mate and two hands of the East Indiaman, E. of P., went aboard, and after fifty-two days of varying wind and weather, got the S. N. within sight of Bishop Rock Lighthouse, and finally to St. Mary's, Scilly. *The See Nymphe*, M. M. R. Dec. 15, 1876, p. 1588. V. 7,500*l.*—A. £1400

241. The brig L. was ashore upon Pickles Reef. She drove high up, and had to be lightened of all her cargo before she could be heaved off. Four wrecking vessels at considerable hazard performed this service. The sea broke over her badly. *The Lexington*, 1 A. R. 167, 1835, cited in Marvin, 214. [American.] V. 2,750*l.*—A. £1375

242. A vessel, at the request of the master of a wrecked vessel, postponed her homeward voyage in search of freight, and went out of port to the wreck, about 500 miles distant in the Chinese seas, and there with great risk and exertion for several days saved valuable property, which, being afterwards compelled by bad weather to put back to the same port, she there sold by auction, transmitting the proceeds to the Admiralty Court in England. *The Martha*, 3 Hagg. 434. V. 2,651*l.*—A. £1365

243. In January, the schooner-rigged steamer I., 1,728 tons nett, 2,672 tons gross, from Shields to Bombay, with coal and thirty-three hands, when about six miles N.N.W. of the Jebel Zukin Island, in the Red Sea, carried away the high pressure end of her tumbling-block, and signalled for assistance. The iron steamer G., 1,863 tons, from West Hartlepool to Bombay, with coals and twenty-five hands, in answer to her signals, bore down upon her. Hawsers were made fast, and the G. towed the I. in about forty-eight hours to a place of safety in Aden. *The Inchgarvie*, M. M. R. July 13, 1883, p. 887. V. 38,952*l.*—A. £1350

244. In December, the ship J., 1,512 tons, from London for Sydney, when off Dun-
geness, had her cargo on fire, and was taken in tow by the tugs R. and S. The S. went on to Dover to get land fire-engines, the R. brought her on to Dover, where they were joined by the tugs V. and P. They could not stop the fire, though they kept it under. The railway company sent an engine and men to pump. The J. was ultimately towed to London, 100 miles, in 13 hours, still burning. The J. had only one hose on board, which was burnt and useless. £500 to the R., £400 to the S., £300 to the V., £100 to the P., £50 to the Railway Co. *The Jason*, M. M. R. June 25, 1875, p. 805. V. 54,878*l.*—A. £1350

245. In February, the screw-steamer H., 1,297 tons gross, 829 tons nett, from Cardiff to Gibraltar with coals, in the Bay of Biscay, about 110 miles N.E. of Cape Finisterre, broke her stern shaft in the pipe, without, however, losing her propeller, and signalled to the screw-steamer P., 1,693 tons gross and 1,296 tons nett, from the Mediterranean to Antwerp with a general cargo, to take her in tow. There was heavy rain and a high cross sea with stormy gale from S.W. increasing. Efforts to get a tow rope on board the H. were made ineffectually for four hours, when at last a hawser was made fast. After three days, the wind sometimes moderating a little,

but always blowing a strong gale, the H. was taken into Plymouth Harbour, where the P. was delayed by the weather for two days more. *The Hoopoe*, M. M. R. March 25, 1880, p. 391. Value 11,500*l.*—Award £1300

246. The M. of H., laden with government stores, was ashore on the Middle Sand, off Essex, in thick rainy weather, with a signal of distress flying. Eight Colchester smacks, valued at £200 each, carrying thirty-two men, went to her assistance. In boarding the salvors were in great danger from the surf and breakers. The master of one boat and a boy were washed out; three boats were sunk, and three men drowned. Guns were fired on board for the smacks to keep near during the night. The salvors threw overboard forty tons of cargo, and finally succeeded in getting the ship off. *The Marquis of Huntley*, 3 Hagg. 246. V. 6,500*l.*—A. £1300

247. In November, between Cape Roca and Cape Espicel, the propeller of the Cunard steamer M., 1,055 tons, was fouled by one of the tow-hawsers, by which she was towing the French steamer E., and her rudder was jammed. The M., thus unmanageable and in danger, was at great risk and with much skill, taken in tow to a place of safety by the screw-steamer A., 1,093 tons. *The Morocco*, M. M. R. June 18, 1875, p. 775. V. 105,000*l.*—A. £1300

248. In April, the screw-steamer S. A. S., 434 tons nett and 684 tons gross register, fifteen hands, from Hamburg for London with sugar, broke the main shaft of her propeller about thirty miles east of Yarmouth, the wind being strong freshening from the N.E., and steering W. by S. $\frac{1}{2}$ S., and the sea heavy. She was steering and making under sail and steam about eight-and-a-half knots an hour. In answer to signals of distress the smack V., of forty tons, engaged in fishing in the North Sea, bore down upon her. A boat was launched, the mate of the V. boarded her at great personal risk and found her practically disabled, leaking with water over the floor of the cabins. She had a list to port and her lifeboat was being got ready for launching. The master of the S. A. S. wanted to be towed to London, so the smack V., twenty-four tons, which had come up, proceeded in search of a tug. In answer to further signals the smack M. S., thirty-six tons, came, and by the united services of these two smacks, which ran a great risk owing to the unmanageable condition of the S. A. S. and the state of the weather, she was got safely to Southend, 100 miles distant, in about twenty-four hours. *The S. A. Sadler*, M. M. R. June 24, 1881, p. 784. V. 25,721*l.*—A. £1300

249. The ship W. B. was ashore on the Pan Sand, ten miles from Margate. Several smacks and a large number of men went to her assistance. She was in a dangerous situation, and could not be got off without lightening. The salvors lightened the ship by taking on board their vessels and landing at Margate a large quantity of cargo, and finally got the ship off. *The William Beckford*, 3 C. Rob. 356. V. 17,604*l.*—A. about £1300

250. In February, the barque C. P. D., of 1,130 tons register, had her hull and rigging very much damaged in bad weather, and drifted in towards the shore in a very dangerous part of the coast of France, off Isle de Bas. Her master was disabled, and owing to sickness among the crew, only three hands were efficient for navigation. The screw-steamer N., 196 tons nett and 304 tons gross register, from St. Nazaire to London, with wines and provisions, including eggs and butter, made fast hawsers and towed her safely to Portland Roads in about twenty-four hours. *The C. P. D.*, M. M. R. February 10, 1882, p. 172. V. not stated.—A. £1284

251. The brig C. struck on the Girdler Sand. The master and crew proceeded in a smack to Herne Bay for assistance. The vessel in the meanwhile broke up, and thirty-six smacks saved a large part of her cargo. *The Clarisse*, S. G. August 2, 1855; Swabey, 133. V. 6,050*l.*—A. £1280

252. In April last the three-masted schooner G., which had been found, derelict, by the English ship S., was with great labour and skill rigged and navigated to St. Helena, under the command of the second mate of the S. *The Glarus* (St. Helena V.-Adm. Co.), M. M. R. Oct. 30, 1869, p. 1392. V. 4,500*l.*—A. £1250

253. In December, the J. B., of 727 tons, from Savannah to Liverpool with cotton, in lat. 49 N., long. 21 W., was struck by lightning and her cargo set on fire. She was taken in tow off the Arcklow lightship, twenty miles from Farrow Head, Wex-

ford, by a steamer 220 h.-p., value £18,000, cargo £55,000, to Dublin. *The John Bryant*, S. G. March 8, 1851. Value 30,000l.—Award £1250

254. The ship P. broke adrift in the Mersey, and got aground off the Bramley Moore Dock, the steam-tug C. got her off, and endeavoured to bring her up. At the time there was a terrific gale from the N.W., and the tide was flood. The P. then drifted up the river, thumping against the different piers, until she was brought up near the Waterloo Dock, and there docked by four tugs, the C., E., B. J., and U. S. £550 to the C., £500 to the B. J., £100 to the E., £100 to the U. S. *The Philadelphia*, S. G. Feb. 4, 1863. V. 12,800l.—A. £1250

255. The barque B. was off Hasborough, derelict, waterlogged, and in great danger. Two luggers, the S. and the C., and the steamship B. B., took the barque to the entrance of Lowestoft Harbour, when the harbour tug P. towed her into the outer basin. The S. endured some hardships, and the services lasted from the 19th to the 21st of October. £500 to the B. B., £30 to two passengers on the B. B., £250 to the C., £50 to the P., £400 to the S. *The Baltic*, S. G. April 21, 1859. V. 2,726l.—A. £1230

256. In December, the steamer A., 1,019 tons gross register, from Ibrail to Gibraltar with wheat, lost her rudder and rudder-posts. In answer to signals the steamer T., 1,513 tons gross register, with twenty hands, and a general cargo from Leith to Odessa, came to her in the Archipelago, twenty miles N.N.E. of Cape Spathe, Andros Island, and found her lying broadside to the sea and rolling heavily, the wind sheering from N. to S. The T. took her in tow in about fourteen hours to Syra Harbour, sixty miles distant. *The Amcott*, M. M. R. May 11, 1883, p. 589. V. 21,120l.—A. £1200

257. In December, the brig A., of 263 tons register, with cocoa, from Guayaquil for London, encountered a heavy storm off the Scilly Islands, and her cargo shifted, so that she took a list to starboard. It became necessary to cut away her mainmast and pump her. Next day the wind being about N.E., blowing fresh, and the sea heavy, cross and chopping, the steamer Armenian, 848 tons register, 100 h.-p. nom., from Patras to Bristol with currants, sent off a boat to the A. which was lying in the trough of the sea without her mainmast, foretopsail-yard, topgallant-yard, and her starboard bulwarks, and with a hole in her starboard quarter. She was lying broadside on to the wind and sea and heading S.S.W., was making much water, her pumps were choked, and she was unmanageable. A hawser was made fast, and after seven and-a-half hours towing she was brought to Falmouth. *The Amelia*, M. M. R. Feb. 27, 1880, p. 271. V. 18,350l.—A. £1200

258. In June, the screw steamer A., of 1,180 tons gross register, from Rossano to Cronstadt, with oil and sulphur, when fifteen miles N.N.E. of the Berlings, broke her bilge pipe, and the water was found to be above the stoke-hole plates in the engine-room. The bilge pumps were set to work. The screw steamer C. of C., of 779 tons gross register, value £41,200, with nineteen hands, and green fruit, wine and general cargo, from Cadiz to Dublin, altered her course and stood by the A. for a couple of hours. She then got a tow-rope made fast and commenced towing towards Lisbon. The wind was blowing strong from the N., and the sea was high. After eight hours' towing, during which two tow-ropes broke, one of them breaking the mate's right leg in two places, the two vessels passed inside the Berlings. After eight hours' further towing Cascaes was reached, a pilot taken aboard, and the A. anchored for the night. Next day the A. was towed to Lisbon, and the C. of C. proceeded on her voyage. *The Angelica*, M. M. R. Dec. 15, 1882, p. 1586. V. 20,000l.—A. £1200

259. In January, the steamer A. 1,354 tons gross, from New Orleans to Falmouth, with oilcake, was off the coast of Portugal, Cape Roca, bearing S.E. twenty-five miles, with her mainshaft broken, disabled, unmanageable, leaking, and drifting before wind and sea towards land. She was found thus by the steamer R., 1,178 tons, from Sunderland to Genoa and Burrachee, with coal, and twenty-one hands. There was a stiff W. breeze and a heavy N.W. swell. The R. took the A. in tow, and in about fifty-six hours brought her safely to Lisbon. *The Ayrshire*, S. G. May 15, 1885, p. 310. V. 34,650l.—A. £1200

260. The ship B. got upon the Knock Sand in extremely severe weather. She was rescued therefrom by between sixty to seventy salvors, being the crews of nine smacks and two luggers, the N. and the U., and by their advice and assistance part of the cargo of the B. was transferred to the boats and smacks, and a part thrown overboard, and after some little time she was got off and conducted to the Prince's Channel, taken in tow and brought up to London, where, owing to the frost, three of the smacks were detained some time. *The Batavia*, S. G. July 25, 1861; 7 L. T. N.S. 222. Value 15,500*l.*—Award £1200

261. In February, the screw steamer E., 628 tons register, from Cardiff to Genoa, with coals, was in a disabled state in lat. 44°38' N. and long. 9°14' W., the weather being clear, with a westerly breeze, but there was a heavy swell. The screw steamer U., 2,763 tons register, from Cardiff to Leighorn, with coals, three passengers, forty-nine hands, with great difficulty towed the E. to Lisbon. The U. was delayed three days by the service. *The Eastella*, M. M. R. Feb. 23, 1883, p. 242. V. 8,945*l.*—A. £1200

262. The ship E. A. B., of 1,920 tons, from Liverpool for Australia, with a general cargo, when at anchor was in danger, owing to the wind and weather, of driving into a perilous position, and was rescued by the exertions of the steam-tug U. K. *The Elizabeth Ann Bright*, M. M. R. May 25, 1867, p. 658. V. 30,000*l.*—A. £1200

263. In October, the ship E. R., with tea, was found derelict and stranded on the Belvedere Shoal, in the Gaspar Straits, by the ship A., of 774 tons register, from London for Shanghai. The A. was anchored, and it being found impossible to get the E. R. off the shoal, furniture, stores, tackle and cargo were taken from her by boats and placed in the A. They were ultimately sold by public auction. The A. and cargo were worth £70,000. *The Ellen Rodger*, M. M. R. Feb. 20, 1869, p. 245. V. 3,155*l.*—A. £1200

264. The screw steamer E., of 1,070 tons, carrying mails and passengers, when on her passage from Alexandria to Malta, suddenly lost her screw. She thereupon made sail (being fully equipped as a sailing ship) and beat to windward for about 130 miles. The steamer J., bound to Hull, was signalled, came up, and agreed to tow the E. to Malta. The J. then took the E. in tow, and in three days reached Malta, the weather being throughout quite moderate. On the E. arriving at Malta the mails were, by order of Post Office authorities, transferred from the E. to the J. The J. conveyed them to Southampton, and then completed her voyage to Hull. *The Ellora*, 1 Lushington, 550. V. 51,450*l.*—A. £1200

265. The German ship E. von H. was met with by the Austrian barque the R., some 350 miles from the Lizard, derelict, and taken by the mate and four of the crew of the R., after five days, to the Scilly Isles. *The Ernst von Homeyer*, M. M. R. May 24, 1872, p. 657. V. 3,864*l.*—A. £1200

266. A Government steamer at some, though not great, risk to the persons on board, effected a salvage of property which was in extreme danger, but not derelict. Number of salvors, 200. *The Ewell Grove*, 3 Hagg. 209. V. 6,000*l.*—A. £1200

267. The barque I. was driven by a gale on the Goodwin Sands, and was in a perilous position, from which she was rescued with some risk by the crews of two luggers, twenty-seven in number. *The Indus*, S. G. May 12, 1854. V. 12,848*l.*—A. £1200

268. In September, in lat. 45°50' N. and long. 7°15' W., about 200 miles W.S.W. of Cape Finisterre, the wind being N.W. by N., in a heavy N.W. swell, and dull and cloudy weather, the steamer F. V. was in distress, having shifted her propeller. The steamer B., 508 tons register and 150 h.p., from Oporto to London, with passengers and a cargo of fruit, wine, and cattle, took the F. V. in tow, and ultimately towed her into Falmouth harbour. *The Fairy Vision*, M. M. R. Jan. 19, 1867, p. 84. V. 30,000*l.*—A. £1200

269. The vessel G. met with a violent storm, whereby she was dismasted. When off the South Stack Lighthouse she came to anchor and hoisted signals of distress. She was in very considerable peril of being driven on shore by the wind. The steamer C. went out of Holyhead harbour and towed her in. *The Gipsy*, S. G. June 7, 1853. V. 24,000*l.*—A. £1200

270. The ship *H.*, with nearly all her crew suffering from scurvy, and with signals of distress hoisted, was fallen in with on November 18, about 500 miles from Cape Clear, by the barque *C.* Four men boarded the *H.*, and she reached the London Docks on December 5. The weather was tempestuous, and the service was attended with peril. *The Henbury*, S. G. Feb. 16, 1859. Value 9,829*l.*—Award £1200

271. In February, the brig *I.*, from Demerara to Liverpool, with rum and sugar, with no canvas set, and signals of distress flying, was drifting to the S.W. apparently in an unmanageable condition from about one mile west of the city of Punta Delgada. The wind was blowing strong from E.N.E., and the weather so bad that the authorities of St. Michael's declined to send off from the shore to her assistance. The master of the schooner *M. B.* and four other masters put off in the *M. B.*, and found the *I.* making some water, with her crew in a state of misery, and her master incapable through drink. They towed her to St. Michael's roadstead, which they reached next morning, and she, with the *M. B.*, was placed in quarantine for five days. During the towage, the master and crew of the *I.* went on board the *M. B.* A hawser was broken, and other damage accrued to the *M. B.* during the towage. The vessel was in great distress, but the services involved no serious personal danger to the salvors. £800 to the *M. B.*, £400 to the four masters. *The Isabella*, M. M. R. July 28, 1866, p. 946. V. 6,000*l.*—A. £1200

272. In November, the weather being bad and squally, the wind about N.E., and in a very heavy sea, the steamer *B.*, value £15,000, in answer to signals, bore down upon the steamer *I.*, from Alexandria for Liverpool, with cotton, about eight miles from the Tuskar Light, and found that she had lost her propeller, and was disabled. With great risk and much manœuvring a tow-rope was got on board the *B.*, and she proceeded to tow the *I.*; but before long the two vessels got entangled. In extricating them the tow-rope broke, and the perilous task of getting a tow-rope on board had to be performed a second time. After three hours of this dangerous work the rope was got on board, and the *B.* towed the *I.* to Milford Haven, which was reached after thirty-three hours' towing. *The Isis*, M. M. R. May 2, 1873, p. 561. V. 139,328*l.*—A. £1200

273. The ship *A. U.*, from New York to Liverpool, was hailed by the brigantine *J.*, which was much damaged, and had lost her boats. At their request the crew of the *J.*, with their effects, were taken on board the *A. U.*, a boat from that vessel having been sent to fetch them. The first mate of the ship, with eight volunteers from her crew, boarded the *J.*, and after experiencing difficulty from a succession of heavy gales, and from the brigantine shipping much water, whereby the men were constantly kept at the pumps, she was ultimately brought into the Mersey, having been towed by a steam-tug from off Bardsey Island. The services lasted seventeen days, during which the salvors suffered great hardships from exposure to wet and cold, and from want of sufficient water. Disbursements of £92 allowed besides the salvage. *The James*, S. G. March 24, 1863. V. 2,761*l.*—A. £1200

274. The master and boat's crew of an English whaler, 400 tons and thirty-seven men, at the imminent risk of their lives, in very bad weather, boarded the English ship *J.* in the Atlantic Ocean. The *J.* was dismasted, her bulwarks were stove in, part of the crew were sick, and the rest were dispirited and exhausted. She had a signal of distress hoisted. The whaler was outward bound, but nevertheless she took the *J.* in tow, and towed her for seven days to Plymouth, England. *The Jane*, 2 Hagg. 338. V. 7,000*l.*—A. £1200

275. In February, in fine weather, with a smooth sea, after very severe gales, the screw steamer *J. S.*, of 835 tons nett, and 1,289 tons gross, from Patras to Liverpool, with twenty-two hands and a general cargo, having a disabled propeller, and otherwise damaged, was found in distress under fore-and-aft trysails and foresails, but making no way, about forty-four miles W.S.W. of Ushant, by the screw steamer *N.*, value £9,500, which had herself encountered severe weather, broken her wheel, and lost compasses and boats. The *N.* was from St. Ubes, in Portugal, for Bergen, in Norway, and had a crew of fourteen hands and a cargo of salt. It was arranged that the *N.* should take the *J. S.* in tow to Falmouth, about 140 miles off. The *J. S.* steered badly, and the hawser chafed, and the sea being high and the weather thick, after some twenty hours towing, the hawser broke. The sea was too high to allow

another hawser to be got to the J. S., and the N. was hove-to in order to stay by the J. S. The weather being still very bad, the N. proceeded to fetch assistance from Falmouth, but lost her bearings, and in fear of running short of coals was put on a course up channel, and eventually, after narrowly escaping stranding, arrived at Dover. The J. S., after she was left, drifted to the N.N.E., and anchored off Down-derry. She was reported, as seen off Downderry, signalling, "Send two steamers:" "Fire (or leak); want assistance." The V., a screw steam-tug, of 58 h.-p., with five hands, and the paddle steam-tug Sir W. R., with seven hands, got up steam immediately, and having found the J. S., made fast their hawsers, and towed her safely into Ply-mouth Sound, where they left her. There was considerable danger in getting the tow-rope on board from the N., on account of the weather. £800 to the N., £400 to the tugs. *The John Straker*, M. M. R. July 15, 1881, p. 872.

Value 17,000*l.*—Award £1200

276. The L., with specie, was struck by a heavy sea, which reduced her to a wreck, the vessel and the lives of those on board her being in imminent danger. She continued to drift for some days, when she was fallen in with by the M. Æ., and the crew and treasure of the L. were transferred to the M. Æ., and brought to Plymouth. *The Libra*, S. G. July 14, 1848.

V. 4,965*l.*—A. £1200

277. In May, the steamer L., of 500 tons, from Harlingen to London, with a general cargo, cattle, and passengers, got on the Thorpe Reef, Suffolk. Twenty-nine men and four boats, with great skill and much personal danger, got her off. *The Lion*, S. G. 1855.

V. 24,000*l.*—A. £1200

278. In August, the L., a paddle-steamer of 1,000 tons gross and 476 tons nett, with twenty-six hands, a cargo of general goods, about 140 passengers, and £50,000 in specie, from Dublin to Liverpool, impaled herself on the stern of the B., near the Prince's landing-stage by the Collingwood Dock, sustained a serious wound in her side, and was in imminent danger of sinking. She steamed across to the landing-stage, accompanied by the tugs R., M. K., K. of M., and R. A. When at the north end of the landing-stage, the M. K. towed her to the wall, where she was beached. The passengers meanwhile had jumped on board the tugs, as the L. was evidently in imminent danger. *The Longford*, M. M. R. Feb. 25, 1881, p. 238.

V. 72,000*l.*—A. £1200

279. In November, the French galliot L., abandoned after collision in the North Sea, was found two days afterwards by three fishing smacks with twenty-four hands, and in five days brought to London. *The Louisa*, S. G. Dec. 20, 1842.

V. 4,000*l.*—A. £1200

280. In November, the iron screw-steamer M., of 566 tons register, with wheat and barley from the Danube, was fallen in with, about 100 miles from the Lizard, by the A., of 1,109 tons register. She was found to have broken her propeller, had the end of her shaft carried away, and all her sails blown away. The A. took her in tow, and in thirty hours brought her to Falmouth harbour. By doing this the A. was delayed five days in her voyage to London. *The Mary*, M. M. R. June 20, 1873, p. 784.

V. 23,400*l.*—A. £1200

281. The barque M. was aground off Gallipoli, and in a heavy gale and rough sea, exposed to considerable danger. The steamer E. E., of 100 h.-p., and worth £20,000, after an ineffectual attempt to rescue her, obtained some lighters from Gallipoli, and had a portion of the barque's cargo discharged into them. The E. E. then towed the M. off the ground into deep water. The services lasted seven days. *The Mary*, S. G. May 22, 1858.

V. 14,400*l.*—A. £1200

282. In August, the brig N. H. stranded off Cape Spartel, and, with the first change of wind, must have inevitably gone to pieces. Four faluchos and one boat, with thirty-four men, slipped cables, went to the brig, discharged part of her cargo, got her off, and reshipped the goods. The faluchos and boat were uninsured. *The New Holland*, S. G. December 6, 1838.

V. 21,169*l.*—A. £1200

283. In October, the P. got on a rock at Honduras, and was rescued and repaired by H.M.S. C. *The Pallinurus*, S. G. July 22, 1842.

V. 4,116*l.*—A. £1200

284. The barque N. A., during a heavy gale, struck on the Elbow Shoal, whereby she lost her rudder, and was exposed to considerable peril. She hoisted a signal of

distress, and the lifeboat M. W., at considerable risk to the lives of her crew, went to her assistance, and at the request of the master of the N. A. returned to the shore, and engaged the lugger C. and the steam-tug A. By the united exertions of the salvors the N. A. was safely conducted to London. *The Nord America*, S. G. April 1, 1856. Value 24,210*l.*—Award £1200

285. In July, the iron screw steamer S., of 923 tons nett, 1,538 tons gross register, from Akyab, in British Burmah, to Liverpool, with rice, so short of coals that a great deal of the woodwork of the vessel had to be utilised for fuel, was discovered in need of assistance near the Straits of Jabal, in the Red Sea, in fine weather by the screw steamer G., 1,352 tons nett, 2,056 tons gross register, 200 h.-p., working to 500 h.-p., value £52,000. The S. was found to be drifting S., and entirely helpless. The G. took her in tow for Suez in an increasing sea and strong wind. After two days' towage, two hawsers breaking during the towage, she was got safely to Suez Bay. *The Shadwan*, M. M. R. Dec. 22, 1882, p. 1617. V. 28,975*l.*—A. £1200

286. In December, the three-masted screw steamer R., 2,706 tons gross, from Cardiff to Orleans, carried away her screw propeller in lat. 43°14' N., long. 11°20' W. She was hauled on the port tack, and proceeded south till daylight, then wore round on starboard tack, and made all sail for the English Channel, with fine weather and a smooth sea, making 3½ to 4 knots. On the 28th, having made 330 miles under sail, she sighted the screw steamer K., 2,920 tons, from Java to Greenock, with twenty-seven hands, cargo sugar, which took her in tow, and, with the assistance of a steam-tug, the R. was anchored safely inside St. Anthony's Light. *The Rhosina*, M. M. R. March 7, 1884, p. 150. V. 34,000*l.*—A. £1200

287. The R. S., from Colombo for London, when off Dover took a pilot on board, and on her way to Gravesend encountered a tempest, and lost her anchors. She was assisted by the A. and three luggers. £800 to the luggers, £400 to the A. *The Royal Standard*, M. M. R. July 3, 1869, p. 848. V. 200,000*l.*—A. £1200

288. In January, the ship S., with 234 tons of pumice stone, was found by H.M.S. H. ashore off Tawaba, on the Arabian coast, 30 miles E. of Aden, on an open coast, exposed to the E. winds, in 8 feet of water at low tide, her draft being 15 feet aft, and 14·6 forward. She was derelict, and bumped heavily as the tide rose. The sea was heavy, and the sun very powerful. The officers and crew of the H. laid out the anchor of the S., and the stream anchor of the H. with two hawsers, the chains were heaved on, and the ballast got out of her. In four days she was got afloat. She was ultimately taken to Aden. *The Statelie*, M. M. R. March 11, 1865, p. 304. V. 4,000*l.*—A. £1200

289. In February, the barque S. F., 266 tons, from Berbice for London, with rum and sugar, having four out of eleven hands ill, brought up after a squall, by her starboard and port anchors, off the North Foreland, and to avoid a collision with other vessels, the wind blowing S.W., slipped both anchors. Thereupon the smack, W. R., made for her, and the master and four of the crew thereof boarded the S. F. The smack left for Ramsgate for anchor and chains, but as she could not take the anchor, the lugger U. F. was employed, and the two vessels waited for the barque. The anchor and chain were put aboard, and a steam-tug was employed, which conducted the barque to the West India Dock, the master and three of the crew of the smack remaining to help navigate the barque, at the request of the master of the S. F. *The Strada Florida*, M. M. R. Feb. 2, 1867, p. 149. V. 7,500*l.*—A. £1200

290. The engines of the V. broke down, and as she could not rely upon her sails with the strong wind prevailing, which exposed her to the danger of being blown ashore, she asked for assistance from the L., and the latter, after sustaining damage (£88) through collision with the V., completed the salvage, after several days' loss of time and great exertions. *Hamburger Handelsgerichts Zeitung* (Hamburg Mercantile Law Journal), vol. 2, p. 71; vol. 5, p. 244; Lübeck Superior Court of Appeal Decisions, Hamburg Collection, vol. 2, p. 989; Kierulff Superior Court of Appeal Decisions, vol. 2, p. 510; vol. 3, p. 705. [German.] V. 27,000*l.*—A. about £1140

291. The barque I., 729 tons, from Quebec for London, with a crew of eighteen hands, fell in, on the 15th November, with the iron half-clipper ship, M. R., 388 tons, two-thirds laden with coals, dismasted and derelict, in about N. lat. 49°, and W. long. 30° 30', all her spars being gone except the mizen mast and bowsprit, having a

list to port, her hatches exposed to the sea, about fourteen feet of water in the hold, and the starboard pump choked. The master of the I. boarded her with eight hands, to assist at her pumps, and they soon after left, leaving the mate in charge. The I. took her in tow, and after experiencing heavy weather, during which the ships came in contact, and damage was done to the I., whereby she made water, and after casting off the M. R. at different times from the severity of the gales, ultimately succeeded in bringing her to Falmouth on the 4th December. *The Mary Rogerson*, S. G. Feb. 24, 1863. Value 2,300*l.*—Award £1135

291*a.* In April, the steamer C. IX., from Copenhagen to London, with general cargo and passengers, had broken down about 130 miles from Harwich, having lost her propeller. She was burning rockets for assistance. The Danish paddle steamer R., from Esbjerg for Harwich, with cattle and butter, when in lat. 53°28 and long. 4°10, sighted the C. IX. about three miles off, and came up with her. The R. agreed to tow the C. IX. to Harwich, whence a tug could take her to London. A hawser was made fast, and the R. commenced towing the C. IX. The wind changed to a fresh breeze from S.S.W., and the tow-rope chafed. Next evening Lowestoft was sighted. The weather was hazy, with rain, and a pilot was taken on board each vessel. At midnight of the next day the two ships were brought to anchor off the Cork lightship. The R. lay by the C. IX. during the night, and at daylight both vessels proceeded into Harwich harbour. A tug was there engaged to tow the C. IX. to Gravesend. *The Christian IX.*, *The Times*, July 15, 1881; M. M. R. 1881, p. 873.

V. 31,316*l.*—A. £1120

292. Great skill and perseverance was shown by the salvors in a salvage of a very meritorious character, by which they effected a complete rescue from total loss, the lives of the crew of the vessel salvaged having been in imminent peril. The salvage lasted five days, and the salvaging vessel was in great peril and much strained. Another smack showed a willingness to assist, but was of little substantial service, owing to her bad sailing. £100 to the smack, £1,000 to the other salvors. *The Albion*, 3 Hagg. 255.

V. 4,600*l.*—A. £1100

293. In February, the screw steamer A., 1,175 tons, from Alexandria to Hull with seed, got on the edge of Hasborough Sand, in hazy weather and a heavy sea, with a strong tide running, and, her sails being aback, remained there. Ten of the crew of the yawl D., which first came up, joined by fifteen hands from the yawl P. and fourteen of the crew of the lifeboat M., all of whom boarded her, were engaged. They threw over some of the cargo. The yawl D. laid the ship's anchor E.N.E., and by the united exertions and under the directions of the salvors the A. came off, and was brought to an anchor in Hull Roads nineteen and a half hours afterwards. *The Artos*, M. M. R. May 11, 1877, p. 596.

V. 30,000*l.*—A. £1100

294. In September, the screw steamer N., from Liverpool to Nantes, with manure and general cargo, was fallen in with about forty miles south of the Wolf Rock by the steamer W., 921 tons, 99 h.-p., fifteen hands, value £16,773, from Newport to Pasages, in a strong N. wind and heavy N.W. sea. The foremast of the N. had gone by the board, and she was lying in the trough of the sea with a maintrysil set, a quantity of water in her engine-room, her fires out, and in a very helpless condition, her crew being exhausted with baling. With great difficulty the W. got her in tow, and made first for Falmouth, but afterwards altered her course, and took her to off Pierres Moires lighthouse, whence she was taken through heavy seas into Brest, after sixteen and a half hours' towing. *The Neptune*, S. G. November 27, 1885, p. 758.

V. 8,305*l.*—A. £1100

295. In May, the screw steamer O., 1,138 tons, from Odessa to Hull, with a general cargo, broke her high pressure cylinder and became totally disabled. She was in great danger, drifting on to shore about six miles off Cape Finisterre. The steamer L., 2,301 tons, value £59,000, from Rangoon to Falmouth, with thirty hands and a cargo of rice, saw her signals, bore down on her, and with some difficulty took her in tow. In getting the warp aboard the bight of the rope, owing to the rolling of the vessels, fouled the propeller-blade and jammed it so that the engines could not be moved, and the vessels drifted to within a few feet of one another, when the hawser was cut and a steel hawser made fast, with which the O. was towed twenty-five miles to Corunna. *The Orchis*, S. G. July 11, 1882, p. 438.

V. 28,000*l.*—A. £1100

296. Information having been received at Liverpool of a ship being in distress, the steam-tug C. went in search of her, and discovered the ship P. heading for the West Hoyle Bank, close-hauled on the starboard tack. The master of the C., seeing she was in danger of going on the bank if she kept her course, got his hawser ready, and called out to those on board the ship to wear round, as the only chance of preventing the ship going on the bank. Having come round, the C. went up to her to take her in tow, but the master of the P. wished to make a bargain with the C. to tow the ship to Liverpool. The master of the C. refused to bargain considering he was already engaged on salvage terms, and ultimately left the ship as the tugs B. J. and the U. S. arrived, the former having a pilot on board. The B. J. and the pilot were first employed to assist the ship into Liverpool, and the U. S. was afterwards directed to aid the B. J. The tugs took the ship in tow, and finally conducted her to the Coburg Dock, experiencing some difficulty on their way, as they alleged, from the violence of the N.W. wind and heavy sea, the weather being so bad that the pilot could not be put on board the ship, and the force of the sea caused the tugs to come into collision while the U. S. was endeavouring to get attached to the B. J. £1,000 to the U. S. and B. J., £100 to the C. *The Pride of Canada*, S. G. April 18, 1863.

Value 11,160*l.*—Award £1100

297. The American ship, W. F. S., 1,628 tons register, lost both her anchors and received damage by collision with another ship, and afterwards during a strong gale drove on the Pluckington Bank, a very dangerous locality in the river Mersey. The steam-tug G. C., with double disconnecting engines of 60 h.-p. nom., working up to 180 h.-p., and the steam-tug S., of 150 actual h.-p., went to the aid of the W. F. S., and by their joint manœuvres succeeded in getting her clear of the bank. Afterwards these two tugs, assisted by the steam-tug R., of 300 tons gross register, of 140 h.-p. nom., working up to 700, conveyed the W. F. S. safely into dock. £500 to the G. C., £400 to the S., £200 to the R. *The W. F. Storer*, M. M. R. March 10, 1866, p. 303.

V. 46,000*l.*—A. £1100

298. In January, the screw steamer Z., 490 tons, was found by the screw steamer C., 633 tons, about lat. 44° 57' N., and long. 9° 12' W., in distress, with her shaft broken. Two hawsers were made fast, and the Z. was towed 120 knots during that night and next day, the wind blowing strong from S.S.W. to S.S.E., with squalls, and the sea being heavy all the time, to within five miles of the Connemara light, where they watched for daylight, when a pilot was taken aboard, and the Z. was towed into harbour, in the afternoon of the following day. *The Zadne*, M. M. R. July 30, 1875, p. 967.

V. 43,650*l.*—A. £1100

299. In January, the barque M., 796 tons, from Quebec to Grangemouth with timber, was found derelict by the tug R. and taken in tow in moderate weather to Cork Harbour, which was made in four days. *The Marianne*, S. G. July 22, 1859, 2 Asp. 127.

V. 2,700*l.*—A. £1080

300. In October, the M. B., a barquenette of 396 tons, from New Brunswick to Ayr with deals, was discovered, about lat. 30° N. and long. 35° W., waterlogged, and with a mutinous crew, by the steamer O., 1,990 tons nett, and 3,104 tons gross, value £80,000, from Philadelphia to Liverpool, with passengers and mails; and the steamer's boat took off the crew of the M. B., eleven in all. The third officer of the O., and a volunteer crew then took charge of her, her pumps were set to work, more sail was set, and she was taken in nine days, through heavy seas and wind, to off Kussala, where a pilot was got, and she was brought to Queenstown Harbour, thence towed to Liverpool, and after twice dragging her anchor, docked in the Brunswick Dock. Some expenses of the owners allowed besides the salvage. *The Margaret Boyd*, M. M. R. February 21, 1879, p. 243.

V. 3,200*l.*—A. £1080

301. The ship C. D., 1,545 tons, being in collision with another vessel in the Mersey, the steam-tug E. came to her assistance, and towed her clear. The steam-tug U. afterwards came up, and the two tugs remained by her all night. Next morning they began to tow her towards the Waterloo Dock, but owing to her having lost her rudder, they experienced great difficulty, and were exposed to great risk. Ultimately, on the following day, the assistance of the C. was obtained, and the three tugs towed the vessel into the Waterloo Dock. £600 to the E., £450 to the U., £25 to the C. *The Carrier Dove*, S. G. March 16, 1863.

V. 34,167*l.*—A. £1075

302. The M., found derelict and waterlogged off the Coast of Portugal, was towed seventy-five miles into Lisbon. *The Majestic*, S. G. July 2, 1839.

Value 2,150*l.*—Award £1075

303. The L., derelict, with fifty-six slaves on board, was found 250 miles from Charleston, and brought into that port. *The Leander*, Bee, 261, cited in Marvin, 191. [American.]

V. 3,200*l.*—A. £1066

304. In May, during a fresh gale from N.E., the barque I., 800 tons, was found on Roar Sand, near No. 1 Battery, broadside to the sea, with one anchor out, heading N.E., in a flood-tide, by the tugs the C., 50 h.-p., and the E., 50 h.-p., who tried to tow her off in vain, and did not succeed, even when reinforced by the tug N., 100 h.-p. They, therefore, left her and took shelter in the west bay of Dungeness, till the next flood-tide made. On their return, they found the I. abandoned, and shortly before high water succeeded in moving her on the sand. Her master and four hands then returned. They succeeded in getting her clear, but she was strained and unmanageable. They took her to Dover, but she had too much water in her to allow of her entering. The pilot who boarded her advised them to take her to Sheerness. Seven men from the tugs remained on board, and the three tugs commenced to tow her towards Sheerness. On her way she became very waterlogged. In Prince's Channel she capsized, her hawser fouled the tug E., and did great damage, and the masts of the barque were obliged to be cut away to right her. They got her through the Nab Channel and into the Mouse, and the next day towed her to Sheerness Harbour. £300 to the E., £300 to the C., £400 to the N., £60 to pilot. *The Imatar*, M. M. R. August 11, 1876, p. 1011.

V. 3,100*l.*—A. £1060

305. A derelict was salvaged by very meritorious services. A revenue cutter rendered some useful, but not necessary, service in towing. £100 to the revenue cutter, £958 to the other salvors. *The Charlotta*, 2 Hagg. 361.

V. 2,394*l.*—A. £1058

306. In April, the ship C. G., with many passengers and a large crew, was discovered at anchor by the S., near Five Fathom Bank, off Cape May, and flying signals of distress, having been on that bank, and her master being ignorant of his position. The S., value £100,000, took the C. G. in tow, but the hawser broke, and thereupon the S. guided her clear of the shoals, and the C. G. proceeded on her journey. The S. sustained damage by collision with the C. G., and at one time fouled her propeller. The weather was stormy throughout, and by reason of the delay the S. encountered a heavy gale, which caused further detention, and in attempting to pass Pollock Rip at low water she struck and was badly injured, and had to be towed to Boston. The striking and subsequent expenses were held to be too remote to be taken into consideration. *The Cornelius Grinnell*, 2 Asp. 140. [American.]

V. 20,500*l.*—A. £1052

307. In February, the screw steamer P., 1,770 tons, 139 hands, with 450 troops and a cargo of stores, was drifting W.N.W. on a lee-shore, quite unmanageable, with her machinery broken down, about twenty miles E.S.E. of Roche's Point, on the coast of Ireland, in a nasty swell. The screw steamer L., 741 tons, fifteen hands, 90 h.-p., from Cork to Newport with coals, came up in answer to the P.'s signals and took her in tow, having to hack with her stern against the P. to pass a hawser on board. After four hours the after crank pin of the L. became heated by the strain of the towage, which had, therefore, to be stopped for a time, the P. coming close to the L. meantime, and causing danger of collision. When starting again the hawser parted, then the warping chock was carried away, the after and main butts torn up, and the hawser cast adrift. Before these could be repaired a tug came up, and the L. remained in company with the P. till she was brought to Queenstown. The L. was damaged to the extent of £190, and detained nine days for repairs. *The Poonah*, S. G. June 26, 1885, p. 407.

V. not stated.—A. £1050

308. In October, the screw steamer A. S., 1,146 tons register, from North Shields for Alexandria with coals, when within a few miles of the coast off Cape Finisterre, became unmanageable. The schooner J. B. kept the head of the A. S. off shore for three hours, and then the screw steamer C., in answer to signals, came up, and towed the A. S. to Lisbon, going 260 miles out of her way to do so. £900 to the C., £120 to the J. B. *The A. Strong* (P. C.), M. M. R. July 25, 1873, p. 944.

V. 16,090*l.*—A. £1020

309. The brig H., when two miles outside of Mobile Point, was thrown on her beam ends by a hurricane, and her masts and bowsprit were cut away; she had two feet of water in her, and the pumps were choked. The master and crew abandoned her. After the gale had abated somewhat the salvors, who were pilots, attempted to board her, but without success. At a later period they boarded her, when she was in imminent danger of becoming a complete wreck. They procured the assistance of a steamboat, with which, and two of their own boats, they towed her into port. *The Hope*, 10 Peters, 108, cited in Marvin, 200. [American.]

Value 3,059*l.*—Award £1019

310. The brig A., of 237 tons register, with a general cargo, got on the dangerous Arklow Bank. The weather was fair and the sea calm. The smack P. came up, and five or six of her crew boarded the brig. Some of the coastguard also came up, and forty-seven smacks were, under the superintendence of a lieutenant of the coastguard, loaded with the cargo of the A., after attempts had been made without success to heave her off. About 500 men assisted in rendering the service. *The Amazon*, 5 (Irish) Jur. N.S. 111, Adm. C.; 2 L. T. N.S. 140.

V. 8,000*l.*—A. £1007

311. The schooner A., dismasted, was towed by a smack of fifty-seven tons, with a master, four men, and three boys, in bad snowy weather, five days and nights, and brought into port. *The Albion*, 3 Hagg. 254.

V. 4,600*l.*—A. £1000

312. In June, the screw steamer A., 474 tons, from the Canary Islands to London, with general cargo, when off Cape St. Vincent, broke her main shaft short off at the stern-post, in boisterous weather. The screw steamer N., 799 tons and 500 h.-p., from Torreeveja for Pontevedra, with grain, took her in tow, and in nine hours brought her to the Tagus. *The Amazon*, M. M. R. Jan. 21, 1865, p. 82.

V. 21,896*l.*—A. £1000

313. In November, during a gale from N.W., the steamer A., with twenty-three passengers and a cargo of timber and iron, was discovered off the Dogger Bank in a disabled condition, having consumed all her coals, by the fishing-smack N. H., 71 tons, and six hands. With great risk the master and one of the crew of the N. H. boarded the A. Three other smacks came up and took her in tow for about twenty-two hours, when one of the warps broke, and although the weather moderated, twelve hours later a second warp broke. A gale sprang up twelve hours afterwards, and the three other smacks were lost sight of, but the N. H. stayed by the A. for two days, and supplied her with bread and beef. On the third day she supplied her with two tons of coal, with which steam was got up, until the fires went out from want of fuel. On the fifth day the A. was anchored three miles from the New Sand lights, and the N. H. went for a tug, which came out next day and towed the A. to the Victoria Dock. The N. H. was damaged to the amount of £80. The profits of the voyage, £260, were lost, and the coal and provisions supplied amounted to £10. £700 to the N. H., £300 to the tugs. *The Angelica*, M. M. R. Feb. 9, 1883, p. 177.

V. 14,750*l.*—A. £1000

314. The screw steamer P., 141 tons, 45 h.-p., observed rockets and blue lights burning, and heard guns fired from a ship to windward. The P. made towards her, and on nearing her found she was the screw steamer A., and that her machinery was disabled. Her chief mate boarded the P., and requested that she would lie by the A. to see if the forward engine could be worked. It being discovered that the engine would not work, the P. towed the A. to Milford. The P. was detained thirteen hours. *The Araxes*, S. G. May 6, 1862; 7 L. T. N.S. 257.

V. 95,000*l.*—A. £1000

315. In January, the schooner-rigged steamer B., in ballast, from Landeman, in France, for Middlesborough, which had been blown off the land in the stormy weather of the preceding day, and was short of coals and provisions, was seen by the trawl fishing-smack Y. E. flying signals of distress off the Dogger Bank, about eighty miles E. by N. of Spurn Point. The B. was taken in tow by the Y. E. and towed between forty and fifty miles, the wind still blowing strong and the sea being heavy. The trawl W., 78 tons, then came up at the western end of the Dogger Bank, and made fast to the B.; but the weather becoming worse, the warp of the W. had to be cut, and that of the Y. E. parted. The W., which had towed twenty-four hours, and the Y. E., which had towed forty-eight hours, then returned to Grimsby to repair damages, and the B. was drifting helplessly about until discovered some 175 miles E.N.E. of the Spurn Point by the trawl C. and S., 76 tons, which took her in tow, aided shortly afterwards by the cod-smack B. F., 84 tons, whose warp, however, parted, after about twelve hours' towing, when the C. and S. towed

alone for another ten hours. The B. F. having supplied the B. with food, again made fast, and helped to tow for about twenty-four hours more, when the steam fishing-cutter Z., 114 tons, came up, and the C. and S., and B. F., were cast off, after putting more provisions on board the B. The Z., after eighteen hours' towing, got the B. to the Humber, but not without considerable damage to herself and delay in landing her fish. *The Bessemer*, S. G. July 18, 1884, p. 454.

Value 4,000*l.*—Award £1000

316. In September, the steamer B. was in distress, about five miles from the Shambles lightship and the same distance from the Portland Breakwater Light. The water was running into her engine-room; her fires had been out for several days; she was under sail, but had lost some of her canvas. She was taken in tow by the paddle steamer C., from Weymouth for Guernsey, and in one hour and a half was brought to an anchorage in Weymouth Roads. *The Brenda*, M. M. R. Dec. 20, 1872, p. 1619.

V. 23,500*l.*—A. £1000

317. In November, the ship B., 1,145 tons, from Calcutta to London, with a general cargo, when off the South Foreland, at the back of the Goodwin Sands, after severe storms and during a heavy gale, in which she had lost both anchors, engaged the tug D., eight hands, 95 h.-p., value £8,000, and the tug C. of L., eight hands, 140 h.-p., value £8,000, to get her towards the land. The two tugs, with much difficulty, got hold of her, and took her to off Folkestone, where she was anchored by two anchors, for which the lugger V. was sent, and which were brought to her with great difficulty by the luggers A. and R. The two tugs dragged their anchors and came into collision, the C. of L. sustaining serious damage; but next morning they weighed, and took the B. safely into the West India Docks on the fifth day. £670 to tugs, £330 to luggers. *The Bruce*, M. M. R. March 3, 1876, p. 277.

V. 33,000*l.*—A. £1000

318. In June, the screw steamer C., from Hamburg for London, with passengers and cargo, with a broken main shaft, was met with, in lat. 52°38' N. and long. 3°19' E., by the G. S. N. Co.'s screw steamer L. The L., taking her in tow, after some difficulty, brought her into the Elbe, and subsequently to Bosch. The L. had fifty-four passengers on board, and with her cargo was worth £120,000. *The Castor*, M. M. R. March 13, 1874, p. 335.

V. 40,000*l.*—A. £1000

319. In April, about 300 miles from Pernambuco and about 600 miles from Rio de Janeiro, the barque C. C., from Liverpool for Valparaiso, with general cargo, was boarded by the mate of the Portuguese brig E., who took command, as the captain and mate of the C. C. were unfitted by intoxication to navigate her, and brought her safely into Pernambuco. *The Coro Coro*, M. M. R. June 24, 1865, p. 785.

V. 40,000*l.*—A. £1000

320. In September, the C., 1,548 tons register, from New York with a general cargo for Liverpool, when endeavouring to enter the Canada Dock with the steam-tug E. lashed to her port side, became unmanageable in a gale; and at the pilot's direction the E. let go, and took a hawser from the port bow of the ship; the fore and aft sails were set, but she still kept drifting on to the Huskisson Pier. The gale increased, there was a heavy sea on, and the wind shifted right ahead. The sails were taken in, and the steam-tug U. S. was employed. This tug, at great danger to herself, passing between the ship and the wall of the pier, as there was not time to go ahead of the E., was attached to the starboard side, and by going full speed ahead prevented the ship drifting. When the ship had been towed half across the river the hawser parted, and she again drifted; but another hawser being made fast, the two tugs anchored her on the ebb tide, in safety. *The Cultivator*, M. M. R. March 2, 1867, p. 271.

V. not stated.—A. £1000

321. The D., from Leghorn to London, was dismasted and in great peril when she was taken in tow and in four days got to Corunna by a vessel of 80 tons, from Lisbon to Gloucester, with a valuable cargo, whose insurance was risked by the deviation. *The Defiance*, S. G. June 7, 1837.

V. 5,200*l.*—A. £1000

322. The ship D'E., 700 tons, off Shoreham, considerably damaged by collision, had signals of distress hoisted. The steam-tug D., sixty-two tons, thirty h.-p., conducted her into Portsmouth Harbour. Wind S.W., and against the ship. *The D'Elmina*, S. G. May 12, 1859.

V. 22,770*l.*—A. £1000

323. The ship D., during a heavy gale, struck on the Puller Bank. Three Trinity

House pilots, with others, proceeded in a large galley towards the ship. On their way they met the crew in two boats. After putting them in a safe channel to reach the shore, the pilots proceeded to the vessel, and after very great exertions, and at the risk of their lives, they succeeded in taking her to Portsmouth. *The Denmark*, S. G. Feb. 20, 1856. Value 3,390*l.*—Award £1000

324. In April, the steamer E. H., from Copenhagen for Revel, with cotton, was found by the steamer K. of the B., from and to the same ports, fast in the ice off Dago Light, with signals up "short of provisions," "starving." The K. of the B. was much out of the water, and in danger of her screw being broken by the ice, yet the master backed astern, drove her alongside of the E. H., put provisions on board, and got her out through the path thus made, and the two ships proceeded for Slitehamn in the island of Gothland, where they were detained by the ice for twelve days, when the K. of the B. proceeded to Revel, and arrived there in fourteen days. *The Edward Hawkins*, M. M. R. July 24, 1874, p. 944. V. 32,000*l.*—A. £1000

325. The ship E. was at anchor in the Mersey when the wind came on to blow heavily from the northward and westward, and the starboard chain parted. A second anchor was immediately let go, but she drove foul of the S., started her from her anchor, and both vessels, each with an anchor down, drove up the river, and the E. ultimately struck broadside on the Devil's Bank, where she was in considerable danger. Three steam-tugs succeeded in dragging her off the bank. *The Eliza*, S. G. May 13, 1857. V. 40,000*l.*—A. £1000

326. In November, the E. A., 1,139—98 gross tonnage, from Cronstadt for Hull, with linseed, hemp, &c., when letting go her port anchor to bring up, the chain parting, drifted up the Humber and took the ground on the Middle Sand. The tide caught her starboard side, she canted, her cargo shifted, and she lay with her port broadside down in the water. After drifting for some time, she drove off the sand and floated. Three tugs assisted her, by taking off some of her crew, taking her in tow, and preventing her from driving on to the sand again. Ultimately they took her into the Albert Dock. *The Emma Ash*, M. M. R. Dec. 8, 1871, p. 1552. V. 38,000*l.*—A. £1000

327. In November, the barque E. was found, derelict and water-logged, some sixty or seventy miles from the Longships in the Irish Channel. She was laden with firewood and deals, had lost her bowsprit and gear, and her foretop-masthead. Her port bow was stove in. There was a strong rolling sea and stiff wind from E. to E.S.E. The steamer C. of D. took her in tow, and towed her for twelve hours, when her wheel-ropes parted and she had to rig up fresh steering gear. She then towed her for about twenty-three hours more, when the 18-inch hawser parted. They were then in the race of the Lizard; she stood by the barque, in considerable danger, till morning. The barque was then drifting on to the Scrag Rocks, but with great danger and difficulty the men of the C. of D. on board the barque kept her clear of them by about fifty yards. The C. of D. then took her again in tow, anchored her, after eight hours' towage, under the lee of the Lizard, abreast the Mullion, for about twenty-one hours, then again took her in tow for two hours, and with the assistance of two small tugs got her into Falmouth after six and-a-half hours' towage. £800 to the C. of D., £200 to the tugs. *The Eintracht*, M. M. R. Jan. 30, 1874, p. 144. V. 3,000*l.*—A. £1000

328. The F. was wrecked off the coast of South Carolina, and the passengers and crew exposed to imminent danger. A canoe and four men, at the risk of their lives, took off the passengers and crew, and £5,000 in specie. *The Friendship*, Bee, 175, cited in Marvin, 202. [American.] V. 5,000*l.*—A. £1000

329. The ship J. M., in a state of great distress, her captain having been drowned, and there being no one on board capable of navigating her, fell in with the barque E., the mate of which navigated the J. M. to England. The owners of the J. M. gave the mate £200, and appointed him to the command of a vessel. An action was entered by the owners, master, and crew of the E. for salvage. *The Janet Mitchell*, S. G. May 14, 1856. V. 29,000*l.*—A. £1000

330. In January, the screw steamer J. B., from Newport for Southampton, with coals, was quite unmanageable and leaky, with six feet of water in her, her fires out, the pumps choked, and the sea making clean breaches over her, in the Bristol Channel, close by the Nash Light, when found by the pilot-cutter P. of the T., which, at

the request of the master of the J. B., stayed by her all night. The weather was very rough, but moderated next morning, when the pilot-cutters S. A. and P. came up, and the three cutters towed her from between one and a-half miles and two miles S. of the Culver Sand, whither she had drifted, to within three miles of Barnham, and near No. 3 Gore Buoy, where a tug took her in tow to the sand at Barnham. There she grounded, and was afterwards floated into the gutway. £700 to the P. of the T., £300 to pilot cutters. *The Jones Brothers*, M. M. R. June 8, 1877, p. 724.

Value 7,179*l.*—Award £1000

331. In November, during a gale of unusual severity from N.W. to N.N.W., with a heavy sea, the barque K. T., 443 tons register, from Liverpool to Arica, with sixteen hands and 366 tons of coal, was lying, with two anchors down, in the Mersey, near the North Wall lighthouse, with her head to the east, and signalling for immediate assistance. A hawser was got to her from the tug E., which came up. Her head was canted to N.N.W., but owing to her having gunpowder on board it was not deemed safe to take her too near the landing-stage. She was therefore towed abreast the Waterloo Dock, and held during the night, the gale continuing with heavy squalls and seas, forcing her up the river as far as Seacombe Point, but ultimately she was brought to anchor off New Brighton in nine and a-half hours. *The Knight Templar*, M. M. R. Jan. 14, 1881, p. 41.

V. 11,000*l.*—A. £1000

332. In February, the L. M., 600 tons, got on Margate sands. Thirty-one men from three luggers brought off an anchor and cable, and by laying out anchors and cables got her off, thus rescuing her from the loss which would have happened had the wind freshened. *The Lady McNaughten*, S. G. May 12, 1843.

V. 21,898*l.*—A. £1000

333. In January, the ship L., being in great distress, her master and crew were on the point of abandoning her when she was fallen in with by the ship N., 1,137 tons, and the crew, who were much exhausted, were taken on board that vessel. The master of the N. then sent some hands on board the L., and by constant pumping, they succeeded in getting her into Galle Harbour after four days' labour. The N. then left for Bombay, taking with her the master, officers, and crew of the L. Communications were had with the owners of the L. and her cargo in England, and after some repairs the L., under the command of the mate of the N., with four men and a boy of that vessel, and a crew shipped at Galle, was brought to Greenock, where she arrived on the 14th Oct. following. The salvage for the ship was settled out of court. *The Cargo per Loodianah*, S. G. April 21, 1863.

V. 9,000*l.*—A. £1000

334. In April, the transport steamer M., 1,257 tons, in a very heavy gale, with the sea running high, was found with her engines broken down, in distress and great danger, off Lulworth, about eight or nine miles from Weymouth Harbour, by the mail steamer A., from the Channel Islands to Weymouth with mails, &c. The A. towed her into a place of safety. *The Madeira*, M. M. R. Feb. 26, 1875, p. 261.

V. 53,500*l.*—A. £1000

335. In June, the iron steamer M., 456 tons, from Oporto to Southampton with cattle, fruit, &c., was found by the screw steamer G., 722 tons, and 90 h.-p., about ninety-eight miles W. of Ushant, with a burst boiler, her master, second engineer, donkeyman, and a fireman killed, her other officers and some of the crew disabled by the explosion, and the rest exhausted and unable to navigate her. The chief officer of the G. was put in charge, two tow-ropes were attached, and she was towed 200 miles in forty hours to Falmouth Harbour. There was a heavy swell, and a wind from the N. and N.E. *The Marcasite*, M. M. R. Dec. 10, 1875, p. 1582.

V. 24,141*l.*—A. £1000

336. In April, the barque M., of Chatham, New Brunswick, from Pensacola to Falmouth, sprung a leak, became waterlogged, and was abandoned by her crew. She was discovered derelict on May 4, 1882, seven miles from the Eddystone Lighthouse, lying on her beam ends, with her bows under water, by the paddle-wheel steam-tug R., 1,029 tons register, 75 h.-p., value £4,000, sent out in search of her. After ineffectual attempts to right her, the R. made fast with a chain cable and a hawser, and began to tow towards Plymouth. The screw steam-tug K., 1,689 tons, 45 h.-p., value £2,000, and the steam-tug P., 1,899 tons, 45 h.-p. nom., value £200, came up, and hawsers having been attached, proceeded towards Plymouth. On May 5 the Eddystone was about twelve miles off, and the three tugs continued towing till 5 a.m. on the 7th, when the P. ran dry of coals, and had to run to

Plymouth for a supply for herself and the R. The tug V., sixty-eight tons, 60 h.-p., went out in search, and found her in tow of the other tugs, but the wind being from the eastward, and the tide half-flood setting to the east, very little way had been made, and the M. was drifting on to the Hand Deep Rocks. A hawser from the V. was made fast, and the M. was towed clear of the rocks, and then towards Plymouth. When about two miles past the Eddystone the P. came up again. The M. was then brought inside the Rame Head, within a mile and a-half of Penlee Sound, where she was brought up by her chains catching the ground, and could not be moved until the Government tug P. came up, and she was then brought into the inner harbour of Cattewale. The services lasted eight days. £900 to the R. and the P., £100 to the V. *The Mallard*, M. M. R. Aug. 4, 1882, p. 972.

Value 2,000*l.*—Award £1000

337. In September, the steamer M., 1,641 tons, from Philadelphia to Bordeaux, with wheat, was flying signals of distress, about 130 miles from Cape Prior, off the coast of Spain, when fallen in with by the steamer C., 1,776 tons, from Cardiff to Constantinople with coal. The M. had her propeller shaft tail end broken in the stern-pipe, which was itself shattered, and she was leaking through her stern-post. The weather was moderate, with a heavy N.W. swell. The C. took the M. in tow to Ferrol Harbour in about forty-two hours. *The Marcia*, S. G. Jan. 30, 1885, p. 70.

V. 33,940*l.*—A. £1000

338. On the 4th December, during a tremendous gale, intelligence was received at Clovelly that the ship M. Q., 1,088 tons, was in distress near Hartland Point. About 8 or 9 p.m. of the 5th two of the salvors went out in a small boat, found the launch of the M. Q., with the master and eighteen men, and piloted them into Clovelly from a position of some danger. On the morning of the 7th the salvors, the crew of the smack R., reached the M. Q. in their vessel. She was about a mile and a-quarter from the shore, all her masts were cut away, and she was pitching bows under, no one on board, and riding by one anchor only, the chain of the other having parted. There were over four feet of water in the vessel, the sea was heavy, and the wind blowing a moderate gale. The salvors with difficulty and risk boarded the M. Q. in their boat. They collected the crew's effects and put them on the smack, repaired a boat, and assisted in getting a tow-line on board the steam-tug P. which arrived. The salvors incurred £28 expenses. In consequence of a telegram the P., 60 h.-p., left Cardiff on the 5th December to go to the M. Q., but because of the severity of the gale did not reach her until the 7th at 9 a.m. The P. towed the M. Q. up the Bristol Channel, and a little above Lundy Island met the steam-tug I. D., 100 h.-p., which had left Cardiff on the 6th, but had also been detained by the gale. The two tugs towed the M. Q. to Penarth Roads, laid her on the mud, and the P. remained lashed alongside until the 10th, when she docked the ship. *The Margaret Quayle*, S. G. May 28, 1864.

V. 4,800*l.*—A. £1000

339. The steamer E., 2,000 tons, fell in with the Dutch galliot M. A., totally dismantled, and with a signal of distress flying. The steamer took the crew of the galliot on board at their own request, and towed the M. A. to Southampton, a distance of 300 miles, and 100 miles out of the steamer's course. The services lasted four days. *The Maria Anna*, S. G. July 15, 1856.

V. 5,956*l.*—A. £1000

340. In October, the M., 853 tons register, from Liverpool to Syria and Constantinople with a general cargo, had her pump (worked by a donkey-engine) choked. The water had come into the engine-room through the port discharge pipe, which was broken in a heavy gale. The screw steamer D., 1,125 tons, from Cardiff to Alexandria with railway iron, fell in with the M. off the Lizard, having seen her signals of distress. The ship and cargo were not in any danger, and the court held that the tender of £1,000 was a sufficient reward to the D. for the services of towing the M. into Falmouth, which occupied two days. *The Melita*, M. M. R. June 30, 1866, p. 819.

V. 95,000*l.*—A. £1000

341. In March, the steamer M., 1,855 tons gross, 1,193 tons nett, from Constantinople for Liverpool with general cargo and forty-three hands, while steaming full speed ahead in clear weather with a light wind, ran on Heraclitza Point, in the Sea of Marmora, and remained hard and fast, but not in immediate danger unless bad weather came on, as she had not sustained material damage, and was not out of the way of assistance. The screw steamer S., value £29,722, 2,052 tons gross and 1,562 nett, 230 h.-p. nom., working up to 1,100, from Constantinople for Liverpool, found

the *M.* in this position and got two hawsers aboard, but could not tow her off till, by the advice of the master of the *S.*, the *M.* was lightened by emptying her boilers and discharging part of her cargo and some coals. Lighters and labourers were obtained from the shore for this purpose, and were paid by the master of the *S.* After thirty-one hours' towing she was got off and safely anchored. *The Morocco*, S. G. June 5, 1885, p. 358. Value 43,617*l.*—Award £1000

342. The ship *P. R.*, of 1,184 tons register, from Liverpool to Melbourne, was at early morning lying at anchor in the Mersey, when, in a moderate gale, she broke her sheer, parted her port chain, and was carried inside the Woodside landing-stage, where she touched the ground. The steam-tug *U.*, with disconnecting engines of 120 h.-p. nominal, went to her assistance and was fastened alongside her. The tug at times thumped heavily against the ship's side, and was slightly damaged. The tug towed the ship clear of the ground, conducted her to an anchorage, and early next morning docked her. *The Prince Rupert*, M. M. R. March 24, 1866, p. 369. V. 47,000*l.*—A. £1000

343. The steamer *V.*, 395 tons, 300 h.-p., from Belfast for Fleetwood, when six miles N.W. of the Isle of Man, fell in with the barque *R. A.*, which had lost all her sound sails, was out of her course, and was burning blue lights for assistance. The *V.* towed the *R. A.* to Fleetwood. *The Royal Arch*, S. G. April 25, 1860. V. 19,500*l.*—A. £1000

344. In September, the *S.*, 580 tons, from London to New South Wales, was taken in tow in a damaged state after collision, by a steamer, of the value of £60,000, and in thirty-three hours brought to Gravesend. *The Sophia*, S. G. Jan. 14, 1840. V. 30,000*l.*—A. £1000

345. In November, the steamer *S.*, 482 tons, from Bilbao to Sunderland, with iron ore, and ten hands, struck on the Hasborough Sands in thick weather, and remained all night signalling for assistance. She was found derelict next day by the yawls *B. of H.* and *Z.* The *B. of H.* prepared anchors for laying out, and the *Z.* went for assistance. The steam-tugs *E.* and *U. S.* came up, with whose assistance the *S.* was got off and towed clear of the shoals and sands. In answer to further signals, the lifeboats *M. H.* and *C. G.* came alongside, and all hands turned to and baled out the water from the engine-room, where it was rising rapidly. Ultimately the tugs towed her into Yarmouth Roads, and thence to Harwich harbour. *The Swan*, M. M. R. February 18, 1881, p. 207. V. 3,834*l.*—A. £1000

346. The screw steamer *T.*, lying in the dock at Hay's Wharf, London Bridge, on the occasion of the great fire in that vicinity in June, 1861, was in imminent danger, from which she was rescued at great risk by the steam-tug *U.* *The Tees*, S. G. March 4, 1862; 1 Lushington, 505; 7 L. T. N.S. 257. V. 4,500*l.*—A. £1000

347. A steamer of 50 h.-p., and valued at £4,000, in very violent weather and for three hours, towed, to a place of comparative safety, a vessel which had struck and was bumping on a sand, with a signal of distress hoisted, and in a very helpless and perilous state. *The Traveller*, 3 Hagg. 370. V. 12,246*l.*—A. £1000

348. In April, the barque *W.*, of 139 tons, laden with chain cables, anchors, and general merchandise, and derelict, with her rudder unshipped, the gudgeon band and pintles gone, four feet of water in her hold, and making a great deal of water, was taken in tow by the steamer *C.*, of 648 tons register, from Greenock for Hong Kong with a general cargo. While making a hawser fast, the mate's hand was severely injured. The *C.*, after two days and a-half towing, arrived at Plymouth with the derelict, and incurred there expenses amounting to £70 for the derelict's benefit, and one hawser, value £27, was destroyed in the towing. The heavy swell, the unmanageable condition of the vessel, and the parting of the hawsers rendered the towing a task of great difficulty, though it was not attended with any great risk. The value of the *C.*; her freight and cargo, was £31,263. *The Wigtownshire*, M. M. R. March 10, 1866, p. 304. V. 2,845*l.*—A. £1000

349. In January, the Dutch ship *W. P.*, 1,351 tons register, with a general and perishable cargo, from Batavia for Rotterdam, struck aft on the Southward Well, off the Scilly Islands, having dragged her starboard anchor, by which she was brought up in St. Mary's Roads. In answer to signals for assistance, some pilots put off in the pilot cutter *P.*, and found her pilot on board. The *P.* was sent back to get an anchor and chain, which the Dutch consul refused to let the *P.* bring, but sent one

of his own boats, the L. W., 106 tons register, 35 h.-p., the mail boat between Scilly and Penzance. The L. W. found the W. P. in a dangerous position, having two anchors ahead, chains slack under her bow, and her rudder unshipped. She was making water, and the wind was S.E. by S. After a service of eight hours, the L. W. got the W. P. off, and moored her in a place of safety. £900 to the L. W., £100 to the P. *The Willem Poolman*, M. M. R. June 4, 1870, p. 720.

Value 84,660*l.*—Award £1000

350. In April, the screw steamer Y., 1,477 tons nett, 1,853 tons gross register, from Hull to Boston, U.S., with twenty-eight hands, one passenger, and general cargo, stranded on the Long Sand. After she took the ground whilst working astern with the engines the propeller struck a sunken wreck, and the blades broke off. The tug H., 130 nom., working to 520 h.-p., value £11,000, bound for Shields under a towage contract, offered to give the Y. a "pull off" for £200. This was accepted, and a rope was made fast, but though the engines of the H. were put full steam ahead the Y. only moved a few feet and took the ground again. The wind at the time was fresh from S.E., and there was a heavy sea on. The tug I., 90 h.-p., working to 400, value £9,000, came up, and the two tugs together got her off. The Y., when she came off, was making water very fast in her engine-room, and it was arranged that the tugs should tow her to London. This they did, the H. having to be lashed to the Y. with ropes fore and aft, for fear of the latter sinking. The services lasted about sixteen hours. *The Yeddo*, M. M. R. Aug. 5, 1881, p. 969.

V. 31,068*l.*—A. £1000

351. In May, the ship N., 842 tons, worth £5,000, from Curraqueç to London, with seed and cotton, worth about £35,000, fell in with the barque Z., 672 tons, from Banjorwangle to Middleburg with sugar and coffee, in a seriously damaged state from a collision. Though the weather was fine it was held that the Z. was in no small degree of danger. The master, mate, and six of the crew of the N. assisted in pumping and repairing the damage, and the N. kept company with the Z. till the 11th, when the Lizard was sighted. A pilot then boarded the barque, and took her safely into Falmouth. *The Zeepard*, M. M. R. Aug. 11, 1866, p. 1010.

V. 45,000*l.*—A. £1000

352. The Z. was discovered on the coast of Africa with deficient crew, short of provisions, and with disabled gear and sails, by H.M.S. P.; a lieutenant and seven men of which took her in five months' time to Liverpool; during the continuance of service the salvors were all attacked with fever. *The Zephyr*, S. G. Dec. 16, 1842.

V. 3,678*l.*—A. £1000

353. The brigantine F. Q., 139 tons, from Newport to Rio Janeiro, with railway iron, after collision with the barque A., was abandoned by her master and crew, and in danger of total loss. The mate and part of the crew of the brig L. from Liverpool to Bahia, with one passenger, got on board and made her fast by two hawsers to the brig. After a short towage the hawsers parted, and the F. Q. was navigated to Cork. *The Forest Queen*, S. G. May 26, 1858.

V. 2,890*l.*—A. £963

354. The screw steamer A., 394 tons, broke her intermediate shaft and damaged other parts of her machinery, which impeded the working of her engines. The screw steamer P. took her in tow about fourteen miles to the eastward of the island of Galita, and towed her to Malta, 250 miles. The services lasted two days. *The Arabian*, S. G. Feb. 7, 1853.

V. 14,000*l.*—A. £950

355. In December, the barque S. B., 480 tons register, from Talcahuano to Queens-town, with wheat, was fallen in with in the North Atlantic Ocean in about lat. 17°26' N. and long. 35° W., the wind blowing a moderate breeze from N.N.E., with a heavy sea, by the full-rigged wooden ship S., 1,546 tons register, value £12,951, from Calcutta to Dunkirk with general cargo. The S. B. was quite out of the ordinary track of vessels. Her master in a fit of frenzy, during a disturbance on board, had shot at the steward and the mate, and the crew had batted him down. The mate was too badly hurt to navigate the ship, the steward was killed. None of the crew knew anything of navigation. The master of the S., four hands and a carpenter, boarded the S. B., and took the master of the S. B. off. The S. then gave the S. B. a lead, and the mate of the S. took charge of the S. B. to Dublin, which was reached in thirty-five days. *The Standard Bearer*, M. M. R. March 19, 1880, p. 369.

V. 47,000*l.*—A. £950

356. The ship *I.*, in ballast, was ashore on Loo Key, and lay in seven and nine feet of water, drawing twelve. Five wrecking vessels, carrying fifty-four men, carried out several anchors, discharged the ship of nearly all her ballast, and hove her off. *The Iconium*, 5 A. R. 287, cited in Marvin, 215. [American.]

Value 2,900*l.*—Award £939

357. The ship *B.*, 794 tons, from Chinca Islands with guano, was totally disabled when ten miles off Cloughter Wyke, and was got into the Humber by a steam-tug, assisted by a galliot, seven smacks, and three luggers. *The Blanche*, S. G. July 4, 1854.

V. 11,600*l.*—A. £930

358. The barque *W.*, from Taganrog for Plymouth with wheat, and a crew of ten hands and a master, fell in with the coal-laden ship *D.*, derelict, 100 miles west of Cape Finisterre; and the mate and four hands of the *W.* boarded the *D.*, and took her, in ten days, to Falmouth. *The Duke*, M. M. R. May 21, 1870, p. 658.

V. 2,795*l.*—A. £930

359. In January, the brig *A.*, which was fallen in with, derelict, by the iron screw steamer *Athlete*, was towed by her from Shokham Island to Milford Haven. *The Andrina*, M. M. R. May 14, 1870, p. 626; L. R. 3 A. & E. 286; 3 Asp. 210.

V. 2,800*l.*—A. £900

360. The ship *A.* was lost on Charleston Bar, and the cargo was cast ashore on several contiguous islands. The owners of these islands, with their negroes, were employed for a considerable time, in some instances for three weeks, at considerable risk to their healths and in neglect of their crops, in securing and drying the goods. They afterwards carted it to distant landings, and finally brought it to Charleston. Cotton saved sold for \$12,192 = £2,439, and the court awarded one-third of the nett; tar sold for \$1,178 = £235, and the court awarded a moiety. *The Argus*, Bee, 170, cited in Marvin, 201. [American.]

V. 2,674*l.*—A. about £900

361. The *E. G.* was in St. George's Channel, demasted, and with a signal of distress flying. A steamer, valued at £12,000, towed her in twenty-nine hours into port. *The Earl Grey*, 3 Hagg. 363.

V. 4,000*l.*—A. £900

362. In November, the ship *M.* broke adrift from her moorings in the middle of the Mersey, between Rock Ferry and Tranmere, and came into collision with the *G. B.*; and the two drifted together in the direction of the Pluckington Bank. By the exertions of the tugs *A.*, *L.*, *T.*, *R.*, and *H.*, the two vessels were parted; and the *M.* was able to steam ahead and get out of danger. *The Mysore* (Liverpool Pass. Co.), M. M. R. January 14, 1876, p. 44.

V. 20,700*l.*—A. £900

363. In September, the barque *S.*, 383 tons, in lat. 37° 53' N. long. 68° 54' W., which had lost her first mate with yellow fever, and had the second mate and two out of her eight hands down with it, and her captain sick, was taken charge of by Osman Osmundsen, the only mate of the barque *H.*, 382 tons. This man steered the *S.* a course for Liverpool, he and the steward taking watch and watch. On the third day the second mate, and on the sixth the master and one seaman died. Osman also was taken ill and became delirious, but was on duty next day. On the eleventh day the wind increased, and the maintop-gallant sails split before they could be taken in, owing to the shortness of hands. On the seventeenth day the second seaman died. After forty-one days the *S.*, under Osman's command, arrived off the Great Orme's Head, and was taken to the Mersey by a tug and docked. *The Skibladner*, M. M. R. November 23, 1877, p. 1492; 3 Asp. N.S. 557.

V. 5,135*l.*—A. £900

364. In February, the screw steamer *A.*, 1,325 tons gross register, from Arzen, in Algeria, to Liverpool, with esparto grass, started her deck and carried away three boats in bad weather. She also lost her foresail, forestaysail, maintopsail, mainstay-sail, main and topsail braces, and jib. Her propeller did not revolve, she drifted about 1½ knots an hour, and was quite unmanageable. In this state she was sighted, about 115 miles S.W. of Brest, by the schooner-rigged steamer *F. H.*, 1,175 tons gross register, from Fiume to Leith, with twenty hands and a cargo of flour and barley. After several fruitless attempts in severe weather, a hawser and other ropes were attached, and the *F. H.* towed her to Brest in about twenty-six hours. *The Alfonso*, M. M. R. April 27, 1883, p. 525.

V. 22,000*l.*—A. £875

365. The ship L., having no one on board able to navigate her, master and mate having died, was fallen in with at sea in September, by the ship G., which had on board a cargo of sugar valued at £30,000. The chief mate of the G., by permission of his captain, boarded the L. and navigated her to Liverpool, where she arrived on the 30th October. *The Loyal*, S. G. Dec. 22, 1858. Value 8,605*l.*—Award £870

366. The F. was found derelict in the Chops of the Channel, taken in tow by a Prussian vessel, assisted by H.M.S. C., and carried into Portsmouth with risk and considerable labour. The court awarded a moiety of the nett value after deducting all expenses, probably about £850. *The Flora*, 3 Hagg. 430, n.

V. 1,800*l.*—A. £850

367. In January, the F., from Honduras to London, was rescued from a position of peril on a sand at the mouth of the Thames by twenty men from three smacks with the assistance of a steam vessel. £600 to smacks, £250 to steamer. *The Favorite*, S. G. May 28, 1840.

V. 10,000*l.*—A. £850

368. In November, the steamer N., 276 tons nett, 65 h.-p., from Rotterdam for London, with general cargo and thirty-two calves, was in Black Deep by the Long Sand and the Knock Deep, with her propeller bent and her rudder broken, when found by the tug R. O., which, with great difficulty, owing to her yawing so much, got her out of her dangerous position. When near Barrow Sands the tug D. came up, and the two tugs in three days took the N. to Thames Haven, where she was moored in safety. £350 to the R. O., £500 to the D. *The Nestor*, M. M. R. June 25, 1875, p. 806.

V. 9,900*l.*—A. £850

369. In September, the barque N., 404 tons, from Cardiff for Ancona, with coal, was fallen in with by the barque A. S., 570 tons register, from Cork for Dordrecht, with rice. The N. was derelict and in a miserable state of confusion, with 13 inches of water in her hold, both maintopsails hanging to the yard-arms, the ends towing alongside, her wheel unshipped, no rudder wheel ropes, compass, chronometer, sextant, or flag on board, and only her long-boat left. Three of the hands of the A. S. boarded her, and with considerable risk and great labour took her to St. David's Head, where a steam vessel was employed. The services lasted eight days. £540 salvage, £310 expenses. *The Numa*, M. M. R. Jan. 15, 1870, p. 84.

V. 1,725*l.*—A. £850

370. In August, the screw steamer Z., 490 tons nett, from Naples for Liverpool, with twenty-one hands, fruit and oil, broke her propeller shaft off the coast of Portugal. On 4th September, in lat. 37°40' N. and long. 9°40' W., in answer to signals, the steamer C., 1,526 tons, from Cardiff to Galatz, with coals, came up, and by request stood by the Z. that night. On boarding her next morning she was found to be making water very fast. The C. took her in tow to Cadiz, which was reached about three p.m. on 6th September. *The Zadne*, M. M. R. Feb. 29, 1884, p. 134.

V. 19,584*l.*—A. £850

371. In November, the steamer P. was discovered by the steamer H. A., from Newcastle to Singapore, with twenty-three hands and a cargo of coals, in the Red Sea, stranded on a coral reef, and signalling. She was in so perilous a position that all that could be done was to land those on board and the cargo, which occupied seven weeks. An attempt to tow her off was unsuccessful, and she was abandoned. *The Penguin*, M. M. R. July 28, 1882, p. 941.

V. 28,000*l.*—A. £840

372. The barge J. L., in tow of a steamer, got aground on Princeton Bar, in the Mississippi river, and lay in a perilous situation. The master of the steamboat enlisted his mate in the enterprise of saving the barge and cargo, and for this purpose discharged him, and also three or four hands, from any further duty on board the steamer, and proceeded on his voyage. Before leaving, however, he and the supercargo of the barge entered into a written agreement to give the mate one-half the property he might save. He procured two flat boats from a neighbouring plantation, hired twelve negroes, worked three days and nights, got the barge off, and hired a tow to New Orleans. He paid out in the service \$1,208=£241 sterling. The mate claimed a moiety in fulfilment of the contract. The court held the contract not to be binding upon the owners of the property, and decreed one-sixth for salvage. *The Jenny Lind*, 1 Newberry R. 443, cited in Marvin, 223. [American.]

V. 5,038*l.*—A. £837

373. In April, off the Dover Pier, the steamer E., 226 tons, from Paris for London, with a general cargo, had fouled one of the Admiralty danger buoys with her propeller, and knocked a hole in her port quarter, causing a leak. The ship and cargo were in great jeopardy, and were rescued therefrom by the exertions of the steam-tugs N. and C. and the lugger W., who cut the chain of the buoy and towed the E. into Dover Harbour. £300 to the C., £270 to the N., £260 to the W. *The Esther*, M. M. R. July 10, 1869, p. 882. Value 8,500*l.*—Award £830

374. In October, the Norwegian barque D., 433 tons register, with timber and deck-laden, was discovered waterlogged by the ship H. B., 1,061 tons register, from St. John (New Brunswick) to Liverpool, with timber, in lat. 51 N. and long. 15°30 W., with her rudderstock broken near the water's edge, and rudder useless, some of her traces adrift, and with six feet of water in the hold. There were no instruments or charts on board, and only the binnacle compass. The H. B. assisted in pumping the D., and then, after some trouble got a hawser fixed, and towed her for a time; but the hawser parted. The H. B. remained by her all night. Next morning a jurmast was rigged, and the two vessels made the best of their way towards Queenstown. The weather was for three days very bad, and on the third day cargo had to be thrown overboard. On the fifth day the vessels parted company, but next day fell in with one another again. On the seventh day a pilot was engaged, and the D. was brought into Queenstown Harbour, and safely anchored. *The Dagmar*, M. M. R. Jan. 27, 1882, p. 109. V. 2,200*l.*—A. £819

375. The brig C., 258 tons, in thick weather ran on shore near the Brisons, and made much water. By the aid of the coastguard she was got off, and the steamship G., bound for Penzance, having come up, took the C. in tow, and after some difficulty, from the hawsers parting several times, succeeded in towing her to Penzance; here, owing to the hawsers parting, she was placed in a critical position near the shore. The L. W. was despatched from Penzance to her assistance, and succeeded in moving her head seaward. The G. then completed the service, with the help of the pilot lugger N. astern of the C. to steer her, the rudder being damaged. The pilot lugger W. put a pilot on board the brig. £120 to coastguard, £60 to the N. and the W., £500 to the G., £130 to the L. W. *The Concordia*, S. G. Feb. 24, 1864. V. 3,237*l.*—A. £810

376. In September, the schooner-rigged steamer A. S., 1,644 tons gross, 1,061 nett register, from Hamburg to North Shields, in ballast, with twenty-three hands, about ninety miles E.N.E. of the Spurn lightship, lost her screw propeller, became unmanageable, and was drifting to leeward. She was discovered by the screw steam fishing cutter O., 177 tons gross, 94 tons nett, 66 h.-p., working to 350, value £5,926, with twelve hands, from the North Sea to Hull. There was a N.N.E. gale and a high sea. The O. steamed round the A. S. three times in vain efforts to get a rope aboard, and came into collision with her. The O. stopped by the A. S. all night till the weather moderated in the morning, when her lifeboat with three men, at great risk took a hawser aboard, and the O. towed the A. S., which sheered and rolled heavily, into Snack Roads, in about six hours, and engaged two tugs to take her to Hull for £30. The O. suffered £150 damage. *The Andriana Stathatos*, S. G. May 15, 1885, p. 311. V. 30,000*l.*—A. £800

377. In March, the barque A., 417 tons, from the Elbe for Singapore and Penang, with general cargo, after stormy weather, sprung a leak, when she was about fourteen miles east of Yarmouth, and making for it as a port of safety. The weather was very rough, with a strong gale, and the crew had to work at the pumps. She was sighted by the D., but owing to the gale and sea, no boat could be launched, so the D. followed her by request for six hours, when the weather moderating, the A. was boarded by two hands from the D. The master of the A. was unacquainted with the numerous sands thereabouts, and the master of the D. undertook to direct her course. By this means she was brought up with her port anchor and forty-five fathoms of cable in the Winterton Roads; but the weather increasing in roughness, she began to drag, and flares were sent up, which were seen by the crews of the yawl R. J., and lifeboat C. G. In consequence of the high surf, these boats could not be launched at Scralby, but had to go by land to Caistor. The C. G. was then launched, and proceeding to the A., dropped down abreast of her port side. Some of

her crew boarded the A., set to work at the pumps, and managed to keep her clear of the beach. Next morning the yawl R. J. came up, and some of her crew went on board the A., and assisted at the pumps. The water being thus reduced, the A. was sailed out round the Cockle Sand and through the Gat towards Yarmouth Roads. A steam-tug was hired to tow her thence to Harwich, the water being too low to take her to Yarmouth or Lowestoft. The D. sustained damage to the extent of £186. £456 to the D., £274 to the R. J. and C. G., £70 for hire of tug. *The Angostura*, M. M. R. June 3, 1881, p. 687. Value 9,500*l.*—Award £800

378. The ship A., 820 tons, in January, when off Dungeness, accidentally touched the ground, and from the season of the year was in a position of some danger. The luggers B. N. and P. went to her assistance. The B. N., assisted by the crew of the P., laid out the ship's anchor and hove the chain taut. Subsequently the steam-tugs T. P. and P. came up and were engaged, and by their united efforts, in heaving on the anchor, the ship was got off, and towed past Dover, where the luggers left her. The tow-ropes of the tug subsequently parted, and the wind and sea having increased, much difficulty was experienced in keeping the tugs clear whilst towing. Both the tow-ropes breaking, the master of the P., discovering that the ship was going right on for the Oaze Sand, warned the pilot, and the ship was anchored clear of the Sand, and was finally towed by the two tugs to the Victoria Docks. £31 for damage to one of the luggers was awarded in addition to the salvage. *The Astronom*, S. G. March 9, 1864. V. 30,000*l.*—A. £800

379. In January, H.M.S. P. set out to the aid of the British steamer A., which was ashore off the east side of the Bay of Aboukir. She found her with all plain sail set, two hawsers out, two kedges fast aft, with her pipes choked, and unable to use her steam power. The P. dragged her off and took her to Alexandria. *The Atlas*, M. M. R. May 13, 1865, p. 591. V. 45,000*l.*—A. £800

380. The A. anchored off the North Foreland; she parted from her anchors and drove on the Tongue Sand, whereby she lost her rudder; she was then for safety run on the Brake Sand. Two luggers and a steam-tug, after twelve days' services, got her off the sand, and with the aid of two steamers conveyed her to London. *The Aurora*, S. G. April 25, 1855. V. 4,600*l.*—A. £800

381. The ship B. had four feet of water in her hold, one of her pumps split, the other choked, her fore and maintopmast, and the head of her foremast gone. Nine of her crew were sick, the rest exhausted. A post-office packet carried her into Falmouth in six days. *The Baltimore*, 2 Dod. 132. V. 1,900*l.*—A. £800

382. In December, the steamer B., rigged as a fore-and-aft schooner only, with eighteen hands, and 1,017 tons of iron ore, from Bilbao to the Tyne, broke her shaft in the gland nine miles from Ushant, heading N.E. The steamer W., with sixteen hands and iron rails, railway waggons and coals, from Cardiff to Bilbao, saw her. There was a strong S.E. breeze, with a moderate swell. Two of the B.'s hawsers were taken on board the W., which proceeded at full speed ahead towards Falmouth. After fifteen hours the port hawser parted, and after twenty-two hours, just when the Lizard lights were sighted, the starboard hawser parted. The tow-rope of the W. was then made fast to the B., and in six hours the B. was safely anchored in Falmouth harbour. The W. deviated from her course for upwards of three days. *The Brighton*, M. M. R. April 23, 1880, p. 529. V. 11,788*l.*—A. £800

383. The B., 350 tons, was found derelict and brought into Harwich from about eight leagues off Orfordness by four smacks, together having fourteen hands. The court awarded a moiety of the nett value after deducting the usual costs and expenses, probably about £800. *The Britannia*, 3 Hagg. 153. V. 1,729*l.*—A. about £800

384. In March, the brigantine C., from the Benin River for Liverpool, with palm oil, was discovered by the barque O., 583 tons, from Iquique for Queenstown, with saltpetre, in about lat. 44 N., and long. 18.4 W., with two men only on board, and those sick with fever, her captain, mate, boatswain, and two seamen having died of quinsey, bronchitis, consumption, inflammation of the windpipe, and dropsy, respectively. She was in a disabled state for want of spars and sails; her rigging was all adrift, and she had no provisions. The wind was fresh, N.W., and the sea heavy. The mate, with two of the crew of the O., took some provisions on board, and having

repaired the sails and cleared the pumps, navigated her for fourteen days into Brest Roads, whence she was towed to London. They slept on deck for five days for fear of infection. *The Catherine*, M. M. R. May 16, 1879, p. 627.

Value 7,000*l.*—Award £800

385. The ship C. of A., which was lying derelict and abandoned by all but the captain, off the Arklow Bank, in a heavy sea, was towed by the screw steamer C., into Waterford Harbour. *The County of Ayr* (Dublin Adm. Co.), M. M. R. July 7, 1876, p. 854.

V. 20,000*l.*—A. £800

386. In January, the crew of the ship C., fifty-two in number, were taken on board the screw steamer T., from the C., which was waterlogged and nearly on her beam ends, about thirty miles S.W. of Queenstown, and the T. towed the C. into Queenstown. *The Crimea* (Dublin Adm. Co.), M. M. R. June 13, 1873, p. 752.

V. 5,500*l.*—A. £800

387. The barque D., of 457 tons, had lost some of her boats and some of her water casks were destroyed; she was short of provisions, her crew were nearly all exhausted with pumping, and some were in bad health. A leak had been discovered, and it was stopped as well as it could be. The smack S., 56 tons, fell in with her on the 27th January, put two men on board, supplied her with provisions, and attempted to tow her, though unsuccessfully, as the hawser broke. After pumping her they left to obtain the aid of a steam-tug, and the barque was taken into Grimsby Docks, where she arrived about 5 p.m. of the 6th February. *The Decima*, S. G. May 27, 1859.

V. 22,000*l.*—A. £800

388. The steamer D., after collision with the steamer Darlington, was found by the tug Q., 143 tons, in a position of great peril off Portland, and requiring steam power to keep her afloat. A hawser was made fast and the D. was held, but she yawed and would not steer. She was accordingly grounded, and the Q. went to fetch two pumps, timber bolts, cement, &c., and two carpenters to close temporarily the hole caused by the collision. On her return the D. was made watertight, and continuously pumped until the water was reduced sufficiently to enable her engine fires to be lighted and steam got up. The Q. then left, and the tug A. coming up was asked to go and fetch the tug F., which she did, and the A. and the F. towed her to her anchors, and beached her on the mud off the Mesh. *The Devonía*, M. M. R. March 28, 1884, p. 198.

V. 17,500*l.*—A. £800

389. The ship D., 1,190 tons, passing the North Foreland, and while in stays, grounded and remained fast, but was not in danger. She was lightened of 200 tons, and by the aid of five steam-tugs was drawn into deep water, and subsequently taken to London. One tug had been settled with; three, 300 h.-p. each, and one of 60 h.-p., having twenty-four persons engaged on board, now claimed salvage. *The Devonshire*; S. G. May 28, 1850.

V. 39,000*l.*—A. £800

389a. In January, the screw steamer D. was near the Newarp Lightship when one of her boilers exploded, scalding six of her crew severely, and stopping the engines. She was thus in a perilous position; the crew were taken off in the Caistor lifeboat, and the tug E. towed the D. to Grimsby. £200 to the C., £600 to the E.. *The Druid*, M. M. R. May 23, 1873, p. 657.

V. 33,000*l.*—A. £800

390. The brig E. B., 215 tons, off Cape St. Vincent, dismasted, was fallen in with by the barque M., 354 tons, sixteen hands, and was with some risk of collision taken in tow, and towed in about twenty-seven hours to Cadiz. *The Edward Barnett*, S. G. July 8, 1847.

V. 16,000*l.*—A. £800

391. Two branch pilots and five men in a smack, at the request of Lloyd's agent, who had heard of a derelict in the Irish Channel, went in search of, found, and took it in tow, and, aided for a few hours by a revenue cutter of 170 tons, with some assistance from another smack, they towed it into Milford. Time employed two days. *The Effort*, 3 Hagg. 166.

V. 1,600*l.*—A. £800

392. In December, the screw steamer G., 1,700 tons, from Bussorah for London with general cargo, touched the ground in the Suez Canal and broke her propeller blades. The wind was N.W., strong, and with a heavy sea. She was drifting to leeward and rolling heavily in the trough of the sea, when found by the steamer A., 1,901 tons gross, value £96,480, from Alexandria to Liverpool with grain and cotton. The A. took her in tow, and after three days' towage, involving to the A. a delay of

one day and a half, but no extraordinary risk, brought her to Malta, 323 miles distant. *The Gorji*, M. M. R. April 25, 1884, p. 262. Value 28,226*l.*—Award £800

393. In May, the brig-rigged steamer G., 2,173 tons, from Rotterdam to Batavia, with thirty-four passengers, mails, and a general cargo, took fire in the Red Sea, about lat. 20°33' W. long. 38°23' E. The weather and sea were calm, with fresh breeze from N. She was flying signals of distress when discovered by the steamer B., 1,433 tons nett and 2,207 tons gross, which took the mails and passengers. The master and chief engineer went on board the G. and found that the fire was in No. 2 hold, before the bunkers and low down among the cargo, and that it had been burning some two hours. The hatches were replaced, and a steam pipe was inserted in the hold, by which means the fire was kept well under until the G., accompanied by the B., arrived at Suez in about eighty-seven hours. *The Guelderland*, S. G. Dec. 9, 1884, p. 806. V. 85,000*l.*—A. £800

394. The schooner H. had sustained considerable damage in a storm, and her master was confined to his bed by illness. The brig S. G. fell in with her, and towed her to Plymouth, a distance of 1,000 miles. The services lasted from the 3rd to the 22nd May. *The Harriett*, S. G. Dec. 5, 1853; 1 Spinks' Ecl. and Adm. Rep. 180. V. 3,800*l.*—A. £800

395. The steamboat H. D. B. sunk in the Mississippi river, was raised and saved in twenty-one hours by an apparatus called "a diving-bell boat," constructed for such purposes, which cost \$20,000=£4,000 sterling. The pumps threw from 150 to 200 barrels of water in a minute. The boat went 200 miles to render the service. *The H. D. Bacon*, 1 Newberry, 275, cited in Marvin, 224. [American.] V. 5,000*l.*—A. £800

396. The schooner H. was found capsized and derelict near the Owers by the smack P., which, after towing her with much difficulty for several hours, received some assistance from two luggers, and on the next day got her into Littlehampton. A lieutenant of the coastguard, with two boats and ten men, rendered very effective aid. *The Helene*, 3 Hagg. 430, n. V. 1,600*l.*—A. £800

397. In November, the screw steamer L., 1,188 tons register, from Bergen to London with twenty hands and timber, broke the tail shaft of her propeller about five miles from the Kalboden lightship, out of the track of steamers. The weather was hazy and with a fresh breeze from S.W. and a bad sea. The L. was drifting to leeward between one and two knots an hour. She was found in this critical position by the screw steamer D., 978 tons, value £23,725, which agreed to tow her to Helsingfors or Revel. The Revel Stone lightship had been removed, and there was great danger of running on the Revel Rock. The D. took the L. in tow and rounded Nargen Island, with the Nargen lightship S. by W. $\frac{1}{2}$ W. A pilot was then taken on board, and the two vessels proceeded for Revel Roads, where the D. cast off and proceeded on her voyage. The services lasted twenty hours. *The Leda*, M. M. R. July 7, 1882, p. 844. V. 15,977*l.*—A. £800

398. The ship L. was off Walmer Castle, in imminent danger, with a heavy gale from about E., and a heavy sea. The crews of two luggers and two steam-tugs, thirty-five in all, with great exertions and risk of life, and after services of some duration, towed her into Ramsgate. *The Lion*, S. G. July 8, 1857. V. 4,200*l.*—A. £800

399. In October, the screw steamer L. R., 350 tons, from Rotterdam to Newcastle with a general cargo, aground on a bar off Brielle, was got clear and towed safely into Hull, by the screw steamer from Rotterdam to Hull with passengers. *The Lord Raglan*, S. G. Feb. 17, 1860. V. 10,600*l.*—A. £800

400. In April, the barque L., 572 tons, was discovered by the smack Z., abandoned and aground on the Burnham Flats, striking heavily, the wind and sea being very heavy and the tide three-quarters ebb. The crew of the lifeboat J. and M., and three of the hands of the smack T., which came up immediately afterwards, boarded her. The smack W. had picked up her crew. She was beating heavily, and it was feared she would momentarily become a wreck. Her master refused to go on board her again. The tow-rope of the L. was taken on board by the tug O., which towed her into deep water, and to Lynn in three days. *The Lucy*, M. M. R. July 23, 1875, p. 936. V. 3,500*l.*—A. £800

401. In November, the screw steamer L., 1,277 tons gross, with a crew of twenty hands and cargo of cotton, from Wilmington, North Carolina, for Liverpool, broke her high-pressure piston and had her lower stuffing-box knocked off; the low pressure would not work after disconnecting. She was lying in the trough of the sea about two and a-half miles off the South Bishop Rocks, heading S.S.W., and signalling for assistance. A strong hurricane from W.N.W. was blowing. In this dangerous position she was found by the screw steamer S., 751 tons gross, twenty hands, six passengers, general cargo, from Bristol to Belfast and Glasgow, which towed her to Milford Haven in about seven and a-half hours. *The Lykus*, M. M. R. Jan. 25, 1884, p. 54.
Value 43,970*l.*—Award £800

402. The ship M., 648 tons, after passing Sharp Peak Point, in the River Min, missed stays, and took the ground, although the starboard anchor with thirty fathoms of cable was at once payed out, and the sails furled. From this position she was rescued by H.M. steam gunboat H., and was subsequently taken in tow and anchored in a safe position. The services lasted three days. *The Magnolia*, S. G. March 26, 1863.
V. 22,000*l.*—A. £800

403. The French steamer P. was in the Bay of Biscay, entirely disabled by injury to her machinery. The steamer D. towed her to Plymouth Sound in three days. *The Paris*, S. G. April 21, 1854; 1 Spinks' Eccl. & Adm. Rep. 289.
V. 4,060*l.*—A. £800

404. In May, the P., on the Scrobie Sand, with four to five feet of water in her hold, and abandoned, was got off and taken into Yarmouth by thirty men from three boats. *The Patriot*, S. G. July 27, 1843.
V. 4,000*l.*—A. £800

405. The Netherlands ship-of-war P. F., having suffered considerable damage off the Scilly Islands, was brought into Mount's Bay by the assistance of the master and crew of the British brig Howe. *The Prins Frederick*, 2 Dodson, 451.
V. 27,750*l.*—A. £800

406. In December, the iron ship R. F., 1,585 tons, from Glasgow to Sydney, with iron pipes, pig-iron, and general cargo, was in a helpless condition about thirty miles E. of Madeira, having lost her topmast, her foremast, nearly all her spars, and most of her sails. Her square sails and fore-and-aft sails were of little use, except with a leading wind. She was rolling heavily, drifting to the E., had one of her crew disabled, and had lost two others. She had been in this state a month when found by the screw steamer F., 2,174 tons gross, 1,417 tons nett, 200 h.-p. nom., value £75,000, from Liverpool to Monte Video, with thirty-two hands and general cargo. The F. lowered a boat, hauled a wire hawser from the R. F. on board, and got the head of the R. F. off shore. After about an hour the hawser parted, and was only got on board a second time by the F. going astern of the R. F. at great risk of collision. She then took her to Funchal Roads. The weather was comparatively calm, but with a heavy swell. *The River Falloch*, S. G. May 29, 1885, p. 345.
V. 36,699*l.*—A. £800

407. In November, the screw steamer R. L. A., 452 tons, with sixteen hands and a cargo of sugar and potatoes, four days out from Hamburg for London, ran short of coals, and in severe gales started her sternpost and shipped much water. She was found flying signals, about twenty-five miles east of Lowestoft, wind W., by the trawl fishing smack T. A., 54 tons, the fishing-dandy H., 56 tons, and the fishing-dandy A. Warps were made fast—a task requiring great skill—and the R. L. A. was towed towards Yarmouth clear of the Leman and Ower Sands, the weather being so rough that the smacks once cast adrift, but another hawser being made fast, the smacks continued towing. Being unable to weather the Cross Sand, they, while waiting for the ebb tide, veered the ship to the east, hung her there for an hour, and then headed her for Hasborough Gat, but the warp of the A. parted, and she commenced to drift into shallow water. The T. A., after several attempts, again got a warp on board the R. L. A., and she was brought through the Cockle Gat into Yarmouth Roads, and thence taken by a tug to Lowestoft. The services lasted twenty-four hours. *The R. L. Alston*, M. M. R. February 18, 1881, p. 207.
V. 11,100*l.*—A. £800

408. In March, the steamer S. was discovered by the steamer H., 1,140 tons nett, 1,732 tons gross register, 150 h.-p. nominal, lying with her head to the N.N.E. off the Zarafana Light, about sixty miles from Suez. She had lost her rudder and rudder-post, and was making water. There was a strong sea running. A hawser from the H. was made fast, and the S. was with much difficulty, owing to her bad steering, towed at the rate of six to seven knots towards Suez. When about six miles from Suez the hawser broke, and the sea being smooth, the two vessels were lashed together. By this means the H. was enabled to tow the S. through the shipping to a safe berth in Suez Bay, after twelve hours towing in all. The value of the H. was £40,000. *The Shildon*, M. M. R. July 15, 1881, p. 873.

Value 26,532*l.*—Award £800

409. In February, the ship S. D., from Liverpool for San Francisco with wheat, was found by the tug L. E., derelict, off the Skelligs, and rolling considerably, with only her mizen topsail set. After considerable difficulty the L. E. got her in tow, and took her in three days to Queenstown. The sea was heavy. *The Sydney Dacres* (Dublin Adm. Co.), M. M. R. May 28, 1875, p. 678.

V. 50,000*l.*—A. £800

410. In November, the master of nine luggers on Deal beach descried the barque T., 488 tons, from Carthagena for Shields, with lead, copper ore and esparto, driving rapidly broadside towards the main, the wind blowing heavily from S.S.E., and the sea being heavy also. When the luggers reached the barque, she was found to have grounded on Deal beach broadside on, with her port side to the shore, and her head about N. by E. Some of the lugger's men fetched a large lugger called the T., which took on board, and laid out in an E.S.E. direction, the barque's starboard anchor with 120 fathoms of cable, and then fetched a stream anchor and hawser from the barque, carried it out E. by S., and let it go. The barque's port anchor was then laid out in an E. direction. By the united exertions of all the luggers and the steam-tug W. the barque was got afloat, towed to a good berth, and brought up. The T. twice struck the masts of the barque. One of the flukes of the port anchor of the barque, which was slung astern of the T., struck her under the water, and made it necessary to pump. *The Thames*, M. M. R. June 15, 1867, p. 752.

V. 7,250*l.*—A. £800

411. A vessel got on a sand ten miles from Calais, where, in consequence of the state of the weather, no steamer could for four days be prevailed upon to go to her assistance. She was without a rudder and dismantled (but had in the meantime received some assistance from three fishing-boats), and on the fourth day was got off and towed into Calais by a steamer engaged for the purpose. *The United Kingdom*, 3 Hagg. 411.

V. 4,000*l.*—A. £800

412. The ship A. having run on to some dangerous rocks on the Welsh coast, the crews of two boats went to her, and by means of advice given by them she was got off and taken into Port Griffith Creek, where she was in great danger. The steamer O. went from Holyhead and towed her clear of the surrounding rocks. The services of the steamer lasted 2½ hours. £700 to steamer, £80 to boat's crew. *The Advance*, S. G. March 7, 1854.

V. 60,000*l.*—A. £780

413. The barque D., coal laden, in the month of December, was near the Dudgeon lightship, having received damage in a gale; her cargo had shifted, she had a list to port, and the wind and sea were heavy. Two fishing smacks, the R. and the T., took her in tow, but could not make much headway. The R. took off the master and crew of the D. and landed some of the crew at Grimsby. The steamer L. C., 377 tons, came up, and was employed by the smacksmen to tow the D. for one-third of the salvage they should recover. Two other smacksmen arrived, and were engaged to pump. The L. C., with some difficulty and labour, after breaking her tow-ropes, towed the D. to Grimsby Road, where she left her. The smacksmen employed two tugs to dock the barque, and paid them six guineas. Services of smacks lasted four days, of the steamer thirty-eight hours. *The Douglas*, S. G. May 10, 1864.

V. 2,640*l.*—A. £766

414. Two vessels got another off some rocks near one of the Cape de Verd Islands, and into deep water. One of the vessels was settled with out of court. *The Haidee*, 1 Notes of Cases, 602.

V. 14,000*l.*—A. £760

415. In February, the screw steamer A., 1,550 tons register, got on shore in St. Margaret's Bay at low water, and, with the wind dead on shore, was in danger of going to pieces if bad weather came on. She was got off by the steamer B., 396 tons, in about three-quarters of an hour. *The Agamemnon*, M. M. R. June 18, 1875, p. 775.

Value 150,000*l.*—Award £750

416. In December, the barque C., 645 tons register, was found waterlogged by the smack L., 69 tons, off the Dogger Bank. Attempts were made to board her, and to throw a line, but without success. A boat was lowered, and the crew of the C. were taken off and to Hull. Three days later the C. was found by the tug A., 19 tons, derelict, about twenty-five miles east of the Longstone, taken in tow, and after forty-seven hours brought to an anchorage in the Tyne Harbour. The weather was bad. £250 to the L., £500 to the A. *The Charlotta*, M. M. R. May 4, 1883, p. 558.

V. 2,400*l.*—A. £750

417. In December, the Russian barque D. M., with timber, was found aground, derelict and waterlogged, on the N.W. side of Hasborough Sands, near the S.W. buoy, by the tugs M. and A. W. They made fast a hawser, and slewed her head round. The A. W. then left to obtain help. The yawl G., with seventeen hands, came up, and for four days the salvors made efforts to get her off, but only succeeded in getting her some way towards the edge of the sand. They left her in that position, and during the night she came off, and was fallen in with by the steamer E. E., 841 tons and 99 h.-p., which made fast to her and tried to tow her. When Wintaston was bearing S.W. and the Cockle Lightship S., the tug U. S., 200 h.-p., and the lifeboat G. came up, and found that all the tow-ropes but one had been broken by the E. E. Under agreement the D. M. was taken in tow by the tug U. S., which, with the aid of the M., took her to Yarmouth in four days. £533 to tugs, lifeboat and yawl, and £217 to the E. E. *The Die Matrone*, M. M. R. April 12, 1878, p. 469.

V. not stated.—A. £750

418. In October, the iron screw steamer D., 537 tons nett and 90 h.-p., twenty miles E. of the Dowsin Light, with a broken shaft and drifting, hailed the smack M. to lie by. The wind was blowing a gale from the N.W., with a heavy sea. Next morning, when the D. was in about six fathoms of water, at the north end of the Ower Sands, the smack E. came up, and the two smacks towed her towards Yarmouth, as far as off Hasborough, when the warp of the M. parted. They stayed by her during the night, and next morning the screw steamer R. hove in sight, took the D. in tow, and brought her to the Nore, whence she was taken by a tug to London. £450 to the R., £180 to the M., £120 to the E. *The Dione*, M. M. R. April 23, 1875, p. 518.

V. 13,400*l.*—A. £750

419. In October, the C., from London to the West Indies, on fire off the Motherbank, was towed at great risk of life by two fishing smacks with sixteen hands to the beach. *The Colonist*, S. G. May 3, 1838.

V. 1,500*l.*—A. £750

420. In December, the barque E., timber laden, was discovered, derelict and in considerable danger in that stormy season of the year, off St. Anu's Light in the Bristol Channel, by the crew of a pilot cutter, who informed the master of the tug T. The barque was taken in tow by the tug, which had to disconnect her engines several times during the towage, as the barque had lost her rudder. She was got on to the mud at Milford in three days. *The England*, M. M. R. May 13, 1865, p. 591.

V. 2,000*l.*—A. £750

421. In March, the H. was in collision with the T., and had carried away some of the ironwork of the footway and railings, smashed in some of her stern-plates, and carried away her bowsprit, jibboom and head-gear. She was lying in a helpless condition between the S. end of the Woodside quay and the quay wall, with her port bow canted in against the quay wall, and her stem jammed about four yards under the bridge. The weather was dark and dirty, with a fresh gale, squalls and rain. The paddle-wheel steam-tug G. E., 109 tons, came up, a hawser was made fast, and the H. was drawn away from the bridge and held till the tug T. came up. By their joint assistance the H. was taken to the Alfred Dock. £600 to the G. E., £150 to the tug T. *The Hermione*, M. M. R. May 11, 1883, p. 589.

V. 12,885*l.*—A. £750

422. In February, the L., 700 tons, from the East Indies to London, was driving two miles from Margate towards the cliffs in a hurricane, when two luggers with twenty-five hands put off to her aid, ran her aground, discharged part of her cargo,

got her off, and took her to Gravesend. The services lasted several days, and involved some risk. *The Larkins*, S. G. July 22, 1843. Value 70,000*l.*—Award £750

423. The brig M. M., 230 tons, was in a dismantled state off the Land's End. A steamer of 286 tons and 160 h.-p., towed her for nineteen hours about 105 miles, into Plymouth. *The Meg Merrilies*, 3 Hagg. 346. V. 9,500*l.*—A. £750

424. In November, the R. J. was waterlogged and disabled three or four miles N.E. by E. of the N. Sand Head, the sea running very heavily, her crew were worn out with fatigue, her sails were all split or blown away, her donkey-engine was broken down, and she had fourteen feet of water in her hold, and was flying signals. The lugger B. G. came up, and was sent for steam assistance. Next day the tug R. came up with the R. J. about six miles E. of N. Foreland, and was sent after the lugger B. G., which the R. overtook, and sent back to Broadstairs. The R. brought back the tug H. to the R. J., and the three towed the R. J. to Gravesend on the day following, five of the crew of the lugger B. G. remaining on board to assist in pumping. On the third day she was towed to the Commercial Docks. *The Red Jacket*, M. M. R. May 2, 1873, p. 561. V. 11,000*l.*—A. £750

425. In September, the screw steamer R., 508 tons, from London for Gibraltar with a general cargo, in lat. 45°35' N. and long. 8°5' W., totally disabled, with her boilers burnt out, was boarded by the mate and four hands of the screw steamer B., 643 tons nett, and 99 h.-p. A tow-rope was got on board, and the R. was towed a distance of 320 miles to Falmouth in a little less than three days, a service of considerable danger to both steamers, as there was a dense fog during the whole of one day. *The Risca*, M. M. R. March 17, 1876, p. 340. V. 54,138*l.*—A. £750

426. The screw steamer R., 462 tons, when in the Formby Channel, was discovered to be on fire in the after-hold, which was chiefly filled with nitrate of soda. Her head was immediately put about to return to Liverpool, but the smoke in the engine-room was so dense, that the engines were obliged to be stopped. The steam-tug S. came up, passed a hawser to the R., and towed her some distance up the Mersey, where she was anchored and water pumped into her after-hold by the S., the T. C., and two other steam-tugs. The fire was extinguished, and the R. was docked on the following morning. *The Rita*, S. G. July 28, 1862; 7 L. T. N.S. 258. V. 38,000*l.*—A. £750

427. The barque R., two days out from Monte Video, was discovered to be on fire, and put back to Monte Video, and anchored about eight miles from that port. H.M. steam-tug L. took her in tow with the view of putting her on shore at the fort of San José; both vessels, however, grounded on the rocks at the entrance of the harbour. The barque was got off by a small Brazilian steamer, and the L. followed. Her crew then assisted in extinguishing the fire, and performing various other services. The services lasted altogether about twenty days. *The Rosalie*, S. G. Dec. 20, 1853; 1 Spinks' Ecl. & Adm. Rep. 188; 18 Jur. 337. V. 8,800*l.*—A. £750

427a. In March, in lat. 35°56' N. and long. 64°5' W., the Norwegian barque S., with timber, which was leaky and derelict, was boarded by the mate and crew of the men of the barque E. K., who with great difficulty brought her into Cork Harbour on April 16. *The Softid* (Dublin Adm. Co.), M. M. R. July 7, 1876, p. 854. V. 2,880*l.*—A. £750

428. The P. had her screw broken, and after making several signals of distress, she was found by the F. in the North Sea and brought safely to Heligoland, where a tug took charge of her. There was no danger to the F. *Frederick and Peter der Grosse*, Assistance, Hamb. H. G. Z. 1877, pp. 103, 104. [German.] V. 22,700*l.*—A. £750

428a. The A. L. was aground on a sand bank near Wangeroog. The D. brought her off and towed her to Bremerhaven next day. *Diana and Andrew Lovitt*, Assistance, Decisions of the Reichs Oberhandels, gericht, vol. 4, pp. 422—443. [German.] V. 39,570*l.*—A. £750

429. In April, the iron screw steamer C. was ashore on a bank ten miles W. of Ochakor, and lying with her head about N.N.W. The steamer A. made fast, and towed till the hawser broke. About 100 tons of the C.'s cargo were then discharged,

and ultimately she was got off, and the discharged cargo put on board again by the A. This took about twenty-six hours. *The Crosby*, M. M. R. Aug. 10, 1877, p. 1015.
Value 41,092*l.*—Award £740

430. In February, a fire broke out on board the screw steamer E., 2,030 tons gross register, from Bombay to London with an inflammable cargo. The pumps were worked. The screw steam-tug S. came up and set her fire hose to work, assisted by the tugs V. and U. S., and the Gravesend Fire Brigade, one of whose engines was brought alongside by the steamer C.; some Gravesend watermen also assisted, and four of them went down under the boilers. When the fire was put out the S., the U. S., and the V., towed her into the Albert Dock. £300 to the tugs, £175 to the watermen, £100 to the C., £160 to the Fire Brigade. *The Ethiopia*, M. M. R. May 11, 1883, p. 589.
V. 67,029*l.*—A. £735

431. The barque B., 381 tons, had her tiller-band broken away from the rudder head and temporarily repaired. Eight out of fourteen of the crew were suffering from scurvy. When near Dungeness on the 18th May, the steam-tug E. was engaged to tow her to Gravesend and London for £28, and the usual dock order, the barque having a pilot on board. When off the South Foreland two men, in the yawl M. A., were engaged to assist in working the ship to London for 30*s.* Their boat was fastened astern, and was subsequently lost. The barque was brought up by her starboard anchor and sixty fathoms of chain in the Gull Stream, about two miles from Ramsgate, when the tug cast off, and the weather having become very bad and the wind blowing heavily with a heavy sea, made for Ramsgate to get a lugger to steer the barque. On the next day the barque lost her port anchor, and on the same evening the windlass broke, and the end of the starboard chain was attached to the foremast. On the 20th the lugger P. came up, and three of her crew boarded the barque at risk to their lives, and were engaged to assist the ship. A signal was then hoisted, whereupon the E. came up and took the barque in tow, she having slipped from her starboard anchor, and having only a small anchor left. On the afternoon of the same day the steam-tug M. was also employed to assist the barque, and the two tugs, after some difficulty from the parting of the M.'s hawser, conducted the barque to the Nore, the P. steering the vessel, and the barque was then brought up by her spare anchor. On the next morning the tugs were again made fast, one on each side of her, and took her to Gravesend, where the lugger cast off, and the barque was conducted to the London Docks. £200 to the E., £250 to the M., £200 to the P., £80 to the M. A. *The Burnside*, S. G. March 16, 1864.
V. 21,000*l.*—A. £730

432. The ship V. struck a ledge of rocks in the night, was forced over, and came to anchor in a dangerous situation, with rocks near by under her lee. She was much damaged, and had from seven to nine feet water in her when the salvor steamer towed her to Boston. *The Versailles*, 1 Curtis, Rep. 353; cited in Marvin, 206. [American.]
V. 24,000*l.*—A. £720

433. In November, the barque A. M., 837 tons register, with seventeen hands, general cargo and nine passengers, from London to Otago, took the ground abreast of the coastguard station at Kingsdown. The A. M.'s signals were seen by the crew of the K. lifeboat, and with the assistance of some horses from a neighbouring farmhouse the boat was dragged along the beach abreast of the A. M. The rocket apparatus was similarly got into position, and the passengers saved by it. The sea meanwhile was breaking right over the A. M. Early next morning she was lying with her head about S.W., nearly broadside on to the shore, where she had made a dock for herself, with a heavy list to port. Her starboard bower anchor was dragged up the beach and firmly secured, and a chain cable was made fast to it from the ship's windlass. All hands were set to work to save the cargo, which was taken in carts to Deal. The services lasted thirty-two hours. The A. M. was eventually floated off and towed to London. *The Araby Maid*, M. M. R. 1881, p. 238.
V. 32,786*l.*—A. £700

434. In September, the Russian-Finnish barque A., 697 tons, laden with wood and tallow, and bound from Christianstad for London, got aground on the south head of the Long Sand. The wind was from the southward and westward, and the vessel and

cargo were in considerable danger. The steam-tug P., with the help of the smacks the M. P., the A., the A. I., and the I., got the barque off the sand and took her into Harwich harbour, where she made water at the rate of two feet per hour. The crews of the five salving vessels numbered thirty-two persons, and they were forty-eight hours performing the service. *The Cargo ex Astrea*, M. M. R. March 31, 1866, p. 402. Value 2,529*l.*—Award £700

435. In November, the barque A., 665 tons register, with timber, was off the Shipwash Strand in an E.N.E. gale and a heavy sea. Her decks had been swept on the previous day in a fearful storm, her deck-houses, bulwarks, and all her boats, but one, were gone. The captain and one hand had left to seek assistance. The screw fishing steamers, W. and F., were hailed and put out a boat manned by three hands, who, at most imminent risk, boarded the A., but the boat was upset in doing so. After great labour, the two tow-ropes breaking several times, she was towed in safety to the Thames and docked. *The Australie*, M. M. R. March 21, 1873, p. 367. V. 2,000*l.*—A. £700

436. In January, the barque C., laden with lead and grass, was within 1½ mile of the Broad Sand, Torbay, with the wind driving violently on to the sand and a heavy sea on. She had been exposed to a terrific storm the previous night and was waterlogged with seven feet of water in her, and her mizenmast was gone. She had two anchors down, her crew were exhausted and unable to work, and she was in great danger of parting with her anchor and being driven upon the Broad Sand. The steam-tug P., having been telegraphed for, about three p.m. left Dartmouth Harbour, having nine men on board in addition to her crew, and with all hatches battened down she succeeded in rounding Berry Head through a tremendous sea and reaching Torbay. She placed five of her additional crew on board the barque, and then proceeded to the assistance of another vessel. She afterwards returned to the barque and towed her into Dartmouth. *The Celestina*, M. M. R. April 28, 1866, p. 530. V. 6,900*l.*—A. £700

437. In November, the B. was drifting about quite unmanageable in the neighbourhood of Dasser Island. There was a nasty current setting in towards the land, and but for the assistance of the C., the B. would have drifted on to the land, or have been driven out to sea. The C. brought her to such a position as enabled the signalman at the Lion's Rump to see her signals and send off a tug, which took her to Table Bay. *The Batavier* (Cape Town Sup. Co.), M. M. R. Dec. 29, 1876, p. 1653. V. 35,000*l.*—A. £700

438. The steamer B. S. left Malta for the Crimea. The weather was stormy, and the ship made water, putting out the fires in the engine-room, and was in a state of very considerable distress. The French ship-of-war J. took her in tow, and towed her until the steamer L. E. (who entered this action) came up and took her in six days to Constantinople. *The Black Sea*, S. G. Dec. 18, 1856. V. 5,000*l.*—A. £700

439. In March, the screw steamer C., 700 tons nett, 1,091 tons gross register, 95 h.-p., twenty-two hands, with wheat, oats, and rye, from Nicolaieff for Hamburg, took the ground on the Greowitsi Bank, fifteen miles E. of Odessa, in fine weather, with the wind light from N. and a smooth sea. An anchor was taken out by one of her boats, and spare spars, &c. thrown overboard, but she would not come off. The screw steamer R., 764 tons nett, 1,198 tons gross register, 130 h.-p. nom. working to 600, with twenty hands and a cargo of rye, from Nicolaieff for Rotterdam, in answer to signals, bore down on her. Her master boarded the C. and agreed to tow her off the sand. In two hours the head of the C. was canted, but she did not come off. It was then getting dark and the weather worse, so 200 quarters of rye were thrown overboard. In two hours more she was got off, and in a further two hours got to Odessa. The R. ran some risk from the vicinity of the sand. *The Coanwood*, M. M. R. July 21, 1882, p. 907. V. 21,000*l.*—A. £700

440. In September, the barque C., 638 tons, from Archangel to London, with deals, was dismasted and waterlogged in the North Sea. Her master and crew were taken off by a fishing smack, and a second smack, with the aid of two steam-tugs (in all twenty hands), got her to Yarmouth and beached her after twenty-four hours' service. *The Coromandel*, S. G. Feb. 27, 1857. V. 2,519*l.*—A. £700

441. In August, the barque E. N., 904 tons nett, with sugar and hemp, while in tow of the tug R. A., came athwart the bows of the iron barque C., at anchor abreast of Seacombe and W. of mid-river in the Mersey, became firmly locked, and was in considerable danger of going down, and carrying with her the C., which was dragging her anchors. The weather was moderate, the wind being from S., and the tide three knots flood nearly high water. The steam-tugs S. K., 190 tons gross, 87 tons nett, value £6,000, and H., 224 tons gross, 31 tons nett, value £11,500, towed the E. N. clear of the C., which was brought to anchor by the H., the E. N. being towed northwards by the S. K. £500 to the S. K., £200 to the H. *The Cumbrian and The Elizabeth Nicholson*, S. G. Oct. 30, 1885, p. 697.

Values of the E. N. 22,326*l.*; of the C. 23,957*l.*—Award £700

442. In January, the screw steamer D., 823 tons, from Sunderland to Malaga, with salt fish, which two days before had struck on a sunken rock, broken her propeller, and damaged her rudder, was taken in tow by the screw steamer A. O., 817 tons, towards Falmouth, but it was afterwards found necessary to steer for Plymouth. The wind was blowing a gale, and the sea heavy. In twenty-one hours from first taking her in tow the A. O. brought the D. inside the breakwater at Plymouth. *The Danmark*, M. M. R. May 11, 1877, p. 595.

V. 10,701*l.*—A. £700

443. In October, the F., 190 tons register, from Stockholm for Liverpool, with a cargo of iron, had been damaged through a collision. She was fallen in with by the screw steamer N. C., 570 tons register. There was a heavy sea running clean over her, and she was found to have five or six feet of water in her hold. The steamer ultimately towed her to Weymouth Roads, and placed her in safety there. *The Fairlina*, M. M. R. April 21, 1866, p. 498.

V. 5,000*l.*—A. £700

444. The barque F. was got off the Tongue Sand by two luggers, and was assisted by them to a place of safety. *The Freedom*, S. G. Feb. 17, 1863.

V. 8,000*l.*—A. £700

445. In October, the steamer J., 306 tons gross, from Swansea to St. Malo, broke her propeller and became unmanageable. She was lying with her head to W., about twenty miles off Ile de Bas, France, in a moderate sea with W. wind. In answer to her signals the steamer O., 271 tons nett, 362 gross, from St. Nazaire for London, with fruit and thirteen hands, came up and took her in tow for Plymouth, where she was anchored. *The Jacinth*, S. G. Feb. 13, 1885, p. 102.

V. 4,200*l.*—A. £700

446. In November, the schooner M., from Swansea to Rouen with copper, lost both masts and bowsprit. The crews of five boats, thirty-five men in all, at great risk to their lives, went off to her in very tempestuous weather, got her out of her very perilous position, and ultimately to Ilfracombe. *The Mary*, S. G. March 12, 1841.

V. 9,980*l.*—A. £700

447. In July, the barque L. M. M., 491 tons, was discovered by the steamer L., 488 tons, within seven miles of the sand banks off Lytham and Blackpool, with her sails flying adrift, having lost foremast, foretopmast and royal mast, and with only lower maintopsail set. There was a strong gale from W.S.W., and a very heavy sea. The L. changed her course from S.½W. to due E., ran under the bows of the L. M. M., and with great difficulty, after many attempts, got a hawser on board, by which the L. towed her for four hours, and took her to the Rock Light, where she got a pilot. *The Lady Muriel May*, M. M. R. Dec. 22, 1876, p. 1619.

V. 3,500*l.*—A. £700

448. In February, the barque M. S., 468 tons, from Newcastle to Baltimore, with soda and soda ash, struck upon the Shingles Sand, the Tongue Lightship bearing S. by E., and the Shingles Beacon S.S.W.½W., about one mile and a half. She strained very much, her masts dropped two or three inches, two of the beams of her mainhold were broken, and she was leaking. The fishing smack K., 32 tons, with six hands, came up and anchored abreast of the M. S. There was a moderate breeze from S.W. and an ebb tide. The K.'s men boarded the M. S. and commenced getting the cargo out of the forehold. After they had been doing this for about three hours the lifeboats F. A. N. and Q., with twenty-eight hands, came up from Margate and assisted in getting her off on the last tide on which she could have been got off. The luggers S., 32 tons, with nineteen hands, and E., 32 tons, also came up, and the crews of all the boats set to work lightening the vessel. She continued to make water, and the port bilge had to be battened with canvas and oakum. Next day, about 3 a.m., the S.

took out the M. S.'s starboard anchor and five fathoms of cable, hauled her to the S.E., and then laid it out. The steam-tug C., 58 h.-p., which had come up, tried to get the M. S. off, but had to desist, as she herself struck several times. The tug B. L. came up, and about 2.45 p.m. or 3, with the assistance of the tug C., dragged the M. S., whose sail was all set, off and over the sand into deep water, took her to Gravesend in ten hours, stayed by her all night, and docked her in Millwall Docks in the afternoon of the next day. *The Mary Stewart*, M. M. R. June 24, 1881, p. 785.

Value 2,256*l.*—Award £700

449. In April, the steam-yacht M. E., value £18,000, while on a pleasure cruise in the Mediterranean, ran aground in a fog on the rocks near Port Genoves, on the coast of Spain. Endeavours were made to get her off by means of her own engines, but they were unsuccessful, and she signalled to the steamer A., which came to her assistance. The A. tried to tow the M. E. off the rocks, and several hawsers were destroyed, but at length the M. E. came off into deep water, and the A. proceeded on her voyage. The service was performed in fine weather. *The Merrie England*, The Times, June 28, 1884.

V. 18,000*l.*—A. £700

450. The barque M., on the S.E. part of the Sherringham Shoal, after lying there a quarter of an hour, forged off with the loss of her rudder and hoisted signals of distress. The Sherringham lifeboat A., the yawl H., and a number of boatmen, with the steam-tug P., at great risk towed the M. to Hasborough, and from thence, with the assistance of the steam-tug V., obtained from Yarmouth by the yawl, to Yarmouth Roads, all the salvors assisting. There were thirty-two hands in the lifeboat, and eighteen in the yawl. *The Milka*, S. G. July 30, 1857.

V. 6,700*l.*—A. £700

451. The barque O. having sustained considerable damage by collision, the crew, with the exception of two hands, abandoned her. The barque P. observed the O. with a signal of distress flying, and with some difficulty put on board of her the second officer and four men, who brought her up at the Motherbank. *The Orbona*; S. G. Nov. 11, 1853; 1 Spinks' Eccl. and Adm. Rep. 166.

V. 5,082*l.*—A. £700

452. In October, the ship O. was met with, derelict, by the barque E., which had the crew of the barque C. (also derelict) on board. Nine hands boarded her, and after thirty-six days brought her into Plymouth Sound, whence she was towed into Plymouth. She was provisioned by the E., and was making fifteen to twenty inches of water per hour all the way. *The Oregon*, M. M. R. March 25, 1865, p. 367.

V. 1,575*l.*—A. £700

453. In August, the schooner O., from Sierra Leone for Falmouth with nuts, was discovered by the screw steamer M., 124 tons and 120 h.-p., with only her master and two hands alive, the rest of the crew having died of yellow fever. The master and two hands were taken on board the M., whose chief mate with the boatswain and two hands took the O., after great difficulty and bad weather, into Falmouth. *The Ostrich*, M. M. R. March 11, 1865, p. 304.

V. 1,550*l.*—A. £700

454. In May, the barque Queen of the T., 300 tons, from Antwerp to Liverpool with a general cargo, got on the Goodwin Sands, whence she was got off with considerable risk to life, and brought into Ramsgate by thirty-one men in two luggers, a lifeboat, and a steam-tug. *The Queen of the Teign*, S. G. August 6, 1855.

V. 5,030*l.*—A. £700

455. In December, the steamer R. C., 497 tons, broke her rudder-head in the Bay of Biscay, and was making signals for assistance. The weather was moderate at the time, but there was a heavy swell, which made her roll considerably. The steamer W., 534 tons register, came up. Hawsers were made fast, and the W. commenced to tow the R. C. towards Brest. About midnight the wind increased, and at four a.m. next day a gale was blowing from the S.W. The services were continued till ten a.m., when, a pilot having been taken on board, the R. C. was brought into Brest harbour and anchored in safety. *The Raleigh's Cross*, M. M. R. 1886, p. 86.

V. 8,500*l.*—A. £700

456. The barque S. was, during a gale of wind from the south, driven on to the Church Rocks, off Folkestone. The galley N. and the lugger F. B., manned with sixteen hands, went to her and succeeded, at imminent risk to themselves, in boarding

her. The F. B. was despatched for further aid, and returned with another lugger and a steam-tug, and the barque was then got off the rocks. £250 to the tug, £450 to the other salvors. *The Santipore*, S. G. Feb. 7 and March 7, 1854; 1 Spinks' Eccl. and Adm. Rep. 231. Value 9,675*l.*—Award £700

457. In November, the ship S. F., 1,895 tons register, grounded in the neighbourhood of the Blackwater Bank, off the Irish coast, on her way from Liverpool for Calcutta, with a cargo of salt. One hundred labourers were employed to lighten her. The steam-tug U. K., which had been detained there for the purpose, aided by the steam-tug R., towed the ship off the bank, took her to Liverpool, and docked her on the evening of the following day. The weather was not very bad. *The Savoir Faire*, M. M. R. March 31, 1866, p. 402.

V. between 13,000*l.* and 14,000*l.*—A. £700

458. The S. proceeded on a fishing voyage to Davis's Straits, and was there frozen up in the month of October. Bounties having been offered for the rescue of the crews of this and other ships, several ships left England for that purpose, and upon the 14th May of the following year the S. was discovered by three ships beset in a floe of ice, in lat. 69°5' N., having at the time only nine days' provisions on board, many of the crew dead, and most of the survivors confined to their berths by scurvy. By the exertions of the salvors a channel was cut through the ice 376 yards in length and 26 yards in breadth, the average thickness of the ice being between three and four feet, and after two days and nights' incessant labour she was finally released on the 21st May, and enabled to return to this country. *The Swan*, 1 W. Rob. 68.

V. not stated.—A. £700

459. The American ship V., of 1,196 tons burthen, struck in a fog on the Blackwater Bank, in 18 feet water at high water, the ship drawing 20 feet. A small steamer, the E., came to her assistance, but was unable to tow her off, and was despatched to Wexford for a larger steamer. The F., of 207 tons and 160 h.-p., a passenger steamer, at the request of the E., proceeded to the V., and by the united exertions of the F. and the E. the V. was towed into deep water and round to Kingstown. The F. was engaged in the service twenty-seven hours, and proceeded a distance of 104 miles. The E. was settled with out of court by a payment of £300. *The Vanguard*, 5 (Irish) Jur. N.S. 364. Court of Adm. V. 10,000*l.*—A. £700

460. In December, the brigantine W., when off the Spurn, bound for Rotterdam with tar, was in an unmanageable state, having lost her rudder. She was rotted by four smacks, which towed her to Broadstairs, where she engaged a tug and was taken to Ramsgate. One man from one of the smacks went on board, and stayed there till she reached Ramsgate. Her crew left her and got on board the smacks. *The Werkendam*, M. M. R. February 26, 1870, p. 272. V. 1,845*l.*—A. £700

461. In February, the Norwegian barque A., 625 tons register, from Halifax to Liverpool with deals, which had been abandoned by her crew some eighty days before, and had drifted about since then, was boarded, when about seventy-five miles S.S.W. of the Eddystone Lighthouse, by hands from the steamer W., 1,581 tons gross register, twenty-two hands, from Shields to Savona with coal. The A. was waterlogged, had her rudder broken and unshipped, had lost all her masts except the lower part of the foremast, and her cabin, forecabin and deck were swept clean. Her bulwarks also were gone, and the sea was washing over her. She was taken in tow, and in about thirty hours anchored in Plymouth Sound. *The Argonaut*, M. M. R. June 22, 1883, p. 783. V. 1,380*l.*—A. £690

462. The ship W. P. was ashore on the outer breaker off Charleston Bar, in a condition of great peril. The steamer G. attempted to haul her off and failed. Afterwards the steamer J. went out to her from Charleston, in a stormy night, with much wind and sea, approached the ship at much risk and peril, hauled her off, and carried her to Charleston. *The William Penn*, 1 Am. Law Reg. 584, cited in Marvin, 206. [American.] V. 4,600*l.*—A. £690

463. In October, the iron barque J. W., 776 tons, sixteen hands, in ballast, from Antwerp to Cardiff, parted from her anchors off Dover Pier, whither she had been beaten back by stress of weather, was drifting about on her beam ends towards the Brake Sand, and was west of the Wreck lightship, when the tug G., 34 tons, made fast a tow-rope, and began to tow ahead from off shore. After twenty minutes

the hawser parted, and the J. W. again began to drift towards the sand, but another hawser was made fast, which, however, broke when the J. W. was well off the Middle Brake Buoy. She then ran before the wind past the North Brake Buoy, and drifted towards the Elbow Buoy. The tug S. then came up, with whose help the J. W. was got under the land close to Kingsgate, and thence through a very heavy sea to Dover. The smacks G. A. and T. also assisted by getting fresh anchors and chains. £434 to the G., £150 to the S., £105 to the smacks. *The James Wishart*, M. M. R. December 15, 1882, p. 1586. Value 5,000*l.*—Award £689

464. In January, the barque C. A. H., from Texel to Surinam, was leaky and much strained, with her crew exhausted by pumping, 200 miles from Holland and 150 miles from England. She was found thus by two smacks, who put eight hands on board. These, with the assistance of a third smack, took her into Ramsgate harbour. *The Catherina Anna Helena*, S. G. April 24, 1839. V. 5,100*l.*—A. £665

465. In February, the Swedish ship K. was broadside on, on Hasborough Knoll, rolling heavily, with her rudder unhung and useless. By the exertions of thirteen boatmen, the tugs R., P., and E., and sixteen of the Storm company of boatmen, she was got off, and taken into Yarmouth Roads, after about ten hours' work. £400 to the thirteen boatmen, £200 to the R. and the P., £30 to the E., £25 to the sixteen boatmen. *The Krona*, M. M. R. May 1, 1874, p. 560. V. 4,900*l.*—A. £655

466. The barque D. struck on a sand off Margate, and when got off was run upon another, called the Woolpack Sand, and finally upon a third, called the Red Sand, where she was in great peril. Eight luggers and a smack, containing ninety-five men, came to her assistance, but their services were at first declined. Eventually, on the barque getting on the Red Sand, with six feet of water in the hold requiring constant pumping, they were accepted. Some of the luggers conveyed some troops who were on board the barque to Sheerness. The rest of the salvors, assisted by a steamer, conducted the vessel to London, and lodged her in dock. Services of two days' duration. £120 had been paid them by the East India Company for the conveyance of the troops. *The Diamond*, S. G. July 5, 1845; 9 Jur. 695. V. 5,965*l.*—A. £650

467. In November, the steamer G., 740 tons, from Copenhagen to London, with 7,800 quarters of oats, took the Holm Sands, and became unmanageable, having lost her rudder. In answer to signals the lifeboat S. P. put off to her, and found her on the outer sand. The lifeboat sailed across the sands through a terrific surf, and let go her anchor about forty fathoms from the G. The crew of the G. were taken off by a rope from the G. to the lifeboat. There was a furious gale and sea. The crew were taken into Lowestoft by the lifeboat, which, with a crew of thirty beachmen, returned through a very high sea to the G., which they found had drifted clear of the sand, and was lying with her port side under water and the sea breaking over her, her engines disabled and fires out, and much water in her. Some of the crew boarded her, but the weather getting worse a tug was signalled for, and the tug D. came from Lowestoft. A line was with difficulty made fast, and the G. was taken to a safe anchorage off Lowestoft High Light. The tug R. then came up and towed the lifeboat to Lowestoft. The crew of the G. were brought back, and she was ultimately towed to London by three tugs. *The Gorm*, M. M. R. Jan. 31, 1879, p. 148. V. 10,506*l.*—A. £650

468. In November, the brig L. was discovered, derelict and in a crippled state, by the brig J., whose mate and two hands boarded her and set sail upon her, but after five days the water increased so much and the weather got so bad that they tried to abandon her. The boat in which they put off, however, was swamped, and the mate and one hand with great difficulty got on board the L. again, the other man being picked up by a smack. The L. was driven out further to sea, and after about twelve hours the steamer W. came up and took her in tow to Dover. £390 to the J., £260 to the W. *The Livretta*, M. M. R. Feb. 2, 1883, p. 143; 8 P. D. 24. V. 1,300*l.*—A. £650

469. In January, the steamer M., from Ibrail for London with maize, suddenly broke and carried away her propeller in the English Channel, and proceeded under canvas till midday of the next day, when the steamer C. went to her, and a hawser being

got on board, towed her to an anchorage in Portland Roads in about sixteen hours. *The Mary*, M. M. R. Nov. 14, 1873, p. 1458. Value 20,700*l.*—Award £650

470. In February, the barque *P.*, 587 tons, from Hamburg for Cardiff, in ballast, struck on the Long Sand, the wind being S.E. and moderate, the tide half-flood, and a heavy sea breaking. She was found by the smack *P. of W.*, 25 tons register, with a quantity of fish on board. The *P. of W.*, at much risk, went to her, and leaving one hand aboard her, proceeded to Harwich, and gave information to the master of the tug *H.*, 36 tons register, and 60 h.-p., and also to the coxswain of the lifeboat. The lifeboat was immediately launched with twelve hands, and found the *P.* on the lower knock of the sand, with a list to port. There was not then enough water to allow the lifeboat to get alongside the *P.* The sea was heavy, the wind fresh from N.N.E. The tug arrived early next morning; a tow-ropes was got on board, and three attempts made without success to get her off. The *H.* then went away, whilst the *P.* was lightened by some of the crew of the lifeboat and of the smacks *A.* and *Angora*, which had come up. An attempt was made to haul the ship off as the tide flowed, by means of an anchor from the *Angora*, got out to N.W. with two warps, but failed. She began to roll heavily, and a strong W.S.W. wind blowing straight on her broadside, gave her a heavy list. As she seemed to be fast settling down her crew were taken off by the lifeboat to Harwich. The smacks remained by the *P.* at the master's request. The tug and lifeboat returned two days afterwards; their crews put tow-ropes on board, and at high tide succeeded in getting her off, the tug striking heavily several times in the course of the manœuvres. The tug towed her to Harwich in about eight hours. *The Pasithea*, M. M. R. May 30, 1879, p. 692. V. 2,600*l.*—A. £650

471. In April, the brig *Z. J.*, 335 tons gross register, from Dantzic to St. Nazaire, with oak planks and logs and pine timber, lost her mainmast and became water-logged off the Dutch coast in a heavy sea. A boat from the smack *G.*, 34 tons register, on a trawl fishing voyage from Ramsgate to the North Sea, took the master and crew of the *Z. J.* to Lowestoff. Two days afterwards the screw steamer *W.*, 1,581 tons gross register, value £26,000, in ballast from Rotterdam for the Tyne, to load coals for Sebastopol, found the *Z. J.* derelict in lat. 53° 3' N., and long. 3° 10' E., took her in tow to the mouth of the Shields Harbour, and thence with the aid of a tug to a safe mooring in the harbour. £250 to life salvors, £400 to the *W.* *The Zelinth Jane*, M. M. R. July 21, 1882, p. 907. V. 1,168*l.*—A. £650

472. The steamer *B.*, 1,800 tons, 520 h.-p., on her passage from Calcutta to England for repairs, with her boilers leaky, touched at Ceylon for coals; her topsides being dry from exposure to the heat she made water, which extinguished the fires, and the engines stopped. Applications were made to vessels lying at Point de Galle, and several men belonging to four vessels—the *F.*, the *M.*, the *W.*, and the *A.*—were sent to assist in pumping her. The *F.* and the *M.* also lent some pumps. The water was so far reduced as to allow the engines to be worked, and the steamer went into the harbour. The services lasted about twenty-six hours. One of the pumps of the *M.* was damaged, and she was detained, whereby her owners lost freight amounting to £145. There was thirty salvors in all, *i. e.*, twelve men from the *F.* and *M.*; nine from the *W.* and nine from the *A.* The steamer had on board, besides her crew, fifty coolies, who did their best to assist in rescuing their ship. £160 to the *F.*, £305 to the *M.*, £100 to the *W.*, and £80 to the *A.* *The Bentinck*, S. G. December 16, 1851. V. 30,000*l.*—A. £645

473. In November, during a heavy gale and exceedingly heavy sea, the masters of the luggers *S.*, *E.*, *Eclipse*, *U.*, *A.*, and *O.*, and the lifeboat *F.* of *A. N.*, hearing signal guns fired, manned their luggers and the lifeboat, and proceeded toward the Tongue Lightship. They discovered the brig *V.*, from London to Sierra Leone with a general cargo, aground on the shingles eight miles from Margate. They succeeded, in three days, in saving the cargo, but the brig finally broke up. It appeared there were some government stores on board. The value of the salvaging vessels was £2,950. *Cargo ex Venus*, M. M. R. Mar. 10, 1866, p. 303. V. 1,906*l.*—A. £635

474. The *B. of L.*, with iron, going into the port of Liverpool, disabled, in tempestuous weather, late at night, engaged the services of the tug *U.*, when off the Salisbury Dock. A hawser was thrown to the *B. of L.*, which, however, through the fault of her crew, was not fastened; and she had drifted up to the Waterloo Dock

before it was made fast, and then her head having canted to the south, the lashings gave way, and she got between the Prince's Landing Stage and the Prince's Pier, and was in great danger, and those on board her were taken off by the U. While the B. of L. was thus bumping about against the stage and the bridge, three boatmen at the peril of their lives jumped aboard, succeeded in making the hawser fast, and took charge of the vessel, which the tug then pulled out from her dangerous position. She then drifted down the river and got between the George's Pier and Stage, a dangerous position. The tug U., which had got into the George's Basin with too much hawser out, and was amongst a number of flats, could not assist her. The services of the tug U. S. were therefore engaged, and by her aid the B. of L. was towed in safety into the George's Basin, though not without damage to the U. S. £350 to the U., £160 to the boatmen, £120 to the U. S. *The Belle of Lagos*, M. M. R. June 19, 1869, p. 786. Value 7,850*l.*—Award £630

475. Four boats and twenty-two men, in a terrible storm, went out to save life in the harbour of Ilfracombe, beset with rocks, when the vessels were drifting against each other. One boat was stove; the men were saved by jumping on board the crushing vessels. They saved one vessel and her crew. *The Aid*, 1 Hagg. 83. V. 6,000*l.*—A. £600

476. In December, the iron ship A., 1,500 tons gross, from Calcutta to London, with twenty-nine hands and a general cargo, broke her windlass, lost an anchor, and was taken in tow off the Foreland in a S.W. gale and thick weather by the tug V., 219 tons gross, and 100 h.-p., value £9,000, which, however, could not make headway owing to the violence of the gale. The tug N., 157 tons gross, 100 h.-p., value £7,000, was therefore also asked to assist, and the A. was got safely to the East India Docks in two days. £360 to the V., £240 to the N. *The Airlie*, M. M. R. Feb. 20, 1880, p. 241. V. 44,750*l.*—A. £600

477. In April, the barque A., from Amsterdam to Batavia with a general cargo, dragged her anchors during a heavy squall, and fouled the Mouse Lightship. After three or four attempts, a hawser was got from the A. to the tug D., which came up; and the tug held her clear of the lightship. But the violence of the gale and the strength of the flood-tide brought her close to the lightship, the moorings of which she fouled with her chains, getting them under the bottom of the lightship. Ultimately, however, she was got clear of the lightship, her head turned round, and she was towed, first to Gravesend, when the gale was too strong to allow of her mooring, and then to Greenhithe. *The Antoinette*, M. M. R. June 8, 1877, p. 724. V. 15,031*l.*—A. £600

478. In November, the iron barque A., 578 tons, from Stockholm to London with deals, took the ground on the N.E., part of Hasborough Sands. The weather was fine but hazy, and the wind moderate from S.E. Some of the crew of the yawl D., which went out in answer to signals from the Wold Lightship, boarded the A., but, owing to the sea, could not get an anchor or tow-line out. The tug M., sent out in search of the A., came up and passed a tow-rope on board. The M. towed for an hour, when the lifeboat B. W. came up and helped. The A. was then got off and towed with the D. astern to Palling, where the lifeboat was left in charge till the M. returned and towed her to Yarmouth jetty. *The August*, M. M. R. Feb. 10, 1882, p. 172. V. 7,105*l.*—A. £600

479. In December, the A., from Quebec to London with timber, parted her anchors, drove on the Tongue Sand, lost her rudder, and became waterlogged. A steam-tug and two luggers, after four days' work, got her off, and engaged two steamers to tow her to London for £200. *The Aurora*, S. G. April 25, 1855. V. 4,000*l.*—A. £600

480. In January, the wind blowing a heavy gale from S.W. to S., and the night being very dark, the steam-tug P. took in tow the barque B. S., 455 tons register, from Alexandria to Dover, with cotton seed, which was in imminent danger near the Mole Rocks, and driving. The steam-tug towed the barque through a heavy sea to Sheerness, but did not incur any extraordinary risk in so doing. The steam-tug had a hawser destroyed, the cost of which was allowed, exclusive of the award. *The Beautiful Star*, M. M. R. June 2, 1866, p. 688. V. 9,000*l.*—A. £600

481. In November, the B. of the C. was to leeward of Formsby Lightship in bad weather, near the Jordan Flats, under close-reefed topsails, and fore and main topmast staysails. She was close to, and driving on, the breakers. She was broadside to the shore, with the wind blowing dead on shore a violent westerly gale; the tide was ebb, and the B. of the C. perfectly helpless. In this state she was found by the steam-tug G. E., 108 tons register, with engines of 110 h.-p. nom., 350 h.-p. actual, which took her in tow from outside the Zebra Buoy to the Bell Buoy, and up the Queen's Channel, and brought her to anchor opposite the Queen's Docks. There was some degree of risk, though no imminent danger to ship and cargo. *The Belle of the Clyde*, M. M. R. May 26, 1866, p. 655. Value 12,470*l.*—Award £600

482. The B. B. was derelict, about a mile from the Goodwin Sands. A lugger and three galleys, with twenty-eight hands, and a steam-tug, took her into Ramsgate harbour. *The Bessie Bent*, S. G. Dec. 12, 1855. V. 1,875*l.*—A. £600

483. In October, the barque B., 332 tons, from Rouen to Charlestown with phosphate, disabled; her fore-topmast having gone by the board, and also her maintopmast, mizen topmast and jibboom, with all gear attached, was discovered by the fishing lugger M., twenty-nine tons, about fifty miles from Lowestoft, in a heavy westerly gale. The M. lay by her for four hours; then her mate and three hands boarded the B., and helped to clear away the wreckage. Two hours later the trawling-dandy M. S. came up, and her master and mate boarded the B. The lugger and dandy towed the B. for seventeen hours, then lay by her for five hours, when they made fast again, and brought her to a safe anchorage in the wold off Hornsea, where two tugs were engaged to take her to Yarmouth. *The Brunette*, M. M. R. Feb. 9, 1883, p. 177. V. 3,303*l.*—A. £600

484. In March, the barque C., 729 tons, from Dunkirk to Shields in ballast, got aground on the south part of the North Scroby Sand. The lifeboat G. was hauled through the surf crossing the Barba Sand, and proceeded to the C., which she found in the middle of the sand under all plain sail, lying with her head N.W. by W., a little to windward of the wreck of the iron screw steamer R. The G. dropped her anchor, and came athwart the bows of the C. Some of her crew boarded the C., and found that the master thought he was on the Shipwash Sand. The C. was in danger of being carried on to the wreck of the R. A hawser was put on board the G., and a stream anchor lowered from the C., and towed to the side of the boat. The tide had scoured the sand away from the bows of the C., and carried the cable under her. The lifeboat C. G. then came up, dropped her anchor, and passed a rope to the G., and hauled her through the surf. The tug V. then came up, but there being only eight feet of water, had to stand off until the tide flowed; when, after further efforts, the C. was eventually got off, and taken to Yarmouth Roads. *The Canmore*, M. M. R. Jan. 23, 1882, p. 781. V. 7,200*l.*—A. £600

485. The C. P., 349 tons, having encountered very boisterous weather, and lost nine of her crew, was met with not far from Plymouth by a fishing smack and a pilot cutter; the master gave up charge of his vessel to these parties, who carried her towards Dartmouth, but on making for the harbour the vessel was run against the rock, beat heavily, and suffered damage to the amount of £500. *The Cape Packet*, S. G. Nov. 14, 1848. V. 6,775*l.*—A. £600

486. In February, it was discovered that the ship C. of B., 2,322 tons, from Queenstown for New York, seven days out, had broken her rudder. The C. of P., in answer to signals, remained by her all night, next day took her in tow, and arrived with her at Queenstown on March 7. *The City of Brussels*, M. M. R. July 4, 1873, p. 848. V. 100,000*l.*—A. £600

487. The barque E. K., 405 tons, struck on the Longship Rocks during a thick fog. The screw steamship A. fell in with a boat containing the master, his wife, and the crew of the E. K., they having left her fearing she would founder. The A. then proceeded to the barque, which had floated off the rocks, and having taken her in tow, conducted her to Falmouth with some difficulty, owing to the quantity of water in her, and the state of the weather. *The Eliza Kinch*, S. G. January 20, 1863. V. 2,250*l.*—A. £600

488. In November, the screw steamer F. H., 946 tons, with engines of 98 h.-p., and nineteen hands, in ballast, from Savona to Villaricos, Spain, was flying signals, "wanted immediate assistance," and "machinery disabled," within a mile of the rugged coast of the Island of Porquerillos, in a heavy sea. She had lost the coupling bolts of the first length of her propeller, and the truss-block was broken. She was under some sail, but in great danger of running on the rocks on a leeshore. She was sighted by the iron screw steamer A., 1,108 tons, value £13,000, with engines of 550 h.-p., twenty-three hands, and a valuable cargo of pig-iron and coals from Troon, in Scotland, to Savona. The master of the A. boarded her, and agreed to tow her to Savona, which he did. The towage involved great difficulty, and lasted about twenty-eight hours, the distance being 130 nautical miles. *The Farnley Hall*, M. M. R. August 5, 1881, p. 968; 4 Asp. 500.

Value 12,000*l.*—Award £600

489. The ship G. P., anchored off Margate in a hurricane, lost one anchor, and hoisted a signal for another. Two luggers went out to her. Six men went aboard, and one of the luggers returned for an anchor and chain cable. The pilot advised that the ship should be run on the mud, eighteen miles above Margate, which was undertaken by the salvors and performed successfully. The lugger which returned for the anchor and chain being too small, a third was employed, which, at great risk, carried the anchor and chain to the ship. The ship lay on the mud in safety two days, until relieved by a steamer. Fifty-one salvors. *The General Palmer*, 2 Hagg. 323.

V. 30,000*l.*—A. £600

490. In September, the steamer H., value £11,500, was in a sinking condition, after collision with the C., her crew having taken to the boats. The steam-rawler F. S. came up, made fast to the H., and towed her on to the North Beach, at Scarborough, where she grounded. She afterwards removed her to another place, where temporary repairs were effected, and attended on her until she reached West Hartlepool. *The Hardwick*, M. M. R. 1884, p. 89.

V. 11,500*l.*—A. £600

491. In September, the H., from London to Yokohama, after a collision in the Straits of Dover, which made a hole in her starboard side amidships below the water line, anchored about three-quarters of a mile W.S.W. of the Admiralty Pier, and was rapidly making water. The tug P., 54 tons and 60 h.-p., went to her, and found her with her spar-deck level with the bottom of the sponson beam of the P., and fast settling. The P. took on board the passengers and their luggage, the ship's chronometer, and several boxes of specie. The tug G., 34 tons, then came up, and both tugs made fast, one on each bow of the H., and towed her to, and beached her on, a level bank of mud in the bay. *The Hector*, M. M. R. March 10, 1882, p. 303.

V. 77,500*l.*—A. £600

492. In October, the screw steamer J. M., 525 tons register and 98 h.-p., bound from Malaga with fruit for London, when off Point Molinos, discovered the barque H., 366 tons, stranded on some rocks. She tried in vain to tow her off, and then proceeded to Malaga, and obtained the assistance of a felucca and labourers, who lightened the barque. The barque was ultimately towed off and anchored in Malaga Bay in safety. *The Hero*, M. M. R. January 23, 1869, p. 117.

V. 2,500*l.*—A. £600

493. The I., 600 tons, was dismantled in a squall, and came to anchor off Dungeness. The next day the master rigged jurmasts, and a collier took the second mate to Dover to procure a steamer. The D. of K., of 140 h.-p., a passenger steamer bound to London, was engaged at Ramsgate. She proceeded to the ship, took her in tow at nine in the morning, brought her to anchor at five in the afternoon in the Queen's Channel, and remained by her that night, the wind being fair the whole time. *The Isabella*, 3 Hagg. 427.

V. 21,000*l.*—A. £600

494. The iron ship L. L., 1,435 tons, from Liverpool to Melbourne, damaged and aground on the Tuskar Reef, and making water at the rate of 3½ inches per hour, was in danger of foundering in a calm, and was towed by the exertions of the paddle-wheel steamer G. W. to the bar, whence she was subsequently towed into harbour. The towage to the bar was fourteen miles, and that from the bar to the harbour took from three to four hours. *The Loch Laggan*, M. M. R. November 19, 1875, p. 1488.

V. 40,000*l.*—A. £600

495. A second set of salvors having discovered a derelict vessel, bottom upwards, at sea, near the Eddystone Lighthouse, succeeded, after great exertions during two days and a half, in towing her into Falmouth. They then, in spite of repeated remonstrances, carried on for a month a series of unskilful attempts to right the vessel, in consequence of which attempts she was much strained and injured. *The Magdalen*, 5 L. T. N.S. 807; 31 L. J. Adm. 22. Value 2,400*l.*—Award £600

496. In February, the screw steamer *M.*, 801 tons gross register, from the Tees for Pomaron, with seventeen hands, pig-iron and general merchandise, whose engines were disabled, grounded on the North Gare on a falling tide. The tug *H.* came up, got a hawser on board, and towed astern, but the hawser broke, and the *M.* drifted back on the sands. The *H.* then engaged the tugs *C.*, 57·14 tons register, and *N.*, 11·22 tons register, who, with the assistance of the *H.*, got her off, and took her safely to Middlesborough. *The Marbella*, M. M. R. May 4, 1883, p. 558.

V. 17,724*l.*—A. £600

497. In November, the barque *M. L.*, timber laden, was found derelict, waterlogged, and in a deplorable state, about 120 miles E.N.E. of the Spurn, in a heavily rolling sea, by the smack *T. B.*, which got her in tow, but as the water was flush with her decks she was a great strain on the *T. B.* The smacks *S.* and *Q.* of the *E.* came up, and the three smacks took the barque in tow for four days, when she was taken in tow by tugs sent out to meet her, and brought into Grimsby in safety. *The Martin Luther*, M. M. R. May 6, 1865, p. 560.

V. 1,560*l.*—A. £600

498. The *M. P.* was driven on shore by stress of weather, about seven miles to the westward of Eupatoria. *H. M. steamer L.*, after lightening the vessel, succeeded in towing her off. Services seven days. *The Mary Pleasants*, S. G. April 7, 1857; Swabey, 224.

V. 4,247*l.*—A. £600

499. The schooner *M.*, derelict, was off South Shields in great distress. The steam-tug *P.*, manned with eleven hands, went out and towed her into the harbour. *The Minerva*, S. G. March 27, 1854; 1 Spinks' Eccl. and Adm. Rep. 271.

V. 2,320*l.*—A. £600

500. The ship *M. S. E.*, 611 tons, in misty weather, grounded near Boulogne. The steamer *P.*, 231 tons, 136 h.-p., and the steam-tug *T. B.*, 120 tons, 60 h.-p., assisted her off. *The Mount Stuart Elphinstone*, S. G. Jan. 24, 1861.

V. 9,750*l.*—A. £600

501. The steamer *N.*, 493 tons, broke one of her engines. Her signals were observed by the steamer *B.*, of 399 tons, 400 h.-p., with a general cargo and 100 passengers. She towed the *N.* to Liverpool. Services eight hours. *The Nimrod*, S. G. May 14, 1850; 14 Jur. 944; 7 Notes of Cases, 570.

V. 19,000*l.*—A. £600

502. In November, the iron barque *P.*, 588 tons register, from Liverpool to Otago, New Zealand, with fifteen hands and general cargo, anchored in Mounts Bay for shelter, during heavy weather. Her captain had been below for nine days, and those on board did not know of the dangerous nature of the Bay. Rockets and blue-lights were shown and the lifeboat *R. L.* came up. The *P.* had lost mainmast, mizenmast and all spare rigging, and had her wheel and boats damaged. By request the *R. L.* went back to Penzance to get a steamer, which had been ordered to be got ready. The *R. L.* found the tug *Q.* of the *B.*, 183 tons, 80 h.-p., working to 400, moored, with steam up, in Penzance Bay, which took the *R. L.* in tow back to the *P.* in heavy weather, with a fearful sea. Two hawsers were successively made fast, but parted directly. The tug then fetched two new hawsers from Penzance, with which she towed the *P.* into the harbour. £200 to the *R. L.*, £400 to the *Q.* of the *B.* *The Pampero*, M. M. R. Feb. 18, 1882, p. 172.

V. 16,243*l.*—A. £600

503. In May, the Norwegian brig *P.*, with petroleum and naphtha, was found derelict and waterlogged about 40 miles W. of the Scilly Islands. With great difficulty a crew was put on board, and she was taken to Queenstown. The weather was rough. *The Prosperité*, M. M. R. Nov. 5, 1875, p. 1427.

V. 4,000*l.*—A. £600

504. In June, the steamer *R. L.*, 180 tons nett, 56 h.-p., from Antwerp to Vigo and Oporto, with iron rails and general cargo, which had undergone an injury to her engines and steering gear, and had thrown everything overboard, including two anchors and thirty tons of coals, was discovered in lat. 45·14 N. long. 7·49 W., in the

Bay of Biscay, lying in the trough of a heavy sea, in tempestuous weather, by the screw steamer F., 873 tons nett, and 1,353 tons gross register, and 130 h.-p., value £21,000, from Taganrog to Dunkirk, with linseed. In answer to signals the F. went to her, and passed a line on board, nearly losing her lifeboat in doing so. The line was made fast, and the chain-cable of the R. L. shackled to the hawser of the F. The F. then towed the R. L. to Falmouth Harbour. In towing, the F. necessarily went at a slow speed, but she did not go considerably out of her way. *The Rio Lima*, M. M. R. Nov. 7, 1879, p. 1427. Value 7,655*l.*—Award £300

505. In November, the R., while in tow of the double-engine paddle steam-tug P., 98 tons gross, towards the Albert Dock came into collision with the E., and was in danger of sinking. The P. cast off the tow-rope, came alongside the R., took off her crew, and afterwards, with the help of another tug, the T. B., held the R., until she was safely moored to the shore. *The Ripon*, S. G. March 6, 1885, p. 151.

V. 10,000*l.*—A. £300

506. In January, the barque R., 477 tons, from Havanna for Queenstown with sugar, whilst off Crookhaven dragged her anchors, and drifted on to the rocks at the north side of the harbour. There was a strong gale and a heavy sea. In this juncture the steam-tug M. came up, took her in tow, and in one hour brought her to a safe berth. *The Rosalind*, M. M. R. May 20, 1865, p. 62*l.* V. 8,700*l.*—A. £300

507. In February, the steamer S., 356 tons nett, from the Clyde to Oporto, with fifteen hands, coal and iron pipes, broke her high-pressure crank shaft when about thirty miles N.W. of the Bishop Light, and drifted about twenty-five miles, close to the Seven Stones, east of the Wolf. By lashings and wedges the shaft was secured sufficiently to allow of the engines being used at slow speed, and she was put under sail and got clear. Her engines were then stopped, and she made sail for Falmouth. On 6th February she was discovered by the steam-tug T., 1,573 tons, about two or three miles from the Lizard, after having been in collision with the J. B., making water, in great danger of going ashore, and lying unmanageable in the trough of a heavy sea, with a strong S.W. by S. wind. A hawser was made fast, but parted, and after one or two unsuccessful attempts she was got in tow and taken inside the Black Rock, where another tug was employed, and the S. was taken into Falmouth tidal dock. *The Saga*, S. G. March 20, 1885, p. 182. V. 7,500*l.*—A. £600

508. The S., 1,237 tons, was towed into Liverpool in a dismantled and crippled condition, and the tugs U. and R. were engaged to dock her, and proceeded up the river with her for that purpose, the R. being lashed to the ship's port side and the U. towing ahead. When the S. was about to enter the basin the ebb tide caught her on the starboard side, and drove her in towards the corner of the great landing-stage, thereby placing the S. and the R., which was between her and the stage, in considerable danger. The pilot of the S. hailed the R. to hold on and go ahead full speed, which she accordingly did, with her helm hard a-port, in order if possible to clear the stage, but could not, and the R. was forced against the stage and crushed between it and the ship, thereby receiving damage. The ship was then towed back into the river by the U. *The Saratoga*, 1 Lushington, 318. V. 52,092*l.*—A. £600

509. In October, the Italian barque S. II., 517 tons, with a general cargo, value £32,000, from Rio Plata to Antwerp, shipped a heavy sea, which carried away her wheel and did other damage. Four of her crew were knocked down, and one of them, the mate, died afterwards from his injuries. The S. II. signalled for assistance, and the screw steamer C., 1,017 tons, came up and towed her into Cowes Roads. The C. was from Sulina bound to Falmouth, with grain. *The Sincero II.*, The Times, Feb. 4, 1881. V. 32,000*l.*—A. £600

510. In April, the screw steamer S., from Newport for Naples, with twenty-five hands and coal, was lying helpless, rolling and drifting to leeward in the trough of the sea, with a broken propeller crank shaft, when found by the screw steamer H., 644 tons, from Newport to Barcelona, with nineteen hands and coals, in lat. 38°7' N. long. 9°20' W. The H. lay by her during the night in a strong gale, and next morning commenced to tow. The hawser soon parted, but was again made fast, and the S. was brought to a safe anchorage in the port of Lisbon in about eighteen hours in all. *The Stowell*, M. M. R. June 30, 1882, p. 813. V. 10,500*l.*—A. £600

511. In January, the barque T., from Littlehampton for Plymouth and Exeter with paraffin, was fallen in with, disabled and without a rudder, by the screw steamer C., 100 h.-p., 631 tons register, value £5,940, from Amsterdam for Naples, about twenty miles N.W. of Ushant. There was a fresh N.E. wind and a considerable sea. The C. lay by her all night. Next day a mate and four hands boarded her, and found the master and crew on the point of abandoning her. Tow-lines were attached, and the C. towed her in twenty-five hours into Plymouth Sound. *The Tarsus*, M. M. R. June 21, 1878, p. 787. Value 5,940l.—Award £600

512. The U., 1,245 tons, near the North Foreland, parted from two anchors. She had other anchors on board, but not ready for use. The master requested the steam-tug R., of 121 tons, 120 h.-p., to get him a new anchor and a powerful tug. The wind and weather at the time were boisterous. The R. proceeded to Ramsgate, and employed two luggers to put the anchor and cable on board. The luggers and the R. then went in search of the U., and after two days found her. The R. towed her to Gravesend, where luggers followed, and tendered the anchor and chain, which the master of the U. refused to accept, and the luggers carried them back to Ramsgate. £400 to the R., £200 to luggers. *The Undaunted*, S. G. June 21, 1860; 29 L. J. Adm. 176; 2 L. T. N.S. 250. V. 36,000l.—A. £600

513. The steamer U. got amongst shoals, and during a storm was exposed to the greatest danger of being lost. Five persons from the A. brought her out of her very dangerous position after exertions lasting over several days, and with considerable personal danger. *The Uhlenhorst*, Assistance, Hamb. 11 G. Z. 1875, pp. 137, 138. [German.] V. 12,500l.—A. £600

514. In March, the brig C. was stranded close to the shore in the north of Crookhaven Harbour. The wind was squally from S.S.W., with mist and rain. An officer of the coastguard hailed the master, and at his request manned the lifeboat, and, accompanied by some whaleboats, went to the C. They proceeded to pass a hawser from the brig to the south shore of the harbour, and after great exertion and with considerable risk, they got her into a place of safety. The whaleboats then left, and the coastguardsmen remained on board to work the pumps, there being thirteen inches of water in the hold and her crew being too fatigued to pump. £500 to whaleboats, £80 to coastguards. *The Charles* (Dublin Ad. Co.), M. M. R. June 2, 1871, p. 688. V. 5,000l.—A. £580

515. The brig E. got aground on the Sunk Sand, there being a strong wind from N.N.W. Two smacks went to her assistance, and by great exertions got her off, and took her into port. *The Eliza*, S. G. May 6, 1856. V. 2,000l.—A. £580

516. The brig C. A., 213 tons, off the Lizard, was much damaged by collision, and in a state of considerable danger. Two boats and the S. C. lifeboat went to her assistance, and took her in tow. They were afterwards joined by the B. lifeboat and the C. clipper. Ultimately the steamer M. came up, and the brig was taken into Penzance. £300 to the two boats and the S. C., £150 to the C. and B., £120 to the M. *The Charles Adolphe*, S. G. Nov. 5, 1856; Swabey, 157. V. 2,450l.—A. £570

517. The master of the vessel E. discovering, when near Great Yarmouth, that a fire had broken out, signalled for assistance, and ran the vessel on the beach, from which she was got off by some boatmen, who, at considerable risk, succeeded in extinguishing the flames, and in removing the cargo. *The Eliza*, S. G. Feb. 14, 1846. V. 2,563l.—A. £570

518. In October, the brigantine W. was found by the ship Q. of B. fifty miles S.W. of the Scilly Isles, derelict and with four feet of water in her hold. Some of the crew of the Q. of B. boarded her, stopped the leakage by means of an augur, pumped her, and after sixty hours work got her into Dartmouth Harbour. *The William* (Dartmouth Co. Co.), M. M. R. Dec. 30, 1865, p. 1650. V. 839l.—A. £564

519. In November, the barque H., 362 tons, to the Tyne with wood and iron, was seen in a damaged state after collision by the smack E., 45 tons, about twenty miles E. by N. of Flamborough Head. A strong south wind was blowing, but the weather was fine. She was full of water, and deserted by all hands but the master and two mates. The crew of the E. cleared away the wreckage, and the smack G., 60 tons, coming up, the two smacks towed her for an hour towards the Tyne. They

were then joined by the smack L., 40 tons, and the H. was towed by them for twelve hours to ten miles east of the Mouth of the Tyne, where a tug was engaged and took her to Shields for £40. The L. lost a boat. *The Hanna*, M. M. R. Nov. 9, 1877, p. 1428. Value 2,464*l.*—Award £560

520. A heavy anchor was carried out to the ship W. by a wrecker, and the ship hove off a reef, after lightening her of a few barrels of tar, and brought into port. *The Washington*, Marvin, 221. [American.] V. 3,200*l.*—A. £560

521. The pilot cutter K. having observed the barque C. P., 335 tons, derelict, near Poor Head, off the south coast of Ireland, gave notice to the steamer S., of Cork, which went to the derelict, and brought her into Cork without any risk or difficulty. £500 to the S., £52 to the K. *The Carrier Pigeon*, 33 L. T. 79; 4 (Irish) Jur. N.S. 99. V. 5,000*l.*—A. £552

522. The steamer A., 1,040 tons, damaged, was being towed by a steamer into Padstow Harbour when she struck on the Doombar Sand, and was left by the steamer. She was got off as the tide flowed by persons on shore, with the assistance of warps and capstan provided by the Harbour Association for the assistance of distressed vessels, and was tracked up the harbour and moored. Sixty-six persons had been settled with; 140 sued. *The African*, S. G. July 19, 1860. V. 158,867*l.*—A. £550

523. The Norwegian brig C., timber laden, was found derelict near the Lemon and Ower Sand, on the 20th of August, and conducted to Yarmouth by two cutters, the W. and C., and the fishing smack R. *The Ceres*, Dec. 18, 1851. V. 1,460*l.*—A. £550

524. In December, the steamer A. had her machinery disabled in the Bay of Biscay, and was sighted under sail by the steamer Alfonso, which, in answer to signals made after she had passed the A., turned back and agreed to tow the A. to Corunna. The wind was strong and squally, with a heavy cross swell from N.E. and N.W., and the A. was rolling heavily. Two hawsers were made fast, and the wind being S.S.E., both vessels laboured and rolled heavily, shipping large quantities of water. After twenty-four hours towage, during which the hawser parted once, nearly fouling the Alfonso's propeller, the A. was safely anchored in Corunna harbour. *The Angelica*, S. G. April 17, 1885, p. 250. V. 7,000*l.*—A. £550

525. In December, the barque C., 328 tons register, with petroleum oil, from New York for London, brought up by her port anchor and sixty fathoms of chain in Margate Roads. Next day, the wind having increased, she let go her starboard anchor with forty-five fathoms of chain. The gale increased so much, that she was forced to slip her anchors, and was nearing the Long Nose Rock when the tug A. came up, towed her to the Downs, and held her there; whilst the master of the barque went in a lugger to Ramsgate to fetch anchors and chains. During his absence the barque's pilot deemed it better to take her into Dover, and with the aid of the steam-tug P., the tug A. took her in there; and then returned and towed the lugger which had been to Ramsgate to Dover Harbour. *The Cumberland*, M. M. R. May 30, 1868, p. 691. V. 5,545*l.*—A. £550

526. In December, the steamer G., about eight miles from St. Agnes Lighthouse, Scilly, was discovered by the steamer C., from Cardiff to Constantinople, entirely disabled, the tubes of her condenser being choked. Two coir ropes were made fast, and the G. was towed, steering very wildly and sheering in an increasing gale and sea, to off Falmouth Harbour, where two tugs were engaged at the cost of £25 to take her into the harbour. The C. incurred expenses by detention, and otherwise to the amount of £9 12*s.* *The Gainford*, M. M. R. March 9, 1883, p. 302. V. 7,663*l.*—A. £550

527. In November, the barque M. in the North Sea, in very bad weather, was found in a sinking condition by the smack F. W., value £900, which took the crew of the M. on board. The F. W. lay by her till night, when the E. E. and the Mermaid fishing smacks came up and stood by. Next morning two or three hands boarded the M. and navigated her as far as Lowestoft, from whence the tug C. towed her to Harwich. The pumps had to be kept going all the time, and the services involved much risk. £500 to the smacks, £50 to the tug. *The Marequita*, M. M. R. March 22, 1883, p. 365. V. 1,425*l.*—A. £550

528. A derelict was discovered at sea, about ninety miles N.W. of the Scilly Isles, by a West Indiaman with a valuable cargo, homeward bound, the master of which put his chief mate and three of his men on board, who brought her with difficulty to Milford Haven. *The Nicolina*, 2 W. Rob. 175. Value 1,153*l.*—Award £550

529. In December, between the Longships and Hartland Point, the flood tide being N.E. and the wind N.W., the screw steamer V., with her cylinder cover broken off, and in close proximity to the Brisson Rocks, was taken in tow by the screw steamer J. B., and brought, in twenty-four hours, to Penarth Roads, 141 miles. There a tug came and docked her. *The Vulture*, M. M. R. March 17, 1876, p. 341. V. 6,500*l.*—A. £550

530. In December, the ship Admiral P. T., which was derelict about six or seven miles from the Blaskets, off the S.W. coast of Ireland, was boarded by some of the crew of the sloop C. She had a cargo of spruce deals and battens, and was waterlogged with 16 feet of water in her hold, having lost mainmast, mizentopmast, foresail, flying jib, and foretopgallantmast. She had her spanker brailed up, upper topsail split, and foresail set reefed. Sail was made on her, and she was towed to an anchorage near Scatterry Island, in the Shannon, next morning. The weather was rough. *The Admiral Peter Tordenskjold* (Dublin Adm. Co.), M. M. R. Feb. 18, 1881, p. 208. V. 2,000*l.*—A. £535

531. The barque H., 316 tons, was found derelict on the south end of the Hasborough Sand by the crew (twenty-seven hands) of the steamer B., belonging to the Trinity Corporation. They with great difficulty boarded her, and were subsequently joined by forty-three men, the crews of two other vessels. Having got the barque off, she was, with the aid of the steam-tug R. O., conducted to Lowestoft. *The Hopewell*, S. G. March 10, 1855. V. 1,600*l.*—A. £534

532. The schooner C., off the Arklow Bank, was run into and damaged by the ship St. L. The master and crew of the C. climbed on board the St. L., and her master would not lend them a boat to return, but carried them away. Three fishing smacks, having fifteen hands, found the C. abandoned, and navigated her in about thirty hours to Kingstown. *The Cosmopolitan*, 6 Notes of Cases, Supp. 33. [Irish.] V. 2,293*l.*—A. £530

533. The J., much damaged by collision, was abandoned by all her crew, excepting a cabin boy. The pilot cutter D., with five men, including three pilots, conveyed her to Harwich. Some slight assistance was rendered by four men belonging to a smack against the wish of the first salvors. £500 to pilot cutter, £30 to smack. *The Juliette*, S. G. July 27, 1847. V. 3,567*l.*—A. £530

534. In February, the ship B. and the tug S. K. came into collision in the Thames; and the S. K. rendered valuable assistance to the B. in taking her from a position of danger and placing her in safety. The lugger R. was also of great service. A tender of £525 was made and accepted, and the court apportioned to the lugger £305, to the tug £220. *The Brenda*, M. M. R. July 3, 1874, p. 847. V. 23,500*l.*—A. £525

535. In February, the ship P. A., from Macabi Islands with 1,529 tons of guano, during a severe gale with a heavy rolling sea in Crookhaven Harbour, made signals of distress. A pilot and four whale-boats, at great risk, succeeded in taking the P. A. from the neighbourhood of the rocks, to which she was drifting, and moored her safely. £25 to the pilot, £500 to the four whale-boats. *The Pietro Accame* (Dublin Adm. Co.), M. M. R. June 12, 1874, p. 751. V. 13,500*l.*—A. £525

536. In January, the steamer W., 644 tons register, ninety h.-p., from Manilla for a port of call with tobacco, when five miles from Cape Espichel, was disabled by the loss of her rudder, and found thus by the steamer L., 830 tons, 120 nominal h.-p., from Cadiz for London with passengers and merchandise. The L. took her in tow, agreeing to accept £400 for the towage to Lisbon (twenty to thirty miles). There was a very heavy cross sea from N.N.E. to N.N.W. A violent squall came on, and the hawsers parted several times. The W. got across the sea and drifted to within three or four miles of the shore. She then let go her anchors. The L. kept under steam during the night, and the W.'s crew came aboard her. Next morning they returned to the W. She slipped her anchors and was towed to Lisbon without further

mishap, reaching there after twenty-nine hours service. *The Waverley*, M. M. R. April 21, 1871, p. 497. Value 63,384*l.*—Award £523

537. The schooner A., 156 tons, brought up in the West Swin in a S.W. gale. The wind increased, and she parted from one anchor after another, drove on the edge of the Maplin Sand just after high water, and was in great danger. Five yawls came up, and the crews assisted her and aided in pumping. Towards the next high water the vessel began to move, and a kedgo anchor was got out to prevent her driving along the sand. The steam-tug B. E. came and towed her into deep water, and up to the St. Katharine Docks, some of the smacksmen remaining on board to assist in pumping. £120 to smacksmen, £400 to the B. E. *The Alamode*, S. G. June 8, 1849. V. 7,600*l.*—A. £520

538. In October, the D., from London to Stockton, in extreme peril, dismasted, with four feet of water in her hold, and flying signals of distress, was towed by two smacks into Yarmouth. *The Dispatch*, S. G. January 22, 1839. V. 2,400*l.*—A. £510

539. The barque R. M., laden with sugar, was lost on Pelican Shoal. Five wrecking vessels, carrying fifty-six men, saved part of the cargo and materials. *The Robert Morris*, Files of Court, 1853, cited in Marvin, 218. [American.] V. 1,170*l.*—A. £506

540. In September, the steamer A., from Cardiff for Liverpool with coals, was met with in heavy weather by the iron screw steamer N., off St. George's Head, on the coast of Pembrokeshire. Her pumps were choked, and her engine fires put out. After several attempts, during which there was a collision between the two vessels, the N. got the A. in tow and took her to Milford Haven. *The Andalusia*, M. M. R. May 6, 1865, p. 560. V. 5,750*l.*—A. £500

541. In July, the American barque A. T., 782 tons, was found about ten miles S.W. of St. Alban's Head in the English Channel, derelict, with her mizenmast carried away, her mizen rigging hanging partly on deck and partly over the side, and her jibboom gone. The wind was strong from the W., the weather rainy, and the sea high. The schooner M. S., 149 tons, placed men on board her, and took her in tow, for the Needles; but in half-an-hour her foremast broke off at the head, and her topmast topgallantmast and yards came down and injured the master and crew of the M. S. The towing, however, continued for three hours, when the steamer S., 133 tons, and 40 h.-p., came up, and by agreement took the A. T. in tow through the Solent. Near Cowes the tug F. D. also took her in tow, and brought her to Cowes harbour for £5. £333 to the M. S., £167 to the S. *The Annie Torrey*, M. M. R. Nov. 30, 1877, p. 1525. V. 1,700*l.*—A. £500

542. In August, the Italian ship A. de los A., which had been in collision with the Z., and was damaged, but not in any immediate danger, was taken in tow off Hasborough Head by the screw steamer M. Q., from Amsterdam to Alexandria, with a cargo of barges in pieces, and in thirty-six hours brought by her safely to Gravesend. The M. Q. was delayed some time on her voyage. The weather was fine. *The Aquila de los Andes*, M. M. R. July 1, 1865, p. 817. V. 3,000*l.*—A. £500

543. The ship A., 1,119 tons, was driven by a gale from her moorings in the Mersey, and drifted against the great landing-stage. The steam-tugs S. K. and I. K. tried to stop her, but could not do so until assisted by a third tug, when the A. was towed out of danger and taken to an anchorage. *The Argo*, July 5, 1860. V. 54,000*l.*—A. £500

544. In November, the brig A., of 185 tons register, was lying off Porthcawl, exposed to a furious wind and sea, and an unsuccessful attempt was made by the crew of the lifeboat at Porthcawl to reach her. The brig was again seen next day, having drifted to the eastward. Eventually the lifeboat reached the brig, but found no one on board. The sea was breaking very heavily upon the Tuskar Rocks just under her stern, and she must have been lost but for the efforts of the salvors, who ultimately took her into Porthcawl harbour. The crew of the A., in attempting to reach the shore, were drowned by the capsizing of their boat. *The Argo*, M. M. R. March 31, 1866, p. 402. V. 1,300*l.*—A. £500

545. The barque B., 465 tons, met with bad weather, and was driven out of her course; her masts were cut away to prevent her running on shore, she was in a position of great peril, and hoisted signals of distress. Twenty-seven men, in the life-boat A., with twenty men in the yawl P., in tow of the steam-tug E., took the B. to Yarmouth. The steam-tug E. accepted £350 for her services. *The Balaklava*, S. G. June 28, 1855. Value 5,400*l.*—Award £500

546. In December, the French steamer B., off Ushant, was disabled by her engine-rod breaking, and hoisted signals. The tug S. bore down to her, and agreed to take her to the nearest French port. A gale from the S.S.W. springing up, the B. was taken into the nearest English port, Dartmouth. The towage lasted for three days, and the weather and sea were rough. *The Bayonnaise*, M. M. R. June 21, 1872, p. 786. V. 18,000*l.*—A. £500

547. In March, the ship B., 890 tons register, was discovered by a pilot cutter off the N.W. lightship in the Mersey, in a sinking condition, and abandoned by all her crew (twenty-three in number) but her master. The crew were found astern of the B. in two boats, and taken on board the cutter. Two of the cutter's crew and three pilots then put off, and with great personal risk succeeded in rescuing the master. The B., however, did not go down, and next morning four pilots and four apprentices boarded her, the cutter standing by in case of their being forced to abandon her. Seven feet of water were found in her. They kept her afloat until she drifted to Formsby lightship, then a steam-tug was engaged, and she was next morning safely towed to Seacombe and dry docked. *The Belmont* (Liverpool Pass. Co.), M. M. R. April 14, 1871, p. 464. V. 1,480*l.*—A. £500

548. The ship B., 265 tons, when twenty-five miles from Marseilles, was struck by a violent squall and much damaged. The brig M., 247 tons, assisted her into Marseilles. *The Bessy*, S. G. December 13, 1860. V. 7,640*l.*—A. £500

549. The vessel B. left Alexandria for England, and soon after was deserted by the whole of the crew excepting the master. The master of the G., having heard of this circumstance, went with four of his crew to her assistance, and after four hours' search found her at anchor in a most dangerous position near the Arab's Tower, and about half a mile from the shore. On boarding her they found the master in a very exhausted state, having eaten nothing for several days, and having attempted suicide with laudanum. By dint of great perseverance they succeeded in taking the schooner back in safety to Alexandria. *The Breeze*, S. G. April 29, 1846. V. 3,500*l.*—A. £500

550. In September, the schooner-rigged iron screw steamer B. was discovered by the steamer G. disabled, with a broken crank shaft, about ten miles W. by S. of the Eddystone Lighthouse in a dense fog, and was towed by her into Falmouth, a distance of twenty-five to twenty-eight miles. The weather was fine, and the towing lasted twelve hours. *The Brittany*, M. M. R. Mar. 19, 1875, p. 361. V. 18,000*l.*—A. £500

551. The screw steamer B. Q., 565 tons register, with engines of 180 h.-p. nom., came into collision with the steamer C. in the Mersey, and sustained considerable damage. The New Brighton ferryboat M. proceeded to the vessels in collision, in answer to blue lights and rockets sent up by the B. Q. The M. got a rope to the C., and the passengers of the C. boarded the M. The crew of the B. Q. left her and boarded the C., and some got on board the M. The pilot of the B. Q. urged the M. to leave the C. and assist the B. Q., which was sinking fast. The M. went to the starboard side of the B. Q., then nearly on her beam ends, and hawsers were passed to the B. Q., one from each end and one off each sponson timberhead. The B. Q. had her starboard bow cut down from the topgallant forecastle to within about four feet of her forechains and below her water-line; and she was so much down by the head that her screw was nearly out of water. The B. Q. could neither steer nor steam. The M. made fast to the B. Q., and went full speed till abreast of the Clarence Dock, then half-speed till abreast of the Sandon Dock. She then, at the request of the pilot of the B. Q., changed her position from the starboard to the port side of the B. Q., and a tow-rope was got out, to check her round the corner, and another was got out to the North Pier. In this way the B. Q. was taken into the Huskisson Dock, and left there in safety. It was alleged that the lives of the master, crew and pilot

of the B. Q. were in great danger, and her cargo was probably saved from total loss. The owners alleged that the steam-power of the B. Q. was in perfect order and was used to propel her, that she was perfectly under command, though with a slight list, but was never on her beam ends, that she refused the services of a larger tug, that the M. did not save the B. Q., but only accompanied her across the river, to be at hand if wanted, and assisted her round the corner, which latter assistance a rope round the pier-head would have effected equally well. *The British Queen*, M. M. R. May 19, 1866, p. 625. Value 110,000*l.*—Award £500

552. In December, the iron steamer C., 488 tons register, 70 h.-p., with iron ore, off the coast of Portugal, rolling heavily, shipping much water and greatly disabled by the breaking of her propeller, was found by the steamer B., from Newcastle for Genoa. After towing for about nine hours, during which the C. came into collision with the B., and stove in her bulwarks, and the B. lost two buoys and a quantity of rope, the C. was brought to Vigo harbour, a distance of about thirty-five miles. *The Campanil*, M. M. R. June 26, 1874, p. 816. V. 13,975—A. £500

553. The brig C. L., 173 tons register, with a general cargo from Marseilles for Liverpool, was towed by the steam-tug E. from Moebfra Bay to Holyhead. The state of the wind and the sea made the towage a matter of great difficulty and danger, and also placed the brig in imminent peril. *The Canadian Lass*, M. M. R. April 20, 1867, p. 497. V. 5,500*l.*—A. £500

554. The American ship C. was anchored in Torbay, when a gale springing up she parted from her anchors and began drifting towards the rocks. The smack S., manned by seven hands, went to her and brought her into a place called Mole's Nest. The services lasted three days. *The Caspian*, S. G. June 30, 1853. V. 29,000*l.*—A. £500

555. The barque C., 336 tons, having been exposed to tempestuous weather for two or three days, shipped heavy seas, and suffered some damage, took refuge in Milford Haven, where her anchors not holding her masts were cut away. The steam-tug F., 181 tons, with some risk, towed the C. to Milford. *The Comet*, S. G. July 25, 1862; 7 L. T. N.S. 257. V. 6,300*l.*—A. £500

556. The ship C., 1,282 tons, brought up with her port anchor off Egremont in the Mersey. The wind blowing a strong gale with heavy squalls from the N.E., she began to drive. After driving a considerable distance her starboard anchor was let go, cable was payed out to both her anchors, and she was finally brought up off the Huskisson Dock, but as she continued to drag, a signal was made for a steamer, and the steam-tug R. A., 98 tons, with two engines working up to 250 h.-p., came up. The ship ceased to drag, and the tug agreed to stay by her. The C. afterwards struck the ground several times, but not heavily, and the tug then took the C. in tow, and finally conducted her to a position opposite the Magazines, and left her. *The Constitution*, S. G. March 12, 1863. V. 45,500*l.*—A. £500

557. In January, the steamer D., 1,914 tons, from London to Bombay, when S. of the Lizard, in the English Channel, became disabled in her machinery in a hard W.N.W. gale and a heavy sea. In answer to signals the steamer F., 3,138 tons, from Shields to Bombay with coals, came up and sent off a boat which, owing to the weather, could only get within speaking distance of the D. The weather having moderated, a rope was made fast, and the F. towed the D. for about twelve hours in very bad weather, when the D., having temporarily clamped her broken shaft, wore round and went up Channel under steam and sail at a slow speed to Southampton, the F. keeping by her for an hour and a-quarter, but incurring no danger by the services, and no loss beyond two broken hawsers. *The Dago*, M. M. R. July 6, 1883, p. 884. V. 53,549*l.*—A. £500

558. A vessel on her beam ends, dismasted, with a signal for assistance nailed on the stump of the mast, and with five feet of water in her hold, was fallen in with off Southwold, on the Suffolk coast, by two fishing smacks, who towed her into Yarmouth. The salvors incurred some danger in approaching the vessel, rendered their assistance promptly, and their services lasted about three days. *The Despatch* (1839), 4 Monthly Law Mag. (Notes of Cases), 87. V. 2,400*l.*—A. £500

559. In March, the Norwegian barque E. and L., with timber, was discovered by the smacks A. and I. C. abandoned by her crew, and drifting towards the Great Fish-bank in the North Sea. The smacks lay by her for some hours, then got hawsers attached, and towed her towards the Tyne until a steam-tug came up. Owing to the severity of the weather a second tug had to be employed, and the E. and L. was in five days safely moored in the Tyne. *The Edwin and Lizzie*, M. M. R. July 13, 1883, p. 877. Value 1,199l.—Award £500

560. In November, the Russian barque E., 375 tons, from the Baltic to Cette with deals, was dragging her anchors in the Downs, and in danger of collision in a heavy gale from the S.S.W. with rain and a heavy sea. The lugger L. C., of ten tons, value £500, came up, put three of her crew on board, and made fast a hawser, which, however, very soon parted. The E. driving astern, nearly came into collision with the lugger, and drove out into the open sea without any anchors or chains. The tug P., of 240 h.-p., value £500, came up, and with a hawser got the head of the E. round. The tug V., of 350 h.-p., value £4,000, then came up, and the E. was towed into the Commercial Docks in about twenty-eight hours. £350 to tugs, £150 to lugger. *The Elin*, M. M. R. May 12, 1882, p. 590. V. 17,600l.—A. £500

561. The barque E. H., in a gale from the S.S.W., went on shore on Romney Hoy, near Dungeness, and was in a position of great danger. Some coastguardsmen, at considerable risk to their lives, went in a galley to her assistance, and after several attempts succeeded in boarding her, and getting her off the shore. *The Eliza Hart*, S. G. July 15, 1856. V. 22,600l.—A. £500

562. In December, the E., 773 tons, from China for London, with tea, took the ground on the Roar Sand, off Dungeness. By the assistance of the tug S. and some of the crew of the lugger F. to A. N. she was rescued, and arrived at the West India Docks on the afternoon of the next day. The E. would have been two and a-half hours before getting off with her sails, and would not probably have even then got off without damage. As the hours advanced the weather got worse and the wind increased. *The Eme*, M. M. R. Feb. 24, 1871, p. 239. V. 77,400l.—A. £500

563. The F. F. grounded in a fog on the Arklow Bank. A signal of distress was made, and two cutters and a boat, manned by ten pilots, together with the steam-tug V., went to her assistance, and after lightening the vessel succeeded in removing her from the bank. Weather fine. *The Fanny Forrester*, S. G. Oct. 31, 1855. V. 13,432l.—A. £500

564. The ship G., when at anchor in the Mersey, dragged her anchors during a most dangerous storm from the N.W., in which nearly all the ships in the Mersey dragged their anchors. She was driven from rather more than mid-channel up the river until nearly straight across towards the north wall, where her anchors held. There was great probability, however, of her anchors dragging during the storm, and if they had done so, she, being only a hundred yards from the wall, must have breached round head up on to the wall, and would have foundered. From this peril she was rescued by the steam-tug G. W., which sustained no damage, and was in no danger in rendering the service. *The Glengarry*, S. G. Nov. 28, 1884, p. 758. V. 43,000l.—A. £500

565. The barge G., when about four miles from the Nore, was quite unmanageable, rolling heavily in the hollow of the sea, and in great danger of driving on the Nore Sand and being lost. The steam-tug C., after some difficulty, the tow-rope breaking twice, and the sea rolling heavily, succeeded in towing the barge to Limehouse. *The Gipping*, S. G. Nov. 17, 1857. V. 3,000l.—A. £500

566. In February, the screw steamer G. C., 1,650 tons, from London to Boston, broke her propeller, and from that time to the 22nd of March, being unable to use her engines, had drifted about under sail in very heavy weather, suffering serious damage to ship and cargo. One of her crew had been washed overboard, and another had died from small-pox, which attacked the captain and several of the crew. She could not have made an English port without steam assistance when she was discovered by the tug E. about eleven or twelve miles S.S.E. of the Lizard, drifting rapidly to leeward. The hawsers of the tug E. and the tug V., which also came up, were made fast, and the G. C. was towed by them for two hours, when the tug V.

came up, and the three took her safely into Falmouth Harbour. The services lasted seven hours altogether. *The Gothenburg City*, S. G. July 10, 1885, p. 438.

Value not stated.—Award £500

567. In March, the Norwegian schooner H., 123 tons register, from Gothenburg to West Hartlepool, with oats, was fallen in with about 150 miles from the mouth of the Humber, the Spurn bearing S.W. by W., by the smack O. L. The H. was displaying two signals of distress. The wind was blowing heavily from N.E. with a heavy sea. The H. had been struck by a heavy sea, two of her crew of six had been washed overboard and drowned, she had lost her mainboom gaff and mainsail, and her pumps were choked. The O. L. rescued the rest of the crew, and stayed by the H. till next morning, when in answer to her signals for help the smack E. came up, and the two smacks towed her into Grimsby. *The Here*, M. M. R. July 24, 1874, p. 944.

V. 1,798*l.*—A. £500

568. The steamer I., with iron, was lying grounded on a reef of rocks called Scarecrow Bush, between the Fern and Staple Islands; wind and weather moderate. Seventy-two salvors, thirteen boats. Taken to Holy Island Harbour. *The Ivanhoe*, S. G. July 10, 1857.

V. 5,000*l.*—A. £500

569. The steam-tug R. was engaged to tow the ship J. C. P. from the Smalls into a dock in the Mersey for a specified sum. A hurricane came on, and both the ship and the tug were in danger of drifting on to a lee-shore, but the R. nevertheless continued towing the J. C. P., and ultimately got her to the said dock. *The J. C. Potter*, M. M. R. Nov. 25, 1870, p. 1521.

V. 20,000*l.*—A. £500

570. In December, the ship L. H., from Quebec, laden with timber, arrived off the S. Foreland in bad weather, partially disabled. Her deck load had been thrown overboard. She was piloted to the Outer Downs by one of the crew of the lugger G., which came to her aid. In letting go the port anchor the windlass broke, and she began to drift towards the Gull Lightship. The W. and G. came up in answer to signals, and the former took her in tow to Margate Roads, and there held her while the latter went to the shore for 120 fathoms of chain; thence the W. and another tug towed her to Gravesend. *The Lady Havelock*, M. M. R. March 14, 1873, p. 335.

V. 4,100*l.*—A. £500

571. The L. was in the Downs during a gale. Being unable to procure a pilot the master engaged the lugger G., which conducted him to the Small Downs. The L. broke her windlass, and subsequently drove from her anchorage, approached the edge of the Brake Sand, and was in considerable danger. The lugger B., with the G., conducted the L. to a place of safety. *The Leguan*, S. G. May 9, 1855.

V. 9,000*l.*—A. £500

572. A large steamer having passengers on board, and having struck on a reef of rocks, was, by the exertions of a steam-tug, an officer of the coastguard and five of his men (assisted by 150 boatmen paid by agreement), got off the reef, and towed into port, a distance of two miles, by the steam-tug. *The London Merchant*, 3 Hagg. 394.

V. 12,000*l.*—A. £500

573. The ship L. D., off Bombay Harbour, was struck violently by a heavy sea, which carried away the rudder, the sea washing through the stern. The ship drifted, and the anchor was slipped; but the ship continuing to drift she was again anchored. The weather moderated, and the East India Company's steam frigate F. towed the L. D. inside the harbour. *The Lord Dufferin*, 7 Notes of Cases, Supp. 33. [Supreme Court of Bombay.]

V. 25,000*l.*—A. £500

574. In April, the screw steamer L., 476 tons register, 40 h.-p., with wine, from Bordeaux for Liverpool, about 20 miles W.N.W. of the Smalls, was drifting in a heavy, rolling cross sea from the S.W. towards the Irish coast in a disabled state, with a broken shaft. She was taken in tow with two hawsers by the steamer S. of I. towards Waterford. After passing the Conningsberg Lightship, a third hawser was got out; and ultimately, after five hours' towing, she was brought into Waterford Harbour. *The Lotus*, M. M. R. December 11, 1874, p. 1585.

V. 32,439*l.*—A. £500

575. In January, the steamer L., which had broken her main-shaft, came to an anchor about three miles from the Holm Sand Head. In answer to signals the Pakefield lifeboat put off, and reached the L. through a heavy sea, when she was requested to fetch a tug. The tug D. was brought, and, with the assistance of the crew

of the lifeboat on board the L., got her into Yarmouth in two days. *The Ludworth*, M. M. R. May 4, 1877, p. 564. Value 6,500*l.*—Award £500

576. The ship M. was ashore on the Quicksands, not a very dangerous shoal. One wrecking vessel, carrying seven men, lightened her of 163 bales of cotton. The next day, the wind and tide being favourable, she worked herself off the reef. *The Marathon*, 5 A. R. 88, cited in Marvin, 214. [American.] V. 16,000*l.*—A. £500

577. The M. W. considerably damaged, was off the Liverpool Banks, and in danger of going on the Lancashire Sands. She hoisted a signal of distress, and the steamer M. C. came and towed her in about six hours to Liverpool. *The Mary Wilson*, S. G. March 3, 1851. V. 5,000*l.*—A. £500

578. In August, the ship M., 1,212 tons register, took the ground on the edge of the Six and Fourfeet Flats, at the entrance to the river Mersey, on the ebb tide, and during a heavy W.N.W. gale. She was timber-laden with a deck-load, and had lost her anchors, chains, and the greater part of her canvas, and her rigging was damaged. The tug C. stood by her for three hours, and then a hawser being attached between the tug and the M., and the tug's engines disconnected, the M., after half-an-hour's towing, was moved from the bank, taken into deep water, and ultimately docked in the Canada Dock. *The Maud*, M. M. R. June 12, 1869, p. 754. V. 6,700*l.*—A. £500

579. The schooner M., while riding at anchor near the mouth of the Thames, lost one of her anchors in a gale, and was driving on the Mouse Sand, with a signal of distress flying, when the steam-tug R. B., 120 h.-p., value £6,000, with much difficulty and risk took hold of her, and kept her from driving further towards the sand, and finally, in seven hours, got her into Sheerness. *The Medora*, 5 Notes of Cases, 156. V. 11,431*l.*—A. £500

580. In November, the barque N. I., 982 tons, from Rotterdam to Batavia, with twenty passengers and a general cargo, in a violent gale from S.S.W., parted from her anchors in the Downs, drove for more than an hour, and took the ground in Pegwell Bay, the tide being flood, and she kept forging ahead for three hours and then remained hard and fast. The master, being ignorant of his position, signalled for a tug, and the lugger P. R., value £450, which had anchored on account of the weather, cut her cables, ran through a fearful sea, as close as could be, alongside the N. I., which was rolling and striking heavily, and put three hands on board her. The tug and two lifeboats then took the passengers to Ramsgate, and returned to the N. I. Anchors and chains were laid out, and the tug A. coming up, they succeeded in getting her off, and into Ramsgate Harbour. £155 was paid to the A. and two lifeboats, and £300, with £32 for damages, was offered to the lugger. *The Noach I.*, M. M. R. November 8, 1878, p. 1427. V. 16,000*l.*—A. £500

581. The barque N. was on shore upon the Upper Knock of the Shipwash Sand, laden with deals, derelict, damaged, and in imminent danger, the wind at the time blowing heavily, was fallen in with by the cutter E., the crew of which, with some difficulty, succeeded in boarding her, and shortly afterwards three smacks came up, and after great difficulty the four vessels succeeded in dragging her off the sand, and conducted her to Harwich. *The Norma*, S. G. March 13, 1862; 7 L. T. N.S. 257. V. 1,341*l.*—A. £500.

582. The barque P., in Caernarvon Bay, was riding heavily to two anchors, with her stern to Rhoscolyn Rocks, the wind blowing a gale from the S.W., and the sea running heavily. The barque was in considerable peril. The steam-tug R., of the value of £11,000, after several hawsers had parted, towed the barque to the North Stack. *The Paraguay*, S. G. Dec. 8, 1858. V. 5,300*l.*—A. £500

583. The R., 700 tons, having grounded on the Sumatra Bank during a squall, the ship F. went to her assistance, and by laying out anchors succeeded in getting the R. off. *The Rajasthan*, S. G. Dec. 19, 1856; Swabey, 171. V. 40,000*l.*—A. £500

584. The ship R., while on her homeward voyage, encountered bad weather, and suffered so much damage that she was in danger of foundering. When about eighty-five miles from Algoa Bay it was determined to steer thither. After some days she fell in with the barque P. of W., when the master of the P. of W. agreed to see the R. into Algoa Bay for £500 (expecting to reach that place the next

morning). The service, however, occupied more time, and led to more expense than had been anticipated, the P. of W. having incurred an actual outlay of £261, besides liabilities. *The Repulse*, S. G. May 24, 1845. Value 38,000*l.*—Award £500

585. The ship R., damaged and dismasted by collision, was off the Bishops. The steam-tug Rattler, 358 tons, 150 h.-p., value £9,500, cast off another ship she was towing, and towed the R. to Liverpool, 120 miles, in ten hours. *The Respigadera*, S. G. March 2, 1859. V. 15,000*l.*—A. £500

586. The R., of 1,150 tons, in a fog got upon the Arklow Bank (a dangerous quicksand), and was in considerable danger. The steamer S. went to her, and after two hours' service dragged her off the bank. *The Roscius*, S. G. June 7, 1845. V. 10,000*l.*—A. £500

587. In March, the French ship S., when in a disabled condition after a collision, was towed fifty-three miles to Cherbourg by the barque T., from St. Lucia for the Tyne, a service of fourteen hours. *The Servannais*, M. M. R. March 25, 1865, p. 367. V. 4,000*l.*—A. £500

588. In December, the iron ship S. of G., from Calcutta to London, with general cargo, in tow of the tug U. (the tug O. having just cast off), was drifting into shoal water on the west end of the Leigh Middle, and in great danger. A heavy gale was blowing, with thick, dark weather. She was taken in tow by the tug H. M. The two tugs then towed for four hours, when they came into collision, and the H. M. was seriously damaged. At midnight an anchor was let go, and the S. of G.'s tow-rope was cast off. As the S. of G. was again drifting towards the Knock, the tug let go her anchor with forty fathoms, and her engines were set full speed ahead. The S. of G. was thus held till two a.m. next day, and then brought to a safe anchorage. *The Star of Germany*, M. M. R. March 7, 1879, p. 309. V. 38,000*l.*—A. £500

589. In July, the steamer M. S., from New Orleans to New York, grounded off New Jersey, near Deal Beach, with such force that she could not be got off without help, which she received from a company formed for salvage purposes, who sent two schooners with heavy chains and cables and got her off in about twenty-four hours. *The Morning Star*, 2 Asp. 327. V. 58,000*l.*—A. £500

590. The schooner S., in a heavy gale off Gorleston, lost both her anchors and cables, and was drifting towards the Newcombe Sands. The lifeboat R. assisted her to Lowestoft. *The Susannah*, S. G. Nov. 3, 1860. V. 3,000*l.*—A. £500

591. The S. of I. was drifting amongst the ice, and in a dangerous position. The greater part of the crew had already left her, when a large number of men with ice-boats came to her assistance, and after hard labour, extending over several days, managed to save so much of the cargo of the guano as had not been jettisoned, and, with less trouble, succeeded also in saving the vessel. *The Star of India*, Assistance, Ham. H. G. Z. 1872, pp. 206—208. [German.] V. 1,575*l.*—A. £500

592. The T., 300 tons, in consequence of stress of weather, was driven on the North Sand, where she was found by the crew of a revenue cutter, who, with the assistance of the crews of six smacks, three luggers, two barges, and a whale boat, lightened the T., and she was finally got off and conducted to a place of safety. *The Twiot*, S. G. Feb. 25, 1847. V. 5,680*l.*—A. £500

593. The barque T., off Towan Head, on the coast of Cornwall, laden with iron, was in imminent danger to ship and crew. There was an extraordinary swell on; wind blowing hard from N.W. by W. right into the bay; weather moderate. Salvors proceeded to her in two boats, one a pilot boat. Services of short duration, but attended with great danger. The barque had lost her maintopgallant mast, and her outer and inner jib-sheets, her mainyard, mainsail, and maintopsail were blown away, and she was unable to weather Trevoise Head. She was got into deep water. *The Transil*, S. G. July 10, 1857. V. 6,980*l.*—A. £500

594. The steamer T., 409 tons, with her intermediate shaft broken, was between the islands of Skokam and Skonear. The steamer S., 301 tons and 200 h.-p., with passengers and a valuable cargo, towed her to Milford Haven. The S. was detained about four hours. *The Troubadour*, May 25, 1850. V. 30,000*l.*—A. £500

595. The barque V. was off Rottingdean, disabled and derelict. Assistance rendered by steamer L., the Newhaven lifeboat, and seven coastguardsmen. Conducted to Newhaven. £250 to steamer, £150 to coastguardsmen, £100 to lifeboat. *The Viscaya*, S. G. April 21, 1859. Value 1,450*l.*—Award £500

596. The barque V., of 487 tons, when off the South Foreland, was damaged by collision, and hoisted a signal for assistance. The steam-tug R. towed her into Ramsgate. *The Vrede*, S. G. June 21, 1860. V. 9,300*l.*—A. £500

597. In January, the ship C., 984 tons, from Flushing to Glasgow, eighteen hands, in ballast, when in tow of the steam-tug S., 235 tons, came into collision in the Penarth Roads with the steamer T., at anchor there. The weather was very bad, and the sea high. The S. cleared her from the T., and brought her to an anchorage, had her partly refitted at Cardiff, and thence towed her to Glasgow. *The Caroline*, M. M. R. April 4, 1884, p. 215. V. not stated.—A. £480

598. In November, the Norwegian barque F., from Riga for Havre with timber, was sighted by the smack Faith, thirty-eight tons, value £600, flying signals of distress on the Long Sand. There was a fresh breeze from S.S.W., and a heavy sea, and the F. was waterlogged, had her keel and bottom knocked out, her stern smashed, and her masts gone. The crew of the Faith, with difficulty, boarded her, and found the crew about to abandon her. The Faith lay by her, and the smacks C. and S. came up and put some hands on board. The Faith took the crew's effects, and went to Harwich with them to fetch a tug. Meanwhile an attempt was made to lay out an anchor, but failed, and the wind and sea increasing, all hands had to get on board the S. to save their lives. Next day the steam-tug H., 350 h.-p., value £6,500, came up; a tow-line was made fast, and the tug tried, but in vain, to tow the F. A heavy gale came on, and the F. had to be deserted. The gale continued, and they could not again board her for two days, when she was found to be full of water, and to have her rudder unshipped. She was boarded again two days later, some sails were set, and she was forced over the sand into the Black Deep, her deck cargo alone keeping her afloat. The S. then got the F.'s hawser on board, and commenced towing. The Faith went to look for the tug H., and then anchored till the tug came up, shortly before night. A hawser was then got on board the tug from the F., and she was towed, rolling much and sheering frequently, owing to the loss of her rudder and masts, and to her being waterlogged, into Harwich harbour, which was reached late next day, but she could not be got into the inner harbour, owing to heavy gales and her unmanageable condition, for two days more. *The Franklin*, M. M. R. April 12, 1878, p. 469. V. 1,400*l.*—A. £480

599. In November, the barque S., 835 tons register, from Hull to Bahia Blanca, with seventeen hands and a general cargo, ran ashore on the Ower's Shoal. The weather was bad, the wind blowing a gale from E.N.E., and the sea breaking heavily on the beach. She was boarded by a pilot and the crew of the lifeboat F. S., who, at considerable risk, got her off in a few hours, and shaped her course for Spithead, the lifeboat towing astern. A tug was obtained, which took her into Spithead. *The Sarach*, M. M. R. June 1, 1883, p. 691. V. 12,000*l.*—A. £480

600. The barque E., laden with timber, was on the rocks off Black Head in Galway Bay, derelict, her sails, topmasts and rigging carried away, and hanging over her sides. Her rudder was beaten away, and her bottom gone aft, her transoms being entangled among the rocks, and several logs of timber were sticking out of her. A steamer from Galway was sent to her assistance, and with the aid of the revenue cutter D., and a boat and crew of the coastguard, succeeded in towing the derelict in safety to the westward of Nimmo's Pier. The services occupied five days and nights in stormy weather upon an exposed coast. £350 to the steamer, £90 to the D., £20 to the coastguard, and £10 to the man who carried the news of the wreck. *The Erin-go-Bragh*, 9 Jur. N.S. 100. [Irish.] V. about 1,373*l.*—A. £470

601. In October, the steamer M., from Patras to London, when about twenty miles S.E. of Cape St. Vincent, broke her crank shaft, and became disabled. In answer to signals, the steamer R. came up and took the M. in tow to Gibraltar Bay. The services lasted four days. *The Miranda*, M. M. R. July 12, 1872, p. 881. V. 36,000*l.*—A. £470

602. In November, the brig E., from Odessa to Fraserburgh with a cargo of bones, was in great distress, and fast driving on the Main, near Dover. From this perilous position she was extricated by the steam-tug P. and the lugger F. The court awarded to the tug £400; to the lugger, £56. *The Epaminondas* (Dover Comm.), M. M. R. December 18, 1869, p. 1620. Value 2,000*l.*—Award £456

603. In December, the screw steamer E., 943 tons, from Revel to London with oats, &c., was aground on the Swin Middle. There was a heavy sea running, the wind was blowing fresh from the N.W., and the tide was the first quarter flood. She was in considerable peril, and unable, without assistance, to get away from her position of danger. Seven smacks assisted her, and after a few hours' work got her into deep water. *The Essex*, M. M. R. July 2, 1875, p. 839. V. 34,100*l.*—A. £456

604. In October, the full-rigged ship A., 1,460 tons, was derelict in foggy weather, with light wind, about one mile to the N.N.W. of the Varne lightship, heading to the E., making no way, and in a sinking condition, having been in collision with the steamer V. She was found thus by the screw steamer C., 1,547 tons, value £27,850, with twenty-four hands, and cargo of coals from the Tyne to Alexandria. The A. had a hole fifteen feet broad in her starboard bow, out of which petroleum barrels were falling into the sea. Her crew had gone on board the V., which was too disabled to assist. At the request of the master of the A., the C. got a hawser aboard, and with great promptitude and skill beached the A. *The Adome*, M. M. R. February 8, 1884, p. 89. V. 2,700*l.*—A. £450

605. In November, the A. B., from Archangel to London, got on the Gunfleet Sands, parted three anchors and cables, and sprung a leak. After six smacks had got her off the sands, for which they were paid £200, two steamers towed her, with 9½ feet of water in her hold, to London. *The Alexander Brandt*, S. G. May 26, 1841. V. 2,061*l.*—A. £450

606. The screw steamer F. fell in with the barque E. off Cape Pælas in a state of great distress and quite unmanageable, and towed her into Carthage. The services lasted eight hours. *The Edina*, S. G. November 14, 1855. V. 2,044*l.*—A. £450

607. In November, the screw steamer E., 1,172 tons gross, broke her tail shaft, and was lying with her head N.E. by E., about three miles off the Land's End. The screw steamer L. D., 813 tons gross, from London to Cardiff, in ballast, with sixteen hands, came up, got a hawser on board the E., and with considerable difficulty, owing to the parting of the hawsers, the heavy sea, and high wind, got her to Penarth Roads, and anchored her there. The services lasted about sixteen hours. *The Elf*, M. M. R. April 4, 1884, p. 215. V. 9,500*l.*—A. £450

608. The E., from Gothenburg with deals, was found derelict on the Sunk Sand, and saved by four smacks with forty-eight hands. *The Emanuel*, S. G. July 26, 1839. V. 970*l.*—A. £450

609. In April, the German barque F. W., 241 tons register, from Dantzic for Newcastle, with timber, waterlogged, without power of steering, and having lost her mainmast, was discovered by the smacks T. and Sir T. S., of Grimsby, about 180 miles from that place. There was a tremendous gale and a very heavy sea. Hawsers were attached, but after some towing, broke, and the smacks stayed by her all night. The crew, who were exhausted by the exposure and cold, were taken off, put on board the smacks, and two days later landed at Grimsby. At 2 p.m. towing recommenced, but when within eight miles of Grimsby the rope parted, and the F. W. disappeared in the squall. Next day the vessel was fallen in with about 100 miles from Spurn Point by the smacks Sir W. A., M., E., and Esther, who got hold of her, and in three days towed her to within sixty miles of the Spurn Point. The tug Melton then came up and towed her safely to Grimsby in one day. £150 to salvors of life, £300 to the other salvors. *The Frederick Wilhelm*, M. M. R. Aug. 11, 1882, p. 1004. V. 958*l.*—A. £450

610. The ship S. G., nearly two miles above low water-mark, was lying dry in Holford Bay, having been driven by the wind, which was blowing hard from the N.N.W. The steam-tug P., after some difficulty, dragged her off the mud, and towed her to Cardiff Roads. The ship was in danger of becoming a total wreck, had not the tug gone to her assistance. *The S. Gildersleeve*, S. G. Nov. 4, 1857. V. 8,200*l.*—A. £450

611. In November, the steamer G., in lat. 49°35 N. and long. 3°10 W., the weather being overcast, with light wind and a ground swell, was found totally disabled, with engines broken down, by the screw steamer S. F., 351 tons, which towed her first towards Portsmouth and eventually into Portland Harbour of Refuge. *The Glanwern*, M. M. R. Jan. 25, 1884, p. 54. Value 18,000*l.*—Award £450

612. The barque G. H., of 380 tons, got upon the dangerous Barnard Sand, off the coast of Norfolk. The wind at the time was blowing upon the sand, and the vessel was in considerable danger. The salvors, consisting of eighty-four men, the crews of five yawls, put off to her assistance, and with some difficulty and danger got her off at high water on the same day, and took her to Harwich. *The Governor Harcourt*, S. G. June 12, July 16, 1845. V. 4,100*l.*—A. £450

613. In October, the Swedish barque G., 512 tons, from Sandwall for Bristol, with deals, damaged in a collision the night before, was taken in tow off the South Foreland by the tug V., and brought to the City Canal Dock. *The Gustaf*, M. M. R. May 6, 1865, p. 561. V. 3,000*l.*—A. £450

614. In November, the brig H. M., 185 tons, from Cronstadt for London, with oats, was lying, crippled by a collision, at anchor in the roadstead of Yarmouth, the wind blowing heavily from S.S.W. and increasing, and a strong sea running. The tug M., 98 tons, 180 h.-p., value £3,000, towed the lifeboat L. out to the brig, which was reached in three-quarters of an hour. The L. was towed alongside, some of the crew boarded the brig, and the tug and lifeboat stayed by her during the night. The weather was so bad that all hands got into the lifeboat and rode under the brig's stern for five hours. On returning, the windlass and anchor were found to be broken, so she slipped anchor and was towed by the M. into the river, and there moored in safety. The services lasted seventeen hours. *The Hannah Maria*, M. M. R. Feb. 22, 1878, p. 243. V. 2,422*l.*—A. £450

615. The barque H., 500 tons, leaky, with her anchors down, was being driven by a gale on to a rocky and dangerous part of the coast of Cork, when her fore and main masts were cut away, and she was brought up not far from the shore. E., the commanding officer of the coastguard station, sent to Cove for a steamer, and also collected eight men, who, when the weather became more moderate but still dangerous, went with him in a whale-boat to the H., to save the crew. The steamer S., on a voyage from Cork to Bristol, came up, and in a few hours towed the H. to Cove, breaking a hawser in the service. £120 to the coastguardsmen, £330 to the S. *The Hebe*, 7 Notes of Cases. Supp. 1. [Irish.] V. 4,000*l.*—A. £450

616. The brig H. got on shore on the south part of the Goodwin Sands and was in a state of very imminent danger. The P. and the S. went to her assistance, succeeded in getting her off the sand, and took her to the North Foreland. *The Hilda*, S. G. April 21, 1855. V. 4,100*l.*—A. £450

617. The screw steamship L. went on shore on the Shingles between the Needles and Hurst Castle; the master telegraphed to Southampton for assistance. Two tugs and a lighter went to the L., and after lightening her of part of her cargo, they succeeded in removing her from the Shingles, and conducting her to a safe anchorage ground. The engines of the tugs were damaged, and cost £50 to repair. Services lasted two hours. *The Leda*, S. G. June 20, 1855. V. 12,278*l.*—A. £450

618. In November, the brigantine L., 233 tons, from Halifax to London, with eight hands, general cargo and government stores, lost both anchors off the N. Foreland. The lugger Q., 23 tons, came up, and by request fetched an anchor and ninety fathoms of chain. Whilst she was gone the tug C. came up, made fast a hawser and held the L. till the lugger's return (six hours), and then towed her to Woolwich in twenty-six hours. The wind was blowing a gale with a heavy sea, and the L. was in danger of drifting on to the Goodwins. £370 to the tug, £80 to the lugger. *The Luland*, M. M. R. February 16, 1883, p. 209. V. 2,000*l.*—A. £450

619. In February, the M. from Smyrna to Hull was assisted from a position of peril on the Cross Sand near Yarmouth. The salvors were kept in quarantine thirty-seven days, the M. not having a clean bill of health, and, besides, were liable to catch the plague. *The Maria*, S. G. July 5, 1837. V. 2,344*l.*—A. £450

620. The brig N. was stranded on the beach off the Island of Paloma, and her master and crew had left her, and were living on the island. H.M.S. C. went to her assistance, and after lightening her, succeeded in getting her afloat, and ultimately into Monte Video. The services lasted six days, but were attended with no danger. *The Nina*, S. G. November 29, 1860. Value 1,293*l.*—Award £450

621. In July, the steamer P., 1,157 tons, from Messina to New Orleans, with green fruit and Mediterranean produce, in lat. 34°30' N. and long. 14°50' W., with a broken crank-shaft and helpless, the weather being moderate, with wind and sea from the N.E., was discovered by the steamer T., 1,670 tons, 148 h.-p., value with freight and cargo £4,372, from Antwerp to the River Plate. The T. took the P. in tow to Funchal, a distance of 150 miles. The services lasted twenty-six hours. *The Picqua*, S. G. November 20, 1885, p. 742. V. 24,000*l.*—A. £450

622. The schooner P. C., 283 tons, was in distress off the East Hoyle Bank, riding heavily to one anchor, the wind blowing a strong gale from the N.W., and there being a heavy sea running. The steam-tug C. went to her, and found her square-sails torn, her rudder disabled, and no pilot on board. She then disconnected her engines, took her in tow, and ultimately conducted her to Salisbury Dock in the Mersey, the steam-tug B. J. rendering some assistance. £300 to the C., £150 to the B. J. *The Pride of Canada*, S. G. April 23, 1863. V. 12,000*l.*—A. £450

623. In October, the brig T., 244 tons register, from Norway to Aberdeen with timber and deals, was discovered by the smack W. D., east of the Dogger Bank, 185 miles from the Spurn, in a heavy sea and westerly wind, quite disabled, making a great deal of water, and with her crew exhausted from pumping. One hand was put on board from the W. D., and one from the smack T. B. which subsequently came up. The T. B. commenced towing, and next morning the W. D. towed ahead of the T. B. Two days later the brig's crew were taken off, there being eight feet of water in her, and hands from the smacks took their places. The towing ceased then for a time, and within twenty-four hours there were twelve feet of water in her, and crews were put on her every night and morning for three days, at great risk, to pump her; towing then recommenced, and after eight days' labour she was brought into Grimsby. *The Tvedestrand*, M. M. R. February 26, 1875, p. 262. V. 1,710*l.*—A. £450

624. In February, the ship T. B., deserted by her master and crew, was taken possession of, about 240 miles from Malta, by the steamer L., value £30,000. The weather was not bad, and there was no danger to the salvors in the service; but the property salvaged was in danger from the fact of being derelict. The L. took the T. B. to Malta, which was reached in two days, and the L. was there detained eleven or twelve hours. The Vice-Admiralty Court at Malta awarded £300, which on appeal was held to be insufficient. *The True Blue*, 4 Moore, P. C. C. N.S. 96; L. R. 1 P. C. 250. V. 1,452*l.*—A. £450

625. The ship W. S., 1,049 tons, grounded on Brook Ledge, Isle of Wight. The cutter A. and E., the E. with nine hands, and the boat V. with five hands, went to her assistance. The A. and E. was sent to Yarmouth for forty extra hands; five men from the A. and E., and the E. went to the ship's pumps; a steam-tug took her in tow. The A. and E. returned with thirty-six hands, who were employed at the pumps. Five men of the V. assisted at the anchors, all the salvors laboured hard at the pumps. Two steam-tugs arrived and towed her to Cowes. There might have been loss of life if the masts had fallen. The services lasted more than a day. *The William Singer*, S. G. July 22, 1858. V. 20,000*l.*—A. £450

626. In November, the Dutch barque Z., in a perilous position, about 1½ miles from Shoreham Pier, and in danger, if she remained where she was another tide, of perishing entirely, was extricated by a small tug with pilots on board. The services lasted into the next day. *The Zaanstroom*, M. M. R. June 16, 1871, p. 753. V. 25,000*l.*—A. £450

627. The O. was drifting about with wood cargo in the North Sea in stormy weather, abandoned by her crew, mainmast cut away, and without sails. The U. took her in tow and brought her to Hamburg. *The Uhlenhorst and Orpheus*, Salvage, Hamb. H. G. Z. 1878, pp. 158, 160, 200. [German.] V. 1,330*l.*—A. £440

628. In November, the A., from Newcastle, sprang a leak, and anchored at the mouth of the Humber in a sinking state. She was towed up to Grimsby by a smack. *The Allen*, Feb. 22, 1841. Value 4,300*l.*—Award £430

629. The B. P. was off Milford dismasted and in great distress. The schooner T. S., laden with a general cargo, went to her assistance, with some difficulty took her in tow, and conducted her to St. Ives, where she brought up. The services lasted three days and three nights. On nearing the port of St. Ives some pilots and boatmen went to the brig in the lugger K., and assisted in steering and towing the brig into the port. £400 to the T. S., £20 to the pilots and boatmen. *The Brazil Packet*, S. G. April 29, 1851. V. 2,677*l.*—A. £420

630. In November, the brig E. M., 255 tons, from Marseilles for the Baltic with timber, was fast on the Buxey Sand in a strong S.E. breeze at high water, and sixty-one miles from where her captain, who was ill and had met with an accident, imagined he was. Twelve hands of the crews of three smacks, by means of heaving on a kedge and a bower anchor, and other manœuvring, got her head round to the wind, which was freshening all the day; and when she came clear of the sands they slipped both anchors, took her to a safe anchorage for the night, and thence next morning to Brightlingsea. *The Emma Malam*, M. M. R. Feb. 2, 1877, p. 149. V. 2,700*l.*—A. £420

631. In April, the ship G., 658 tons register, from Valparaíso for Liverpool, with flour and wheat, when in the Floyne, River Mersey, came into collision with the S., then in tow of the tug B. P. The steam-tug rendered services, which it was not denied entitled her to a considerable salvage reward, and in them she was assisted by the tugs Sir G. G. and W. The services lasted eleven hours. £300 to the B. P., £60 to the G. G., £60 to the W. *The Glengaber*, M. M. R. June 21, 1872, p. 786. V. 22,000*l.*—A. £420

632. In January, the ship K. F., 1,326 tons, from New York for London with refined petroleum, at anchor in the Downs, with the North Foreland Light bearing W.S.W. about four miles off, began to drag her anchors, and had to slip thirty-five fathoms of chain to prevent coming into collision with a barque. Her starboard anchor was let go, but the gale increasing from the N.E., she dragged till she was in five fathoms of water only, when her anchor and chains were slipped, and she made all sail towards the South Foreland. A lugger made two trips to shore to get anchors, and two tugs held her till the return of the lugger with the second anchor and chain, a period of sixteen hours. *The Kendrick Fish*, M. M. R. June 30, 1876, p. 811. V. 18,000*l.*—A. £410

633. The ship A., having taken the ground in the Old Calabar River, the steamer D. Y. was employed in lightening her and towing her off. The services occupied four days. *The Africa*, S. G. April 29, 1854; 1 Spinks' *Ecl. & Adm. Rep.* 302. V. 30,000*l.*—A. £400

634. The brigantine A. was off Holyhead, damaged, and in considerable danger. The brig R., after several attempts, got her hawser on board and towed her about twenty miles, when a steam-tug was engaged. *The Alarme*, S. G. Dec. 22, 1858. V. 4,575*l.*—A. £400

635. The schooner A., 308 tons, from Gothenburg for London, received great damage in a gale, and was shortly afterwards fallen in with by the cutter V., 107 tons, which towed her in seven or eight days to the vicinity of Corton Lightship. Some risk of life was incurred by the salvors in boarding the A., and difficulty arose in towing her from the warp breaking from time to time. From the lightship she was taken by a tug into Yarmouth Roads. *The Albert*, S. G. May 3, 1864. V. 1,672*l.*—A. £400

636. In October, the screw steamer R. L. A., 620 tons, from Riga to Grangemouth, with sleepers and lathwood, was drifting helplessly with a list to starboard, having, through stress of weather, used all her coal and failed to get up steam by burning part of her cargo and her bunker fittings. She had lost her mainmast, after binnacle and compass, and was drifting out of the track of steamers. In answer to flare-ups, the steamer T. T., 348 tons net and 554 tons gross, from London to the Tyne, with fifteen hands, and in water ballast, came up and towed her towards Hartlepool until the tug C. came up and took her in tow. *The R. L. Alston*, M. M. R. Feb. 29, 1884, p. 134. V. 7,350*l.*—A. £400

637. The A., 665 tons, grounded on the Tynemouth Bar, and was in imminent danger. The tide was high water, the wind blowing a fresh breeze with a heavy sea on, which was gradually increasing. Four steam-tugs went to her assistance, and she was, in a short time, towed off. *The Ann*, S. G. March 3, 1847.

Value 6,710*l.*—Award £400

638. In November, the brigantine A. C., from Lagos for London, with cereals, was descried about two miles off by the steamer B., which was waiting to enter the harbour of St. Helier. It was blowing a gale. The A. C. was drifting towards the rocks about half to leeward of her, and could not save herself by anchoring. The B. bore up to her, and with great difficulty making fast to her, towed her to within a mile of the harbour when the hawser parted. The A. C. then let go her anchor, the B. landed her passengers, returned to the A. C., and towed her into harbour. The A. C. had a damaged and disabled rudder, which increased the difficulty of towage. *The Annabella Clark*, M. M. R. March 13, 1874, p. 334.

V. 5,500*l.*—A. £400

639. The A., on the 5th November, near Hasborough light, suddenly struck the ground, there being increasing gales and a high sea. For safety the sails were cut away, and a great part of the cargo thrown overboard. The water rose in the vessel under the half-deck, and the pumps could not remove it. On the following morning, the vessel being in great danger, a signal of distress was hoisted; three fishing smacks put off to her assistance, and on the 9th carried her in safety into the Humber. This action was brought against the cargo, the vessel having been condemned and sold, and one-third of the value paid to the salvors. *The Apollo*, S. G. April 27, 1847.

V. 1,350*l.*—A. £400

640. In September, the screw steamer A., 3,127 tons register, 750 h.-p., from Plymouth for Melbourne, with cargo and 500 passengers, when in Plymouth Sound broke both her anchor chains. Two galleys, the B. and B. P., passed ropes from the A. to a schooner lying by the A. and to the mail buoy, by which means the A. was prevented from drifting on to the rocks off Stratton Heights. *The Atrato*, M. M. R. Dec. 13, 1872, p. 1588.

V. 90,000*l.*—A. £400

641. In October, the ship B., 1,034 tons, in ballast, from London to Cardiff, to load fuel for Aden, having dragged her anchors, went aground on Long Nose Rock, S.E. of N. Foreland Light, and was in imminent danger. She burnt blue lights, and the luggers E. and S. went to her aid, the sea breaking heavily, the tide being about an hour's ebb, and a strong gale blowing from N. by E. The luggers' crews helped to get top-gallants down and prepare her for being towed, to make the tug fast, pump the ship, and lighten her by throwing out ballast. She was finally towed off the rocks by a steam-tug. *The Bavelaw*, M. M. R. June 2, 1866, p. 688.

V. 6,000*l.*—A. £400

642. The brig B., 189 tons, got upon the Goodwin Sands, and the lives of those on board were in imminent danger. The steamship S., the Ramsgate lifeboat, and three luggers, went, at the risk of life, to the assistance of the B.; they were afterwards joined by another lugger, and together succeeded in taking the brig into Ramsgate Harbour. *The Bartley*, S. G. Jan. 30, 1857; Swabey, 198.

V. 1,250*l.*—A. £400

643. In December, the C., from Stockton to London, seriously damaged by collision in the Humber, was pumped by the crew of the brig B., which took on board the master and crew of the C. The C. was ultimately got into harbour. *The Canegrove*, S. G. May 7, 1840.

V. 1,750*l.*—A. £400

644. In March, the barque C., 470 tons, with sixteen hands, two passengers, and a cargo of wool-skins, tallow, and oil, from New Zealand to London, went ashore on the Goodwin Sands in thick weather, the wind being S.W. and the sea moderate. The crews of the lugger A., eight tons, and the lugger L. B., seeing signals from the East Goodwin and Gull Lightships, there being then a strong breeze from S.W., hazy and squally weather, and a nasty sea, launched their luggers and proceeded to the Goodwin Sands, where they found the C. in distress, lying heading south, with her sails still set, and striking heavily. She had previously been in collision, and lost her cutwater jibboom and most of her head-gear. The tides were then taking off, and it was absolutely necessary to get the C. off before next high-water. The salvors furled the sails and cleared away the wreckage forward, and at about 10-20 the steam-tug V. came up. About 12-30 the hawser of the V. was made

fast, the C. meanwhile having been striking heavily and having unshipped her rudder. In about two hours she was got off and towed to Gravesend, nine of the salvors remaining on board till she reached that place, after nine and a-half hours' towage. *The Chaudière*, M. M. R. April 14, 1881, p. 457.

Value 37,380*l.*—Award £400

645. In January, the brig C., 246 tons, from Congo River for Liverpool with nuts, at anchor in the Congo River, dragged her anchors during the absence ashore of her master and four hands, and was fallen in with by the ship L. in lat. 46° 32' N., and long. 18° 35' W. The mate and three hands had endeavoured to take the vessel on to Liverpool. When the C. was fallen in with by the L., her mate was nearly exhausted, one of the three hands had died, and the other was quite unable to work from fatigue. Two men were shipped on board the C. from the L., with whose assistance the brig was taken to Liverpool. *The Charles*, M. M. R. May 10, 1872, p. 593; 1 Asp. N.S. 296.

V. 8,174*l.*—A. £400

646. In October, the Danish schooner C., 77 tons register, with oilcake, was discovered off Dungeness derelict, and in a very crippled condition, in the trough of the sea, by the screw steamer S., 140 tons, twelve hands, and a full cargo from Guernsey to London. There was great danger of the C.'s drifting into collision with other ships. There was a heavy swell, a strong N.E. wind, and an ebb tide. The S. took her in tow for the river, but after thirteen hours, owing to the strong wind and tide, had to anchor, holding the C. astern. When the tide turned the towing recommenced, and she was got safely to Gravesend in about thirty-six hours, anchoring on the way off the Nore by an anchor taken on board from the S. at great risk in a boat. From Gravesend she was towed to the Regent's Canal. *The Christian*, M. M. R. Dec. 15, 1882, p. 1586.

V. 900*l.*—A. £400

647. In November, the screw steamer C., 153 tons gross register, from Dublin to Ayr, in ballast, struck on the East Hoyle Bank in a strong N.N.W. gale, about three miles from the mainland. Her steering-gear had given way, and the master and crew left her, but not intending to abandon her. The crew of the smack Q. V., which came up, cleared the anchor and chains and set the sails. They got her to the Channel in about five hours, and anchored her. In about two hours the tug K. of M. came up, and took her under an agreement for £100 to Birkenhead Docks. *The Coaster*, M. M. R. Dec. 22, 1882, p. 1617.

V. 3,000*l.*—A. £400

648. The ship C., 2,282 tons, having come into collision off the Skerries with a brig of 182 tons, was held by the wire rigging of the brig, which was rapidly sinking. The steam-tug R. A. towed the C. clear and to Liverpool, the service occupying sixteen or seventeen hours. *The Constitution*, S. G. March 22, 1864.

V. 32,000*l.*—A. £400

649. In January, the steamer C., 1,217 tons, from Marseilles for London, got on the W. end of the Roar Sand in a fog, and was in considerable danger. As the water was shoaling, the engines were stopped, and the C. brought up with twenty-eight fathoms of cable. When the tide fell she touched about a quarter mile from shore; and next flood-tide was towed off the sand by the tug C. of L. *The Copernic*, M. M. R. June 6, 1873, p. 720.

V. 86,000*l.*—A. £400

650. The barque C. was in a state of great danger. The fishing smack Y. F., at great risk went to her, took the crew on board, and conducted them to Yarmouth. The steam-tugs V. and R. O., and the fishing smack W., went to the barque, and after twenty-six hours' labour succeeded in bringing her to Yarmouth Beach. £200 to the Y. F., £200 to the tugs and smack. *The Coromandel*, S. G. Feb. 27, 1857.

V. 2,519*l.*—A. £400

651. In April, the schooner D., with oil, got ashore on sandy ground on the main at Point Elena, twelve miles west of Almeria. Her master was drunk. She was got off the sand by the joint efforts of the schooner F. A. B., the brig U., and the barque C. *The Dazzler*, M. M. R. Feb. 11, 1865, p. 181.

V. 8,335*l.*—A. £400

652. In November, the steamer E. C. was found by the smack A., 39 tons, in the North Sea, in a dangerous position and flying signals of distress, lying across the sea, with her head to the E., her ballast shifted, and nearly on her broadside. She had cattle and sheep in her hold, which were in six feet of water, and nearly all drowned. Her engines were submerged, her pumps choked, and her crew were

preparing to leave her. The wind was strong from N.N.W., and the sea very heavy. The smack towed her until a steamer came up, by which she was taken into the Humber. *The Ella Constance*, M. M. R. July 21, 1866, p. 913.

Value 17,000*l.*—Award £400

653. In February, the screw steamer J., 531 tons register, from Pomaron to the Tyne, with sulphur ore and brandy, hove-to in bad weather on a dark night, with a strong wind from N.E. and a high sea, off the Tyne. Her screw was loose, and her engines useless. The master of the J. under fore and aft sail bore towards the east, to keep away from the shore, which was about eight miles distant; lights and flares were exhibited, and a rocket fired for a pilot. As neither pilot nor tug came, the J. was steered for Hartlepool Bay, where she anchored. The tugs T. and M., the A., and the L., with two pilots on board, came up and took the J. in tow, and one of the pilots boarded her by a rope round his body. She was finally steered into Hartlepool Harbour. *The Jarrow*, M. M. R. Aug. 11, 1866, p. 1009.

V. not stated.—A. £400

654. The steamer E. C., 535 tons, from Alexandria for Malta, Gibraltar, and London, with a general cargo, and having on board about eighty Hadji pilgrims, had burnt all her fuel, some of the spars, a boat, and other things to endeavour to keep up steam. About eighty miles from Malta the steamer I., 1,436 tons, with passengers and cargo, fell in with the E. C., and in between ten and eleven hours, without risk, towed her into the Grand Harbour of Valetta. *The Ella Constance*, S. G. May 16, 1864.

V. 16,000*l.*—A. £400

655. The brig E., having sustained great damage by collision, must inevitably have been lost if the weather had changed for the worse. She was taken in tow by the steamer M., about fourteen miles from Whitby, and conducted to Shields. *The Elswick*, S. G. Feb. 28, 1854.

V. 5,600*l.*—A. £400

656. The screw steamer G., 481 tons, grounded in Smyrna Bay on the Pelican Spit, and lay in a position of considerable peril. The screw steamer A. S., 1,437 tons, came to her aid, and finally succeeded in getting her off the bank. They then towed her into the channel. The service lasted eleven hours. The screw of the A. S. was damaged owing to the service, and she lost freight in consequence of having to go into a graving dock to repair it. The court pronounced for all the damage and loss sustained, in addition to the salvage, and referred the amount to the registrar and merchants. *The Gladiator*, S. G. Nov. 6, 1863.

V. 12,000*l.*—A. £400

657. The screw steamer G. was off Dungeness, with a signal for assistance hoisted, the wind was blowing a gale from the east, and there was a very heavy sea on. She had been in collision twice during her voyage from Palermo, and had a large hole in her port bow, into which the sea was breaking, and which might without any notice in a minute have forced in her iron bulkhead, when she would have almost immediately sunk. There were ten feet of water already in her hold. The crew of the steam-tug S. assisted the crew in pumping, and after having been once compelled to bring her to an anchor, succeeded with great difficulty in getting her to Gravesend. *The Genova*, S. G. Dec. 24, 1857.

V. 16,000*l.*—A. £400

658. The steamer J., tender to H. M. steamer G., fell in, off the coast of Africa, with the brig H., with a signal of distress. The master and first mate had died, and no one on board could navigate the vessel. The J. took the brig to Fernando Po, where the G. lay, and where she was visited by the surgeon of the ship, and was supplied with medicines, water, provisions, and an anchor. Lieut. R., of the G., and two other men to complete the crew, took the brig to Philadelphia in sixty-nine days, Lieut. R. suffering from fever nearly the whole time. *The Huntress*, 2 Wallace, jun. 59, cited in Marvin, 202. [American.]

V. 2,804*l.*—A. £400

659. The Dutch barque J. H. was descried by the fishing lugger S., on the south part of the Goodwin Sands. She immediately proceeded to her assistance, but before reaching her the barque had cleared the Sands, and was drifting away to leeward with her sails and braces loose, the wind blowing strong from the W.S.W. with a heavy sea, and the weather being very thick. The S., assisted by the lugger E. G., which came up, succeeded in conducting the barque to Margate Roads, where they

engaged two steam-tugs, which towed the barque to Sheerness and laid her on the mud. *The Jan Hendrik*, S. G. Dec. 7, 1853; 1 Spinks' Ecl. and Adm. Rep. 161.

Value 13,400*l.*—Award £400

660. In March, the J. and B., from Wells, in Norfolk, to Yarmouth, I. W., got on No Man's Land in most tempestuous weather, and was, with all on board, in imminent danger. She was assisted into Portsmouth by a revenue cutter, which sustained damage in the service. *The Jane and Betsy*, 1 E. & A. 299. V. 1,862*l.*—A. £400

661. The J. and M. drifting towards sands near the Nore Light, after she had lost three anchors and cables, and both her masts, and had had her boats stove in, was towed by a powerful steamer to London. *The Jane and Margaret*, S. G. May 14, 1840. V. 1,800*l.*—A. £400

662. In January, the screw steamer L., 700 tons, from Southampton to Dublin, with passengers and general cargo, on a dangerous shoal between Needles Rock and Hurst Castle, was got off the shoal and to a safe anchorage by two steam-tugs from Southampton. The tugs sustained damage to the amount of £50. *The Leda*, S. G. June 20, 1855. V. 12,278*l.*—A. £400

663. The L. C. from Bordeaux to Amsterdam with wine, struck on Old Shoreham Church Rock, and after she was got off, was in considerable danger, but was boarded by pilots and coastguardsmen, and taken into a place of safety. £250 to pilots, £150 to coastguard. *The Lisette Caroline*, S. G. July 23, 1840. V. 1,900*l.*—A. £400

664. In December, the brigantine L. L., from Africa for Liverpool with palm oil, was boarded off the Scilly Islands by four men from the pilot-cutter G. They found only the captain and one hand on duty, the rest of the crew being down with fever. Nearly all her sails were carried away, and her boat was knocked to pieces. The four salvors then took entire charge of the vessel, which was short of provisions, the captain and one man giving no aid by night, and but little by day. The cutter returned to Scilly for provisions, and could not get back to the brigantine, because of the weather. The salvors unbent a square sail, set it for a main sail, and bent and set a jib and trysail, which had been put on board from the cutter on the fore-topmaststay, and twice tried to stay her, but she refused stays, and would not answer her helm. With difficulty they twice wore the ship. The rudder head split to pieces, and the wheel-chain was broken. It blew a terrific gale from E.S.E. Three days afterwards, the wind having moderated, they stood in for Scilly; but as it came on to blow heavily, with a very rough sea and torrents of rain, they wore ship and kept her to the E. till next day, when the wind shifting to E.S.E., they again wore ship. They were then about forty miles from Scilly, which bore S.E., as they learned from those on board the barque D., from which they got provisions. The next day was calm till about 8 p.m., when it blew hard from the S.W. They were then about a quarter of a mile off the Seven Stones Lightship. The wind being against them, they made for Penzance; but being in danger of driving on a lee-shore, bore away for St. Ives, could not make it, so bore away for Lundy, and as they could not make that, bore away for, and the day following made, Padstow, where a pilot took charge of the vessel, and she was safely moored in Harbour Cove. *The Little Lizzie*, M. M. R. March 26, 1870, p. 401. V. 3,800*l.*—A. £400

665. In January, the Russian barque M., 458 tons register, from New York to Hull, with 3,259 quarters of Indian corn, got ashore on the Hasborough Sand about 8 p.m. The sea broke over her heavily, and the mainmast, mainstay, mizenstay, mizentopmast, backstays, main royal backstays, fore braces, foretopsail, halyards, and lanyards of the main rigging on both sides had to be cut away. Next day she floated, and her anchors were let go. In answer to signals, the Palling lifeboat was launched, which found her riding right over the Hasborough Sand in a chopping sea, with chains fouled and crossed, leaking, with from two to three feet of water in her, her boats afloat, and the crew preparing to abandon her. The crew of the lifeboat pumped her, and with the aid of a tug she was brought to anchor in Yarmouth Roads in about fourteen hours. Next morning her cargo was discharged into lighters, and she was taken over the Bar into Yarmouth. *The Marie*, M. M. R. April 10, 1879, p. 466. V. 4,615*l.*—A. £400

666. In February, the ship *M. S.*, from Barrow to Newport, with ballast of 200 tons pig-iron and 130 tons iron ore, in tow of the tug *R.*, got ashore in Rostilly Bay, the tow-rope having parted, and the tug being lost sight of in a fog. The wind was moderate E., and there was a S.W. ground swell, with dark hazy weather, the tide being three-quarter flood. A port anchor was let go, and she swung with her head to seaward and then settled down on an even keel and in an upright position. Two boats were lowered, but were swamped, and their occupants drowned. The captain and remainder of the crew got ashore by means of rocket lines from the shore. The tug *H.*, which had been summoned by a man who rode twenty-five miles to Pembrey to fetch it, put out with pilots, found the *M. S.* bumping heavily, much strained and injured, and with a heavy sea running over her. One man got on board from the *H.*, then two more, and then a tow-line was hauled on board. After some towing the *M. S.* was got off into smooth water and taken to Swansea, with the assistance of the tug *F. C.*, which had been engaged off the Mumbles, to keep her steady astern. The services lasted fourteen hours. *The Mary Stenhouse*, M. M. R. May 23, 1879, p. 662. Value 6,650*l.*—Award £400

667. In January, the steamer *M.* stranded on the West Spit, off Lagos, and within a cable's length of the shore, heading in shore about N.N.E., and was got off after much trouble and risk by the steamer *W.* Her windlass gear was disabled, all but one of her anchors had been lost, and her boilers had burst. She was towed to a safe anchorage, and anchored by the spare anchor of the *W.* *The Monrovia*, M. M. R. Feb. 25, 1876, p. 236. V. 36,000*l.*—A. £400

668. The barque *M. V.*, when off Dungeness, the wind being fresh and weather thick, employed a lugger to fetch her a Dutch North Sea pilot, and, fearing the boat would miss the bark, blue lights were burnt and guns fired to show her position. The lugger *B. Q.* answered the signal, and was employed to go in search of the Dutch pilot cutter, but soon afterwards finding they were in shallow water returned to the ship, to inform her of the danger she was in. The *B. Q.* continued in attendance upon her, the lugger *M.* obtained an anchor and chain from the shore for the barque, and got them on board her, and the lugger *P.* of the *O.* conveyed the mate and crew (who had been previously put on shore), and the Dutch pilot, to the ship, and she afterwards took out to the ship a large hawser and provisions. *The Maria Veronica*, S. G. July 30, 1861; 7 L. T. N.S. 223. V. 46,000*l.*—A. £400

669. A fishing lugger of 44 tons, manned with a crew of ten hands, went to the assistance of a vessel in distress, which had struck on the Hasborough Sand in a gale of wind, and after having been occupied two days in the service, eventually succeeded in getting her off the sands, and carrying her into Yarmouth. *The Medora*, 2 W. Rob. 69. V. 3,637*l.*—A. £400

670. The *B.*, having stranded on the Chichester Shoals, was abandoned by her master and several of the crew. The pilot was drunk, and endeavoured to let go the anchor, which would probably have occasioned the loss of the ship. The mate and the crew remaining on board requested a passenger, a master mariner, to take command. He did, prevented the pilot from letting go the anchor, and ultimately brought the ship safely into Ramsgate Harbour. *Newman v. Walters*, 3 Bos. & Pull. 612. V. not stated.—A. £400

671. In March, the ship *N.*, 1,360 tons, from Mobile to Liverpool, with cotton, when at anchor in the Mersey near New Brighton, broke the chain of her starboard anchor, by fouling it with that of her port anchor, began to drag, and fell off with her head to the W. The tug *C.* took her in tow, and her anchor being hove, held on to her for seven hours, until high water, when she again anchored. A N.N.W. gale was blowing all the time, until the last hour. *The Niagara* (Liverpool Co. Co.), M. M. R. March 23, 1877, p. 373. V. 58,000*l.*—A. £400

672. The ship *N.*, 911 tons register, on a voyage from Quebec to Liverpool, for thirty days and nights encountered a continuance of the most violent gales, and was twice thrown on her beam ends. She was greatly damaged, lost her mainmast and mizentopmasts, together with sails, rigging, and other gear. Four of her crew were disabled, and part of her cargo was thrown overboard. On the 24th December the *N.* was off Dursey Head, Ireland, under short sail, the weather being moderate. The screw steamer *M.*, 363 tons, 130 h.-p., on a voyage from Limerick to Liverpool,

postponed her voyage, and in six hours towed the N. into Valentia Harbour, a distance of twenty-five miles. The towing hawser broke once and fouled the propeller of the M., thereby straining the machinery. *The Nimroud*, 8 Ir. Jur. N.S. 99. Value 12,500*l.*—Award £400

673. In January, the N., in difficulties off the Suffolk coast and abandoned, was boarded by part of the crew of the brig H. and conveyed to Yarmouth. *The Normanby*, S. G. May 12, 1843. V. 1,311*l.*—A. £400

674. In November, the barque Q. V., 670 tons, from Cardiff for Yokohama, with coals, lost her rudder in the Bay of Biscay, and made for the Irish Sea, where she was in a dangerous and critical position. A Mr. Seymour being telegraphed to to send two steam-tugs to her aid (an act of salvage not disputed by the defendant), the tugs, in thirty hours' time, took her to Cork Harbour in heavy weather. *The Queen Victoria* (Dublin Ad. Co.), M. M. R. Feb. 14, 1873, p. 209. V. 3,740*l.*—A. £400

675. The barque P., in consequence of having been in collision, was in a disabled state, and was towed by the brigantine B. into Carthage. *The Peace*, S. G. Dec. 20, 1855; Swabey, 115. V. 4,200*l.*—A. £400

676. The P., 2,200 tons, ran on some rocks near Port Griffith Creek, off Holyhead, and was in considerable danger. A pilot and the masters and crews of five smacks offered their services, which were at first refused, the master having telegraphed to Liverpool for four tugs, but their services were afterwards accepted, and they succeeded in getting the P. into a place of comparative safety until the tugs arrived. *The Persia*, S. G. Nov. 11, 1853; 1 Spinks' Eccl. and Adm. Rep. 166. V. 17,337*l.*—A. £400

677. H.M. lighter R., 154 tons, when off Dungeness, owing to a strong breeze from the westward, lost her maingaff and sprang her bowsprit. When off the North Foreland she made a signal for assistance, to which the steam-tug E. responded, and being engaged by the master of the R., towed her into the Camber, where she arrived between eight and nine o'clock on the morning of the following day. The tug experienced great difficulty in the performance of the services, owing to the severity of the weather. *The Rochester*, S. G. March 26, 1863. V. 4,000*l.*—A. £400

678. In January, the screw steamer R. stranded about 1½ miles west of Beachy Head, 200 or 300 yards from high-water mark, and in five to six feet at low water. Part of her cargo was thrown overboard, she floated, and was towed into Southampton. Three gangs of men were employed for three days in salving the jettisoned cargo, and hired carts to carry the bales, &c., which they rescued. *The Rubens*, M. M. R. April 14, 1876, p. 468. V. 2,081*l.*—A. £400

679. In November, the steamer S., 990 tons gross register, with eighteen hands and iron ore, from Bilbao to the Tyne, when off Flamborough Head, broke the cross-head of her after-engine and split the cylinder cover. She was kept before the wind under sail in a fresh S.W. breeze. Next morning the smack Sirius was engaged to take a telegram to the owners at Scarborough. The Sirius engaged the tug M., and they found the S. fourteen miles E. of Scarborough, drifting quickly towards the Fisher Bank. The S. was taken in tow towards the Tyne by the Sirius and the M. Next day the Sirius cast off, and about two hours afterwards the steam trawler F. A. came up and assisted, and in seven hours the S. was safely docked in the Tyne Dock. £300 to the M., £30 to the Sirius, £70 to the F. A. *The Sunnyside*, M. M. R. June 1, 1883, p. 691. V. 18,000*l.*—A. £400

680. In March, the screw steamer S., 1,836 tons gross register, 190 h.-p. nom., twenty-eight hands, from Bremerhaven for London, took the ground near the Cross Sands in foggy weather. The yawl G., in answer to blue lights and rockets, was launched, and found her on the Sand with a heavy list to starboard. The S. was after some little time boarded, and it was found that the boats had been provisioned and lowered, and the S. was about to be abandoned. The G. laid out two anchors, the crew hove on them, and she came off in about three hours. Two of the crew of the G. then accompanied her to London. *The Scotland*, M. M. R. June 30, 1882, p. 813. V. 16,000*l.*—A. £400

681. In August, the barque S., from the Nore to Algiers, got on the Cross Sand, and was striking heavily in a very broken sea. She was taken charge of, at

her captain's request, by one of the crew of the yawl R. J., which, in company with the yawl L. of the V., had come up. The masters of the two yawls, finding they could not get her off before the flood tide, when she would have filled, engaged the services of the two tugs S. and U. S., and by their combined efforts she was got off the sand, and taken through the Pightle and Hewitt's Channel into Yarmouth Roads, where she was anchored. *The Scott*, M. M. R. Nov. 7, 1873, p. 1426.

Value 2,300*l.*—Award £400

682. The ship S. C., 893 tons, in tow of the barque A., was in a damaged state when the vessels were fallen in with by the schooner S. of P., 42 tons. The master of the A. asked the master of the S. of P. to assist him in saving the S. C., to which he agreed. The two ships then towed the S. C. towards Falmouth, but the wind becoming light they made but little way. The master of the A. then requested the master of the S. to go to Falmouth for a steam-tug, which he did, and returned with a tug in search of the two vessels, but was unable to find either the S. C. or A., and a terrific gale springing up the S. and the tug were compelled to return to Falmouth. *The Sebastian Cabot*, S. G. March 3, 1864.

V. 100,000*l.*—A. £400

683. In November, the ship S., 937 tons, from Quebec to Liverpool with timber, waterlogged and having lost her rudder, got on Jordan's Flats, eleven or twelve miles from Liverpool. The S. was then towed off and into Liverpool by three steamers. A steamer, 45 h.-p., which first rendered assistance was paid £350. *The Scotland*, S. G. July 6, 1841.

V. not stated.—A. £400

684. In November, the steamer S., from Shields to Constantinople, in lat. 48°37' N. long. 6°9' W., was disabled by the breaking of the bed-plate and eccentric shaft of the engine, caused by one of the crank-shafts breaking. The steamer C. came up, but the wind and weather prevented any tow-ropes being got on board till next day, when the C. towed her to Corunna Harbour. *The Styx*, M. M. R. April 11, 1873, p. 464; July 25, 1873, p. 944.

V. 21,000*l.*—A. £400

685. In March, the iron barque U., from Hamburg to Cardiff, in ballast, at anchor in the Downs by her port anchor, through stress of weather, began to drag her anchors during a heavy gale from S.W. and in a strong sea. She was drifting very fast towards the Goodwin Sands, abreast of Kingdom, when the tug P., ninety-five tons gross, 40 h.-p. nom., working to 200, offered assistance, which was ultimately accepted. The P. towed her to off the North Foreland, but could not round it, owing to the violence of the wind and sea, without the assistance of the tug C., 110 tons gross, 60 h.-p., nom., working to 200. The two tugs towed her to Mayal Roads, held her there for 3½ hours, and thence took her to Gravesend, after eighteen hours' towing. *The Unicorn*, M. M. R. June 3, 1881, p. 686.

V. 4,000*l.*—A. £400

686. The brig U., of 800 tons, ran on shore between Dover and Folkestone. A small steam-tug, the B., proceeded from Dover to her assistance, but she had in the meantime got off the land with the loss of her rudder, and the B. was employed in getting her head veered in a proper direction. Next day, S.E. of the South Foreland, the services of the steam-tug Sir W. W., 100 h.-p., and subsequently those of the steam-tug R. B., 60 h.-p., were accepted, and she was then towed into the London Docks. *The Union*, S. G. June 27, 1845.

V. 26,790*l.*—A. £400

687. The V. was stranded on the Gunfleet Sand. Five boats and twenty-two men were employed a month in discharging and getting her off. *The Vesta*, 2 Hagg. 189.

V. 1,000*l.*—A. £400

688. H.M. steamer V., in September, was aground on the Blyth Sand and in some danger. The steam-tug D., after services of short duration, got her off. *The Vulcan*, S. G. Feb. 23, 1860.

V. 49,268*l.*—A. £400

689. In March, about 6 a.m., a cargo of cotton in the 'tween-decks of the screw steamer W., 797 tons register, with a crew of twenty-nine hands from Pernambuco for Liverpool, was, about 178 miles S.W. by W. of Funchal, found to be on fire. All efforts to extinguish the fire were fruitless, and she was still on fire when she reached Funchal at 7-30 a.m. Captain N., a man of experience in such matters, who was just starting for England, was engaged to put out the fire, and by his directions and under his personal supervision the necessary steps were taken by Portuguese labourers, and after two days' hard work and some danger from

the fire, smoke, and red-hot iron deck and sides, the fire was extinguished. The re-stowage was carried out under Captain N.'s instructions, but he could not superintend it, as he had fallen from exhaustion down a hatchway and injured his spine. From this injury he still suffered on his return to England, which was delayed a fortnight. *The Warrior*, M. M. R. Feb. 24, 1882, p. 238.

Value 34,441*l.*—Award £400

690. The ship W., 1,088 tons, damaged, was making for Bahia, when, the weather being thick and hazy, she got on a reef off the Island of Staporica, near the coast of Brazil, and continued striking heavily at times. Part of her cargo was thrown overboard, and the master of the W. sent to H.M.'s consul at Bahia for assistance. The sloop S. came, and after services which lasted for four days, got the W. off the reef, and took her to Bahia. *The Washington*, S. G. April 2, 1855.

V. 11,719*l.*—A. £400

691. In September, the brig W. was in the North Sea with her mainmast gone, and hoisted signals. The wind was strong and the sea heavy. Her crew got on board the smack W., which lay by her all night, and in the morning sent some of her crew on board. Ultimately, with the assistance of the smacks S. Q. and B. L., the brig was towed to the Outer Bank Buoy, and thence by a tug to Grimsby. *The Washington*, M. M. R. Nov. 14, 1873, p. 1458.

V. 966*l.*—A. £400

692. The screw steamer W., in the prosecution of her voyage, arrived at Las Palmas on the 16th September, 1860. On the 18th, owing to an accident, she settled down, became a total wreck, and was abandoned by the master and crew. On the next day the crew were discharged and paid their wages, and were applied to by the chief mate to assist in saving the cargo remaining on board the W. After considerable exertions they succeeded in saving the greater part of the cargo. *The Owners of the Cargo on board the Warrior*, S. G. March 11, 1862; 7 L. T. N.S. 257.

V. 9,525*l.*—A. £400

693. In August, the W., from London for Kingston, Jamaica, with general cargo, was discovered by the tug V., 70 h.-p., value £3,500, close to the Roar Sand off Romney, riding by her port anchor in $4\frac{1}{2}$ fathoms of water, with only the mate and six hands on board. The wind was S. by E., right on shore, and freshening. About midnight it blew a whole gale with a heavy sea, and she started her anchor and began to drive. The V. was got as close as possible, a line was made fast, and the W. was with some difficulty got off the sand; her course was then shaped for Dover by signal, as no boat could live in such a sea, and she reached the harbour about 8 a.m. next day; but the roll of the sea increasing, she was taken on towards Ramsgate, and compelled to seek shelter in Margate Roads. Off Dover a pilot was obtained from the C., and the W. was taken into Westgate Bay till the gale abated. About 3 p.m. the following day she was towed to Gravesend and made fast. £300 to the V., £100 to the C. *The West*, M. M. R. February 7, 1879, p. 178.

V. 4,834*l.*—A. £400

694. In September, the screw steamer W., 132 tons register, joined the fishing fleet in the North Sea, and when about ten miles east of the Dogger Bank, about midnight, was found to be making water fast. The pumps could not touch the water when she was on that (the port) tack, and next day she was put on the starboard tack, but the donkey-engine and the bilge injection got choked with coal dust, and the bilge water put out the engine fires. In answer to signals, the smacks P. A. and P. came up, in a heavy sea and with a strong S.W. by W. wind. Six men from the smacks boarded the W., and pumped and baled her. The day after the smacks V., Vixen, T., and Pearl were engaged, and thirteen of the men of their crews helped to pump and bale the W. The Pet towed the W. from 10 a.m. to 3 p.m., when her rope broke. The smacks left and proceeded to Yarmouth, and the tug Lord A. P. next day took the W., which was then making $2\frac{1}{2}$ inches of water per minute, in tow, but cast her off when off Chapman Head, and the W. reached Barking Creek under steam in about twelve hours. *The Wellesley*, M. M. R. June 14, 1872, p. 752.

V. 4,000*l.*—A. £400

695. In June, the brig R., 253 tons register, from Gefle for London, with battens, deals, and iron, took the ground on the Dunfleet Sands between the Upper and Lower Middle Buoys. She was in a dangerous position, could not have been got off

without help, and would have gone to pieces if the weather had become tempestuous. By the assistance of seven smacks she was got off the sand, and ultimately conducted in safety to Gravesend. *The Rose*, M. M. R. November 20, 1869, p. 1491.

Value 1,832*l.*—Award £390

696. In October, in a heavy sea and gale from N.W., the Norwegian barque S. was discovered by the smack B., 77 tons, about fifty miles W. $\frac{1}{2}$ S. of the Spurn Light, dismasted, and pitching dangerously, with the sea breaking over her, and only one of her crew on board, in a very exhausted condition from exposure. The B., under double-reefed topsails, went to her, and some of her crew boarded the S. A hawser was made fast, which, however, after fourteen hours' towing, parted. The weather was too boisterous to admit of another hawser being made fast, so, after lying by her for three days, the B. departed, leaving two of her crew on board the S. The master of the trawler J. R., five hands, subsequently boarded the S., and found her bowsprit carried away, mainmast and foremast partly broken, her steering-gear broken, hatches carried away, and her anchor hanging overboard. She was rolling and pitching in a heavy sea. An anchor was let go, and the trawlers stayed by her all night. Next morning they commenced to tow. About noon, the trawler V., with six hands, came up, but could not get a hawser on board. About four, the hawser of the J. R. parted, and a hawser was got from the S. to the V. by two of the crew of the J. R. and two of the crew of the V., who boarded the S. The V. then towed her to the Black Bank. Here, the weather having moderated, the J. R. got a rope on board the S., and the two trawlers towed the S. to off the buoy on the Scroby Sand, where two tugs were hired, by which she was towed into Corton Roads. The S. was brought up here, the J. R. and the V. anchoring all night near her in the roads. Next day she was towed by the tugs into the harbour. *The Syster*, M. M. R. April 1, 1881, p. 393.

V. 927*l.* 14*s.*—A. £380

697. In November, the screw steamer G., 1,097 tons, from Nicolaieff to Alloa with barley, with a broken shaft and under sail, was flying the signal N. C., when she was sighted by the screw steamer L., 1,099 tons, from Taganrog to Malta with rye, in a heavy swell with strong wind. The G. was quite helpless, and the L. towed her during bad weather to Malta, a distance of about 165 miles. *The Gran-tully*, M. M. R. February 15, 1884, p. 103.

V. 31,497*l.*—A. £380

698. In March, the barque P., 721 tons, during a strong gale, making signals of distress, totally dismasted and helpless, about eighteen miles from the Scilly Rocks, and driving in that direction. She was discovered by the iron steamer L., 633 tons register, from Liverpool for Lisbon and Africa, value £13,531, with mails and one passenger, and the L., by request, stood by her during the night. Next day, after three unsuccessful efforts, during which a boat was carried away, a rope was got on board and made fast to the mainmast of the L., and the P. was taken in tow and brought into Falmouth. The L. in consequence of the service lost the African mail, and was detained five days at Oporto. *The Pembrokeshire*, M. M. R. December 27, 1878, p. 1651.

V. 1,100*l.*—A. £380

699. The T. and M. was stranded on the Middlebank, off the mouth of the Humber, and abandoned by her crew. Some men in the lifeboat from the Spurn lighthouse, and the crew of a smack, twenty-two in all, took possession of her, and by working at the pumps and baling out the water, they removed her from the reef, and engaged a steamer to take her in tow, but after conducting her some distance the steamer was compelled for her own safety to cast off the ship. She was then beached, and after undergoing temporary repairs was towed by another steamer into Hull; the services lasted two days. *The Thomas and Mary*, S. G. July 14, 1848. V. 1,150*l.*—A. £380

700. In January, the screw steamer F., with six hands, in ballast, from Rye to Seaham, was blown E. from her course in a heavy gale, shipped a quantity of water, and broke her bilge pumps. She was without coal, and with her pumps choked. Her crew were all knocked up. The smack M. A. B. came up and launched a boat, made fast a trawl-warp, and sailed ahead towing her. The smack H. then came up to assist, and some of the smacks' crews went on board and helped to bale her out. The F. after three days was got safely into Yarmouth Roads, whence a tug took her into harbour for £70. *The Ferrifer*, M. M. R. April 27, 1883, p. 524.

V. 1,100*l.*—A. £375

701. In October, the barque P. R. was found derelict in the North Sea by the smack Z., and taken by her in tow and into port, the Z. losing by collision her trawl and warp, as the P. R. was unmanageable and would not steer. The value of the trawl and warp and time taken up in repairs amounted to £170. *The Peter Rolt*, M. M. R. Dec. 16, 1881, p. 1585. Value 580*l.*—Award £375

702. The P., when within several days' sail of the Falkland Islands, sighted a boat, belonging to the B. J., which had been burnt, and rescued the crew (who were quite exhausted and unable to save themselves), together with a case of gold in bars. A case of *salvage* was admitted. At the time the salvage was awarded no regard was paid to the fact that, together with the gold, the crew also were saved, because the law when making salvage awards takes no account of the saving of human life, as if it did the persons saved would also be obliged to contribute to the salvage. No danger, exertion and loss of time were incurred. *The Pymont*, Hamburg, H. G. Z. 1869, p. 280. [German.] V. 4,000*l.*—A. £375

703. The R. C., a long river steamer intended for inland navigation in India, stripped of her engines and machinery, and rigged as a three-masted schooner, and proceeding to Calcutta under canvas, was off Cape Clear when the wind came on to blow heavily. The next day the step of the foremast gave way, and the weather became so thick and dark that the master could not tell where he was, and the crew refused to work, and insisted on the master making for the nearest port. On the following day he found himself off the coast of Waterford, having drifted upwards of fifty miles to the eastward of his intended course. He hoisted an ensign, union down, for assistance. The H. screw steamer, from Liverpool to Limerick, with a valuable cargo, came up with the R. C., and having made fast took her in tow up to Passage, where, after five hours' towing, a distance of about nineteen miles, she was safely anchored. The court looked upon the service as an ordinary salvage service performed with skill, good conduct and success to a vessel in imminent peril. *The Rothsay Castle*, 2 Asp. 206; 9 Ir. Jur. N.S. 360. V. 1,500*l.*—A. £375

704. In January, during a moderate gale from S.E., with a flood-tide of two to three knots, the weather being dark and rainy, the iron screw steamer N., 2,367 tons register, was discovered by the tug T. in the Mersey, lying unmanageable and head upon tide, with her stern deeply imbedded in the port side of the mud-hopper No. 4. The tug Lord L. also came up, and the two tugs alongside each other made fast to the starboard side of the hopper, the N. steering astern, and after towing for twenty minutes the N. was got clear with the loss of her stern. The mud-hopper was beached by the Lord L., and the N. proceeded down the river, anchored till evening, and was then docked. The expenses and damages of the salvors, amounting to £188 allowed. The court allowed £372 against the N. besides £188 against the mud-hopper, for which see No. 1020. *The Nieva*, M. M. R. April 10, 1879, p. 466. V. 103,235*l.*—A. £372

705. The sloop T. S., in a hurricane, was between the Scroby and Corton Sands, damaged, and with a flag of distress flying. The steam-tug D. endeavoured to take her to Yarmouth Harbour, but failing, took her to Lowestoft Harbour. *The Two Sarahs*, S. G. Jan. 18, 1861. V. 1,351*l.*—A. £371

706. In April, the screw steamer M., from Hamburg to King's Lynn, with a general cargo, 130 miles E. by S.½S. from the Humber, was discovered by the screw steamer L. in a position of danger, having broken her screw shaft and without steam power. The L. took her in tow to Grimsby Roads, a distance of 130 miles, where she came to anchor on May 1. The L. was delayed three days in her voyage by these services, which lasted twenty-four hours. *The Middleton*, M. M. R. July 31, 1874, p. 976. V. 22,055*l.*—A. £370

707. In December, the ship O. was found, fifteen miles from Yarmouth, amongst numerous sandbanks, derelict, waterlogged, and with no rudder or anchors. The smacks R. and N. Y. managed to tow her five miles, the weather being squally, with hail, wind fresh, after which she was taken in tow and beached at Yarmouth by the tug E. *The Otto*, M. M. R. March 3, 1876, p. 280. V. not stated.—A. £370

708. The brigantine E. had nearly all her canvas carried away, the sea was making a complete breach over her, and her crew were exhausted. A smack and a lugger boarded the E. with difficulty, and worked at her pumps. The smack towed the

E. some distance, when a steam-tug was engaged by the smack, and the E. was towed to Yarmouth. Services from the 1st to the 4th of February; salvors' loss estimated at £100. *The Exhibition*, S. G. July 26, 1858.

Value 1,800*l.*—Award £363

709. The brig D. was ashore on the Western Dry Rocks. The master carried out his anchor and laboured throughout one tide to heave the vessel off, but without success. He then employed wreckers, who carried out two of their own anchors, tipped the vessel by removing casks of water, the chains, and other articles on deck from forward to aft, and at the first high water occurring after their employment heaved the vessel off. *The Darien*, Files of Court, 1857, cited in Marvin, 221. [American.]

V. 2,200*l.*—A. £360

710. In January, the wind being strong E.N.E., with snow squalls, and the sea heavy, the three-masted schooner H., from Norway to London, with battens, was discovered stranded on the Heap Sands by the smacks C. and D. Six of the crew went on board and took charge of her. The smacks P. and M. A. then came up. Another boat's crew tried to get to her but failed, owing to the heavy sea; but in half-an-hour's time three boats, doubly manned, got to her; their crews boarded her; and, in spite of heavy seas breaking over her, cleared the ropes and gear, and got her anchors ready, in the event of her coming off, which she did shortly after. The sea being too heavy for towage, she drifted into seven or eight fathoms, and was then brought up. The C. went to Brightlingsea and telegraphed to Harwich for a tug, which came up next morning, the other smacks standing by the H. meanwhile. The D. was made fast astern with two hawsers to steer her, and she was brought into Sheerness in about five hours. *The Hebe*, 4 P. D. 217; M. M. R. May 16, 1879, p. 628.

V. 750*l.*—A. £360

711. The brig J. and H. was in considerable danger of being lost, when she was succoured by the smacks F. and V., whose services, though not involving any risk of life or property, were valuable, and lasted four days in bad weather. £120 for losses and expenses included in the salvage. *The Jane and Harriet* (Lowestoft Co. Co.), M. M. R. Feb. 14, 1873, p. 210.

V. 1,200*l.*—A. £360

712. In December, the M. E. C. was off Dover, deserted by her crew, and bumping on the rocks, in a damaged condition, the result of a collision, and drifting on the end of the north pier, against which she struck with great violence. Three men jumped on board from the pier at the risk of their lives, and set the staysail, in order to cant her head towards the harbour and draw her off from the pier. Afterwards the crew of the boat H. got on board, and the crew of the Q. were engaged in carrying out ropes. After great difficulty in preventing collisions with other ships, she was, with the aid of the tug P., got to a safe berth and secured. £200 to the three men, £50 to the H., £20 to the Q., £90 to the P. *The M. E. Clarke*, M. M. R. March 12, 1870, p. 337.

V. 12,000*l.*—A. £360

713. The P. was amongst sand banks in, to her, totally unknown waters near Amrum, and had just been aground upon a sand bank when two pilots arrived with their boats and assisted to bring the vessel into safety. *The Paraguay* (Assistance), Hamburg Mercantile Law Journal, 1869, pp. 193, 194, 205. [German.]

V. 50,000*l.*—A. £360

714. In October, the screw steamer P., 486 tons, was discovered by the smack O. P. during a heavy gale and in a heavy sea with her steam power useless and making water, about eighty miles E. by N. of the Spurn Point. The O. P. stayed by her till next morning, when the smack M. came up. The gale was then increasing. The two smacks took her in tow, one ahead of the other, and next morning brought her into the Humber to the Hawks Roads, where a tug was obtained, which, with the assistance of the smacks, towed her into Grimsby Dock basin. £200 to the O. P., £160 to the M. *The Prospero*, M. M. R. Jan. 14, 1876, p. 43.

V. 6,582*l.*—A. £360

715. In November, the barque A. W., from Middlesboro' for Mollen (Peru), with iron, grounded on the Long Sand Bank. Seven smacks, after services lasting four days, by assisting to throw the cargo overboard and laying out anchors, succeeded in getting her off. The weather was boisterous. *The Albert William*, M. M. R. Feb. 9, 1872, p. 177.

V. 7,360*l.*—A. £350

716. The steamer A. was off Dartmouth with her engines disabled, and her canvas was insufficient to enable her to reach the shore. Two sloops towed her to Dartmouth Harbour. *The Alexandre*, S. G. March 31, 1854. Value 8,000*l.*—Award £350

717. In December, the Norwegian barque A., 338 tons register, from Wilmington to London, with cargo, was lying at anchor by her starboard anchor (having lost her port anchor, about two miles N.E. of the North Foreland, when her starboard chain parted. She was found by the steam-tug D., 135 tons register, in very bad weather. A hawser was got on board and the D. began to tow, but owing to the rolling and pitching of both vessels the hawser parted. Another being made fast to the D. she took the A. to Dover, and held her there till 10 p.m., taking her to Gravesend by 11 a.m. next day, and eventually to the West India Dock buoy at Limehouse. *The Amazon*, M. M. R. Feb. 10, 1882, p. 172. V. 11,415*l.*—A. £350

718. Two smacks went out to a steamer in tempestuous weather twelve miles from land. The steamer had been swept by a sea, and had lost her chimney, masts, and bowsprit, beside the master and seven seamen; she was in great distress and peril, with thirty-two passengers on board. The smacks got the passengers on board their vessels, and towed the steamer into harbour, breaking two hawsers. *The Ardincaple*, 3 Hagg. 151. V. 1,265*l.*—A. £350

719. The barque B., 413 tons, met with tempestuous weather in the North Sea, and sprang a leak; the sea was breaking over her, the wind at the time blowing a complete hurricane, the pumps were choked, the crew, in an exhausted state, were baling out the water with buckets, and she had a signal of distress hoisted. The smack R. D., with five hands, went to her, and the master, at the risk of his life, boarded the barque, and with great difficulty prevailed upon two of his men to accompany him. The services lasted from the 17th to the 19th November, when having succeeded in conducting the barque to about ten miles from Yarmouth Roads, the smack went for a steamer, by which the B. was towed into a place of safety. *The Bilton*, S. G. March 4, 1848. V. 9,750*l.*—A. £350

720. The C. L., 372 tons, having struck upon the Cross Sand, unshipped her rudder, became waterlogged, and was in considerable danger. Two yawls, manned by thirty-two men, at considerable risk brought her into Yarmouth Roads. *The Charlotta Letitia*, S. G. Jan. 21, 1848. V. 1,867*l.*—A. £350

721. In November, the C., in distress off Yarmouth, was assisted in a meritorious manner by twenty-six men in three boats. *The Circassia*, S. G. Feb. 12, 1840. V. 3,000*l.*—A. £350

722. The French barque D. S. got on the Hasborough Sand in a very dangerous position. The yawl N. D. went out to her, but the master and crew would not allow the yawl's crew to board her; the master and crew afterwards left her, and were taken ashore by the lugger N. L.; the crew of the N. D. then boarded the barque, and succeeded in getting her off the sand, and conducting her to Yarmouth. *The Deux Seurs*, S. G. May 25, 1857. V. 1,145*l.*—A. £350

723. In January, the barque D., from St. Domingo for Liverpool with mahogany and logwood, when off the Skerries, was taken in tow by the steam-tug K. T., and, from circumstances, it became impossible to perform the towage services; but the K. T. performed services beyond towage during tempestuous weather, and preserved the D. from great peril. *The Dilla*, M. M. R. May, 1872, p. 562. V. not stated.—A. £350

724. In March, during exceptionally severe gales, the Norwegian barque E., 220 tons register, at anchor off Seacombe Ferry, in the Mersey, dragged her anchors, and came into collision with the steamer H., bumping against her, and doing great damage. The tug K. of M., 131 tons gross register, 326 h.-p., value £4,000, got a hawser on board, towed her ahead, got her clear, and held her. She then towed her clear of another vessel that had dragged her anchors, and held her between Seacombe and Egremont Ferry till orders came to tow her to Garstow, where she was taken and safely docked. The service lasted twelve and a-half hours. *The Einar*, M. M. R. May 26, 1882, p. 654. V. 8,697*l.*—A. £350

725. The Italian brig E., laden with oil, was, on the 3rd and 4th December, anchored in the vicinity of the Holm Sand in a very dangerous position, the wind

blowing heavily from the eastward, and a heavy sea running. The brig had two flags flying, which were observed by the lugger *M.*, manned by a crew of eleven hands, returning in consequence of bad weather from a fishing voyage with about half a cargo of herrings on board. The lugger proceeded towards the brig, but owing to the tremendous sea the crew were unable to board her, and they made for Pakefield Gap. The signals on board the brig were shifted, and the salvors returned, and after several ineffectual attempts two men at last boarded her, at the imminent risk of their lives. The salvors slipped the cable, succeeded in extricating the brig from the breakers on the Holm Sand, and took her into Yarmouth Roads. The Trinity masters considered that the brig should have been anchored under the lee of the Holm Sand, and there was no necessity for taking her to Yarmouth. The court considered it an error of judgment only. *The Eugenia*, S. G. June 19, 1850.

Value 5,350*l.*—Award £350

726. The brig *G.* off Gravesend, with a strong breeze from the east, and a nasty sea, engaged the steam-tug *C.* to tow her to the North Foreland for £15. The brig's hawser broke twice, and she drove rapidly towards the Tongue Sand. A nine-inch hawser of the tug was then bent on to the brig's hawser, but the lashing shortly afterwards broke. The brig's starboard bower anchor was let go, but the chain parted; the brig's second anchor was let go, and she was then very near the sand; her windlass was gone, and the tug with great difficulty dragged her out clear of the sand, and towed her to the London Docks. *The Galatea*, S. G. May 22, 1858. V. 11,750*l.*—A. £350

727. In December, the steamer *G. H.*, 1,024 tons, was aground on the Inner Bank Sand, three-quarters of a mile from the Spurn, in a heavy fog, with little wind and calm sea, and strained. She was taken hold of by the tug *U.*, which tried in vain for two hours to get her off the sand. The tug *W.* coming up, the two tugs got her off and towed her to Grimsby Roads, where she was anchored, the two tugs staying by until next morning, when they again took hold; but owing to the fog, she grounded on the Skilter Bank, and remained an hour thereon, straining herself very much. They got her off, and took her, in her damaged state, increased by a collision with another steamer on the way up the Humber, to an anchorage off Victoria Dock. The services lasted two days and seventeen hours. *The Golden Horn*, M. M. R. June 2, 1876, p. 683. V. 32,000*l.*—A. £350

728. The steam-dredger *G.*, was run into by a steamer in the Thames, and was sinking fast. The steam-tug *P.* cast off a ship she was towing, and towed the *G.* ashore. The tug grounded and received some damage. Services lasted two hours. *The Goliath*, S. G. Feb. 13, 1860. V. 3,265*l.*—A. £350

729. In February, the iron steamer *H. T.*, 975 tons register, aground on the North Cheek Rock, eight miles off Scarborough, was got off by the paddle steam-trawler *F. M.*, with the assistance of the tugs *E.* and *V.*, and taken by the *E.* to Newcastle. *The Hugh Taylor*, M. M. R. May 12, 1882, p. 596. V. not stated.—A. £350

730. The steamer *I.*, 441 tons, took the ground near the island of Saltholm. The steamer *G. Q.*, after fifteen hours' service, got her off. *The Irvell*, S. G. Nov. 28, 1856. V. 15,613*l.*—A. £350

731. The brig *J.*, laden with a general cargo, and having on board seven-five emigrants, struck on the English Bank, off the mouth of the Rio Plata. H.M. sloop-of-war *T.* went to her assistance, and her crew and passengers having been landed, the *T.* conveyed the cargo to Monte Video, where it was sold, and the proceeds, amounting to £1,800, transmitted to England. The services lasted from the 5th to the 10th February, during which time the weather was occasionally very boisterous. *The Jane*, June 4, 1851. V. 1,800*l.*—A. £350

732. In February, the *J. B.*, from Yarmouth for Belfast with flour, ran aground on the Scroby Sand. She was eventually, after much difficulty and danger, got off and brought into harbour, full of water, and only kept up by her cargo. *The Jessie Brown* (Yarmouth Co. Co.), M. M. R. April 30, 1875, p. 551. V. 1,529*l.*—A. £350

733. In November, the wooden-built ship *J. B.*, 1,968 tons register, from San Francisco for Liverpool, with a cargo of grain, was attempting to enter the Canada Dock Basin in tow of two tugs, during a gale and on a high tide. One of the tugs, the *G. B.*, was obliged to let go her hold to avoid another tug with flats in tow, which

passed close under the G. B.'s bows. The J. B. in consequence was driven by the force of the gale on her port side into dangerous proximity to the sea-wall or jetty on the north side of the basin. The tug M. was hailed, got a hawser on board, disconnected her engines, began to tow, and ultimately got the J. B. to an anchorage at the Stoyne. *The John Bryce*, M. M. R. Feb. 17, 1882, p. 206.

Value 37,368*l.*—Award £350

734. The schooner L. B., having lost her mainmast and sustained other damage in a storm, was about thirty miles off the Dutch coast, driving towards the shore, with a signal of distress flying. The fishing smack P. A., with great difficulty and risk to the lives of her crew in consequence of the heavy sea running, succeeded in taking her in tow, and conducted her to Yarmouth Roads. *The Lady Brougham*, S. G. May 12, 1853.

V. 2,131*l.*—A. £350

735. The L. having taken the ground on the Blankanese Bar, was warped over and continued her voyage, and on the 28th February, two or three days afterwards, she was found to be making a large quantity of water. She made but little progress, and the crew having become exhausted from excessive exertions in pumping, preparations were made for abandoning her, and the compasses and other articles of value were stowed in the boats. A breeze, however, springing up, the crew determined to remain on board. At this time she was descried by two fishing luggers, manned by twelve hands, and their services being accepted she was, on the 2nd March, placed in safety in the Humber. *The Letitia*, S. G. June 17, 1847.

V. 4,207*l.*—A. £350

736. In April, in the English Channel, the fishing smack F. fell in with the M., derelict and bottom upwards. The F. proceeded to Plymouth, and obtained the assistance of the sloop B., and subsequently of the steamer, Sir W. R., 100 h.-p. The three vessels made several attempts to tow the M., but were prevented by heavy weather which came on and compelled them to leave, but they afterwards returned to the wreck, and renewed their attempts to tow her. On the morning of the 23rd April two of H.M.'s steamships took possession of the wreck. *The Magdalen*, S. G. Nov. 30, 1861.

V. 2,437*l.*—A. £350

737. In December, the brig M. S., 217 tons, from Lilt Cove to Swansea was discovered by the screw steamer O., 854 tons, sixty miles S. of Falmouth, unmanageable, much damaged, with only one small boat, and drifting at the rate of two knots an hour. After twenty-seven hours towing she reached Falmouth Harbour. The O. was delayed about forty-five hours, and was injured to the extent of £70. *The Martha Stevens*, M. M. R. Nov. 12, 1875, p. 1455.

V. 3,650*l.*—A. £350

738. In January, the schooner M., 139 tons, with crushed sugar from Amsterdam for Genoa, struck heavily on the Goodwin Sands. The master and crew left the schooner to reach a red light that appeared to the W. by N., but owing to the fog were unable to do so, or to regain their own vessel, and got on board a vessel riding off Broadstairs till morning. The wind changed, and they could not get to the schooner, and consequently rowed towards Ramsgate Harbour for assistance, met a steam-tug, the A., and arranged with her to go out and fetch the schooner. Just as the A. was starting, the schooner appeared coming under canvas towards the harbour. The lugger T. had found her derelict, striking heavily on the sand; with her top-sails and topgallant sails clewed up, mainsail and boom foresail lowered on deck, and the jib half lowered, drifting with the flood-tide higher on to the sand. The decks and cabins were strewn with jackets, books, charts, chronometers, &c., and the throat halyards of the boom foresail and the topsail sheet whip had been cut. All betokened a hasty abandonment. The T. got the schooner off the Sands, and steered her safely for Ramsgate. *The Mizpah*, M. M. R. April 20, 1867, p. 497.

V. 5,578*l.*—A. £350

739. The schooner N. U. having been run into by a steamer, was conducted by her to Shoebury Sand, where she was in imminent danger, when five smacks went to her assistance, and after lightening her conducted her to St. Katharine's Docks. *The New Union*, S. G. April 16, 1853.

V. 5,930*l.*—A. £350

740. The brig N. was at sea, about fifty miles from Lowestoft, derelict. Four smacks took her in tow, and she was brought up off Yarmouth Harbour. A steam-

tug was procured for £10, and she towed the brig to Lowestoft. Smacks' loss of employment, £100. *The Norman*, S. G. Jan. 26, 1859. Value 850*l.*—Award £350

741. In August, the brig P. damaged in a collision off Hythe was towed to Ramsgate by a steamer bound for Guernsey, value £1,300, with passengers, which incurred loss by her delayed arrival at Guernsey. *The Peto*, S. G. Nov. 27, 1840.

V. 10,360*l.*—A. £350

742. In July, the Norwegian barque P., 431 tons, from Miramichi for Hull with deals, got ashore during a fog on the main, off Seaford. The tug V. proceeded to her assistance, and brought her in safety to Newhaven. *The Presto*, M. M. R. Feb. 4, 1865, p. 147.

V. 2,650*l.*—A. £350

743. In January, the barque O., 403 tons, from Odessa for Leith with wheat, when about 100 miles from Dungeness, close-hauled on the starboard tack, under all plain sail, with the wind light from E. by N., was run into by the screw steamer G. V., and her mainstays and mainrail were carried away, her port main rigging stretched, her mainsail and foretopsail and foreyard damaged, and she was disabled. A boat from the O. went to the G. V., and it was agreed that the G. V. should tow the O. In approaching her for this purpose, the G. V. again came into collision with the O., and carried away her jibboom, bowsprit, figure-head, head-boards, cutwater, and head-gear. The G. V. then steamed away to a distance, and the steam-tug C. in nineteen hours towed the O. into Gravesend. *The Onyx*, M. M. R. March 17, 1871, p. 335.

V. 9,500*l.*—A. £350

744. In March, the screw steamer S., 1,102 tons register, 120 h.-p., lost her screw, some bulwarks, and two starboard boats. Nearly all her canvas had been blown away, she was lying completely unmanageable, with the sea making a clean breach over her, and her provisions were getting short. She was fallen in with by the screw steamer N., 1,055 tons gross register, 95 h.-p. nom., with iron and tin from Cardiff for Galatz, 160 miles east of Malta. By means of a lead line made fast to a ladder, one 11-inch hawser was, after four hours' work, got on board the N. from the S., and the N. towed the S. for four days and nights, in tempestuous weather, into Malta Harbour. During the towage the hawser broke once, and a new hawser was taken on board the N. from the S. at considerable risk. *The Sappho*, M. M. R. July 24, 1870, p. 977.

V. 18,000*l.*—A. £350

745. The barque S. L. grounded on the lower end of the Roar Sand. The lugger L., with great difficulty and risk from the violence of the wind and very heavy sea, succeeded in getting near the barque, the master of the lugger boarded her, and by his advice the cargo was ultimately taken out, and she was towed off by the lugger to London. *The Sarah Love*, S. G. July 18, 1861; 7 L. T. N.S. 222.

V. 10,000*l.*—A. £350

746. The ship S., 746 tons, near Seaford Head, was embayed, and riding by a warp to her stream anchor half-a-mile from the shore; wind W.S.W., weather foggy. The steamer L., of 400 tons, at Newhaven, got up steam, went to the S., and towed her to Spithead. *The Sumatra*, S. G. June 21, 1859.

V. 54,166*l.*—A. £350

747. In December, the screw steamer T., 496 tons and 90 h.-p. nom., from Newcastle for Havre, with seventeen hands and a cargo of coal, fouled the chain of a schooner. The chain became entangled in the propeller of the T., and parted outside the schooner's hawsepipe. The T. anchored in the track of up and down vessels, about a mile inside the N.W. Knoll Buoy of the Goodwin Sands, in about five fathoms, by a chain cable from her stern. In answer to signals, the galley S. G. and the lugger C., with ten hands, came up, and after much difficulty, owing to the severe weather, succeeded in clearing the T.'s propeller. The S. G. fetched the tug S., 52 tons, 80 h.-p., which with much difficulty brought the T., after seven hours' towage, to Gravesend. *The Temon*, M. M. R. March 31, 1882, p. 398. V. 100,000*l.*—A. £350

748. The ship T. was lying within her own length of a ridge of rocks, and within a cable's length of the beach, on the coast of North Wales. She had unshipped her rudder, the wind was blowing hard dead on shore, the sea was rolling in, and the ship was in great danger, it being the season of the autumnal equinox. The steam-tug U. S., on the look-out for vessels, offered her services, which were accepted, and while the rudder was being shipped the steam-tug C. of L. came up. Both tugs took the ship in tow, and having proceeded three miles a third steam-tug, the V., came

up, and the master of the T. engaged her also. After great risk from the state of the weather the tugs towed the T. into the Mersey. Services about twenty-four hours. The V. had accepted £52. *The Tigris*, March 25, 1850.

Value 42,962*l.*—Award £350

749. The T. F. struck on a reef of rocks near the island of Cuba, and was abandoned by her crew. Another vessel was abandoned near the same spot, and her crew in their boats having fallen in with the T. F. got her off the reef, and brought her to England. *The Two Friends*, 8 Jur. 1011.

V. 1,237*l.*—A. £350

750. The barque V., in the vicinity of Beachy Head, being much disabled by a collision, hoisted a signal for assistance. The lugger S. came up, and was employed by the master of the barque to procure a steam-tug, which towed the barque to the West India Docks, the lugger attending her. The services occupied five days and a-half. *The Vancouver*, S. G. Dec. 17, 1846.

V. 5,000*l.*—A. £350

751. In October, the schooner V., 107 tons, was found by the smack P., 56 tons, between the Leman and Hasborough Sands abandoned and making water, with all her sails set, and carried by the wind (N.W.) and the tide (ebb) towards the Lowestoft Sand. The weather was fine but hazy. A seven-inch trawl warp, 110 fathoms long, was made fast, and the V. was steered and towed through the Hasborough Gat for the Cockle Gat and Yarmouth Roads; but a tug came up at Cockle Gat and towed the V. into Lowestoft for £18. *The Volunteer*, M. M. R. Feb. 2, 1877, p. 147.

V. 1,880*l.*—A. £350

752. In June, the steamer G., about 3,000 tons gross, from Hankow for London, with tea, broke her main shaft in the Indian Ocean, and was under sail but unmanageable. On the 26th the steamer Glenavon, 2,985 tons gross, with tea, from China for New York, fell in with the G. and towed her for 900 miles on her voyage, till her shaft was repaired and she could go at some speed; after which the two vessels kept company until July the 5th, when they parted. The G. ultimately reached London in safety. *The Glenfruin*, S. G. April 2, 1885, p. 215.

V. 158,000*l.*—A. £340

753. In January, the captain of the smack N. S., when fishing at the east of the Doggerbank, observed the ship H. with a flag of distress flying. Abandoning his net, worth £50, he bore down on her, and found she was a derelict, with neither compass nor provisions aboard. With great difficulty, the sea being very heavy, he got on board the H. It took ten hours to get the ship to rights and fasten a tow-line from her to the N. S. The N. S. then tried to tow the H., but the wind was too strong. Next morning the smack Noord See came up, the captain of the N. S. got five men and some provisions from her, and both vessels began towing the H. With much labour and difficulty they got her to within five miles of Shields, where they engaged the services of a tug for £35, and ultimately a second for £5. She was then taken into Shields. *The Hendrik* (North Shields Pd. Co.), M. M. R. Jan. 29, 1870, p. 140.

V. 600*l.*—A. £340

754. In February, the French schooner A. et L., from Nantes for Leith, with wheat and flour, was stranded at Holy Island, and was got off, badly damaged, leaky, and with unshipped rudder, by sixty-five fishermen belonging to the island. *The Auguste et Louise* (Arb.), M. M. R. March 26, 1875, p. 395.

V. not stated.—A. £335

755. In September, the French steamer A. came into collision with the steamer Bancia, and was so much damaged that her master, on the advice of the master of the tug C. of L., beached her on the Roar Sand, near Dungeness. Part of her cargo was discharged, and she was lightened by a master mariner named Groves and forty labourers. The tug then went to Dover, fetched some cement, with which the bows of the A. were patched up, and by careful towing along the land she was taken into the outer harbour of Dover. £300 to the C. of L., £30 to labourers. *The Antelope* (Cinque Ports Ad. Co.), M. M. R. Jan. 24, 1872, p. 1524.

V. 4,500*l.*—A. £330

756. In October, the iron barque T., for Liverpool from New York, dragged foul of another vessel off Egremont, and her head was falling athwart the other, which was paying out cable, when she was taken hold of and towed clear, in half an hour, by the tug R. S., which, with great difficulty and danger, held her for six hours, and then took her to a safe anchorage. *The Toracour*, M. M. R. June 11, 1875, p. 743.

V. 58,000*l.*—A. £330

757. The smack P., off Flamborough Head, fell in with the brig M., 143 tons, derelict, with four feet of water in her hold and her pumps choked; wind W.N.W. and sea high. Some of the crew of the P. boarded the M., and baled her with buckets, and the P. took her in tow, and with another smack, the W., conducted her to Yarmouth. Services lasted four days, and were attended with severe labour and risk to life. *The Minerva*, S. G. Nov. 8, 1860. Value 650*l.*—Award £325

758. In December, the iron barque P., 429 tons register, fourteen hands, from Samanco, Peru, to Liverpool, with sugar, was in the Irish Channel heading S.S.E. in hazy weather with a light W. by S. breeze, the tide nearly high water, and she was in dangerous proximity to the Gynfelin Patches. The master did not know his position, and mistook the South Arklow Light for the Kish Light. The wind having freshened to a gale, the P. was seen about ten miles off Newquay by the captain of the lifeboat, who, after much difficulty boarded the P., and gave directions by means of which she was rescued from her perilous position and got safely to Liverpool. The service lasted about twenty-two hours. *The Pacific*, M. M. R. Feb. 13, 1880, p. 206. V. 18,750*l.*—A. £325

759. The barque S. G., 368 tons, having been on shore, received some injuries which rendered her rudder useless, and she was in a position of some danger, being in the locality of the Goodwin Sands. The steam-tug C. went to her assistance, took her in tow, and towed her into Ramsgate Harbour. The services were attended with some difficulty and danger, owing to the unmanageable state of the barque. *The San Giovanni*, S. G. May 5, 1863. V. 4,000*l.*—A. £325

760. In December, the brig C., from Rio Nunez, for Marseilles, with ground nuts, whose crew of eight hands were nearly all ill, her mate dead, and her master dying, was boarded by the mate of the Norwegian ship T., who took charge of her and brought her to Gibraltar in twenty-two days. *The Cygnus* (Marseilles Trib. of Com.), M. M. R. Aug. 5, 1881, p. 971; on appeal, M. M. R. July 28, 1882, p. 942. V. not stated.—A. £320

761. Salvage services were rendered by twenty-two salvors to a vessel driven on shore off Margate during a heavy gale of wind. *The Emma*, 8 Jur. 651. V. 3,000*l.*—A. £320

762. The J. and A. took the ground on the edge of the Ower Sand, on the Norfolk coast, and though she got off, she became extremely leaky, unshipped her rudder, and drifted about in a waterlogged state between the Leman and Ower Sands. She at length anchored on the western elbow of the latter, and four men proceeded from the light vessel to her aid, but could not render effectual assistance. A pilot vessel and a fishing smack, with the four men from the lightship, in three or four days conducted the J. and A. safely into Yarmouth. *The James and Ann*, S. G. Jan. 13, 1847. V. 2,479*l.*—A. £320

763. The Norwegian barque N. got on the west end of the Mouse Sand, and was in extreme peril, from which she was extricated by a steamer, four fishing smacks, and two watermen. £140 to steamer, £160 to smacks, £20 to two watermen. *The Norden*, S. G. Dec. 13, 1853. V. 2,400*l.*—A. £320

764. In February, the three-masted schooner N. from London to Kingston (Jamaica), with general cargo, had sustained severe damage in a collision. She was boarded off Dungeness by two of the crew of the lugger F., 20 tons. There was a whole gale blowing from N.W., with squalls of sleet and snow, and a heavy sea. The F., leaving some of her crew on board, went in search of a tug, while the N., with the aid of the men of the F., left on board her, was kept from driving to leeward on to the French coast. The F. then came up with the tug G. P., which towed the N. during a terrific gale in about 6½ hours to Dover Harbour, breaking one hawser, and nearly drifting on to the Varne Sand on the way. £250 to the G. P., £70 to the F. *The Nellie*, M. M. R. April 20, 1877, p. 500. V. 20,000*l.*—A. £320

765. In October, in answer to signals from the schooner S. C., 149 tons, from Rancoon to Newcastle, with salt, which had lost her masts in bad weather in the North Sea, and had to lay-to with a drift anchor, the smacks S., 89 tons, value £1,400, and A. came up. The S. C. was in a very dangerous position off the Outer Dowsing in a heavy gale, with the sea making a clean sweep over her. The master and crew of the S. C. were got on to the S. with great difficulty, and a tow-ropes was

put on board the S. C. Five of the combined crews boarded the S. C., which was towed all through the night and the following day during a heavy gale and in a high sea, pumping going on all the time. Next day she was off the Spurn, and taken in tow by a tug safely to Hull. Owing to being shorthanded the S. came into collision with another vessel, and had to pay £60 damage. *The Silver Cloud*, M. M. R. April 29, 1881, p. 521. Value 786*l.*—Award £320

766. In February, the iron screw steamer T., from Ghent for London, laden with a general cargo, with a broken propeller shaft, and sailing under fore-and-aft canvas, was sighted close to the Kentish Knock by the L., forty-one tons, with fish for Ramsgate. The L. towed her towards Lowestoft, and when the T. was about three miles N.E. by E. of the Kentish Knock, the wind being S.W. or W.S.W., and the sea nasty, the smacks E., sixteen tons, and the A., fifteen tons, each valued at £500, made fast, and the three towed her to Harwich in about two hours. *The Troubadour*, M. M. R. June 28, 1878, p. 813. V. 3,763.—A. £320

767. The brig P. was derelict, about fourteen miles from the Lizard Lighthouse. The barque F. B. towed her in nine hours to Falmouth. *The Parvitz*, S. G. May 7, 1851. V. 1,250*l.*—A. £312

768. The schooner At., derelict, with three feet of water in her hold, was fallen in with by the smacks Al. and P. in the North Sea, about seventy miles from the English coast. The smacksmen having boarded her at some peril took her in tow for two days, when they arrived off Winterton. The steam-tug E. was there engaged by the smacksmen to tow the schooner and smacks into Yarmouth harbour. By the misconduct of the tug the schooner and the smack Al. were driven on the beach, and the tow-rope was broken. The smacksmen on board the schooner left her; and the rest of the crew of the Al., about two hours after the accident, went into the harbour to obtain assistance. Whilst they were away a large party of boatmen launched two yawls, proceeded to the At., took possession of her, and by laying out anchors, and heaving on them, got the At. off next morning at high tide. *The Atlas*, 1 Lushington, 508; S. G. Nov. 26, 1861. V. 637*l.*—A. £310

769. In March, the ship W. S., 2,239 tons, from Port Phillip to London with passengers and very valuable cargo, off Newhaven, engaged the steam-tug A., 120 tons, with disconnecting engines of 60 h.-p. nominal, 120 h.-p. actual, and worth £4,000, to tow her to Gravesend. After towing for three hours the N., 99 tons, with engine of 40 h.-p. nom., 90 h.-p. actual, and worth £3,000, was engaged to help the A. When the vessel got off Hastings, the tugs were cast off, and next day the ship wore and stood in for the land, took a pilot off Dungeness, and anchored off Folkestone in the evening, with both bower anchors down. In a heavy gale the day following, she dragged and slipped her anchors, and ran down past Dungeness. The owners alleged that on getting under way the sheet anchor, one of Trotman's patent 43 cwt., with 100 fathoms of 6¼-inch cable, which had frequently before held the ship alone, was got up. The easterly gale continued, she stood on and off, and about midnight, the weather moderating, commenced beating up channel for two days, a tug's assistance being meanwhile refused. Shortly afterwards the A. and the N. rejoined the ship and began towing her, she then being some ten miles from Dungeness. The steam-tug E., 120 tons, with engines of 70 h.-p. nom., 150 actual, worth £5,000, came up, and agreed to take the place of the A., and that the tug should take the master of the W. S. to Dover to get an anchor and chain of the required size, which he could not do. The pilot deeming a third tug necessary, the E. was engaged, and the three tugs towed the W. S. to the entrance to the Victoria Docks. The salvors alleged, and the owners denied, that the ship, her cargo and passengers were in considerable danger. The owners asserted that the Trotman's patent anchor was adequate to effect her safety, and that the service was towage, not salvage. £130 to the A., £100 to the N., £75 to the E. *The White Star*, M. M. R. May 19, 1866, p. 625. V. 218,000*l.*—A. £305

770. The schooner D. got on the Newcombe Sand. A number of boatmen went in a boat from Lowestoft and got her off the sand, but finding it impossible to take her into Lowestoft Harbour, they ran her on the shore. They then entered into an agreement to land and warehouse the stores and cargo, and get the schooner into harbour, for £300. It was afterwards found necessary to lay a false deck in order to

float the schooner, which was done by the owners, the salvors refusing to pay for the same. A tender of £300 (less £98, the expense of the false deck). The court pronounced for the tender, but gave a further sum of £100 and costs for the services anterior to the agreement. *The Dahlia*, S. G. May 21, 1857.

Value 1,250*l.*—Award £302

771. The brig *A. M.*, 285 tons, from Taganrog to Falmouth, laden with wheat, brought up during a hurricane off the Deadman. She was dismasted, and her master had broken both his legs. A pilot boat, the *P.*, which was in search of vessels in distress, went to her assistance in answer to a signal, and the pilot boarded her. The pilot alleged that the master of the brig then gave up charge to him, that he made preparations for towing her into Fowey Harbour, but the tug *D.* coming up with the Mecklenburg consul, he gave up charge to the *D.*, who towed her to Falmouth. The owners denied the pilot's title to reward, on the ground that his services were not engaged. The court held that the pilot's services were not accepted; but that as the pilot remained on board, and certain things, proper and necessary, were done, and done under the eyes of the mate without opposition, he was entitled to reward. The wind was blowing hard from W. by N. *The Adolph Michels*, M. M. R. May 26, 1866, p. 655.

V. 4,550*l.*—A. £300

772. In December, the barque *A. F.*, 313 tons register, from Glasgow for Callao with a general cargo, when off Holyhead, near the South Stack Light, came into collision with the *J. R.*, 847 tons register, from Liverpool for Calcutta with salt, and was considerably damaged. The steam-tug *K.* took her in tow about 8 a.m., and about 1 p.m. she was safely conducted to Holyhead, a distance of twenty-two miles. *The Annie Fisher*, M. M. R. February 5, 1870, p. 178.

V. 8,000*l.*—A. £300

773. The brigantine *A.*, 150 tons, from Swansea to Lisbon, with coal, after heavy weather, in which she had made a good deal of water, was fallen in with by the barque *R. W.*, 336 tons, from Shields to Demerara, with coal. The *R. W.* kept company with the *A.* from Nov. 3 to Nov. 8, as she wanted help in pumping; the mate of the *R. W.* and three of her crew boarding the *A.*, which was ultimately taken to Vigo Harbour. When the *R. W.* came up, the master and crew of the *A.* were about to abandon the vessel, and had she been deserted she must have been destroyed. £70 of the award was apportioned to the mate of the *R. W.* *The Acastas*, M. M. R. June 23, 1866, p. 785.

V. 1,100*l.*—A. £300

774. In April, the smack *A.* was found by the smacks *Z.* and *C.*, 290 miles off Spurn, and near the Schleswig coast, leaky and derelict. They pumped her and eventually got her into Grimsby. *The Admiral* (Hull Ad. Co.), M. M. R. Aug. 18, 1876, p. 1044.

V. 750*l.*—A. £300

775. In October, the *A.*, from Africa to Liverpool, with her crew disabled, her sails split, shorthanded, and in great danger of total loss, whose master did not know where he was, was assisted off Carnarvon into safety by a pilot cutter with seven hands. *The Aurora*, S. G. March 4, 1842.

V. 3,000*l.*—A. £300

776. In November, the iron screw steamer *B.*, 528 tons nett and 250 h.-p., was found by the iron screw steamer *E. E.*, 524 tons nett and 99 h.-p., about eight miles from Lowestoft, with a broken crank-shaft and lying disabled, in the trough of the sea, during a severe gale. A hawser was got on board the *B.* with great difficulty and danger, and she was towed to Yarmouth Roads (fifteen miles) in a little under five hours. *The Batavier*, M. M. R. March 24, 1876, p. 364.

V. 20,000*l.*—A. £300

777. In January, the master and mate of the Italian barque *S.*—the only persons on board who knew anything of navigation—were washed overboard. The *S.*, when in lat. 42 N., and long. 52°17 W., was fallen in with by the German ship *L.*, on a voyage from Philadelphia to Hamburg, with a cargo of petroleum and a crew of eighteen hands, having encountered a hurricane, during which her cargo shifted and she sprung a leak, which necessitated pumping every hour until her arrival in Europe. The master of the *L.* sent one of his best hands, *M.*, who knew something of navigation, on board the barque to navigate her to England, her port of destination being Liverpool. *M.* took charge of the *S.*, and succeeded in very bad weather in navigating her into the English Channel, a distance of nearly 2,000 miles. A fisherman was then engaged to pilot her into Falmouth, where she arrived in

safety about midnight on the 3rd of February. The L. also met with bad weather after M. left her, three of her crew were laid up, and on her arrival at Cuxhaven on the 8th of February she was prevented by ice from getting up to Hamburg. *The Silvia*, *The Times*, March 19, 1886. Value 6,200*l.*—Award £300

778. In December, the steamer B., 1,100 tons register, with a general cargo, 110 passengers, and the U. S. mail from New York, for Cowes and Hamburg, had her pinion-shaft broken, and could not work her screw propeller. She was met with in this condition in the Atlantic by the screw steamer L., 1,188 tons register, 120 h.-p., from Liverpool for Alexandria, with a general cargo, and was towed by her for nine hours, a distance of about sixty miles. It was then found necessary, owing to the tempestuous weather, to cut the hawsers, to avoid a collision between the two ships. The B. subsequently met the steamer G. Y., which conducted her to the Shambles Floating Light, thence she sailed under pilotage to Portland Harbour, and from there was towed to Southampton. *The Borussia*, M. M. R. July 31, 1869, p. 980.

V. not stated.—A. £300

779. In June, the iron sailing-ship B., from London for Liverpool, with 700 tons of cement, went on shore on the elbow of the West Girdler Sand. The wind was strong from the E., and the tide half-flood. The tug C., 209 tons, 100 h.-p., value £9,000, went to her assistance, and found that having got off the West Girdler she had struck on and was lying athwart the East Girdler Sand, with a heavy list to port, and bumping, the tide heading across the sand. The sails of the B. were taken in, and the wife of the master was taken on board the C. The B. was got off the sand, and taken stern foremost up the Alexandria Channel and into the Knob Channel. *The Bruce*, M. M. R. July 14, 1882, p. 377.

V. 12,600*l.*—A. £300

780. The ship C. was piloted by a wrecking vessel from the Washerwoman Shoal, where she lay at anchor in a perilous situation, to Key West, a distance of twenty miles. *The Calcutta*, 5 A. R. 215, cited in Marvin, 221. [American.]

V. 12,000*l.*—A. £300

781. In September, the screw steamer C., in want of assistance, was fallen in with, about 100 miles off Falmouth, by the Spanish screw steamer E., 417 tons register, 100 nom., and 360 eff. h.-p., from Taganrog for Falmouth for orders. The weather was fine, and the E. towed the C. into Falmouth, the towage taking sixteen or seventeen hours. *The Calderon*, M. M. R. May 21, 1870, p. 658.

V. not stated.—A. £300

782. The barque C., 400 tons, took the ground near the Cross Sand, about sixteen miles from Lowestoft, and remained striking heavily, the sea making a breach over her. She was much damaged, and hoisted a signal of distress. Three smacks, together of 187 tons, with twenty-three hands, took her into Yarmouth. *The Caladonia*, May 18, 1849.

V. 2,550*l.*—A. £300

783. The ship C. was in great distress, and on the point of perishing. The brig A. took off the master and crew, some indigo and coffee. A few days afterwards she again fell in with the wreck, and took off more property. *The Cato*, 1 Peters, Ad. Dec. 48, cited in Marvin, 192. [American.]

V. 750*l.*—A. £300

784. In May, the C., from Shields to Alexandria, got on the south end of Race Bank, off Norfolk, during fair weather, and lost her rudder. A steamer and a fishing boat got her safely to Hull. *The Cerere*, S. G. July 20, 1839.

V. 2,278*l.*—A. £300

785. The steamship C., 416 tons, when near the Spurn, fell short of fuel, and had to set sail, and was found to be leaking. Rockets were discharged, and the screw steamer I. E. came up and took her in tow, and finally conducted her to the Bull Sand Buoy in the Humber, where she left her. *The Cumberland*, S. G. March 3, 1863.

V. 12,000*l.*—A. £300

786. The C. was drifting leaky at the mouth of the Elbe with her rudder broken and unable to bring herself into safety. The Cuxhaven, after breaking the tow-ropes, made fast alongside, sustaining considerable damage, and after three hours' towing brought the C. safely to Cuxhaven. *The Cuxhaven and Cowlitz*, Assistance, Hamb. H. G. Z. 1871, pp. 29, 30. [German.]

V. 2,250*l.*—A. £300

787. The brig D. was off Bridlington with coal, considerably damaged and waterlogged, the sea running very high. Sixteen salvors, a yawl, and a coble, at consider-

able risk to their lives and property, got the brig on to the ground off Bridlington Pier. Services lasted fourteen hours. *The Dawsons*, S. G. June 12, 1858.

Value 800*l.*—Award £300

788. In October, the steamer E. C., 650 tons gross, from Middlesborough to Newport, with pig-iron, had, by the shifting of her cargo, started her beams and star-board bulwarks and stanchions. She was about mid-roadstead, but setting fast towards the S. Pier Head. She was discovered by some Gorleston boatmen, who unbattened the fore-hatch, and jettisoned some of the cargo, while ten of them baled her with buckets, the ship's crew turning in exhausted. After 180 tons of cargo had been jettisoned, the vessel was righted, hand pumps were got on board, her sides were plugged, and after twenty-four hours' work she was put into a state to enable her to steam northward for repairs. *The Ella Constance*, S. G. Dec. 24, 1885, p. 822.

V. 4,600*l.*—A. £300

789. The E. was in a state of imminent danger, fast drifting towards the shore in Robin Hood's Bay, the wind blowing a heavy gale, and there being a tremendous sea running. The steam-tug M. and J. went from Whitby, and discovered the E. quite unmanageable, not far from a dangerous reef of rocks. The master of the tug finding it impossible to tow her to Scarborough, resolved to run with her before the wind, and conduct her to a safe anchorage. When off Whitby the tug went into the harbour for a further supply of coals, and after having again taken the E. in tow her air-bucket burst, and she was unable to render further assistance. The master went on shore and procured another steamer, but before he could overtake the E. the wind shifted, and the E. ran before it safely into Scarborough. *The Emmy*, S. G. June 2, 1848.

V. 3,000*l.*—A. £300

790. In March, the brig, E. P., 353 tons, was fallen in with off Dover by the tug W. There was a strong gale from N.N.W. and a heavy sea. The E. P. had lost her anchors. The W. towed her at full speed towards Ramsgate, and in about eight hours took her into harbour there. *The Erminia* (P.) M. M. R. May 19, 1876, p. 620.

V. 12,500*l.*—A. £300

791. In October, the iron screw steamer E. R., 783 tons, from Cardiff for Tyber Savannah, struck on a reef called the Flats, in Crow Sound, having lost her rubber and shipped much water; and owing to boisterous wind and weather, was in danger of going to pieces, when she was discovered by the galley L., whose crew boarded her and found the men pumping. An anchor and chain were got on board and put out astern, and the cable was hove taut. The crews of the gigs P., C., and E. were engaged to pump. The weather was threatening, with rain and a very strong S.W. wind. About noon next day the screw steamer L. of the I., 45 h.-p., value £7,400, came up, and the tide being ebb and about half-flood, the E. R. began to float, and bumped heavily. The L. of the I. was lashed to the E. R., and began towing full speed astern, until the E. R. was got into deep water, and turned astern aground on Bar Point, when the lashings of the L. of the I. for the second time parted. When they were re-lashed, she kept on towing to keep the E. R. on the ground with the rising tide. The wind increasing, a kedge anchor was got out to keep the E. R. straight on the level sand, where she was, after some further difficulty, secured in four fathoms. At the following low water the moveable stores were taken by the gigs to St. Mary's, Scilly, the sails were unbent, and the vessel afterwards taken by a tug to Cardiff. *The Ely Rosi*, M. M. R. January 31, 1879, p. 147.

V. 13,000*l.*—A. £300

792. The E. U. struck on the Brake Sand, and was in a state of extreme peril. Twelve men, forming the crew of the Broadstairs lifeboat, and the lugger R., went to her assistance at great risk to their lives. On reaching her the salvors ascertained that the vessel could not be saved without an anchor and cable, and they took the master and crew to Margate, where they found that the O. had been engaged by the lifeboat to carry out an anchor and cable, and they thereupon went in search of the vessel, and found that she had been taken in tow by a steamer. *The E. U.*, S. G. June 7, 1853.

V. 4,995*l.*—A. £300

793. The ship F. was driven on the Gunfleet Sand, and was in great danger. The smack A., at great risk, got her over the sand, and ran her on the main land. Three other smacks and the revenue cutter S. assisted in lightening the ship, and adopted other measures to get her off, when they were dispossessed by wreckers. The services

lasted several days. The smacks engaged were together of 116 tons, with twenty-one hands, and the S. had twenty-three hands. *The Fleece*, S. G. April 24, 1850; 3 W. Rob. 278. Value 1,188*l.*—Award £300

794. H.M.S. D., on the 27th June, fell in with the F. M., derelict, and wholly destitute of rigging. The second master, three midshipmen, and eight seamen of the D. took charge, and on the 24th July got her to St. Mary's, and obtained assistance to tow her into port. The F. M. was fitted with pumps and a jury rudder, and removed to Terceira. On the 31st August the D. left Terceira, towing the F. M., and arrived with her at Pembroke Dockyard on the 26th September. *The Frances Mary*, 2 Hagg. 89. V. 600*l.*—A. £300

795. A vessel sailing in company with another rendered salvage services to her consort, consisting of a deviation for the purpose of accompanying the vessel to the nearest port in consequence of her having sprung a dangerous leak, of assistance of the ship's carpenter and others in repairing the leak, and of general advice and assistance. *The Ganges*, 1 Notes of Cases, 87. V. 16,000*l.*—A. £300

796. In September, during a strong gale, the ship G. B. began to drag her anchors in the Mersey, and was in great peril, close to several vessels, when the tug R. put a hawser on board, assisted in bringing her up, and enabled another tug to make fast and take her into dock. The night was dark and the weather stormy. *The General Birch* (Liverpool Pass. Co.), M. M. R. Oct. 29, 1875, p. 1390. V. 5,400*l.*—A. £300

797. The brig G. R. anchored off Margate, and in consequence of a violent gale from the north-east was in great danger of driving on shore. The lugger L. went to her, and at the request of her master brought off an anchor and chain, and afterwards procured the assistance of a steam-tug. *The General Rego*, S. G. Jan. 12, 1856. V. 6,185*l.*—A. £300

798. The brig G., of 162 tons, with a cargo of wheat, was discovered about three miles north of Brea Head, the western headland of Valentia Island, an iron-bound coast with a heavy sea always on, the wind being N.N.W. and squally. She had two anchors down, was labouring heavily, her masts were gone six feet from the deck, nothing was standing but her bowsprit, and her crew had left her. She was boarded by the master and a crew of eight hands of the smack A., of 20 tons. They sounded the pumps, &c., and were about rigging a jury-mast, when the steamer E., of 300 tons register and engines of 300 working h.-p., came up and towed the G. into Dingle Harbour, a distance of twelve miles, in four hours. The smack A. was settled with out of court by a payment of £160. *The Gudrun*, 5 Irish Jur. N.S. 360. V. 3,000*l.*—A. £300

799. The fishing smack H., when sixteen miles from Cromer, observed a light on board the barque G., and heard the report of a gun. The master of the H. bearded her, and was informed by her master that he merely required a pilot to take his vessel into port. The master of the H. was thereupon engaged to conduct her to Yarmouth for £20, but upon making further inquiries he found that the barque had been on the Leman and Ower Sand, and that the water was gaining fast upon the pumps, whereupon further aid was obtained from the smack. The lugger B. was subsequently engaged, and by their joint efforts the barque was taken to the Humber. *The Gundela*, S. G. May 25, 1857. V. 2,000*l.*—A. £300

800. The G. having been in collision near Lundy Island, was in great distress, and there was great danger to her and to the lives of her crew. Two sets of salvors in four boats put off, and rendered effectual assistance. *The Glenlyon*, S. G. August 7, 1850. V. 1,160*l.*—A. £300

801. The steamer H., 1,276 tons, grounded on the Beeson Sands, but was not in any immediate danger, the weather at the time being perfectly calm. The steamer E. E. towed her off the Sands. Service about two hours only. *The Hammonia*, S. G. July 6, 1860. V. 28,000*l.*—A. £300

802. In December, the H. was found derelict off the coast of Cromer. Thirteen salvors were employed for thirty-four days attending the ship and cargo. £50 allowed for expenses exclusive of award. *The Hector*, S. G. June 4, 1840. V. 582*l.*—A. £300

803. In April, the ship H., 729 tons, with 19 hands, 349 passengers, and a cargo of coals and sand, for Donna Francisco, Brazil, from Hamburg, got fast on shore, near a wrecked vessel off Winterton. There was a stiff breeze from S.E., and a nasty swell on. She was taken charge of by the crew of the yawl B. of H.; a kedge was laid out, and later on the crew of the lifeboat M. H. assisted them. After being twelve hours aground, the H. was got off into deep water, and a tug took her to Yarmouth for £20. *The Humboldt*, M. M. R. May 11, 1877, p. 596.

Value 8,950*l.*—Award £300

804. In November, the I., from the Gulf of Bothnia to Gibraltar, on Scroby Sand, abandoned, and in danger of going to pieces, was rescued by fourteen men from Gorleston, and with the aid of a steam-tug towed into Yarmouth Roads. *The India*, 30 Apr. 1842; 1 W. Rob. 406.

V. 1,140*l.*—A. £300

805. The schooner J. was off Southwold with a flag of distress flying. The fishing lugger E., 60 tons, with twelve hands, rendered her assistance, and while doing so lost one of her boats. The services were rendered during the herring season. *The Jacinta*, S. G. Jan. 21, 1861.

V. 1,300*l.*—A. £300

806. The barque J. P., from Taganrog to Falmouth, with linseed, had lost some masts and rigging in severe weather, and was partially disabled. The salvors, thirteen in number, in three boats, found her in a perilous position from her proximity to the Lizard, and without any danger to themselves towed her into Falmouth Harbour. Before they came up the barque had been towed some distance by the brig S. *The John Paxton*, M. M. R. May 26, 1866, p. 655.

V. 7,500*l.*—A. £300

807. The brig J., 141 tons, went aground on the North Sand Head, off Broadstairs. The steam-tug S. towed her off. *The Juniatta*, S. G. Nov. 21, 1855.

V. 12,000*l.*—A. £300

808. In November, the barkentine K., 673 tons register, which had been damaged in collision, was succoured by the yawls A. and the B. of H., manned by thirteen and seventeen hands respectively. She was lying utterly unmanageable on the sand off the Norfolk Coast, the tide being ebb and weather fine, and had signals of distress flying. One of the yawls fetched a tug from Yarmouth, and both crews were engaged by the master of the schooner to help get her into Harwich, which was ultimately done. *The Kioto*, M. M. R. Feb. 8, 1878, p. 179.

V. 5,287*l.*—A. £300

809. In January, the schooner-rigged screw steamer L., 476 tons register, 70 h.-p., eighteen hands and general cargo, from Bordeaux for Liverpool, broke the screw shaft of her propeller. The sea was then calm and the wind light. She was brought to anchor in twenty-eight fathoms. The screw steamer D., 645 tons register, seventeen hands, from Shields for Bordeaux, saw her signals when off Point Balemas, near La Rochelle, France, bore down on her, and took her in tow towards Pauillac. After about 7½ hours the rope parted, but she was eventually got safely to Pauillac, a second rope giving way during the towage. The service lasted about eighteen hours. *The Lotus*, M. M. R. May 5, 1882, p. 559.

V. 14,800*l.*—A. £300

810. In February, the French schooner L., from Cetta to St. Malo, with salt and wine, lost her foremast and bowsprit, and was towed by the French schooner I. and M. from forty miles N. of Ushant to Plymouth. *The Lucie* (Stonehouse Co. Co.) M. M. R. Feb. 14, 1873, p. 211; Feb. 28, 1873, p. 273.

V. 500*l.*—A. £300

811. In March, the steamer M. L., aground off the River Gambia, was observed by the barque A., which rendered her certain services. The services were denied beyond the loan of a hawser. Defendants alleged that the plaintiffs had been paid £27 for the use thereof, and that there was an agreement between the masters that £20 should be paid for the services rendered. The award included £27 paid into court. *The Macgregor Laird*, M. M. R. Dec. 21, 1867, p. 1619.

V. 2,500*l.*—A. £300

812. The ship M. of O., 897 tons register, with a general cargo, from London to Kurrachee, sprung a leak and was obliged to put into Falmouth. The port anchor was first let go in Carrick Road; but a strong E.S.E. breeze acting on the sails, she began to drive, and to avoid fouling other vessels at anchor, the port chain was slipped, and she was brought up near the White Buoy by her starboard anchor and forty-five fathoms of chain. A pilot was employed, and went in the steam-tug P. to take the ship to another anchorage lest there should not be sufficient water. Whilst

this was being done, the tow-rope parted, and the ship fouled a Norwegian brig. The starboard anchor was let go and she was brought up, but they drifted on to an English brig. The P. then towed the M. of O. to a berth in the Cross Road. *The Maid of Orleans*, M. M. R. April 20, 1867, p. 497. Value 12,000*l.*—Award £300

813. The M., 390 tons, having nearly all her crew disabled from scurvy, and being deficient of fresh provisions and medicines, hoisted a signal of distress. The ship T., 800 tons, supplied these articles, and although short-manned herself, lent one of her most able men to the M., and both vessels in four days arrived at Plymouth. *The Mary*, S. G. July 21, 1847. V. 40,000*l.*—A. £300

814. The ship M. S., 588 tons, got upon the Red Sand, at the southernmost part of the Ooze Channel, and was got off by the steam-tug S. with much expedition and with slight damage to the tug. *The Mary Scott*, S. G. March 4, 1862; 7 L. T. N.S. 257. V. 21,000*l.*—A. £300

815. The M. W., off the Mumbles, having parted from two of her anchors, was lying to one anchor, and in great danger. Four seamen put off in a boat from Swansea, and notwithstanding a heavy gale, succeeded in reaching the vessel. By their assistance she was safely deposited on a mud bank, and the next morning she was towed into harbour. *The Mary White*, S. G. June 11, 1847. V. 2,500*l.*—A. £300

816. The M., 1,000 tons, when off Kingsdown in the English Channel, on the 2nd Dec., experienced a violent squall, which blew away the spanker, jib, and foretopsail, and shortly afterwards the maintopsail, and the M. was then anchored. On the next day the gale continued, and the M. dragging her anchors, her main and mizen masts were cut away. The lugger D. seeing a signal from the ship, went from Deal to her, carried a message by order of the master to Lloyd's agent at Deal for a tug, and returned to the ship with the answer in the afternoon of the next day, the weather being too severe for her to reach the M. the same night. No steam-tug arriving, the master of the M. went in the D. to Deal to get one, and the steam-tug R., which was employed for £105, with the D. in tow, then went to the ship. The D. then returned to Deal for a spare anchor and chain on the morning of the 5th, and employed the lugger R. to assist in taking them out, owing to their size and weight, and they having been conveyed to the M. and put on board her, the steam-tug R. towed her up to Gravesend, where she arrived on the 6th. *The Maxwell*, S. G. May 20, 1864. V. 26,899*l.*—A. £300

817. The M. Q., 417 tons, got on a bank in the Black Sea, but was in no great danger. The commander of H.M.S. H. despatched two boats with twenty-three men to her assistance, and unsuccessful efforts were made, by unshipping the cargo, and by carrying out and heaving on the M. Q.'s best bower anchor, to leave her off. The H. having then taken her in tow she was dragged off the bank, and the cargo was re-shipped. *The May Queen*, S. G. May 3, 1848. V. 9,100*l.*—A. £300

818. In November, during a very heavy gale, the schooner M. W., from the Baltic for London, with barley, was boarded by some Caistor fishermen, who were brought by a tug, with great difficulty and danger, alongside the ship. The tug's tow-rope was got on board and made fast, and the tug steamed ahead, towed the M. W. through a heavy sea and moored her safely in the harbour. Her bulwarks, sails, and rigging were much damaged, and when boarded she was dragging her anchors, but those were slipped. *The Milky Way* (Yarmouth Co. Co.), M. M. R. Dec. 13, 1878, p. 1589. V. 1,700*l.*—A. £300

819. In March, the steamer M., from New York to Liverpool, ran ashore in Church Bay, near Holyhead, and lay with a list to port and in danger when the tide rose of capsizing or swinging round on to the rocks. The steam-tug S. K. was made fast to the M., thereby incurring the danger of being crushed between the M. and the shore. The S. K. then took off some of the passengers, the mails, and the whole of the crew, except the officers. She landed the mails at Holyhead, where she also took in others of the passengers who had reached there in the boats of the M. She then returned to the M. and took the remainder of the passengers and crew and the baggage to Liverpool. The S. K. also claimed for loss of towage, having been engaged to tow a ship from Holyhead to Liverpool, which she missed. *The Montana* (Liverpool Pass. Co.), M. M. R. July 16, 1880, p. 912. V. not stated.—A. £300

820. In February, the screw steamer N., 548 tons register, from Kustendje for Falmouth, with barley, which had her starboard boiler in a leaky condition, was towed by the Russian steamer L. from 9 a.m. to 9.30 p.m. towards Falmouth, when her three tow-ropes broke, the vessels parted company, and the N. found her way to Falmouth alone. The L. stayed by her for some time, but owing to the darkness of the night could not find her again. *The Nellie*, M. M. R. Nov. 21, 1873, p. 1488.

Value 13,500*l.*—Award £300

821. The ship N., 643 tons, was in ballast in the Downs. She had lost an anchor and chain, her rudder was injured, and she was otherwise considerably damaged. A heavy gale was blowing from the S.S.W. The Deal lugger D. was launched with great difficulty, and taken to her through a heavy sea and stormy weather. After several unsuccessful attempts four of the salvors succeeded in boarding the ship at great risk, and with some damage to the lugger. The N. was taken to and brought up in Margate Roads, and a heavy anchor and chain from the shore was, after about three hours and a-half hard labour, got on board the ship. *The Neptune*, S. G. April 29, 1858; *The Times*, April 30, 1858.

V. 3,000*l.*—A. £300

822. The N. S., with a general cargo and five passengers, was striking heavily on the Pole Sand, off Exmouth; her rudder was disabled, and the crew and passengers were much alarmed. Wind about E. The pilot boat K. G. landed the passengers at Exmouth, took out a large anchor, two hawsers, and a bower anchor, and after some difficulty succeeded in getting her off the sand, and took her to Exmouth with the aid of a steam-tug. The ship was in some danger on the sand, and might have been in considerable danger had the wind increased. No risk to salvors. *The North Star*, S. G. March 30, 1858.

V. 11,000*l.*—A. £300

823. The steamer P., 770 tons, grounded on the south side of Scroby Bank, and hoisted signals of distress; the weather and wind were fair. The yawl S. and the steam-tug E., with twenty-two men, got her off. *The Pallas*, S. G. Feb. 7, 1861.

V. 11,000*l.*—A. £300

824. The schooner P. grounded whilst crossing the outer bar at the entrance of Bonny River, Africa. She succeeded in getting off, but was in a dangerous situation between the outer and inner bars, surrounded by breakers, when Captain Johnson, of the barque M., courageously went to her assistance, and by his skill and local knowledge, and at great risk to his life, extricated her from her dangerous position, and brought her safely into Bonny Harbour. *The Panope*, S. G. May 24, 1845.

V. 4,200*l.*—A. £300

825. The barque P. was in Humphrey's Dock at the time of the great fire near London Bridge, on the night of the 22nd June, 1861, and was in a position of considerable peril, from which she was rescued at very great risk by the steam-tug U., taken beyond the reach of the fire, and anchored on the north side of the river. *The Pentucket*, S. G. Jan. 14, 1862; 1 Lush. 505; 7 L. T. N.S. 256.

V. 950*l.*—A. £300

826. The P. R. struck on the Nore Sand, where she bumped heavily, the wind at the time blowing hard off the shore. Three smacks, a lugger, and a barge lightened her, and with the assistance of two steamers conducted her to London. The steamers accepted £250. *The Princess Royal*, S. G. March 6, 1857.

V. 4,000*l.*—A. £300

827. In January, the barque R., 477 tons, from Havana for Queenstown, with sugar, whilst at anchor off Crookhaven, was found to be dragging and drifting towards the rocks on the north side of the harbour. There was a heavy gale blowing, and a very heavy sea. The crews of two whaleboats, the Lord C. and the A. U., by means of two warps, which were affixed to a perpendicular rock in the harbour and to the barque's capstan, and on which they hove, got her away from the north shore, and just as the rock gave way a tug brought by the L. M. came up and took her in tow. The K. also came up, and five hands from her were put aboard. The tug took the R. into a place of safety. £30 to the A. U., £20 to the Lord C., £50 to the L. M., £200 to the tug. *The Rosalind* (Dublin Adm. Co.), M. M. R. May 6, 1865, p. 562.

V. 8,700*l.*—A. £300

828. The R. S., a large ship, when off the North Foreland, having parted with two anchors, and while getting out the only one left, which threatened to be a matter of great difficulty and danger, was assisted from four o'clock on March 21 until the

evening of March 24 by the W. *The Royal Standard*, M. M. R. July 31, 1869, p. 979. Value 200,000*l.*—Award £300

829. In November, the S., from Memel to Wishead, waterlogged and with her rudder lost, was on Burnham Flats. She was got off and beached at Brancaster, three or four miles off, by some boatmen. Thence she was towed to Lynn. *The Sarah*, S. G. May 12, 1837. V. 1,400*l.*—A. £300

830. The brig S., in a gale of wind, went on shore near Hurst Castle, and the crew got on board another ship. A pilot cutter with four men went to her assistance. The sea was at first so heavy that they could not board her, but after the tide turned the salvors, after some peril to their lives, succeeded in boarding her, and conducted her to the Motherbank. *The Sedgefield*, S. G. Nov. 3, 1859; *The Times*, Nov. 4, 1859. V. 1,380*l.*—A. £300

831. The barque S. had struck on a bank and encountered severe weather. Her rudder and stern-post were carried away, her inner stern-post started, her mainmast broken and cut away about eight feet from the deck, with part of it hanging over her port side, the sails with yards and rigging belonging thereto were washed away, her mizenmast head was broken off under the cap, her spanker and the gear thereto were all blown and washed away, her foretopsail yard was broken in two pieces and useless, her starboard bow timber port was driven out and hanging over the bow, and the round-house was broken to pieces. The water was about four feet above the cabin floor, and there was a large hole, not less than eighteen inches square, near the gudgeon iron where the rudder had been broken off. She was driving on the Leman Bank in the German Ocean, with a strong breeze from E.S.E., and a high sea running, and she was in imminent danger and had a signal of distress flying. Two trawling fishing smacks, the S. and A., proceeded to her, and some of their crews boarded the barque and persuaded her master and crew, who were about to leave her, to remain on board. The salvors worked the barque's pumps but could not reduce the water. The two smacks towed her five or six miles, when they met the smack J., which rendered further assistance. The three smacks towed and steered the barque until 5 p.m. of the 3rd October, when they reached the Humber, and tugs were engaged to tow her into dock. It was then found that her fore foot and eight feet of her stem were gone, her wooden ends were all started, her keel all knocked off, and her keelson raised aft, and the bolts partly drawn. *The Soblomsten*, M. M. R. March 10, 1866, p. 303. V. 867*l.*—A. £300

832. In October, the barque S. D., 336 tons register, from Newport for the Mauritius with coals, was riding in a good berth off Bendrich by one of her bower anchors and forty-five fathoms of chain, when the wind freshening to a heavy gale from the W.S.W., and after thirty fathoms of chain had been given to her anchor, her cable parted, and she began to drive towards the rocks. The master had just given orders to cut away the masts, and the order was on the point of being carried out, when the tug C. came up, was attached to her by a hawser, and towed her clear of the rocks to a place of safety, whence she proceeded under sail up the mouth of the River Usk. *The Sparkling Dew*, M. M. R. January 25, 1868, p. 46. V. 4,000*l.*—A. £300

833. The barque S., owing to hazy weather, got upon the Blackwater Bank. The weather was fine, but from the season of the year could not be relied upon to remain so; consequently the S. was in a position of some peril. The steam-tug C. went to her assistance, and, after nineteen hours' labour, succeeded in towing her off the bank and to Kingstown Harbour. *The Sphynx*, 4 Ir. Jur. N.S. 230. V. 6,000*l.*—A. £300

834. In January, on a dark night with rain, during a violent gale from the W.S.W., the schooner T. E., 121 tons, from London for Gloucester with linseed, was riding off Deal with only one anchor, and a large ship about her own length riding with two anchors down, and under her lee. The master of the lugger B. P., with some of his crew, boarded her, and tried to make sail on her, and after three hours' work got her anchor up; but being unable to do this without fouling, they made a stern board, and ran her clear astern of the ship; a manoeuvre repeated to avoid collision with a large steamer. She was then hove round, and the lugger,

with the master of the T. E. on board, fetched an anchor and chain, weighing three tons, from Deal. *The Two Emmas*, M. M. R. July 29, 1865, p. 944.

Value 3,500*l.*—Award £300

835. The T. F. got upon a rock some distance from Havannah. Her crew went in their boats to Havannah for assistance. The J. B. got upon a reef, and was abandoned by her crew, who took to their boats with the intention of making for Cuba. Whilst doing so they fell in with the T. F. in her then abandoned state. They boarded her, and by lightening her she was eventually got off the rock, and brought to England in six weeks. *The Two Friends*, 2 W. Rob. 349.

V. 1,237*l.*—A. £300

836. The Swedish brig V. was on the Gunfleet Sand, whence she was taken off and towed into Harwich Harbour by the smack P. *The Vesta* (Ipswich Co. Co.), M. M. R. February 28, 1873, p. 273.

V. 1,000*l.*—A. £300

837. In February, the ship V. C., 1,262 tons register, at anchor in the Mersey, about half a mile to the N. and E. of the Rock Ferry Slip, the wind blowing strong from the N.W. with heavy squalls, drove close to H.M.S. D., an officer and men of which tried to get the V. C. into a clear berth. In doing this, the V. C. fouled the moorings of the Rock Ferry Buoy, by which she was brought up, and, her fore-topmast-staysail being hoisted, went off to the eastward. When she was abreast of the Cunard mooring buoy her anchors were let go, and chain paid out, but the star-board-chain parted, and she went over towards Pluckington Bank, whence she was towed by the tug R. The owners of the ship alleged an agreement to have been made to pay the R. £150 for the services. *The Victoria Cross*, M. M. R. May 15, 1869, p. 626.

V. 90,000*l.*—A. £300

838. The ship W. E., 993 tons, was anchored off Margate Sands. On the next day, the wind having increased, the ship slipped from her anchor in order to proceed for the Downs. Two luggers, with twenty-one men, went to Ramsgate, and brought off an anchor weighing about 37 cwt. and 120 fathoms of chain, which, after some difficulty, they succeeded in putting on board the W. E. The court awarded the price of the anchor and chain, besides the salvage. *The White Eagle*, S. G. June 1, 1860.

V. 23,800*l.*—A. £300

839. The steamer L., lying at anchor in twenty-eight fathoms off the west coast of France, sixteen miles from Point Balcines, with a broken shaft, was towed by the steamer D. some seventy-five to eighty miles in sixteen hours to a place of safety off Pauillac. *The Lotus*, L. R. 7 P. D. p. 199.

V. 20,000*l.*—A. £300

840. In November, the schooner A. en J., timber-laden and derelict, was boarded off the Dogger Bank, in the North Sea, by the crew of the smack J. and F., who found that three of the crew of the smack Y. Y. and a Yarmouth fisherman were on board. She had six feet of water in her. Though the night was very dirty, she was taken in tow eighty-five miles from Hull, and towed thither in considerable danger. £200 to Hull smacks, £95 to Grimsby smacks. *The Anton en Jacob* (Hull Adm. Co.), M. M. R. Dec. 3, 1875, p. 1554.

V. 560*l.*—A. £295

841. In April, the barque M. was aground on the Hasborough Sands. The fishing cutter P., eighteen tons, came up, and shortly after the M. beat off the Sand, nearly full of water, but timber-laden, with her boats damaged, her rudder disabled, her mainmast, and all its tackling, hanging alongside, the running gear of her foremast all adrift, and altogether in a very unmanageable state. The P. took off the master and crew at their own request, and carried them to Yarmouth. The brig C. A., 187 tons register, from Sunderland to London, coal-laden, fell in with the barque, drifting rapidly to the W. The mate, with some difficulty, got aboard, and finding no one in her, hoisted a signal of distress. This attracted the attention of the master of the steamer S., 565 tons, from Rotterdam to Hull, with a general cargo and large number of passengers and emigrants; and he agreed to tow the barque to Lowestoft. The S. then towed the barque with great difficulty and much risk, owing to her waterlogged state, and the severity of the weather, the hawsers parting occasionally. When they were within one mile N. of the Cockle Light, the steam-tug M., seventy-seven tons, was engaged to tow ahead of the S., the steam-tug P., seventy-nine tons, which came up shortly afterwards, assisting. When a little to the N. of Yarmouth, the S. cast off, and proceeded on her voyage, leaving three of her hands in the M., which was afterwards brought abreast the monument in Yarmouth Roads. The R. O., seventy-

seven tons, was also employed to assist in steering the M., which was ultimately brought into Lowestoft. £60 to the P., £100 to the S., £40 to the C. A., £90 to the tugs. *The Mentor*, M. M. R. Nov. 24, 1866, p. 1490. Value 1,200l.—Award £290

842. In November, the Dutch barque R., 620 tons, from Sundswak, Sweden, for Nieuwe Diep, Holland, with timber and deals, was in the North Sea, having, after severe gales, cut away her mainmast, and thrown over some of her deckload. She was towed by the smack F. between forty and fifty miles, when the warp parted. The wind was E.S.E., and the weather bad. The F. stayed by the R., and the master, mate, and crew of the R. went on board the F. The smack L. then came up, and helped to tow the R. for between four and five hours, two of her crew assisting to work the pumps, but during the night the warp parted, and the R. was lost sight of. Next morning the smack S. found her entirely deserted and waterlogged. The L. shortly afterwards came up, and the S. and the L. towed the R. to about 100 miles N. of Whitby, when the tug E. came up, and was engaged. The E. towed the R. towards the Tyne, the S. preceding, and the L. staying by the R. At the mouth of the Tyne, the tug A. took the L. into the river, and then returning assisted the E. in mooring the R. safely. The crew were landed by the F. at Grimsby. £100 to the steamer, £80 to the F., £55 each to two smacks. *The Rientje*, M. M. R. July 27, 1877, p. 948. V. 1,100l.—A. £290

843. The C., derelict, was fallen in with by a fishing smack, and on the crew boarding her, they discovered that she was making water rapidly, the water being then one foot above the cabin floor. They endeavoured to stop the leaks, rigged a pump, and took her in tow; but finding themselves unable to rescue her without further assistance they accepted the aid of another fishing smack, and by the joint efforts of the two smacks she was brought into Yarmouth Roads. *The Chase*, S. G. July 8, 1847. V. 719l.—A. £287

844. In January, the Dutch barque *Æ.*, from Rotterdam for Batavia with a general cargo, which was anchored W.N.W. of and close to Deal Bank Buoy, and a mile from South Brake Buoy, during a gale from S. to S.S.W., commenced driving, and was in danger of getting on to the Brake Sand. In answer to signals, the lugger S. G. put off from Deal, and with great difficulty and much personal risk, one of the lugger's crew, named Caspell, by means of a rope, boarded the *Æ.* and took the wheel. The lugger went back to fetch an anchor, which was obtained and shipped on a larger lugger, the T., which brought the anchor and chains to the *Æ.* Owing to the stormy weather, it was a matter of great danger and difficulty to get on board the *Æ.*, and it was a still greater risk and more arduous task to get the anchor and chains aboard. Eight of the crew of the T. boarded the *Æ.*, and the anchor, after 1½ hour's work, was got on board. Two of the crew were injured severely in doing this. The anchor was then let go, and the ship brought up by both anchors, the wind continuing to blow violently all night. The tug and lugger stopped by the *Æ.* till next morning, when she left her. During the night some seven or eight ropes, by which the two ships were kept together, broke. £30 to Caspell, £70 to the S. G., £180 to the T. *The Æolus*, M. M. R. Jan. 24, 1873, p. 115. V. 45,000l.—A. £280

845. The ship E. B., waterlogged and derelict, was picked up off Portland by a pilot cutter, and a coastguard cruiser, and they, with a tug, hired for £25, brought the E. B. to anchor in Portland Roads, where she was temporarily repaired and her cargo discharged. She was then taken into Weymouth Harbour. Claim for salvage against cargo only. *The Erik Baker*, S. G. Jan. 12, 1859. V. 700l.—A. £280

846. The schooner F. was off the Leman and Ower Sand, damaged, leaky, and making water; her master and crew were exhausted and frost-bitten, and the weather was tempestuous. The smack A., with ten men, after ineffectual attempts to tow the schooner, took off the master and crew, and took them to Harwich. The smacks G. and V., fell in with the schooner, and with great difficulty towed her to Pakefield Gat, from whence she was taken by a steam-tug to Lowestoft. The G. and V. lost all their fish. Value of fish not stated. *The Fidelity*, S. G. Dec. 8, 1858. V. 623l.—A. £280

847. In November, the barque T., 386 tons, from Sunderland for Alexandria, with coals, struck lightly on the Holme Sands, got clear, and anchored in the Stanford Channel, weighed anchor, and struck again on the Holme Sands. The wind was

freshening, and the sea began to break. The tug D. got a hawser aboard the T., and towed for half-an-hour, when the tug R. came up, and the two tugs got her off the sand, with the help of some boatmen who boarded the T., and got all sail on her. The tug then towed her into harbour, and safely grounded her there. £220 to the tugs, £60 to the boatmen. *The Temo*, M. M. R. March 31, 1876, p. 396.

Value 2,625*l.*—Award £280

848. In January, the O., from Bombay for Hull, with 1,900 tons of linseed, began to drag her anchors, drove to about one mile E. of the Gull Lightship, and was in danger of driving on the North Goodwin Sands. The tug N., 100 h.-p., was engaged for £100, and got her clear of the Goodwins. The tug B. A. was engaged for £100 to assist the N. in towing the O. into Margate Roads or the Downs. The two tugs took her to Margate Roads, near the North Foreland, and the B. A. held her, whilst anchors and chains were fetched; but it came on to blow, so that they could not be brought, and the O. was therefore taken to the Downs and held for seven hours, till the anchors and chains arrived, and were put out. *The Oithona*, M. M. R. March 16, 1877, p. 339.

V. 42,914*l.*—A. £275

849. The brig P., 257 tons, with coals, ran aground near Cromer. Two fishing smacks, with eighteen hands, got her to Yarmouth. *The Persian*, 1 W. Rob. 327.

V. 2,016*l.*—A. £270

850. In July, the J. O., from Marseilles to St. Petersburg, ran on the rocks at the back of the Isle of Wight, and bilged and sank before the coastguard could do more than save the crew, part of the cargo, the sails and part of the rigging. *Le Jeune Olympic*, S. G. Feb. 17, 1838.

V. not stated.—A. £267

851. The trow F., laden with flour, was discovered derelict, and with great difficulty and some risk towed by the steam-tug E. into port. *The Florence* (Newport Co. Co.), M. M. R. Dec. 9, 1870, p. 1587.

V. 297*l.*—A. £265

852. In April, the ship S., on the Cross Sands, was found by 21 of the Standard Company of Beachmen, in their lifeboat. Her foremast and mainmast were cut away, having fallen across the boats, and she was 150 or 200 yards from the broken water, through which the lifeboat had to pass to get to her. Her crew and their clothes were got into the lifeboat, which stayed by her for about an hour and a-half. She then came off, and six of the salvors boarded her. The tug C. then came up, and beached her on the South Beach, where the salvors were engaged for a fortnight saving her cargo. *The Suez* (Yarmouth Co. Co.), M. M. R. July 6, 1877, p. 851.

V. 838*l.*—A. £265

853. In September, the barque A., 437 tons, left the Mersey in tow of the tug L. L., when the hawser broke, and the A. was in danger of drifting on the Jordan Flats. The tug T. was engaged, as the L. L. could not further assist, and towed her back into the river. *The Albion* (Liverpool Pass. Co.), M. M. R. Jan. 15, 1875, p. 76.

V. 2,350*l.*—A. £260

854. The screw steamer B., 1,627 tons register, with 650 tons of iron, ballast and coals, was seen a little south of Bramley Moore Dock entrance, about one quarter of a mile out in the river Mersey, on the Lancashire side, heading about E.N.E., and signalling for assistance. The steam-tugs H. M. and R. A. went to her aid as she drifted, and, with the assistance of the tug G. C., towed her to the Huskisson Dock Basin, held her for fifteen or twenty minutes, and placed her near the wall, where she was moored about 12 noon. The tug H. M. was then dismissed, and the R. A. with the G. C., after great difficulty, got her into Huskisson Dock. *The Batavia*, M. M. R. June 18, 1870, p. 786.

V. 60,000*l.*—A. £260

855. The barque C., 503 tons, off Dungeness, in a thick fog, being unable to get a pilot, engaged a man from the lugger P. M. to conduct her to the Downs. The C., however, went on shore between Folkestone and Dover. The P. M. and some coast-guardsmen laid out an anchor, but were unable to get the vessel off that tide. A steam-tug having been engaged, the C. was ultimately got off. *The Celestial*, S. G. July 19, 1855.

V. 90,000*l.*—A. £260

856. The steamer D., which had met with a severe accident, and been repaired temporarily at Port Said, when about fifteen or eighteen miles from St. Vincent, homeward bound, broke her crank shaft and was in much danger. The screw steamer,

A., sailed with her to look after her, and by towing her for fifteen or sixteen miles got her safely into port. *The Dhoolia*, M. M. R. April 23, 1875, p. 517.

Value 28,415*l.*—Award £260

857. In January, the schooner G., 128 tons, from Truro for Neath with copper ore, was run into and damaged four miles off the Hangman, in the Bristol Channel. She was found by the pilot-boat V. between Scarweather Lightship and Oxwich Head, abandoned by her master and crew. The crew of the V. cleared away the wreckage, the pilot-boat J. W. J. fetched the tug P. G. from Swansea, and she was towed to Swansea. £150 to the P. G., £90 to the V., £20 to the J. W. J. *The Glenfeadon*, M. M. R. June 30, 1871, p. 816.

V. not stated.—A. £260

858. The brig H. got aground on the Hasborough Sand. The yawl D. went to her assistance and got her off. *The Hendon*, S. G. Feb. 7, 1854.

V. 3,970*l.*—A. £260

859. In December, the barque J. V. and the schooner S. R. were in collision in the Mersey, between Seacombe and Egremont. The jibboom of the barque was driven through the headgear of the schooner, and both vessels began to drift together. The tide was running four knots, and there were other vessels astern; the J. V. was in much danger of drifting on to them. A steam-tug, E., came up, a hawser was made fast to the schooner, and the E., with the assistance of the steam-tug G. C., succeeded in getting the vessels clear of each other and of those astern. £140 to the E. as against the S. R., £70 as against the J. V., £50 to the G. C. *The Jonquina*, *The Sultana Reina* (Liverpool Pass. Co.), M. M. R. Jan. 13, 1871, p. 49.

V. 2,510*l.*—A. £260

860. The S. B., in ballast, got upon the Hasborough Sand with the loss of her rudder, waterlogged, and in a very dangerous state, and was abandoned by her master and crew. Two yawls from the shore, with twenty-five men, with great difficulty and at some risk, got the vessel off the sand into Blakeney Harbour. *The Sarah Bell*, S. G. May 24, 1845; 4 Notes of Cases, 145.

V. 720*l.*—A. £260

861. In October, the barque M., which had suffered damage by collision with a drifting vessel off the tail of the bank, and had been abandoned by her crew, was boarded, at great personal risk, by the master of the tug S., and was eventually towed by the tug into Greenock. *The Maranham* (Greenock Sher. Co.), M. M. R. Jan. 8, 1875, p. 47.

V. not stated.—A. £259

862. The ship L. D. lost her rudder, and with four feet of water in her hold, anchored, during bad weather, in 5½ fathoms water, to avoid drifting on a reef. The weather, which had been bad, moderated during the night, and in the morning a steam frigate of the East India Company towed her to an anchorage. *The Lord Dufferin*, 7 Notes of Cases, Supp. xxxiii.

V. 25,000*l.*—A. £250

863. In April, the A., 340 tons, from Liverpool to River Bonny, Africa, ashore on the Rough Point shoal, at the mouth of the Bonny, was got off after part of her cargo had been discharged by seventeen men in a boat from H.M.S. P. *The Ann*, S. G. Dec. 2, 1842.

V. not stated.—A. £250

864. In February, the barque A. was on the Sparrow Hawk Sand, at the entrance to the Tyne, in stormy weather. The steam-tug F. succeeded, with some risk, in getting the A. clear, and towing her into a place of safety. The services lasted twenty minutes. *The Annie*, M. M. R. May 21, 1870, p. 658.

V. 9,220*l.*—A. £250

865. The brig B. had sprung a leak, and hoisted a signal of distress. The brigantine T., in ballast under a charter-party, took the B. in tow, occasionally lent some of her crew to assist in pumping, and with the aid of a steamer took the B. into Shields. Owing to contrary winds setting in the T. was detained several days at Shields. *The Betsey*, December 19, 1849.

V. 977*l.*—A. £250

866. The ship B. had been in collision off Lundy Island, and sustained considerable damage. She was in a dangerous position, drifting towards Barnstaple Bay. Two pilots boarded her, and with great difficulty conducted her to Ilfracombe. *The Bouanza*, August 8, 1850.

V. 8,997*l.*—A. £250

867. The barque C., 388 tons register, from Alexandria for Hull, with beans in bulk, touched on the Goodwins, and signalled for assistance. She was, with some risk and difficulty, boarded by some of the crew of the lugger H. They navi-

gated her to the North Sand Head, working the pumps for the greater part of the time. It took fourteen hours to get her there. The lugger then fetched a tug from Ramsgate, which towed the barque safely into Ramsgate Harbour. *The Caledonia*, M. M. R. June 12, 1869, p. 753. Value 6,550*l.*—Award £250

868. In November, the C. from London to Gothenburg in ballast, was in a very perilous position on the Maplin Sand. Twenty men belonging to four smacks threw the ballast overboard and got her off. A steamer which had lain by to assist then towed her to a place of safety. £150 to the four smacks, £100 to the steamer. *The Caledonia*, S. G. March 5, 1841. V. 3,800*l.*—A. £250

869. The brigantine C., 157 tons, being in a damaged state, and waterlogged, the master and crew were taken out of her by the Porthcawl lifeboat, and she was left riding between the Skerweather Sands and Sker Point, in that condition, and with her foremast carried away. Some of the crew of the steam-tug D., forty-seven tons, boarded the C., and the D. took her in tow, and ultimately conducted her to Swansea. *The Champion*, S. G. March 3, 1863. V. 1,300*l.*—A. £250

870. In March, the French steamer C., 1,763 tons gross, when trying to enter Penarth Dock in an easterly wind, missed the entrance, and was driven on to the Pitching to the south of the entrance. Directly she struck her stern slewed to the S., and she lay broadside on to the sea, but in no immediate danger. Three Cardiff tugs tried, without success, to get her off. A Liverpool tug and two of the Cardiff tugs got hold of her, but could not move her until after an hour and a-half's towing. The paddle-wheel steam-tug K. C., 2,176 tons gross, came up, made fast, and got the stern of the C. to windward, after which she came off in ten minutes. The hawser was damaged during the services, which, however, involved no risk to the K. C. *The Clapeyron*, M. M. R. July 13, 1883, p. 878. V. 1,800*l.*—A. £250

871. In November, the steam-tug R., 121 tons register, during a gale from the west, was employed to assist another tug in docking the Ca. in the Bramley Moore Dock. She brought her into the London Dock about an hour before high water. Shortly before this the screw steamer City of B., 1,469 tons register, attended by the tug F., on trying to pass from the London into the Huskisson Dock, was driven by the gale broadside on to the east wall of the quay, with her head to the north, her hawser having parted. The hawser of the Ca. parting about the same time, the Ca. was driven to the E., on to the City of B. It was alleged by the R. that she, with the tugs C. and F., placed the Ca. fair for the eastern entrance of the Wellington Half-Tide Dock, and that the R. was then discharged. That she, the City of B., was from insufficient water settling down by the side of the quay on to the bank, which is rough and uneven from the washing of the sluices, and a very dangerous bottom for vessels to proceed upon, and that she then hailed the R. for further assistance. That after an attempt to tow the City of B. from the wall, which was ineffectual, as the rope broke, a second rope was attached, and the R. drew the City of B.'s bow thirty feet from the pier, and the F. having left the Ca., made a hawser fast to the R.'s towing-gear aft, and went ahead, having her stern to the City of B.'s stem, but that her head was close to the west side of the basin, and she could not go far ahead till her bows were straight for the opening into the river. That the R. meanwhile had got the City of B.'s bows fifty to sixty feet from the quay. That the F. was obliged to slip, being landed by the ebb tide to the north, and that the R. towed the City of B. till her head was fair for the opening into the river, and the City of B. then went ahead at full speed and slipped the R.'s hawser. The owners denied these accounts, and alleged that the F. was doing the R.'s proper work, and that the R. was hailed to assist the F. That it was by the R. being backed astern, and the F. going ahead, and the men working at the capstans, that the City of B.'s head was ultimately canted clear for the opening into the river. *Held*, that a salvage service was performed by the R., but not of a very high order. *The City of Boston*, M. M. R. July 14, 1866, p. 880. V. 83,000*l.*—A. £250

872. In December, the steamer C. of H., 333 tons register, took the ground at the entrance to the Yarmouth Harbour. The wind was blowing strong from the S.S.W., the weather hazy, and the sea rough. When the steamer, lifted by the sea, struck the pier end, the salvors got the passengers off by means of a plank. They then attached hauling lines between the steamer and the pier, and succeeded in getting her off.

She was towed to Old Ferry and moored to the south of the harbour. The services lasted twenty-four hours. *The City of Hamburg*, M. M. R. June 12, 1869, p. 753.

Value 3,954*l.*—Award £250

873. The barque D., 350 tons, while proceeding from Kamiesch, grounded on a reef of rocks. The master sent for the steamer C., which came, and with some risk lightened the barque and got her off. *The Deptford*, S. G. May 4, 1857.

V. 3,000*l.*—A. £250

874. In November, the E. G. from Scotland to London, got into a dangerous position on the Maplin Sands. Thirty-seven men belonging to eight smacks discharged her cargo and got her off. The salvors lost a large quantity of sprats. *The Earl Grey*, S. G. April 25, 1842.

V. 2,983*l.*—A. £250

875. In June, the barque E. A. O., 619 tons register, from Sunderland for Beypoor with coals, grounded on the north end of the Goodwin Sands during a dense fog. Two luggers coming up shortly, by laying out two of the barque's anchors, and by the assistance of some of their crew at the sails and wheel on board the barque, succeeded in getting the vessel off the sand. *The Elizabeth A. Oliver*, M. M. R. December 14, 1867, p. 1587.

V. 10,000*l.*—A. £250

876. The schooner E. was greatly damaged in a collision, and was abandoned by her crew. The crews of the luggers M. S. and P. succeeded, with the aid of a steam-tug, for which they paid £15, in conducting the E. into Ramsgate Harbour. *The Ellen*, S. G. June 8, 1860.

V. 600*l.*—A. £250

877. The brig E., on the 2nd November, got upon Hasborough Sand. The crew of the Lightship in a few hours carried her into Yarmouth Harbour. No danger to lives of salvors. The vessel W. and J. rendered some assistance. *The Emma*, January 23, 1859.

V. 1,750*l.*—A. £250

878. In October, the steamer E., 201 tons register, 40 h.-p., bound for Harlingen, was disabled, her boiler having given way, beyond repair. In answer to signals, the trawling fishing smack C. came from the fishing grounds on the Well Bank, three or four miles distant, and her services were engaged to tow the ship to Vlie Roads. The smack crowded all sail and towed the ship by her trawl-line from 7.30 a.m. to 5.30 p.m., when they made Vlie Roads. *The Ems*, M. M. R. March 14, 1873, p. 336.

V. 2,300*l.*—A. £250

879. In March, the barque E., 387 tons register, laden with grain, having been twice deserted by her master and crew was driven into Falmouth Roads, owing to a severe gale from the E.S.E. There was a very heavy sea running at the time. The steam-tug D., 28 tons register, 60 h.-p. with two boatmen, succeeded in conducting her to a place of safety. *The Euphrosyne*, M. M. R. Nov. 23, 1867, p. 1497.

V. 7,000*l.*—A. £250

880. In February, the barque E., anchored in the Sloyne, in charge of a pilot, broke her sheer and drifted across the port bow and chain of the P., at anchor about two cables' length distant. The pilot and most of the crew jumped on board the P. After the vessels had been in contact three-quarters of an hour, the tide ebbed and the wind blowing from an opposite direction, caused a lumpy sea. The tug W. then came up, got hold of the E., and held her for an hour, without, however, getting her clear. Blue lights were burnt on board the P., and the tug N. came up in answer thereto, made fast to the E., and got her clear and to a safe anchorage. *The Eva* (Liverpool Pass. Co.), M. M. R. April 14, 1871, p. 464.

V. 10,316*l.*—A. £250

881. The sloop E., 41 tons, in a hurricane off the Norfolk coast, was driving with her anchors down towards dangerous sands there; the vessel and crew were in imminent danger, and she had a signal of distress flying. A lugger with eleven hands, at the risk of their lives, towed the E. to Yarmouth. *The Exchange*, S. G. June 21, 1860.

V. 1,000*l.*—A. £250

882. In December, the yawl D., while cruising off Dover, in dark and heavy weather, observed signals of distress proceeding from the barque F. B., from Rotterdam to Cardiff, in ballast. The barque was much damaged, having been in collision with the steam-packet S., off Dover. Some of the yawl's men, with the consent of the master of the F. B., boarded her, pumped her, and assisted in repairing, pro tem., the damage received. The next morning the barque anchored

in Sandgate Roads. She got under way again, and the yawl's master engaged some men from a boat called the R. to relieve his men, who were fatigued with pumping. When off Folkestone, the barque was taken in tow by the steam-tug P. to Dover Harbour. It appeared that the master of the F. B. was ill. The salvors alleged, and the owners denied, that the crew of the barque were mutinous, and refused to work. *Held*, that the ship was not in imminent danger, but that a certain salvage service had been performed by the D., and that the P. was entitled to more than ordinary towage. The men from the R. had been paid £2 2s. apiece. *The Fanny Buck*, M. M. R. July 28, 1866, p. 946. Value 1,400l.—Award £250

883. In October, the brigantine F. was caught in heavy gales, and anchored in a dangerous position off Harwich. The two smacks A. and P. went to her assistance, and brought her into Harwich Harbour. *The Fortuna* (Harwich Mag.) M. M. R. Dec. 2, 1865, p. 1523. V. not stated.—A. £250

884. In January, the barque F. was in Yarmouth Roads with a great deal of water in her. The salvors, thirty-one in number, the crew of the M. L. lifeboat, pumped her during the night, and next day, with the help of a tug, took her into Lowestoft. *The Freyr*, M. M. R. May 1, 1874, p. 560. V. 2,363l.—A. £250

885. In August, the transport G. P., from the West Indies for London, with troops and invalids, drove from her anchors off Port Royal, Jamaica, and got into a dangerous position, from which she was rescued in a few minutes by the steamer S., value £65,000. *The General Palmer*, S. G. July 5, 1849. V. 3,200l.—A. £250

886. In February, the brig G. R., from Larna for Demerara with 312 tons of limestone, moored in the outer Roads off Holyhead, about three cables length from Salt Island, near the schooner E., commenced to drive, and got into collision with the schooner in a sea so tremendous as to prevent any of the numerous tugs in the harbour getting under weigh. The tug B. K., returning from towing a vessel off Bardsey, came up, and, after breaking two hawsers and nearly getting her quarter smashed in by the giving way of the G. R.'s mainmast and rigging, succeeded, after four hours' work, in getting the G. R. into port. *The George Reynolds* (Bengore Ad. Co.), M. M. R. April 6, 1877, p. 435. V. 450l.—A. £250

887. In July, the G. H., 565 tons, from Quebec to London with timber, touched the sands at the mouth of the Thames, came off waterlogged and with the loss of her anchors, and was towed by the steam-tug V. into Margate Roads, and afterwards to London. *The Good Hope*, Jan. 22, 1842. V. 3,800l.—A. £250

888. The vessel H., when off the Scilly Islands, became leaky. She was boarded by twenty-three men from three pilot boats, who, in two hours, succeeded in grounding her at Crow Bar. *The Hope*, S. G. July 8, 1853. V. 6,584l.—A. £250

889. In February, the brig J. R. was about ten miles off Orfordness. She had been in collision, and was considerably damaged. The steam-tug I., of 30 tons, went out from Lowestoft, and towed her to London. The salvage services lasted nearly two days, and the tug had to return to Lowestoft. *The Jurgen Rahlf*, S. G. May 22, 1858. V. 2,324l.—A. £250

890. The ship J. M. was assisted off a reef in St. Ann's Bay by the barque W. The services were of short duration, and were not attended with danger. *The John Mayall*, S. G. Jan. 20, 1863. V. 16,000l.—A. £250

891. In February, the steamer L. B., 600 tons, from Sunderland to London with coal, took the ground on the Cross Sand, and signalled for assistance. Some beachmen manned the lifeboat J. P. and went to her aid. The lifeboat lost some sixty to seventy fathoms of cable and an anchor. The salvors alleged that it was through their advice that the L. B. was got off the Sands, and one of the plaintiffs took the steamer's wheel. *The Lady Beatrix*, M. M. R. Aug. 11, 1866, p. 1009. V. 10,600l.—A. £250

892. In April, forty miles from W. Capelle, in a strong wind with a heavy sea, the Swedish barque L., 422 tons register, from Gefle for Torreviga with salt, was in a collision, and hoisted signals of distress. She had lost her bowsprit and foremast, had six feet of water in her hold, and was drifting like a log on the water. She was abandoned by her master and all her crew but the mate, but for whose exertions she would have sunk. The iron screw steamer C., 318 tons register, 50 h.-p., from Ghent

for Hull with general cargo, and the master of the C., with four hands, boarded the barque with much danger and difficulty. Two of the C.'s officers and four seamen of the C. were then put on board the barque. They cleared away the wreck, and pumped her. The C. took her in tow, and in thirty-three hours got her safely to Victoria Dock, Hull. *The Lejonet*, M. M. R. July 5, 1872, p. 848. Value 900*l.*—Award £250

893. The brig L., 253 tons, off the Dudgeon light, was struck by a heavy sea, and considerably damaged, and the master, the man at the wheel, and an apprentice were washed overboard and lost. The next day, the wind having changed to S.S.E., a signal for assistance was hoisted, and seen from several points on the coast, but in consequence of the bad weather it was impossible for any boats to go out to her assistance. When off Mundesley, fourteen men went in the lifeboat, and at considerable risk to their lives, reached the brig and conducted her to Yarmouth Roads. *The London*, S. G. June 18, 1849. V. 2,500*l.*—A. £250

894. The barque M. took shelter in Beaumaris Bay. While there she became becalmed, and touched on the spit of the Dutchman's Bank, but was got off again with the loss of an anchor. The steam-tug C. in two hours conducted her into Friars Roads, a distance of three miles. *The Margaret*, S. G. May 13, 1857. V. 3,565*l.*—A. £250

895. In June, the brig M. A., from Stockholm to Portugal, struck on the Ower Sand. A boat's crew got her into Yarmouth Roads, the boat being damaged during the service. £12 10*s.* was paid by the boat's crew for a steam-tug to take her into harbour. *The Mary Ann*, S. G. Nov. 14, 1843. V. 2,000*l.*—A. £250

896. In May, the M., 240 tons, from Demerara to London, having been damaged by collision and abandoned by all her crew except two seamen and three boys, was boarded by a master and his apprentice (passengers on board the A.), and by one of the crew of the A., who in nineteen days brought the M. to Dublin. The owners of the A. paid the master and apprentice £267 10*s.*, and the seamen £25. The court awarded to the two seamen and three boys £250. *The Medora*, S. G. Nov. 22, 1839. V. 11,500*l.*—A. £250

897. The brig M., 239 tons, in very tempestuous weather, shipped a great quantity of water, drove from two anchors, and was in great danger from the proximity of shoals and sands. A smack with nine hands came to her assistance, and the crew having boarded her, assisted in pumping her, and set the sails. By the means they adopted, the brig was brought in safety to Yarmouth Roads. *The Melona*, S. G. May 3, 1848. V. 1,834*l.*—A. £250

898. The brig M., off Sunderland, was anchored about thirty yards from the shore, in a position of great danger, the weather being very tempestuous; she made signals for assistance, and the steamer F., with great risk to the lives of her crew, went to her and towed her into deep water. *The Miaza*, S. G. May 14, 1856. V. 2,800*l.*—A. £250

899. In January, the ship M. L., 2,377 tons, from Liverpool for Bombay with 2,800 tons of coals, was heading to the eastward, without any sail set, with her port braces hauled in, and running across the Mersey to the Liverpool side, her tug the R. having got out of position and being unable to stop her way. The wind blowing a slight gale from S.S.W., and the tide ebb in shore. The M. L. had parted from both her anchors. The steam-tug E. in answer to signals came up and held her, and prevented her drifting on to the Pluckington Bank, slewing her head round to the S., and end on to the tide, then to the W. of S., and finally with the aid of two other tugs, the E. towed the M. L. to New Ferry, where the other two tugs held her during the night. The services of the E. lasted about fifteen minutes. *The Morning Light*, M. M. R. May 10, 1872, p. 593. V. 12,000*l.*—A. £250

900. A barque of 354 tons, having struck on the Tongue Sand and afterwards on the shingles off Margate, two luggers, of the joint burden of forty-nine tons, went to her assistance, and on the following morning, having brought out an anchor and cable, succeeded in conducting her in safety to the North Foreland. *The Mountaineer*, 2 W. Rob. 7. V. 12,000*l.*—A. £250

901. The brig N. C., 258 tons, in the North Sea, came in collision with another vessel, and remained foul of her, and in much danger. The smack A. disconnected

the vessels, and took the brig to Yarmouth Roads, whence she was taken by a steamer into Lowestoft Harbour. *The Norham Castle*, May 30, 1850.

Value 1,600*l.*—Award £250

902. In January, the N., 826 tons, from Cardiff to Cape de Verde Islands with coals, was found derelict, and drifting towards the shore near Keel Bay, by the screw steamer R., which took her in tow and brought her safely to Inishlyne. *The Nimrod* (Dublin Adm. Co.), M. M. R. April 30, 1875, p. 551. V. 800*l.*—A. £250

903. In November, the barque O., damaged in a collision, was towed to Liverpool and placed in the Canada Dock by the G. B., from about eleven miles north of the Orme's Head. *The Oskar* (Liverpool Pass. Co.), M. M. R. January 13, 1882.

V. 2,447*l.*—A. £250

904. In March, the brig P. C., with railway sleepers, was observed to take the ground on the Long Sand, off Ramsgate, the sea being heavy and the wind strong from W.N.W. The master of the smack I., from the East Swin, manned the lifeboat with four hands, crossed the Sunk Sand, and came through the Black Deep to the Long Sand, and boarded the brig. Shortly afterwards the smack E., belonging to the master of the I., also arrived, and both smacks were set on, and the brig was lightened by throwing about 2,000 sleepers overboard. The I. then came round the head of the Sunk Sand, and got as near to the P. C. as she could. Owing to the heavy sea, the P. C.'s bower anchor could not be got out; so two of the smack's anchors and two cables of 80 fathoms were fetched by the lifeboat, and let go to the W.S.W. of the P. C. About an hour after high water all hands hove on the anchors, and the P. C. floated off the sands, though she had previously been striking the ground very heavily, on the top of the tide. The two anchors were slipped, the P. C. was brought up for the night off Broadstairs, and the smack next morning fetched a steam-tug, which took the P. C. into Ramsgate. *The Prince Consort* (Cinque Ports Comm.), M. M. R. April 4, 1868, p. 435.

V. 1,600*l.*—A. £250

905. In March, the barque Queen of C. was ashore on the West Cap Rocks, and three luggers and three shore boats, with twenty-one hands in all, put off to her assistance. An anchor was carried out, and by heaving on it the barque was got off. The service was of no great duration, nor of any considerable risk. *The Queen of Ceylon* (Cinque Ports Comm.), M. M. R. June 28, 1878, p. 813.

V. 2,193*l.*—A. £250

906. H.M. gunboat R., of Wells, grounded on a sand bank whilst at anchor. A yawl with twenty-two hands assisted her off. *The Ruby*, S. G. April 5, 1859.

V. 7,246*l.*—A. £250

907. The brig S., laden with tallow and lathwood, was, on the 28th of November, on the outer bank off Horsey, on the Norfolk coast, 500 yards from high water mark. The wind and sea were so high that the life apparatus and rockets could not be used with success. Some beachmen, at the imminent risk of their lives, succeeded in launching a yawl, proceeded to the brig, landed the master and crew in safety, and secured the brig to the beach. Next day the agents for the ship engaged the salvors to discharge the cargo at the rate of 12s. per cask. They discharged 140 casks of tallow, and were paid at that rate. The brig then got off the bank, and, with the salvors on board pumping her, was towed by a steamer to the entrance of Yarmouth Harbour; but there was not sufficient water to carry her over the bar, and she remained outside during that night. The next morning she took the ground, and remained on the bar until the evening, when she broke up, and the rest of her cargo was washed out of her. The salvors were recalled by a signal, and on their return were prevented from completing their work by 400 other men, who saved the floating cargo. The court awarded £250 to the first set of salvors, and to the second set a proportion of the value, the amount of which is not ascertainable from the report. *The Samuel*, S. G. January 15, 1851; April 17, 1851.

V. 7,200*l.*—A. £250

908. In December, the steamer S. W., 435 tons gross, from the Tyne to Oporto with coals and chemicals, was in distress and signalling for aid. Her cylinder, cylinder cover, and the piston rod of her low pressure engine had given way. The screw steamer F. N., value £15,000, with sixteen hands, in ballast from London to Sutherland, when about E.S.E. of the Spurn Light, and heading N. by W., sighted her about a mile off, and two points on the port bow, and bore down on her. The weather was dull, with a freshening east breeze. The F. N. took her in tow, and

after some difficulty, and with a good deal of skill, got her to Grimsby Roads, a distance of about twenty-eight miles. *The Sir Walter*, M. M. R. March 7, 1884, p. 150. Value 8,645*l.*—Award £250

909. In November, the schooner S. P., 200 tons, was found derelict seventy miles west of Scilly by the barque E., 311 tons, from Portsmouth to Cardiff. The mate and five hands were put on board the S. P., which was brought safely to Queens-town; £29 10*s.* was paid for damage to hawser, boat hire, and use of tug. *The South Picton*, S. G. Jan. 7, 1859. V. 750*l.*—A. £250

910. Off Margate the lugger Q. was engaged to fetch an anchor and chain for the brig T., but on her return the men could not board the brig, owing to the force of a gale that had sprung up from the E.N.E. The brig went ashore, and the lifeboat, in answer to a flare-up, came to her and saved the crew. The weather moderating, the lifeboatmen assisted in lightening her, and she was got off. *The Theesalia* (City of London Co.), M. M. R. March 17, 1871, p. 337. V. 950*l.*—A. £250

911. In May, the iron screw steamer T. W. was found by the screw steamer E., fast in the ice and making water, about eighteen miles north of Packerort Light-house. The wind was light, the weather thick with snow and rain, and there was much drifting block ice. The E. forced her way to her, and found her badly stove in about six feet under water. Her passengers were taken on board the E., and after great difficulty and no little danger, that vessel succeeded in taking the T. W. in tow to Cronstadt. The services lasted four days. *The Thomas Wilson*, M. M. R. June 23, 1876, p. 779. V. 22,000*l.*—A. £250

912. In February, the barque T., from South Shields to London, got ashore on Tynemouth Bar, and was in great danger. Three steamers rendered most effectual aid, and in a short time towed her off. *The Tyne*, S. G. July 9, 1841. V. 10,400*l.*—A. £250

913. The brig V. got on the Holm Sand, near Pakefield, in a situation of considerable peril. Two yawls, with seventy-two hands, went to her assistance, and found part of the crews of two vessels anchored in the neighbourhood trying to get the brig off by means of a kedge anchor, but without success. The two yawls were employed, and they succeeded in getting the brig off the sand. *The Vivid*, S. G. Dec. 13, 1853. V. 1,700*l.*—A. £250

914. The barque W. H., during a snow storm, got on shore in East Bay, Dungeness; the tide was ebbing, and she was in considerable peril. Lieutenant Combe, of the coastguard at Dungeness, went with four of his men to the assistance of the barque, which was about four cables lengths from the shore. The wind was blowing a strong gale, with a heavy sea. Before the boat could reach the barque it was capsized, and two of the coastguardsmen were drowned; Lieutenant Combe and the other two being saved on board the barque. Soon afterwards two Deal luggers, with twenty-three men, came up with the barque, and with their assistance she was got off and conveyed to Spithead. £150 to Lieutenant Combe, and £100 to the Deal boatmen. *The William Hannington*, S. G. June 12, 1845. V. 1,274*l.*—A. £250

915. The ship W. M., 447 tons, having been compelled to slip from her anchors, put into Yarmouth Roads, and hoisted a signal. The wind was blowing a hurricane from N.N.W. with a heavy snow storm. Ten salvors, at considerable risk, manned the yawl F., proceeded in her to the ship, boarded her and took her into Lowestoft Roads. Thirteen more men went off to the ship in the yawl S. F., taking out a North Sea pilot, and two anchors were procured and placed on board by the yawl assisted by a steamer. *The William Metcalfe*, S. G. May 28, 1850. V. 5,050*l.*—A. £250

916. In December, the steamer A., from Dublin for Genoa with sugar, was aground on the rocks near the North Foreland, her starboard side being broadside to the rocks, the sea breaking over her deck, and the tide ebb. The Broadstairs lifeboat came up and finding that a tug was wanted, sent two of her crew, who jumped ashore on to the rocks from the lifeboat, to fetch one, and they procured the tug Aid, which carried out an anchor and sixty fathoms of chain in a S.E. direction, and succeeded in getting her off. *The Anglian*, M. M. R. April 2, 1870, p. 433. V. 21,000*l.*—A. £240

917. In September, the French steamer A. came into collision with the steamer B., and was so damaged that her master put her ashore on the Roar Sand near Dungeness. The luggers G., F. N., T. S., and the smack General B., came to the assistance of the A., and the crews of the luggers with forty labourers lightened her of some of her cargo, part of which they took to Dover, and she was then got off. *The Antelope* (Cinque Ports Comm.), M. M. R. Nov. 29, 1872, p. 1524.

Value 4,500*l.*.—Award £240

918. The C., abandoned by her crew, drifted five miles out to sea from Sunderland Harbour. A steam-tug manned by ten pilots brought her back. £120 to tug, £120 to pilots. *The Cato*, S. G. June 17, 1841.

V. 700*l.*.—A. £240

919. The barque J., 251 tons, with coals, grounded on the Tongue Sand in a strong wind and high sea. She was in great danger, and rolled, and struck heavily. Two tugs towed her off with difficulty, the tow-rope breaking twice. One of the tugs towed her to Gravesend and afterwards to London. The services lasted two days, and the tugs were slightly damaged. Two luggers and a smack were also engaged in getting the barque off, and were settled with for £120. *The Judith*, S. G. Nov. 3, 1858.

V. 1,510*l.*.—A. £240

920. In October, the sloop E., in a very heavy sea, wind N. and blowing hard, was some fourteen and a-half miles, and bearing S.E. by E., from the Dudgeon in a helpless condition. The sloop's crew were exhausted with pumping, her pumps kept choking, her sails were blown away, and she had a list. The services of the lugger T. S. were engaged; and next day the sloop was brought up in Lowestoft Roads. The master of the lugger came ashore and engaged a steam-tug to tow the sloop into harbour, and extra men to pump. The expenses were £10. *The Ebenezer* (Lowestoft Co. Co.), M. M. R. Dec. 9, 1870, p. 1587.

V. 900*l.*.—A. £235

921. In April, the brig H. A., from Gothenburg to Southampton with wood, was on the Long Sand, in imminent danger, having lost her rudder, mainmast, foremast, and one anchor and chain. Thirty-five salvors, a steam-tug, a lifeboat, a lugger, and a smack, after services of no long duration, got her off, and towed her into Harwich. *The Hedvig Amalie*, S. G. July 10, 1857.

V. 700*l.*.—A. £233

922. In December, the brig A. P., 142 tons, from Helsingborg for London with oats, met with tempestuous weather, shipped much water, and sprung a slight leak. She was boarded by three men from a fishing smack, the L., who helped to pump and navigate her to the Bell Buoy in the Humber, where she anchored next day, and she was afterwards towed by a steam-tug to Grimsby. During the service the weather was bad, with showers of snow, and the men's boat was stove in just after they boarded the A. P. *The Ann Peat*, M. M. R. May 11, 1867, p. 593.

V. 2,800*l.*.—A. £230

923. In October, the iron steamer E., 1,351 tons register, from Liverpool to Madras, with coals, was discovered, after some days' cruise in search of her, by the screw steamer L. of the I., 74 tons register, 45 h.-p., in about lat. 48°50' N. and long. 9°20' W., dismantled, derelict, and unmanageable, with 6½ feet of water in her, and with a list of 16° to port, her lee side being under water and her steering-gear useless. A steel wire hawser was got on board, as well as a 9-inch coir hawser, and the L. of the I. commenced towing at full speed. There was a strong S.S.E. wind and heavy swell from N.W. The steam-tug W. was sighted, and as the rope broke and fouled the propeller of the L. of the I., the tug towed the E. away, leaving the L. of the I. disabled for twenty hours. The W. arrived at Liverpool with the E. in tow in three days. £200 to the L. of the I., £30 to the W. *The Eblana*, M. M. R. Jan. 24, 1879, p. 114.

V. 4,500*l.*.—A. £230

924. In September, the steamer D. struck on the rocks called the Ny Ground, in the Gulf of Finland, and became a total wreck. Her crew and three cases of platinum, which came from the boats of the D., were taken on board the steamer A., which came from some three miles off, in answer to signals. The A. steamed back to Port Baltic, and landed the crew of the D., and the platinum was taken on to Hull. *The Delta* (Hull Ad. Co.), M. M. R. March 20, 1874, p. 369.

V. 1,800*l.*.—A. £225

925. In April, the French brig M. L., from Hull for Boulogne, with coals, was fast on the Middle Cross Sand, and as the water rose began to bump. Thirty-five

beachmen and the tug S. succeeded, after one and a-half hours' work, in getting her off, slipping her chains and anchors, which they afterwards salvaged. *The Marie Leonie* (Yarmouth Co. Co.), M. M. R. June 4, 1875, p. 714. Value 1,500*l.*—Award £225

926. The schooner N., 93 tons, grounded on the Blacktail Sand, on the 20th December, the wind blowing hard from E.S.E. with a heavy sea. The ship and her boats were damaged; she was in great danger. Smacks with twenty-four hands got her off the Sand, and took her to the West India Docks on the 23rd December. *The Nicoline*, April 21, 1849. V. 1,500*l.*—A. £225

927. In February, the brig Q. E., of Liverpool, was after heavy weather in lat. 39° N., and long. 31° 15' W., with her ensign flying union down, and rolling heavily in the trough of the sea. She was on the port tack, under lower maintopsails, reefed upper maintopsails, lower foretopsail, and foresail clewed up, foretopmast-staystail and gib maintopsail aback, and with a tackle at her port yardarm. She was discovered on the 3rd of February, by the barque P., 600 tons, from Cardiff to Port Royal, Jamaica, laden with patent fuel, the P. having herself suffered great damage in the then recent severe weather. The mate and two men of the P. boarded her and found her derelict, her galley and cabin skylight smashed in, her boats missing, and ten and a-half inches of water in her hold. She had been stripped of all provisions. They put her before the wind on a course for Fayal, 120 miles distant. Fayal was sighted on the 5th, and she was safely anchored there about 6.30 p.m. The mate of the P. remained in charge of the Q. E. till the 13th February, and then gave up possession to a master and crew who were sent out to her from Liverpool. *The Queen Emma*, M. M. R. August 11, 1882, p. 1004. V. 450*l.*—A. £225

928. In February, the brig W. T., after she had been abandoned in the ice by her crew, was boarded by nineteen men, who put off with much difficulty in a brig, and brought her into port. *The William Brig*, S. G. March 26, 1856. V. 1,856*l.*—A. £225

929. The R. was ashore near Scharhorn, leaking badly, filled with water, and exposed to the danger of breaking up next tide. She was brought to Cuxhaven by the C., after the crew and the greater part of the cargo had been saved by other vessels. *Cuxhaven v. Regina*, Salvage, Hamb. H. G. Z. 1871, pp. 167, 168. [German.] V. 4,145*l.*—A. £225

930. The M. L., 237 tons, touched on the Brake Sand, but was got off and anchored. She hoisted signals of distress, and two luggers went out to her at some risk, but could not render assistance. One of the luggers remained by the ship, and the other went to Ramsgate with a letter to Lloyd's agent, who came off in a steam-tug, which towed the M. L. into Ramsgate Harbour. *The Mary Lion*, S. G. Aug. 4, 1859. V. 3,248*l.*—A. £222

931. The R. lost her foremast and gear near the Borkum Reef, was anchored foul, in eighteen fathoms water, with forty fathoms of chain out, and was drifting. She was found by the A., who towed her, after half-a-day's labour, without danger, to Cuxhaven. The A. expended £62 in repairs of damage sustained. *Rencke and Alster*, Assistance, Hamb. H. G. Z. 1879, pp. 177, 182. [German.] V. 1,640*l.*—A. £222

932. The A. had her foremast damaged and her rigging carried away by collision. A fishing smack in three days towed her to Grimsby. *The Argo*, S. G. Dec. 6, 1855. V. 1,038*l.*—A. £220

933. In November, the A., 931 tons register, from Quebec for Liverpool with timber, was run down by a schooner in the Mersey, and parted from her anchor by which she was then riding and had to let go another. The steam-tug Gt. C. towed the schooner off, and it was agreed that the tug should return after having towed the schooner to a safe anchor, and shift the A.'s berth for £8. The A. was lying about her own length from the Gt. E., and during the delay caused by getting up the A.'s anchor, she nearly fouled the Gt. E.; and the tug finally brought the A. to an anchorage off the Brunswick Dock. The owners of the A. insisted that the services were not of a salvage nature; or that, if so, they were included in the £8 agreed upon, though rendered more difficult and protracted from the tug having improperly let go the ropes between the A. and herself, and steamed away from her.

This the plaintiffs alleged was done to save collision with the *Gt. E. The Australia*, M. M. R. Feb. 23, 1867, p. 240. Value 5,585*l.*—Award £220

934. The Dutch barque *B.* was off Sunderland in tow of the steam-tug *Bee*, which was endeavouring, but was unable, to tow her into the south entrance of the Sunderland Docks. The wind *E.* by *S.* was blowing a fresh gale; and the weather showery with squalls, and a heavy sea. The steam-tug *W.* went to their assistance. Great exertions were made to get the barque's head towards the entrance of the dock, but before it could be effected the tow-rope of the *Bee* broke. The steam-tug *G. K.* was then also employed, and by the joint exertions of the three tugs the barque was prevented from driving on to the shelf of rocks to the south of the docks, where she would have gone to pieces. The *W.* and the *G. K.* only sued as salvors. *The Brouwershaven*, S. G. November 21, 1857. V. 6,000*l.*—A. £220

935. In January, the barque *C.*, 384 tons register, anchored in ten fathoms water in Yarmouth Roads, for shelter from a gale from the N.E. with snow. After having veered out chain to sixty fathoms, she found herself in only five fathoms, and consequently took the ground and began striking. Signals of distress were made, and a surf boat, with eight men therein, boarded the *C.* Shortly afterwards the steam-tug *S.* came up, and took the barque in tow, first to Lowestoft Roads, and then on the flood tide into the harbour. *The Chowdean*, M. M. R. April 20, 1867, p. 497. V. 2,000*l.*—A. £220

936. In November, the Danish screw steamer *D.*, from Hull for Copenhagen with coals, was discovered by the screw steamer *E.* about four miles from the Knole Lighthouse in the Cattegat, lying in the trough of the sea, rolling heavily, and with her engines quite disabled. The weather was thick and the wind strong from *S.*, with a nasty cross sea. Hawsers were attached after some difficulty, and the *E.* towed the *D.* into Elsinore next day. *The Dannemark*, M. M. R. June 23, 1876, p. 779. V. not stated.—A. £220

937. In January, the *D.*, from the Levant with fruit, got on the Maplin Sand. Twenty-eight men from a smack and a steamer discharged part of the cargo. She was then towed to Standgate Creek, where the cargo was re-shipped. *The Denia*, S. G. May 10, 1842. V. 4,000*l.*—A. £220

938. The barque *E. L.*, 363 tons, having dragged her anchor, was close to the edge of Barber Sand. The steam-tug *F. N.* in an hour and a-half towed her to Yarmouth. *The East London*, S. G. April 19, 1860. V. 3,000*l.*—A. £220

939. The barque *E. H.*, 324 tons, with her rudder damaged by stress of weather, hoisted a signal of distress when about fifteen miles from the Galloper Light. The fishing smack *C.*, with five men, succeeded in bringing her to the Varne Shoal. A steamer, the *B.*, was then engaged to conduct her to Ramsgate. *The Elizabeth Holderness*, S. G. April 29, 1846. V. 2,440*l.*—A. £220

940. The brig *E. W.* was labouring heavily, with both anchors down in the midst of broken water, about ninety fathoms from Hendore Rock, and in great peril of driving thereon. Weather thick and foggy, and sea running strongly. The steam-tug *P.*, with eleven extra hands and a lifeboat, dragged her off the land and towed her into the South Dock at Sunderland. Great difficulty and danger to the tug and her crew. Services from 7 a.m. to 2 p.m. *The Elizabeth Wilthew*, S. G. January 29, 1858. V. 1,800*l.*—A. £220

941. The *E.*, timber-laden, was found derelict on the Dogger Bank, and was conducted by five salvors to Scarborough. *The Emanuel*, S. G. April 16, 1853. V. 620*l.*—A. £220

942. In January, the ship *K. C.*, 1,421 tons register, from Calcutta for London with a general cargo, when off Portland, was found to have her cargo on fire. The hatches were battened down, all the vents stopped, and she was hove-to for the night. Next morning, the fire not increasing, she proceeded up Channel, and on the second day, when off Dungeness, a pilot was taken on board. The master of the tug *P.*, in ignorance of the fire, agreed to tow the *K. C.* to Gravesend for £70, and to engage a second tug when met with. When near Dover, the tug *W.* was employed by the master of the *P.* to help tow. The harbour master refused to allow the ship to proceed beyond Higham Bight, and the tugs were then discharged. The *W.*

took the agents from Gravesend and put them on board the ship. *The Knight Companion*, M. M. R. May 4, 1867, p. 561. Value 39,000*l.*—Award £220

943. In February, the L., having touched on the Leman and Ower Sands, and put into Yarmouth Roads in a very leaky state, was pumped by twenty men, of whom sixteen with a yawl accompanied her to London. *The London*, S. G. July 13, 1843. V. 3,800*l.*—A. £220

944. In December, the Norwegian ship N. P., from Norway to London with deals, struck on the S. side of Hasborough Sand, and twelve men in the fishing-lugger S. got her to a place of comparative safety. Three tugs took her to Yarmouth. £100 to the tugs, £120 to the lugger. *The Nord Polen*, S. G. May 3, 1860. V. 2,100*l.*—A. £220

945. Services were rendered by some Suffolk boatmen to the brig R. off Yarmouth Harbour. There was some risk to the vessel and crew. *The Ratcliff*, M. M. R. Dec. 15, 1866, p. 1586. V. 2,500*l.*—A. £220

946. The barque T., off the South Foreland, slipped from her anchor to find a safer position. The lugger E. Z. was engaged to procure her an anchor and chain from Deal, and having obtained them the lugger A. was employed to take them to the barque, and they were placed on board her in Margate Roads, at very great danger to the lugger, owing to the tempestuous state of the weather. *The Traveller*, S. G. April 5, 1864. V. 4,800*l.*—A. £220

947. In November, the brig T., 421 tons, from St. Petersburg to London, on the Blythe Sand, was, after four days' attendance, towed off and up to the Commercial Docks. *The Trusty*, S. G. April 30, 1840. V. 2,650*l.*—A. £220

948. The brig T. B. was dismasted and sustained other damage. The fishing smack S. of R. observed her in the North Sea with a signal flying, and succeeded, with great danger to herself, in taking the brig in tow, and conducting her in thirty hours to Grimsby, a distance of sixty miles. *The Two Brothers*, S. G. Jan. 28, 1853. V. 1,800*l.*—A. £220

949. The W. was in a sinking condition, with an exhausted crew, about a mile from Sandy Hook Beach. A pilot boat, valued at £600, with a crew of seven men, went to her. The pilot took charge of her, unloaded part of her cargo, shifted other parts from forward to aft to raise her bow where the leak was, secured a tarpaulin over the bow to check the leak, and towed the vessel to New York. *The Wave*, 1 Blatch. & How. 235, cited in Marvin, 210. [American.] V. 2,167*l.*—A. £216

950. In December, the fishing-smack R. G., with fish, lying-to, under close-reefed storm canvas, about twenty miles S.E. of Spurn Head, in a heavy gale from W.N.W., and a high sea, descried the sloop A., forty-four tons register, from London to Goole with wheat, flying signals of distress about three to four miles distant. The A. was driving rapidly to leeward, the sea making a clean breach over her; her jibs had been blown away, her foresail cut away, and part of her bulwark knocked away, in order to right her. She had two or three streaks shift to leeward. Her starboard leeboard was broken, and the ironwork of her chain-plates had given way. The A. was towed up to abreast of the Bull Sand Light vessel, when the tow-rope broke. Next day she was towed by a tug into Grimsby. The two smacksmen helped to pump and steer the A. *The Anne*, M. M. R. June 1, 1867, p. 690. V. 1,300*l.*—A. £210

951. The C., 239 tons, from Cronstadt to London with tallow and lathwood, got aground on the Shoeburyness Sands during the prevalence of a heavy sea and a strong wind. The steamer T. came up, and an agreement was entered into between the master of the T. and the master of the C., that the former should tow the C. off the ground and up to Gravesend for £80. The T. was in attendance on the C. for three days trying to get her off the Sand; the ship was during that time lightened, and with the aid of the tug E., which was employed, the T. got the C. off the Sand, and up to Gravesend. The court held that the agreement was valid, that the E. gave great help in getting the cargo out, and was therefore entitled to £130. £130 to the E., £80 to the T. *The Cato*, M. M. R. Aug. 11, 1866, p. 1010. V. 12,000*l.*—A. £210

952. In December, the E. H. from North America to Hull with deals, with damaged rudder, was taken by a fishing smack with five hands from fifteen miles off the Galloper Light to within six miles of Dover. Thence a steamer towed her

to Ramsgate. £110 to smacks, £100 to steamer. *The Elizabeth Holdernen*, S. G. April 29, 1846. Value 2,440*l.*—Award £210

953. In May, the steamer T. A. G. was driving bodily to leeward off the coast of Portugal, and powerless to help herself, her engines having broken down, when she was taken in tow after much difficulty by the screw steamer O. K., and brought into the fairway for Lisbon. *The T. A. Gibb* (City of London Co.), M. M. R. June 19, 1874, p. 784. V. 16,008*l.*—A. £210

954. The brig J. and M., from Sunderland to Hamburg with coals, was boarded about sixty miles from Heligoland, in a leaky state, in a heavy gale from the S.E., by the crews of two smacks, who pumped her and took her safely to Grimsby. *The John and Mary*, M. M. R. Oct. 21, 1865, p. 1330. V. not stated.—A. £210

955. The sloop M., 45 tons, having been damaged in a gale, was off Yarmouth Jetty. The yawl H. went to her, assisted in pumping, getting up anchors and chains, and conducting her to a place of safety. *The Mary*, S. G. Dec. 13, 1860. V. 1,062*l.*—A. £210

956. The American schooner N. R. was found by the tug M. riding near the Barber Sand, and disabled by a collision; and was taken by her into Yarmouth. The weather was bad, but moderated towards the end of the services. *The Nancy Ross* (Yarmouth Co. Co.) M. M. R. Dec. 28, 1877, p. 1651. V. 1,050*l.*—A. £210

957. In January, the French brig N., with 210 tons of iron ore, disabled in a collision with the barque B., and deserted by her crew, was taken in tow, after much difficulty, by the tug S., and brought to a mooring in the Tyne inside the bar, after nine hours' towing. The wind was fresh at first, and increased to a gale, and the sea got higher as the towage went on. *The Noeme Petite* (North Shields Pol. Co.), M. M. R. Feb. 28, 1873, p. 275. V. 663*l.*—A. £200

958. Six men succeeded, after three days' services, rendered with the greatest despatch and with risk of life, in salving a vessel in so effective a manner that a cargo of large value was not damaged at all. Aulploon awarded. Trib. Middelburg, Nov. 30, 1859, M. C. L. II. 15 P. in voce hulp-en bergloon, No. 36. [Dutch.] V. 1,666*l.*—A. £208

959. In October, the L. C. had gone aground during a gale from the land on Whitburn Steel. The V. and B., steam-tugs, at the imminent risk of being driven on a lee-shore, succeeded in taking her off and towing her into the Tyne. *The Lord Collingwood* (North Shields Pol. Co.), M. M. R. Dec. 14, 1867, p. 1593. V. not stated.—A. £205

960. The ship A. was on shore on the Blythe Sand, surrounded by ice. Several smacks, with forty hands in all, succeeded, after four hours' labour, in breaking through the ice, and by lightening the vessel and laying out anchors rescued her. Services occupied twenty-five hours. *The Adelaide*, S. G. April 21, 1855. V. 1,237*l.*—A. £200

961. In October, the weather being very rough, the schooner A., from London for Goole, got into distress in Pakefield Gats, where she lost her rudder in a dangerous spot, and was making water. The steam-tug R. came up, as also did the Pakefield lifeboat, some of whose crew boarded the A. and assisted in getting the tug's tow-rope fastened. She was eventually brought into harbour. £170 to the tug, £30 to the lifeboat. *The Affigo* (Lowestoff Co. Co.), M. M. R. Dec. 10, 1880, p. 1583. V. not stated.—A. £200

962. The A., 648 tons, sustained so much damage by a collision that she was found to have ten feet of water in her hold, and the master and crew thinking her to be in very great danger, got into the longboat and left her. When about a mile and a-half from the vessel they fell in with a skiff with three boatmen in her, who, at their request, conducted them back to their vessel. The boatmen, with two of the crew, then boarded the A., and ascertained her exact state, on which the crew again took possession of her, and brought her in safety to Kingroad. *The Amoy*, S. G. July 18, 1856. V. 2,875*l.*—A. £200

963. The ship B. was disabled, in a leaky state, and laden with coals; she was towed by the Norwegian barque T. (on her voyage from Quebec to Hull) to St. Ives. *The Brodrene*, S. G. Feb. 26, 1858. V. 1,894*l.*—A. £200

964. In December, the barque C., 597 tons register, when aground and in imminent danger off Plymouth, was boarded at great risk by two pilots and two other persons, who, by slipping her chain and taking other steps, got her off and into a place of safety. *The Cabot*, M. M. R. April 24, 1869, p. 530.

Value 2,700*l.*—Award £200

965. In June, the iron screw steamer C., 880 tons nett, schooner rigged, twenty hands, with Indian corn, fourteen days out from Baltimore for Londonderry, broke the tail of her propeller shaft. She proceeded under sail for 126 miles, and on June 30 fell in with the screw steamer V., 3,989 tons gross, 4,449 tons nett, and 400 h.-p., and fifty-four hands, with live stock, dead meat, and general American produce, from Boston for Liverpool, total value £81,148. The C. was heading N. with a W. wind, and could have paid off to the E. without assistance. The V. took her in tow for eighty-five miles, which hastened the voyage of the C. about seventy hours, and she was also taken some ten to fourteen miles to the W. nearer her track, out of which she had drifted thirty miles S. There was no danger from the state of the weather at that time, and the master of the V., when the hawser broke, did not, as signalled by the C. to do, renew the towing, in consequence of the risk of damage to his own cargo and sheep in turning to windward to connect. The court held he was justified, and that by shortening the time in which the C. was exposed to the risk of bad weather whilst in a disabled state salvage services had been rendered. *The Camellia*, M. M. R. Jan. 18 and 25, 1884, pp. 42, 54.

V. 23,419*l.*—A. £200

966. The barque C., 400 tons, dropped her anchor in Lowestoft Roads; the wind blowing strong, and the anchor not holding, she struck on the north part of the Newcome Sand, but shortly afterwards floated off and drifted towards the Holm Sand, when she was taken in tow by the steam-tug E., which proceeded with her for Yarmouth, whither she might safely have been conducted, but when in the fairway, rather to the north of Lowestoft, some boatmen, who had boarded the barque when on the Newcome Sand, cut the tow-rope and forcibly took possession of her. Possession was, however, recovered the next day, and she was towed back to Yarmouth. There was no risk and no great labour to salvors. *The Caroline*, S. G. July 25, 1861; 7 L. T. N.S. 222.

V. 3,600*l.*—A. £200

967. In November, the screw steamer City of A., 3,273 tons register, from Glasgow for Calcutta with a general cargo, passengers and fifty-six hands, at anchor in the Mersey, off the Rock Lighthouse, was run into by the screw steamer N., 1,297 tons register, received a great wound, had one compartment filled with water, and was sinking. She hailed the steam-tug B. S., 380 tons register, to come alongside, and some of the passengers, and firemen, who were in a state of panic, jumped on board the B. S., which made fast to the City of A., and assisted her into the Alfred Dock at Birkenhead, where she was safely docked. *The City of Agra*, M. M. R. Dec. 3, 1880, p. 1551.

V. 90,060*l.*—A. £200

968. The ship C., 793 tons, in the Mersey, was riding to her port anchor with the starboard anchor catted. The wind increasing, a signal was hoisted, and the steam-tugs C. and S. K. assisted her while her port anchor was got in, and the starboard one let go. *The Conception*, S. G. January 22, 1860.

V. 122,226*l.*—A. £200

969. The C. got on the north end of the Arklow Bank, and lay there thumping heavily for some time. She made about four feet of water; but by throwing overboard part of her cargo she was got off without assistance and proceeded for Holyhead, on the way thither five pilots and ten men boarded her, and by their assistance she was conducted in safety to Holyhead. *The Concordia*, S. G. July 6, 1846.

V. 21,000*l.*—A. £200

970. The C. grounded on the West Barrow Sand in fine weather. Three fishing smacks in twelve hours got her off. *The Courier*, S. G. March 22, 1855.

V. 3,167*l.*—A. £200

971. In January, the full-rigged ship C., 2,211 tons gross, from Cardiff to San Francisco, with thirty-six hands and a cargo of railway iron, bricks, coal, and coke, whilst in tow of the steam-tug M. E., from Cardiff Docks for the Bristol Channel, came into collision with the steamer F., was driven ashore off Penarth Head upon a hard stone bottom, and was in great danger. The M. E., without difficulty or danger

to herself, with the assistance of two other tugs, got the C. afloat, and towed her into dock. *The Cressington*, M. M. R. May 16, 1884, p. 310.

Value 17,500*l.*—Award £200

972. In April, the barque Dr. V. T. T., with grain, was riding in Margate Roads about half-a-mile from the Long Nose, in a heavy gale from the N.N.E., with the sea breaking over her. She had two anchors, but had fouled them. She signalled the lugger E., from which four hands with great difficulty got on board her, and the lugger stood by. The hands from the lugger asked £100 to get her to London, but the captain of the barque offered £5. Whilst they were disputing as to the sum to be paid, the steam-tug *Enterprise* came up, and was engaged to take the barque in tow, and having moved ahead, the anchors were got in and the barque was towed in safety to London. £175 to the *Enterprise*, £25 to the E. *The Doctor Von Thunnen Tellow*, M. M. R. May 1, 1869, p. 562; May 8, 1869, p. 595; July 13, 1869, p. 979.

V. 1,127*l.*—A. £200

973. The D., having struck on a bank, sprang a leak, made a considerable quantity of water, and was in great danger. The fishing smack B. entered into an agreement for £60 to conduct the D. to Harwich, and an additional £10 if the services lasted till the following morning. The water, however, continuing to increase, the services of the yawl Dart were engaged, and after considerable labour the D. was brought into Yarmouth. The B. and the Dart both sued. *The Doncaster*, S. G. May 18, 1847.

V. 1,555*l.*—A. £200

974. The E. E. was anchored in Simon's Bay at the Cape of Good Hope; a squall coming on she was driven on shore and struck heavily on the beach. H.M.S. P., together with a number of men from H.M.S. F., got her off. *The Earl of Eglinton*, S. G. Dec. 6, 1855.

V. 84,500*l.*—A. £200

975. In December, the brig E. J., from Sunderland for Middlesborough with coals, in lat. 55° 53' N., and long. 1° 39' E., about 120 miles E. by N.½N. of the Tees Bar Buoy, had lost her long-boat, had her jolly-boat laid on the deck, the main hatch tarpaulin split, three hatches off, and five and a-half feet of water in her. She was filling fast by the hatchways. Two boats from the screw steamer B. were sent with the means of rigging the pumps and battening down the hatches. The B. got a tow-line on board and commenced to tow her slowly for three and a-half hours, when, the water being reduced, the B. steamed ahead at full speed for twenty hours more. A tug was then procured, which brought her up safely in two hours to Middlesborough. *The Eliza Jane*, M. M. R. July 28, 1876, p. 947.

V. 750*l.*—A. £200

976. The E., 381 tons, was on the Maitland Sand, off the coast of Essex. A steam-tug of 35 h.-p., with eight men, lay by the vessel one night and then drew her off and towed her to London. *The Enu*, 1 W. Rob. 15.

V. 11,773*l.*—A. £200

977. The E., in ballast, got upon the Gunfleet Sand, and was abandoned by her master and crew. Eight smacks and thirty hands took possession and worked at her, refusing other assistance; ten other smacks came and obtruded their assistance. The vessel was got off and into the river Colue. The services of the first salvors lasted two days. The court dismissed the claim of the second salvors. *The Eugene*, 3 Hagg. 156.

V. 420*l.*—A. £200

978. In May, the F. was found lying broadside on the water, with her masts in the sea, by the smack J. and the lugger B., about thirty miles S.E. of Lowestoft. Finding they could not do anything without steam, the J. fetched the tug R., which was not strong enough. The tugs S. and U. S. were fetched, and after the mainmast and foremast had been dragged out of her, and she had righted herself, these towed her into Yarmouth Roads and beached her near the Wellington Pier; the tow-rope breaking three times on the way. *The Flora* (Yarmouth Co. Co.), M. M. R. Aug. 6, 1875, p. 1000.

V. 393*l.*—A. £200

979. In December, as the ship G. G., 1,245 tons, in ballast, was proceeding from Gravesend in tow of the steam-tug S., 235 tons, the tow-rope parted near the Tongue Lightship, in a gale of wind with snow and hail from N.E., and a very heavy sea. The G. G. just cleared the lightship, and let go her anchors, but dragged too close on the Tongue Sand. The S. got a rope on board and towed her up Prince's Channel to an anchorage off Shoeburyness, where she remained till next morning, when the

storm having abated she was taken by the S. to Gravesend and anchored. *The George Gordon*, M. M. R. March 7, 1884, p. 150. Value 14,000*l.*—Award £200

980. The brig G. was driven on the Scroby Sand; the wind blew very hard from the S.S.W.; there was a heavy swell on, and the sea broke over the brig, which was in much danger. Twenty-three men in two yawls went to her aid, and by their exertions, in connection with a steam-tug and a number of men to lighten the vessel, conducted her to Yarmouth Roads. The yawl was in imminent danger of being capsized, and there was great danger to the lives of the crew. *The Gleaner*, June 29, 1852. V. 600*l.*—A. £200

981. In January, the schooner G., with several cases of gunpowder on board, was some thirteen miles S.W. of Sunderland, derelict, dismasted, and rolling heavily, during a gale, when she was discovered by the steam-tug J. P., twelve tons, 40 h.-p., which took her in tow towards Falmouth, but the hawser parted and the G. was lost sight of. After some difficulty she was found again and towed next day into Falmouth. *The Glendower*, M. M. R. June 1, 1883, p. 691. V. 431*l.*—A. £200

982. The H., 300 tons, laden with coals, was in the Mumbles Road off Swansea, in November, considerably damaged. She had dragged her anchor, and had eight feet of water in her. She hoisted a signal of distress, which was observed by six salvors who manned the pilot-boat and went to her assistance, and after considerable danger and difficulty five of them boarded the H., leaving one in the pilot-boat, which was in great danger from the state of the weather and sea. The salvors assisted in pumping the vessel, and saved her until a steamer came up, took her in tow, and beached her on the Mumbles flats, where part of her cargo was discharged, and her bottom temporarily repaired; and on the 30th November she was conducted by another steamer into Swansea Harbour. *The Hampshire*, S. G. March 12, 1851. V. 1,475*l.*—A. £200

983. In March, the H., damaged in collision, was got from twenty-five miles off Start Point into Dartmouth by a revenue cutter without much labour or any risk. *The Harrow*, S. G. July 20, 1843. V. 2,680*l.*—A. £200

984. The brigantine H., laden with flour, stranded in Brixham Bay. The plaintiffs, Messrs. Collier and Dewdney, were requested by the master of the H. to send down men to the breakwater to recover the cargo. There was some difficulty, and probably some little risk, in getting on board the vessel by means of a rope, and subsequently a staging was erected from the breakwater to the H., and the men were thus enabled to work with but little intermission for five days and nights, and were paid by the plaintiffs at the rate of 5*s.* per tide. At times the vessel rolled about a good deal, and eventually she became a wreck. The cargo was abandoned to the insurers, whose agents came down, and finally the cargo was sold by auction. The plaintiffs demanded £125 for commission, saving cargo, &c., as against the consignees and owners. The insurers' agents had already paid the plaintiffs £50 as a bonus, and the defendants paid £150 into court. The disbursements of the plaintiffs were £118 8*s.* 2*d.*, and the court held that the £200 paid by the defendants, being £80 in excess of the disbursements, was a sufficient remuneration considering the nature of the service and the absence of personal risk. Judgment for defendants. *The Honor*, M. M. R. August 11, 1860, p. 1009. V. 2,500*l.*—A. £200

985. In October, the French Chasse-marée H., 90 tons, from Bordeaux for Brussels, with wine, was found derelict and bottom upwards thirty miles S.E. of Portland, the wind being W., and was taken in tow by the Norwegian brigantine L. After towing twelve hours, the L. engaged the fishing-cutter A. to assist. The L. and the A. towed some way, but as the L. broke several ropes and hawsers, a steam-tug was fetched by the A., which took the H. into Weymouth Harbour. £100 to the A., £100 to the L. *The Hortense*, M. M. R. June 3, 1865, p. 688. V. 1,275*l.*—A. £200

986. The brig J. M'Q. grounded on the Long Sand at the entrance of the Thames, her rudder was unshipped, and she hoisted a signal of distress. A steam-tug took her in tow, and the lugger S. coming up she was made fast to her stern to assist in steering her. Some of the salvors were engaged in pumping, and in ten hours she was conducted into Harwich. *The James M'Queen*, S. G. November 14, 1855.

V. 1,478*l.*—A. £200

987. The ship J. W. was on the Goodwin Sands in a very difficult position. Three luggers laid out anchors, and the ship was hove off. She slipped from her anchors, which the luggers took to Ramsgate, and she went to Falmouth. *The James Watt*, S. G. November 3, 1858. Value 3,699*l.*—Award £200

988. In July, about 9.30 a.m., the brig R. E., with a crew of nine hands, fell in with the J. T. twenty miles S.S.W. of the Eddystone, abandoned by her crew, with her wheel-chains carried away, her hatches off, and her rigging partly disabled. Three of the brig's crew, under the command of one Franch, who could navigate, were put on board, and on the next day the vessel, with her cargo of corkwood, was safely moored in Weymouth Harbour. *The Jane Tunes*, M. M. R. May 30, 1868, p. 691. V. not stated.—A. £200

989. In November, the cutters A. and B. prevented the barque K. and E. being lost with her cargo on Corton Sands, and beached her, so that £1,700 worth of her cargo was saved. Some lives were also saved. The services lasted two days. *The Kaga and Emily* (Ipswich Co. Co.), M. M. R. Feb. 14, 1873, p. 210. V. not stated.—A. £200

990. In October, the schooner L., 130 tons, from Middlesboro' for Newport, Monmouthshire, with pig-iron, took the ground on the N. ridge of the St. Margaret's Bay rocks, the wind blowing a gale from S.S.W., and the weather being thick. The lugger B. came up, and found the L. had eighteen inches of water in her hold. The B. took the crew of the L. ashore, and returning, pumped and lightened her. Next day some lumpers came up, and the tug P. towed her in safety into Dover harbour. *The Louisa* (Cinque Ports Comm.), M. M. R. March 3, 1876, p. 279. V. 1,000*l.*—A. £200

991. In November, the M., riding at anchor dismasted near the Long Bank, in Wexford Bay, and flying signals of distress in very tempestuous weather, was taken to a safer anchorage by a pilot boat, which also landed the crew. *The Magnolia*, S. G. Dec. 11, 1850. V. 10,000*l.*—A. £200

992. In December, the brig M., at anchor, sprung a leak, and made water fast, and the Mark Lane lifeboat was put out. Some of the men went on board the M., and their services were engaged for the sum of £200. Gangs of men having been set to work, after some hours the water was got under, and the vessel brought safely into harbour. Agreement upheld. *The Maria* (Yarmouth Pol. Co.), M. M. R. Feb. 9, 1872, p. 179. V. 700*l.*—A. £200

993. In September, the screw steamer N., from New York to Liverpool, with twenty-five hands, passengers, and general cargo, broke her propeller shaft when about sixty miles E. of Cape Clear, and was taken in tow by the screw steamer W., 1,303 tons, to Queenstown, a distance of fifty-five miles. *The Nasmyth*, S. G. Feb. 27, 1885, p. 135. V. not stated.—A. £200

994. In September, the barque N., 347 tons, from Dantzic to London, having got on the Long Sand, was lightened of part of her cargo, and was towed into Harwich by six smacks. *The Neptune*, S. G. Jan. 19, 1842. V. 8,000*l.*—A. £200

995. In November, the barque N. S. was in the Downs in a disabled state after collision. She was sighted by the tug W., which brought her to Gravesend through a heavy gale. When taken in tow she was riding safely and securely to her anchors in a good berth, but it was necessary for her to put into port for repairs before proceeding on her journey. *The Northern Star*, M. M. R. Feb. 23, 1883, p. 240. V. 11,938*l.*—A. £200

996. The D., very leaky, was drifting about in the North Sea, with wood cargo. The O. and P. T. found her, and attempted, without success, to tow her, but brought her after four days under her own sails to Cuxhaven. £100 awarded to each boat. *Dagny and Fishing vessels Orfriesland and Peepin Tom*. Assistance, Hamb. H. G. Z. 1878, pp. 378, 382. [German.] V. 2,100*l.*—A. £200

997. In December, the ship P., from St. Petersburg to London, was off Harwich in distress, with a disabled windlass, and was assisted into Harwich by a sloop with seven hands. *The Palamban*, S. G. Feb. 13, 1837. V. 20,000*l.*—A. £200

998. In November, the schooner P., 98 tons, from Denis and Zabia to Bristol

with dried fruits, lost her rudder in a heavy sea, and was brought to anchor, with two anchors down, off the Cornish coast. Next day a part of her cargo was thrown overboard, and five men coming up from Boscastle in a boat were engaged by the master of the P. to help, as also were five coastguardsmen. (The coastguardsmen were paid for their services, and therefore were not parties to the suit.) They found that her port anchor and the stock of the starboard anchor were gone, so a stream anchor was got out and a wooden stock lashed on. The schooner was then brought up, three miles from Hartland Quay. A boat into which three men had got for the purpose of baling was unable to return to her on account of the severity of the weather, but broke adrift, and was driven ashore near Ilfracombe. The master and crew subsequently left the vessel in search of assistance. During their absence five coastguardsmen, having seen signals of distress flying, came up and took possession. Finding no one on board, and that steam assistance was required, they left one man on board, went for a tug, and fell in with the steam-tug the Q. Another coastguardsman and other persons came up to the schooner in the skiff C., and boarded her. The Q. towed the P. towards Ilfracombe, with a hard gale from the W.S.W., and through a heavy sea. When two miles from Baggy Head both hawsers parted, and the steam-tug left and made for Ilfracombe. The salvors alleged that during the night all on board, under the direction of one of the coastguardsmen, managed the schooner as best they could, with storm sails, to keep her off the shore. They, with great difficulty and risk, kept her off the Mask and Keguries Sands, until the Q. returned (at 11 a.m. next day), and towed her into Bristol Port. *The Pet*, M. M. R. Aug. 11, 1866, p. 1010. Value 3,000*l.*—Award £200

999. The barque P. W., 273 tons, got on the Goodwin Sands in a thick fog, and was in imminent danger. Two luggers with nine men carried out two anchors and hove her off. Salvors encountered some danger. *The Pride of the Wear*, S. G. Aug. 4, 1859. V. 4,000*l.*—A. £200

1000. In May, the steam-tug R. found the steamer P. in the Lower St. Lawrence on fire and abandoned, her master and crew being in two boats, about a third of a mile off. The R. took the master and crew ashore to Rivière du Loup, and next day returned to the P., which had floated a mile higher up. The fire was then confined to her hold. The R. took her in tow and beached her after seven hours' labour. The wind and weather were favourable, and there was no danger to the R. But for such services the P. would have been a total loss. *The Progress* (Quebec V.-Ad. Co.), M. M. R. Sept. 29, 1882, p. 1228. V. \$3,000.—A. £200 (\$1,000)

1001. In April, the steamer Q., 1,975 tons, off the mouth of the Bug River, in the Black Sea, ran aground, and was refused assistance by another steamer. The steamer R., 1,121 tons, from Odessa to Nicolaieff, in ballast, came up and commenced to tow, but after some time the hawser parted. Another hawser was then made fast, and the towage recommenced, and the next day the Q. came off into deep water. The weather was fine. *The Queen*, M. M. R. 1886, p. 118. V. 18,000*l.*—A. £200

1002. The R. was in the Downs in December in a state of distress, but not of actual danger. A steamer went out and lay by her all night, and the next morning towed her into Ramsgate. *The Raikes*, 1 Hagg. 246. V. 12,500*l.*—A. £200

1003. In November, the brig R., 207 tons register, with coals and nails, was some 400 miles from the Azores, thrown on her beam-ends, had her decks swept, and lost her boats and masts in a heavy gale, and had to throw overboard about forty tons of her cargo. The jolly-boat of the brig R. G., 286 tons register, from Jamaica to London, with rum and sugar, came up with some spars and yards with which they rigged jury-masts. The R. G. then resumed her course, and the R., under jury-rigged masts, succeeded in getting to Falmouth. *The Regulator*, M. M. R. Feb. 27, 1869, p. 273. V. 2,600*l.*—A. £200

1004. The R., 1,465 tons, grounded on the Goodwin Sands. The steam-tug C. went to her assistance, and by helping to carry out an anchor prevented the head of the vessel from going further on the sand and ultimately got her off. *The Result*, S. G. Jan. 29, 1856. V. 6,000*l.*—A. £200

1005. The R. having grounded on Shoebury Knock, below the Nore, the master

signalled for assistance. A fishing smack lay by her until two steamers came up, and towed her off into deep water. *The Rifleman*, S. G. June 2, 1848.

Value 16,000*l.*—Award £200

1006. The barque R., 326 tons, was fast aground on the Shipwash Sand, waterlogged and with her rudder useless; two yawls and a smack, at risk to life, towed her to Harwich. Agreement for pilotage set up by owners. *The Robinsons*, S. G. July 20, 1858.

V. 3,520*l.*—A. £200

1007. The Jersey sloop S., from Yarmouth for a port in Wales with wheat and flour, was found by two Yarmouth beachmen derelict on the sands just inside the Scroby, abreast of Caistor. The beachmen engaged the services of the tugs S. and C., and took the vessel in tow for the harbour, in trying to get into which the tow-rope of the C. broke, and the S. drifted on to the North Sand. As soon as the tide ebbed, beachmen were employed to land some of her cargo. The tug S. then towed her off the sand and into the harbour. *The Seaflower* (Yarmouth Pol. Co.), M. M. R. February 23, 1872, p. 244.

V. 424*l.*—A. £200

1008. The ship S. was in danger of being wrecked on a rocky coast, full of dangerous sand banks, near Swansea, and her crew were in a feeble condition. From this perilous predicament she was rescued without any risk by the tug D. G. *The Socrates*, M. M. R. December 18, 1874, p. 1618.

V. 2,354*l.*—A. £200

1009. In March, the steam-tug S., which had been in collision with the steamer C. of E., was found by the steam-tug R., in a sinking state off Dungeness, and taken in tow by her. After towing twelve hours with great difficulty, owing to a strong W. by S. wind, a heavy sea, and the waterlogged condition of the S., which caused a new 11-inch Manilla hawser to part, the S. was brought into Dover Harbour. *The Spindrift*, M. M. R. November 17, 1871, p. 1459.

V. 2,250*l.*—A. £200

1010. The barque T. B., 400 tons, got on the Roar Sand. The weather was calm, the wind blowing from S.S.W., but the barque was in some danger. The master and crew of a fishing smack assisted in getting her off. The services were of short duration. The lugger was accidentally lost during the service. *The Thomas Blyth*, S. G. January 26, 1860.

V. 18,000*l.*—A. £200

1011. The American ship T., 323 tons, got on the Cork Sand, and sustained great damage, but ultimately got off. Three smacks, together of 124 tons, manned by eighteen men, conducted her to Harwich in about six hours. *The Trident*, Jan. 22, 1850.

V. 4,800*l.*—A. £200

1012. The T., having received considerable damage by collision, was abandoned a few miles from Blakeney. Nineteen fishermen of Sherringham put off in a yawl, with some difficulty succeeded in boarding the T., and after services of seventy-two hours' duration took her to Blakeney. *The Tritonia*, S. G. May 26, 1847; 5 Notes of Cases, Supp. 4.

V. 1,367*l.*—A. £200

1013. In May, the screw steamer W. S., 2,025 tons, from Genoa to Cardiff in ballast, was in great danger about fifty miles N.N.E. of Corunna, from a fire burning furiously aft in her 'tween decks. The steamer X., 1,826 tons gross, from Odessa to Hull with grain, came up to her and took off the master, his wife and children. The vessels proceeded together for Corunna, the crew of the W. S. working at the pumps until the fire was put out. The master, with his wife and family, were then put aboard again, with some provisions, and the X. proceeded on her course. *The William Symington*, S. G. August 1, 1884, p. 486.

V. 26,000*l.*—A. £200

1014. In October, the Dutch schooner A. J. was found by the smack J. and F. on the Dogger Bank, without her crew, with three men from Grimsby and one from Yarmouth on board, and anchored by her starboard anchor only. She had parted from her port anchor, had lost her foremast; her cargo, deckboard, and bulwarks were washed away, and she had five or six feet of water in the fore-castle hatch. The J. and F. took her in tow, and brought her to Hull. *The Anton Jacob*, M. M. R. June 23, 1876, p. 779.

V. 560*l.*—A. £195

1015. In March, the brig H., 187 tons, was found by the coastguard and a pilot on the coast of Clare with no one on board, her crew having landed to get assistance from shore. She was taken into Galway. *The Hercule*, S. G. April 8, 1854.

V. 1,300*l.*—A. £195

1016. In March, the brig E. of S., for Shields with coals, and the T., of London, were in collision off Flamborough Head. The smacks J. and J. and L. fell in with her dismasted about twenty miles from Flamborough Head, with only a boy and a man, with both legs broken, and a man dead on board. They took her in tow, put hands on deck to pump, and, with the greatest difficulty, got her safely into Grimsby Docks by the next evening. *The Earl of Sunderland* (Grimsby Mag.), M. M. R. April 18, 1868, p. 501. Value 500*l.*—Award £190

1017. In January, the ship H., when heading for the harbour of Falmouth, was kept too much away to St. Maurs, and shortly afterwards got aground, with all sails loose. One of the crew of the cutter Z. boarded her, and advised her master to send for a tug. The cutter then left for a tug, an anchor was let go, but it dragged, and the H. fell foul of a brigantine close by. In about ten minutes a pilot came and took charge of her. *The Hugueon* (Falmouth Pol. Co.), M. M. R. Jan. 24, 1879, p. 117. V. 11,000*l.*—A. £190

1018. The brig L., having lost her port anchor, was riding heavily by her starboard anchor and seventy-five fathoms of chain, in the Prince's Channel, and in considerable peril. The lugger E., at one a.m., put out to her assistance, left four of her crew on board the L., and proceeded to the shore for another anchor and chain, with which she returned. At half-past seven the steam-tug C. came up and offered her services, and an agreement was alleged to have been made to tow the L. to London for £28. The C. then towed the E. with the anchor and cable up to the L. While doing so, the remaining anchor of the L. parted, and the C. then cast off the E., and taking hold of the L. towed her to London with the assistance of the steam-tug P., with whom an agreement was made for £30. The owners of the ship settled with the salvors, by paying £30 to the C., £40 to the P., and £80 to the lugger, and these actions were brought against the owner of the cargo. *The Lucia*, S. G. December 17, 1861. V. 2,000*l.*—A. £190

1019. The brig C. took out of the M., which was disabled, and in a state of great distress, some cargo, and eight survivors of the crew, seven having perished. *The Messenger*, Marvin, 193. [American.] V. 572*l.*—A. £190

1020. In January, during a moderate gale from S.E., with a flood tide of two to three knots, the weather being dark and rainy, the iron screw steamer N., 2,367 tons register, was discovered by the tug T. in the Mersey, lying unmanageable and head upon tide, with her stern deeply embedded in the port side of the M. No. 4. The tug Lord L. came up, and the two tugs alongside each other made fast to the starboard side of the H., the N. steering astern, and after towing for twenty minutes, the N. was got clear with the loss of her stern. The M. was beached by the Lord L., and the N. proceeded down the river, anchored till evening, and was then docked. *The Mudhopper* (No. 4), M. M. R. April 10, 1879, p. 466. V. 7,000*l.*—A. £188

1021. In December, the Norwegian brig P., during a very heavy gale and in a high sea, was aground on Castle Point and had a distress signal hoisted at the gaff end. A pilot, with a volunteer crew of three hands, went to her assistance. The boat was one hour getting to the ship, owing to the tempestuous and dangerous state of the weather. The brig had taken the ground fore and aft, and was striking heavily. The pilot took charge of her, and with his men separated the chains, which were secured round her mainmast, and one of his men, at great personal risk, put the buoy over the bow to buoy the chains. The tug Da. came up and towed for three hours, partly alone and partly with the tug Do. During the towing the hawser of the tug Da. parted, but another was taken to the Da. from the brig by the pilot boat. The Do. was engaged about five hours, and took the brig to the docks with the aid of the tug W., which came up after she was got off. £70 to the pilot boat, £75 to the Da., £40 to the Do., and £3 to the W. *The Pehr*, M. M. R. Jan. 16, 1869, p. 87. V. not stated.—A. £188

1022. The brig L. was on fire and derelict, off the Lincolnshire coast. Two fishing smacks went to her assistance, and with some danger succeeded in subduing the fire, and at last, with the assistance of a steam-tug, towed the L. into Grimsby Docks. *The Lyra*, S. G. April 19, 1860. V. 372*l.*—A. £186

1023. The brig B. encountered a succession of gales and was near foundering. Her provisions were exhausted; one man died. In this situation she was fallen in with by another ship, the master of which supplied the brig with provisions and towed her twelve days, when the hawser parted in boisterous weather and the vessels separated. The crew got the brig into Charleston. *The Brothers*, Bee, 136, cited in Marvin, 201. [American.] Value 971*l.*—Award £183

1024. In October, the brig E. F., from London for Cronstadt with wheat, struck twice heavily on Hammond's Knowl off the Yarmouth coast, and then beat over the sand into deep water. She made water very fast, and when opposite Winterton, thirteen beachmen were engaged, who pumped incessantly for twenty-six hours, until she was brought to an anchor in Yarmouth Roads. *The Elizabeth Ferguson* (Yarmouth Mag.), M. M. R. Oct. 14, 1865, p. 1293. V. 5,300*l.*—A. £182

1025. In October, some of the crew of the ship M. Q. assisted the schooner T., from Cork for Plymouth with oats, in distress, damaged by heavy seas and gales, and abandoned by all but one hand, and brought her into Ilfracombe Harbour. *The Tower*, M. M. R. Oct. 28, 1865, p. 1361. V. 800*l.*—A. £182

1026. The A. was in broken water on the edge of Smithurst Sand with a signal of distress flying: there was a gale blowing and every appearance of bad weather from the N.E.; her mainmast and all her rigging had been cut away, and she was in great danger. The smack P., with great difficulty and at the risk of the lives of her crew, with the assistance of three other men who afterwards came on board, and to whom the captain agreed to give £60, got the A. into Bridlington Quay. The smack sustained damage to the amount of £45. *The Anne*, S. G. April 24, 1850. V. 2,000*l.*—A. £180

1027. The brig A. was piloted by a wrecking vessel from the Washerwoman Shoals, where she lay at anchor in a dangerous situation, in bad weather, to Key West, a distance of twenty miles. *The Augusta*, Marvin, 220. [American.] V. 2,400*l.*—A. £180

1028. The B. was driven by stress of weather on the Gunfleet Sand. About thirty men, the crews of a revenue cutter and of two boats, lightened her, got her off, and conducted her to Harwich. *The Bagnal*, S. G. May 19, 1848. V. 1,575*l.*—A. £180

1029. In May, the schooner E. V., which was run into by the ship G., six miles off the Lizard, and abandoned by her crew, was found by the trawler P. as she was proceeding to her fishing ground. The E. V. had only her mainmast standing, her foremast was cut away, and the wreck of the bowsprit hanging over the bows. She was boarded by two of the crew of the P., and an unsuccessful attempt was made to get a tow-rope from her to the P. The Cadgwith lifeboat then came up, and put one man on board the trawler and four on board the schooner. The sea during these operations was very heavy, and damage was caused thereby to the P.'s boat. A tow-rope was at length made fast, and the E. V. was towed to near Penzance. *The Ellen Vair* (Truro Co. Co.), M. M. R. July 22, 1881, p. 906. V. 750*l.*—A. £180

1030. In June, the French steamer E., 183 tons, from Havre for Guadaloupe, with a general cargo, took the ground on the Woollessinners, near Fort Eastney. There was a strong east wind and the tide was high. The tug V., 85 tons and 45 h.-p., tried to get her off, but the hawser parted. Later on, the V. engaged the steam-tug I., 57 tons and 30 h.-p., to aid her. By their united efforts the E. was towed into deep water, and eventually to Portsmouth Harbour. The services lasted from 10 a.m. to 8 p.m. *The Espérance*, M. M. R. March 19, 1870, p. 369. V. 6,700*l.*—A. £180

1031. The O. was in the dangerous waters at the mouth of the Elbe, all sails lost, and only makeshift sails set. The pilot schooner H. brought her into safety after nine hours' labour. *The Hamburg and Oernen*, Assistance, Hamburg Mercantile Law Journal, 1869, pp. 71—73. [German.] V. 2,800*l.*—A. £180

1032. In October, the brig H., having sprung a leak about six miles from Corton lightship, was labouring heavily. She had a list to starboard, and that side of her deck was under water. One of her two boats was damaged. The smack J. and C. came up with her, put three men on board, and attended her to the back of the Holme Sand off Lowestoft, when the men not being able to reduce the water in her hold, they signalled to the lifeboat S. P., thirteen or fourteen of whose crew, at

great risk, boarded the H., went to the pumps, and worked her towards Harwich, the smack running to Yarmouth, losing one boat and several days' fishing, besides having her boom broken. The brig was anchored near the Cork lightship at twelve at night, pumped during the night, and taken to Harwich Harbour next morning, with three feet of water in her. £105 to lifeboat, £75 to smack. *The Hope* (Ipswich Co. Co.), M. M. R. Nov. 23, 1877, p. 1494. Value 930l.—Award £180

1033. The sloop J. was on the Breast Sand in a strong wind and heavy sea. Two smacks carried out anchor and chain, worked at the pumps, discharged part of her cargo, hove her off, and took her to Sutton. Services lasted eight days. *The Juno*, S. G. July 22, 1858. V. 620l.—A. £180

1034. The schooner O., considerably damaged by a storm, was off the Dogger Bank when the crew of the fishing smack E. boarded her with considerable difficulty, took her in tow, and conducted her to the Humber. *The Orelio*, S. G. March 23, 1854. V. 1,234l.—A. £180

1035. The steam-tug M. A., 178 tons, having been engaged to tow the ship A., of 811 tons, from the Formby lightship to the Mersey, proceeded to her, and commenced to tow her ahead to her anchor, but being unable to keep ahead of her the tug cast off and lay by the ship. The ship parted her chain, the tug got the hawser on board, and the ship's second anchor was let go, but the wind and sea being very heavy she drove toward Taylor's Bank, thereby incurring great danger. The tug ultimately held her, and conducted her to the Great Eastern's moorings. *The Admiral*, S. G. April 28, 1864. V. 5,000l.—A. £179

1036. In July, the steamer C. was being launched from the slip on which she was built, some little way up Bow Creek, when the rope broke, and she ran on until she took the ground aft on the opposite side of the creek, and her stern being aground she became fixed across it. As a portion of her cradle was fast to her, she was buried deeply in the mud. The tugs B. and U. S., which were waiting to take the C. to Victoria Docks, tried to tow her off the mud, and, failing in that, tried to click or jerk her off, but failed in that also. The tug T. then joined them, and all three managed to move her. Finally, with the aid of the tug V., she was got off, and straightened down the creek. The tide was falling. £120 to the U. S., B., and T., £25 to the V., and £33 for damage to the tugs. *The Cyclops*, M. M. R. May 17, 1872, p. 625. V. 80,000l.—A. £178

1037. The Norwegian barque A. was driven by stormy weather on a shoal in Lampsake Bay, in Asia. The steamer E. E. succeeded in getting her off. *The Alfen*, S. G. January 22, 1857. V. 1,634l.—A. £175

1038. In August, the Swedish vessel A., from Norway to London with ice, aground on the Middle Cross Sand, was found there derelict by some Caistor boatmen in the yawl G., and was eventually got off by them. *The Avance* (Yarmouth Co. Co.), M. M. R. Oct. 8, 1875, p. 1298. V. 525l.—A. £175

1039. The steamer B., from London for Rotterdam, when about thirty miles from the North Foreland, broke her mainshaft. The steamer R. towed her a short distance, but cast her off, it being found that the R.'s machinery was sustaining injury. The R. on reaching land despatched the steam-tug T. P., which towed the B. to the canal leading to Rotterdam. *The Batavier*, S. G. Nov. 25, 1853; 1 Spinks' Ecl. and Adm. Rep. 169. V. 2,930l.—A. £175

1040. The K., a Prussian vessel laden with grain, struck on the Leman and Ower Sand on the 9th of March, the wind blowing strong from N.N.W., with heavy squalls of rain and snow. She made water fast, and all hands were set to the pumps. She got off, hoisted a signal of distress, and made for Yarmouth Roads. While passing through the Cackle Gat in almost a sinking state, the steam-tug R. O. went to her and towed her to Yarmouth Harbour, but she could not clear the bar owing to the state of the tide. Twenty-two hands, the crews of two boats, assisted in taking in the canvas and pumping, and the ship was laid on the bar and lightened. It would seem from the judgment that the tug subsequently towed the ship into the harbour. £100 to the R. O., £75 to boats' crews. *The Krone*, S. G. July 19, 1849. V. 3,067l.—A. £175

1041. In July, the iron screw steamer N., from Newcastle to Hull with cargo and passengers, ran aground off Kettleless Point, Yorkshire, the tide being a quarter ebb, the weather calm, and the sea smooth. Next morning she was found by the tug E. hard and fast on the rocks, with a kedge and warp out, the wind blowing fresh from N., the sea rising, and the tide flood. The N.'s kedge warp broke, so the E. got a hawser on board, and after some considerable efforts towed her off the rocks. The N. then proceeded under steam on her voyage. *The Newcastle*, M. M. R. April 27, 1877, p. 534. Value 4,655*l.*—Award £175

1042. In March, the barque T., at anchor off Margate about a mile and a-half from shore, was rolling and labouring severely, with her mizentop and mainmasts gone, and signals of distress flying, a heavy gale blowing from N.N.E. The steam-tug G. P. was engaged to tow her into Ramsgate, and had to disconnect her engines to enable her to get hold of the barque, thereby damaging her machinery; but ultimately the barque was towed into Ramsgate in two days. *The Triumph* (City of London Co.), M. M. R. April 17, 1869, p. 499. V. 1,000*l.*—A. £175

1043. In June, the barque A., from China to London, was on a coral reef, near Samboangan, Philippine Islands, and leaky. She was got off by two whalers, the M. B. and the C., into Samboangan Roads, whence the M. B. and the A. P. (bound for Sydney) accompanied her, with eight of their crew on board her, to Malacca Straits. £120 to the M. B., £20 to the C., £30 to the A. P. *The Ann*, S. G. July 25, 1843. V. 30,300*l.*—A. £170

1044. In November, the brig C., 260 tons, grounded in the night on a dangerous part of the Nore Sand. She was got off by 126 men from five vessels who were on the look-out for vessels in distress. *The Ceres*, S. G. Feb. 8, 1839. V. 3,000*l.*—A. £170

1045. In November, the steamer D., 192 tons register, 145 h.-p., from Husum for London, with cattle, was taken into Yarmouth by the screw steamer Damietta, 402 tons register, from Sunderland for London, with coals. It appeared that the services involved neither danger nor deviation from her course to the Damietta, but that the cattle on board the D. having been without provender for two days, the arrival of the Damietta prevented a great mortality among them. *The Dolphin*, M. M. R. April 28, 1871, p. 529. V. 3,500*l.*—A. £170

1046. The schooner E. struck on a reef in the Vineyard Sound, and filled with water. Fourteen persons from the shore were employed by the master in landing the cargo and getting out anchors. The next day in a snowstorm the vessel was hove off by the master and his assistants and left at anchor. During the night she capsized. The next day the master employed the pilot boat S. and the sloop H., with their crews, to tow the E. across the sound to Edgarton, a distance of from twenty to twenty-five miles. After they had towed her a considerable way, she struck on a shoal and righted. With a good deal of exertion and perseverance and considerable risk, during that day, the following night, and part of the next day, they succeeded in bringing her safely into the harbour of Edgarton; the season was unfavourable, but the weather was not boisterous. £20 of the award was decreed to the fourteen shoremen. *The Emulous*, 1 Sum. 207, cited in Marvin, 201. [American.] V. 1,144*l.*—A. £170

1047. In December, the Norwegian brig F. H., with a cargo of deals, got ashore during a N.E. gale on the main, near Felixstowe, Suffolk. The crew had cut away both masts; she was waterlogged, and had lost her rudder. The crew of the smack V. were engaged and got her off, and to an anchorage in Felixstowe Road, whence with the help of a tug she was brought into Harwich. *The Familiens Haab* (Harwich Mag.) M. M. R. Dec. 25, 1874, p. 1650. V. 760*l.*—A. £170

1048. In August, the F., from Montrose to London, got on the Maplin Sand, and was towed off after six hours' work by a steamer. *The Falcon*, S. G. Dec. 17, 1814. V. 2,700*l.*—A. £170

1049. The G. got on the Dean Sand, near Portsmouth, and soon afterwards floated off in a disabled condition, having sprung a leak. Two pilots, with the crew of the A. cutter went to her assistance, and brought her into Portsmouth Harbour. *The Giuseppe*, S. G. July 11, 1846. V. 7,000*l.*—A. £170

1050. The H. went ashore on the Mixen Shoal in the Bristol Channel, and was abandoned by her crew. Three boatmen, and a revenue cutter, got the H. off the shoal, and took her into Swansea. The owners settled with the revenue cutter for £765. *The Henrietta*, S. G. Oct. 25, 1855. Value 10,000*l.*—Award £170

1051. In July, the screw steamer K., 1,053 tons, from Riga for London with sleepers and wainscot logs, had a broken propeller and shaft-end, and was riding by one anchor $3\frac{1}{2}$ miles from a lee shore, ten miles E. by N. $\frac{1}{2}$ N. of the Hirtshals Light. She had lost the use of her steam power, and was drifting. A lifeboat from the steamer Kozo, from Shields to Stettin, with great difficulty and danger got a hawser on board, and the Kozo began to tow, but the hawser broke, as also did a second. A third hawser was attached, and the K. was towed into Gothenburg Harbour in sixteen hours. The weather and sea were heavy. *The Kelso*, M. M. R. Dec. 17, 1875, p. 1616. V. 17,000*l.*—A. £170

1052. The Dutch galliot M. M. T., in distress within the Redcar Rocks, during a strong gale with a heavy sea, was extricated by the tug A. and brought safely into port. *The Margaretha Mathilda Thancina* (Middlesboro' Mag.), M. M. R. Oct. 28, 1865, p. 1361. V. not stated.—A. £170

1053. The C. sustained considerable damage in a storm, and had three of her crew frost-bitten, and was in a state of considerable peril. The fishing smack J., while fishing on the Dogger Bank, was asked to assist the C., and accordingly conducted the C. to Lowestoft. The services lasted from the 14th to the 16th February. *The Egir*, S. G. July 19, 1853. V. 700*l.*—A. £170

1054. In December, the schooner P., 168 tons, with coals, which had lost her foremast off Hasborough, was brought into Lowestoft by the steamer C. of Gooles. *The Primrose* (Lowestoft Mag.), M. M. R. Jan. 18, 1868, p. 87. V. 789*l.*—A. £170

1055. In January, the schooner V., from Pau for Runcorn with china clay, came into collision, about eight miles from the Lizard, with another vessel; her decks were swept clean, and but six feet of the mainmast left standing. Some time afterwards the steamer B. A., in tow of the steamer S., came by, made fast a hawser, and took the V. to Falmouth. *The Vanguard* (Truro Mag.), M. M. R. Feb. 9, 1872, p. 179. V. not stated.—A. £170

1056. In March, the brig W., 174 tons register, from Sunderland for Dieppe, with 280 tons of coals, was fallen in with distressed, and, it was thought, in a sinking condition, about ten miles E. of the Leman Sand, by the smacks J., and A. and V., of Yarmouth. The weather was unsettled and the sea rough. At great risk the smacksmen, who had stood by her for some time, boarded her, and worked for many hours incessantly at the pumps, there being six feet of water in the hold. Four of the crew of the W. left her in a fright and went on board the smacks. Ultimately, with the aid of a tug, the brig was towed into Yarmouth. *The Warrior* (Yarmouth Mag.), M. M. R. April 4, 1868, p. 435. V. 375*l.*—A. £169

1057. In November, the A., from Hull to Sierra Leone, parted her cables and drove on Walmer Beach. Thirty-eight salvors landed her cargo in a Deal boat and got her afloat. *The Ann*, S. G. Feb. 27, 1839. V. 1,500*l.*—A. £160

1058. The A. having met with tempestuous weather in the Channel, and damaged her windlass, was compelled to slip from her anchors, and drove upon the Ridge Sand, where she signalled for assistance, which was with difficulty rendered by the lugger W., and she was ultimately brought into a place of safety. *The American*, S. G. April 24, 1846. V. 6,000*l.*—A. £160

1059. In October, the Greek brig C., and the Italian barque J., which were anchored in the Sloyne, were observed by the captain of the steam-tug W. to be dragging and already in collision. The weather was heavy. The tug put off to their assistance, a hawser was taken on board the C., and materially assisted her in the dangerous position she was in. The two vessels were, by the exertions of the W. and the K. E., prevented from drifting on to a Spanish barque moored close to them, and were put in a position of safety. £110 against the C., £50 against the J. *The Calliope and The Junita* (Liverpool Pass. Co.), M. M. R. Nov. 4, 1870, p. 1426. V. 6,800*l.*—A. £160

1060. In November, the steamer C. was boarded by the master of the smack J., off Spurn Head, who found that she was disabled, her engines being out of gear, and that her master wanted her towed into Hull. After towing the C. for two hours, the warp of the J. broke. The J., at the request of the master of the C., stayed by her all night, and one of the hands was put on board for the night, during which the engines were repaired, and the C. steamed away in the morning. The J. had a boat and a tow-ropes so damaged that they were condemned, and new ones cost £10 and £53 respectively. Her rail was also much injured. *The Charente* (City of London Co.), M. M. R. April 11, 1873, p. 464. Value not stated.—Award £160

1061. In November, the D. P., 239 tons, from Dantzic to London with flour, while in tow of a steamer whose boilers had burst, ran on Knock Sand, became leaky, and was in great danger. She was got off without personal risk by some boatmen, and towed by a steamer to Sheerness. *The Dantzic Packet*, S. G. May 10, 1837.

V. 3,080l.—A. £160

1062. The schooner E. lost her sails, rigging, and masts, except a gaff-topsail and the stump of her foremast. In this condition she had crossed the Gulf Stream, and was making her way, at the rate of about three knots an hour, to Key West, with a fair wind, when the steamer L., of 1,100 tons, came up, took the schooner in tow, and towed her about ten miles to Key West, breaking two hawsers in the service. *The Entire*, 5 A. R. 477, cited in Marviu, 207. [American.]

V. 2,400l.—A. £160

1063. In December, the master of the barque G., which was running back to the Downs, having slipped her anchor in a heavy gale from N.W. and a strong sea, engaged some Deal boatmen to get out an anchor and chain. The weather was very bad, but there was not more than ordinary risk incurred by the salvors. *The Galatea*, M. M. R. April 16, 1875, p. 486.

V. 6,500l.—A. £160

1064. In September, the barque G., bound for the Tyne, got on the rocks at Roker in a heavy sea, and was in danger of breaking her back, but was rescued from her peril by the trawler P. C. and the tugs D. and W. £70 to the P. C., £40 to the D., £50 to the W. *The Gers*, S. G. October 16, 1885, p. 663. V. not stated.—A. £160

1065. The schooner G. was off Dungeness, considerably damaged; a fishing smack took her to Ramsgate. A steam-tug, which was engaged by the salvors for £40, assisted, and was paid by them. *The Grootzeewyk*, S. G. December 8, 1858.

V. 6,000l.—A. £160

1066. In October, the schooner I. had been blown off the mouth of the Humber by a high wind, and was about fifty miles from shore, when she was discovered by two smacks, the O. and the P. Two men from each of their crews went on board, and the smacks took her in tow, and succeeded in getting her nearer to the land; but the tow-lines broke and they failed to get them attached again. They therefore left her, intending to return. In the meantime the screw steamer C., from London to Sunderland, fell in with her off Flamborough Head, and towed her into Sunderland Harbour. £40 to the O., £35 to the P., £85 to the C. *The Isabel* (Sunderland Pol. Co.), M. M. R. November 11, 1865, p. 1426.

V. 418l.—A. £160

1067. The steam-tug F. of all N., at the mouth of the Thames entered into an agreement with the brig K. to tow her to London for £40. After a short time the hawser broke, and the brig was in considerable danger of going on to the Shingle Sand, and being lost. The steam-tug, after making great exertion, succeeded in taking her in tow again, and then discovered that the brig had sustained prior damage. The master of the tug thereupon repudiated the agreement, and brought the brig to the London Docks. *The Kingalock*, S. G. February 28, 1854; 1 Spinks' Eccl. and Adm. Rep. 263.

V. 6,200l.—A. £160

1068. The schooner L., forty-seven tons, in Harwich Harbour, the wind blowing very hard, and it being dark and thick, with rain, struck the ground on the Andrew's Sand, beat over it, and got fixed between the sand and the Languard Fort Beach, where she was in imminent danger. Mr. Coulson, of the Revenue cruiser D., went with the crews of two smacks to her assistance, and by heaving upon a bower and kedge anchors, which they carried out, the vessel was got afloat and conducted to Harwich. *The London*, S. G. April 17, 1846.

V. 4,000l.—A. £160

1069. In March, the P., damaged in a collision, was towed by the tug D. from the North Foreland to Gravesend. *The Propitious*, M. M. R. July 28, 1871, p. 947.

Value 1,300*l.*—Award £160

1070. In September, the brig R., from Llanelly to London with coals, lost her foremast and mainmast forty-five miles from the Lizard, and was towed for three days to the Downs by a barque bound from Cork to Shields. The tow-rope broke twice. *The Richard*, S. G. Jan. 25, 1835.

V. 800*l.*—A. £160

1071. From sixty to seventy men were employed from the 30th October to the 3rd November in salvaging, at great peril, a valuable cargo. *The North Holland*, June 14, 1866; P. *Ibid.* No. 37; W. No. 2336. [Dutch.]

V. 1,333*l.*—A. £160

1072. In December, the brig K., coal-laden, for London from Shields, owing to the master's insobriety, grounded on the Caistor Patch, and struck heavily several times, the wind being W.N.W., and very little sea running. In answer to a flare-up burnt on board the K., the salvors, Caistor beachmen, put off in their lifeboat, and, having been engaged, got out their kedge anchor, and by means of a warp and winch, and backing the sails, a flood tide helping, the vessel was hove off, after being some two hours on the sands, and having made some foot and a-half of water; and was anchored in the roadstead. In the morning she was towed in by a steam-tug. £7 allowed for steam-tug besides the salvage award. *The Kelpie* (Yarmouth Pol. Co.), M. M. R. June 5, 1867, p. 22.

V. 954*l.*—A. £159

1073. In March, the Russian barque S., when off Deal, got ashore, and the captain of the coastguard and his men, and a Captain R. and twelve men in two luggers and three boats got her off. There was some evidence of intention to make a wreck of her on the master's part. The coastguardsmen and their captain were paid £73 10*s.* *The Sovinto*, M. M. R. July 31, 1869, p. 979.

V. not stated.—A. £157

1074. In December, the smack B., with a cargo of timber, was found derelict, with seven feet of water in her, on the lower part of the Dogger Bank, by the smacks J. and Lady T., and the U. The three smacks towed her for twenty-four hours, and then the U. cast off, and the two other smacks continued towing, and got her, with the aid of a tug, to Hartlepool. The towing lasted six days and twenty hours. The wind, weather and sea were changeable. *The Bertha*, M. M. R. July 5, 1878, p. 845.

V. 287*l.*—A. £156

1075. The A. was considerably damaged by collision. On arriving at Dungeness she obtained the aid of a steamer to expedite her progress to London. The services lasted forty-eight hours. *The Ada*, S. G. July 14, 1848.

V. 11,287*l.*—A. £150

1076. In October, the three-masted schooner A. L., 270 tons register, with a cargo of 354 tons of coprolites, from London to Newcastle, was caught in a violent gale off Cromer, the sails were all split, and she began to make water. A N.N.W. course was steered, but she began to drift. Next morning she was off the Nore Light, making for Harwich. Early on the next day she struck on the Whiting Sand, and then had twelve feet of water in her. The boats were got out, and the crew left. The fishing cutter R. came up, and took the master and crew on board. The A. L. drifted off the sand, and was boarded by men from the R. and beached at Shotley Point, the water being then level with the decks. A tug was then employed, and she was put into a safe position on the mud. *The Ann Lucy* (Ipswich Co. Co.), M. M. R. Dec. 10, 1880, p. 1583.

V. not stated.—A. £150

1077. In July, the iron vessel A., 1,215 tons, from Liverpool for Melbourne, with 1,600 tons of general cargo, thirty-two passengers, and twenty-eight hands, came into collision with the Andalusia, which was being launched in the Mersey, and damaged her plates so that she began to fill and was sinking. The tug R. A. made fast alongside fore and aft, took off her passengers and crew, and took her to the N. of Egremont Ferryship, where she sank in shallow water, after the R. A. had cast off. On the ebb tide she was patched and floated into dock. *The Angerona*, M. M. R. Aug. 10, 1877, p. 1016.

V. 23,235*l.*—A. £150

1078. The barque A., 302 tons, encountered a very heavy gale, so that her masts had to be cut away, and she was making a considerable quantity of water. When off the Spurn, her signal of distress was observed by the crew (five in number) of the fishing smack T. and A., and they made towards her: three of them went in a boat,

at risk to their lives, and two of them boarded her. The smack then took the A. in tow, a very heavy sea running at the time, and arrived off Winterton, where they engaged a tug, which towed the A. to Yarmouth. The owners of the barque set up an agreement for £150, and tendered that sum. *The Arthur*, S. G. June 3, 1862; 7 L. T. N.S. 257. Value 1,850*l.*—Award £150

1079. The brig B., off the North Foreland, in a heavy gale of wind from the W.N.W., dragged her two anchors, which the captain then slipped, in order to avoid driving foul of several other vessels in the Roads. The T. lugger proceeded to Ramsgate, and procured two anchors and cables of great weight, with which she returned to the brig, and after great difficulty placed them on board. The service lasted about fourteen hours. *The Breeze*, April 24, 1851. V. 3,000*l.*—A. £150

1080. In November, the steamer B., in the Bay of Biscay off Ushant, sprang a leak, and signalled the steamer C., from Malaga to London with a perishable cargo, to stay by her. She was in great peril, and her crew were about to abandon her. The C. lay by her at considerable risk to herself all that night, was detained twenty hours, and burnt eight tons of coals in that time. The B. eventually rounded Ushant, and signalled the C. that she had no further need of her services. *The Britannia* (City of London Co.), M. M. R. Nov. 1, 1878, p. 1395. V. not stated.—A. £150

1081. The master and a seaman of the brig C. W. being seized with the African fever on the 14th November, 1844, while on their homeward voyage, a signal of distress was hoisted, which brought H.M. sloop C. to her assistance, the captain of which vessel boarded the brig and removed the master and sick seaman to H.M. sloop, sending a gunner and three seamen on board the brig to assist in navigating her. They proceeded together, the sloop occasionally towing the brig, till the 20th, when, on their arrival at Prince's Island, whither the C. was bound, her sailing master was sent on board the brig to conduct her to England, the gunner and one of the crew of the C. returning to her. The vessels then parted company, the C. W. proceeding to England, where she arrived on the 30th January, 1845. *The Charlotte Wylie*, S. G. Nov. 11, 1846; 2 W. Rob. 495. V. 1,300*l.*—A. £150

1082. The C. C., on the 1st October, grounded off the coast of Sumatra, where she lay until the 6th, when she was desried by two vessels, which, by means of hawsers, removed her from the bank on which she lay and conducted her into deep water. *The Chartley Castle*, S. G. June 11, 1847. V. 4,000*l.*—A. £150

1083. The brig C. O. (in ballast) was stranded on the East Knock Sand. Six smacks got her off. *The Come On*, S. G. April 12, 1859. V. 2,000*l.*—A. £150

1084. The schooner C., laden with a cargo of pig-iron, was on shore upon a dangerous reef of rocks called the Goldstone, lying E.S.E. of Holy Island, the wind blowing strong from W. by S., with a short sea. Fifty salvors, being the crews of a pilot coble, two yawls, and a coble, by great exertions, got out twenty-five tons of pig-iron, and the schooner was forced into deep water, and finally conducted to Holy Island Harbour. The services were of some duration. *The Commerce*, S. G. Feb. 26, 1858. V. 1,200*l.*—A. £150

1085. In December, the D., from Newcastle to Messina, having been on the rocks off Beachy Head, and lost her rudder in getting off, drifted towards the French coast, and was afterwards found signalling for assistance, ten miles off Worthing. A cutter towed her 100 miles in to the Downs, and a steamer took her afterwards to Ramsgate. *The Dygden*, 4 M. L. M. Notes of Cases, 153, Feb. 27, 1839. V. 2,500*l.*—A. £150

1086. In December, the ship E. B., 983 tons, the wind blowing fresh from the S.E., struck on the north-east end of Glassgorman Bank, to the southward of Arklow, on the coast of Ireland, and continued striking while beating over the bank. After efforts to get her off, by means of her sails, had failed, her masts were cut away, and she drifted off the bank. The starboard anchor was then let go, and the ship rode to it with sixty fathoms of chain. Two lifeboats came to her assistance, and while a portion of the crew of one assisted in working the ship, the second officer of the ship was sent on shore in the other, and telegraphed to Dublin for a steam-tug. Upon receipt of this message the L. was despatched from Kings-town, and after experiencing great difficulty in consequence of the badness of the

weather, she reached the E. B. about 1.30 p.m. next day. About three o'clock she took her in tow, and finally reached Kingstown with her at nine o'clock on the following morning, but, owing to the mismanagement of those on board the tug, the ship struck on the Kish Bank, and thereby received further damage. *The Eliza Bencke*, S. G. March 13, 1863. Value 45,000*l.*—Award £150

1087. The brig F., 300 tons, in the Gull Stream, came into collision with the M. All the crew of the F. jumped on board the M., which continued her voyage, and the F. drifted towards the Goodwin Sands. Two luggers and a steam-tug towed her into Ramsgate Harbour. Services three hours. *The Fenix*, S. G. December 20, 1855. V. 800*l.*—A. £150

1088. The F., 282 tons, was about eight miles below the Winterton Ridge Sand, in imminent danger, with four feet of water in her, her crew exhausted, the rudder damaged, and the water gaining. The pilot-cutter P. conducted her into Harwich in three days. *The Frederick*, 1 W. Rob. 17. V. 600*l.*—A. £150

1089. In May, the F., drifting in a dismasted condition towards the West Girdler Sand, was discovered derelict by the steamer O., 271 tons nett register and 362 tons gross, with fourteen hands and a general cargo, from London to St. Nazaire. The mate and four hands boarded her, cut away her wreckage, and made fast a tow-line, which, however, broke, and fouled the propeller of the O., rendering her helpless for a time. Both vessels began to drive, and came into collision, port bow to port bow, within half a mile N.E. of Pan Sand Buoy. The F. continued to drive towards the North Tongue Sand. The O. was carried by the ebb tide on to the lee side of the sand, and remained fast. The anchor of the F., as she drifted, was let go; she was checked, and brought up a little to the east of the North Tongue Buoy. The tug V. came up and stayed by her all night. Next morning a rope was got on board the F., and towage began, the O., which had got clear, steering from the stern by means of a rope. After two ropes had successively parted, the steam-tug T. came up, and was lashed alongside the F. to steer her, and the F. was taken to Gravesend, and then to the Surrey Docks. The O. incurred £200 expenses, which were allowed by the court exclusive of the salvage. *The Freyr*, M. M. R. July 28, 1882, p. 941. V. 748*l.*—A. £150

1090. The barque G. was off Deal on the night of the 28th November. She was in a dangerous position, as the sea was rough, and she had lost her anchor and chain, and was driving fast to leeward towards another vessel. The luggers D. and R. conveyed an anchor and cable of considerable weight from Deal on board the brig. There were fourteen persons engaged in performing this service. *The George*, M. M. R. April 28, 1866, p. 529. V. 7,000*l.*—A. £150

1091. The Austrian ship G. was off the Lizard, in a leaky and dangerous state, with four feet of water in her hold, and the water gaining upon her. She was laden with railway iron. The crew of the pilot-cutter A. came up to her, and afterwards went back for further assistance, and returned to the G. and aided in pumping and baling, and subsequently took her to Falmouth. *The Giovanna*, S. G. Dec. 24, 1857. V. 12,000*l.*—A. £150

1092. The schooner G., making water, was drifting unmanageable, with crew exhausted, and a flag for assistance hoisted. There was a heavy gale from S.W. by S., and tremendous sea. The fishing smack R., with six hands, with difficulty put three men on board, and towed the G. to the River Orwell. One of the salvors was on board the schooner, and at her pump, from the 7th to the 13th October. *The Goudie*, S. G. March 2, 1859. V. 887*l.*—A. £150

1093. In September, the brig G. M., 216 tons register, from the coast of Africa for London with palm oil, grounded on the Ower Sands, outside Selsea Bill. The lifeboat F. took charge of the ship's papers, chronometers, timepieces, &c., helping the other salvors to cut away the foremast, carry out and get a hawser to a kedge anchor, and to tow the G. M. clear of the shoal. *The Governor Maclean*, M. M. R. Dec. 9, 1865, p. 1553. V. not stated.—A. £150

1094. The ship G., 800 tons, got on shore in the river Min, in China. The schooner M. succeeded in getting her off and running her into a safe anchorage. *The Gravina*, S. G. June 5, 1856. V. 37,692*l.*—A. £150

1095. In November, the schooner H. was boarded, during a heavy gale off Yarmouth, by three of the hands of the smack T., and her crew were taken off. Two hours were lost by the boat, both in going and returning. Next day the luggers P. and J. and W. found her derelict, and took her in tow, the P. towing nearest. After a considerable time, the J. and W. was cut adrift for fear of a collision, and the P., after twenty-four hours, brought the H. to St. Nicholas Gangway, whence a tug took her into harbour. *The Haabet* (Yarmouth Co. Co.), M. M. R. Dec. 13, 1878, p. 1589.

Value 345*l*.—Award £150

1096. In March, the brigantine H., from Marseilles to Yarmouth with oilcake, struck on the Cross Sand off Yarmouth. In answer to signals some beachmen in a yawl, accompanied by the tug V., went to her, crossing the Scroby and Cross Sands. An agreement was made for £450. After some six hours she came off with six feet of water in her hold, and was towed into harbour, being pumped all the way. The cargo being much damaged, the claim was reduced to £300. *The Harriet* (Yarmouth Co. Co.), M. M. R. May 3, 1878, p. 558.

V. 988*l*.—A. £150

1097. In March, the steamer H. M., with coals for London from Cardiff, broke down about six miles from the Wolf Rock. The mate of the smack St. H. boarded her, and agreed, with the assistance of the smack P., to tow her into Falmouth for £150. She accordingly was taken in tow round the Lizard into smooth water, in the course of which towage the tow-ropes of the St. H. parted, and subsequently the H. M. broached to, girted the P., and the anchor stock of the steamer cut the rope of the P. A Falmouth pilot boarded her, and by his advice two tugs were engaged to take the H. M. into Falmouth, notwithstanding the protests of the two smacks. The wind was N.W. and off the land. *The Henry Morton* (City of London Co.), M. M. R. April 22, 1881, p. 495.

V. 10,800*l*.—A. £150

1098. The ship H. was at anchor under the lee of the Scroby, pitching heavily. She had been struck by a heavy sea, and had sustained considerable damage. The wind was N.N.E., with a very heavy sea. The Caistor lifeboat, and the fishing smack C., proceeded at considerable risk to her aid. The salvors set sail and slipped the anchor. The master of the smack took the helm, whilst the salvors pumped. A Yarmouth steam-tug was engaged, and the H. was taken to Lowestoft Harbour. *The Hilda*, S. G. May 19, 1858.

V. 3,580*l*.—A. £150

1099. The brig H., 252 tons, had experienced heavy weather; her crew were fatigued, and one of her men had been washed overboard. She signalled for assistance, and the lugger D. went to her in a heavy sea and found her hawser-pipe split, the gammoning of the bowsprit and her port chain plate carried away, her fore and maintopmasts damaged; she had only her foretopmast-staysail and mizen-staysail set. Two of the lugger's crew boarded the H. and loosed the maintopsail, while the H.'s crew loosed the forstopsail. The master of the H. sang out for the lugger's men to come down, and informed them that the mast was sprung, and that he feared the strain was too much for it. Two of the lugger's men then took the wheel from the master of the H., who was ill, and warped and steered her through the Downs for Ramsgate. The salvors alleged that it required all the care and skill of the lugger's two men to effect her entrance through the pier-heads safely; that the H., being a very long vessel, had they not succeeded in keeping her head straight for the harbour entrance, she would have been lost on the rocks to leeward, or by striking the east pier-head; that when she was safely got between the pier-heads she was hailed by the harbour or deputy harbour-master, ordered on to the West Bank, and told to let go an anchor; that the fore and maintopsails were ordered to be clewed up, but the hands on board were unable to do so; and the starboard anchor was let go, but that on account of a revenue cutter lying moored to the buoys on the top of the banks, the H. could not steer for the most shallow part of it, and was therefore steered close under the cutter's stern, hoping to take the ground on the West Bank as advised by the harbour-master; but the H.'s chain parted, and though her port anchor was instantly let go, it did not hold, and she drove over the bank and touched the cross wall inside the harbour, at the same time taking the ground, and there remained till next tide, when she was properly berthed. The owner denied that the H. was in any danger from her damaged state, or that the salvors incurred any risk. They alleged that the salvors were told to put the helm hard a-starboard, and run the barque on to the West Bank, which was a soft mud bank, that there was

plenty of room to do so, and that she could not have driven and did not drive over it. That the barque's anchors should not have been let go, and that the salvors were not bidden to let them go; and that owing to the unseamanlike conduct of the salvors in letting go the anchors, and not putting the barque on the West Bank, the barque was considerably damaged and seriously endangered. *The Hope*, June 23, 1866, p. 784.

Value 8,900*l.*—Award £150

1100. The brig I. was in the Gulf of Mexico, in distress from collision. The schooner M. piloted her inside the reef, temporarily repaired her, and took her about 100 miles to Key West. *The Indus*, Marvin, 221. [American.] V. 4,000*l.*—A. £150

1101. The I., in a snow storm, drove on a lee shore in the east bay of Dungeness, and was in considerable danger. An officer and men of the coastguard (eleven in number), at great peril, conducted her to a place of safety. *The Invincible*, S. G. June 17, 1847. V. 1,396*l.*—A. £150

1102. The barque I., 263 tons, grounded on the Gunfleet Sand, but the crew, by lightening her deck cargo, succeeded in getting her into deep water. Six smacks put off to her assistance, and the crews, thirty-one in all, boarded her, at great risk of life, owing to the violence of the wind and the heavy sea, and conducted her to Ramsgate. *The Iris*, S. G. March 3, 1855. V. 3,541*l.*—A. £150

1103. The brig J., 215 tons, brought up in Yarmouth Roads, the wind blew from the E.N.E., and she commenced driving. The steam-tugs V. and E. went to her assistance, and after services of short duration, but of considerable difficulty and risk, succeeded in anchoring her in a place of safety. *The Jane*, S. G. Jan. 21, 1861. V. 800*l.*—A. £150

1104. The Dutch barque J., 620 tons, when twenty miles off the Needles, was very severely damaged by collision. She signalled the yawl-cutter S., then proceeding in ballast to Lisbon, and engaged her to tow her to Cowes. A pilot boat was afterwards engaged, and the two towed the barque into Cowes. The services lasted nine hours. Tender of £150 pronounced for without costs. *The Jeanette*, S. G. March 24, 1853. V. 1,734*l.*—A. £150

1105. In October, the timber-laden barque J., for Yarmouth, was taken in tow by a Scotch steamer from near Sizewell, through St. Nicholas Gat, into Yarmouth Roads, and there left. The tug R., which, in answer to a telegram to the harbour-master had gone out to the J. off Sizewell, accompanied her, and when the Scotch steamer left, the tug's services were engaged, as the J. had neither anchors nor chain, but only a small kedje with a broken stock. The wind was stiff, and there was a heavy sea. The tug took her to within half a mile of Gorleston Pier, but there being insufficient water there, she was towed to Lowestoft Harbour, which she reached in about nine hours. *The Jenny* (Lowestoft Co. Co.), M. M. R. November 25, 1881, p. 1489. V. not stated.—A. £150

1106. A vessel having got on shore on the Gore Sand, in the Bristol Channel, a steam-tug proceeded to the spot, and the ship's jolly-boat having been put out with a rope, the tug was by such means connected with the ship, and in about a quarter of an hour drew her off. The vessel had lost her rudder, and had between four and five feet water in her hold. *The Kara*, Nov. 12, 1841, cited in 1 Park on Ins. 307. V. 3,000*l.*—A. £150

1107. In August, the brig K., 143 tons, from Newfoundland to London with oil and sealskins, was in danger near Shingles, having slipped both anchors at the mouth of the Thames. She was towed by a steamer to London. *The Kingalock*; S. G. Feb. 23, 1854. V. 6,200*l.*—A. £150

1108. The schooner L. having met with an accident, became very leaky, and her crew were exhausted by their exertions. In this situation she was boarded by nineteen hands from the yawl R., who took charge of her, and conducted her to Lowestoft. *The Leo*, S. G. May 27, 1854. V. 2,832*l.*—A. £150

1109. In October the steamer L. G. was discovered derelict between the north end of the Seacombe Stage and the river-wall in the Mersey, bumping heavily against the stage pontoons, after having been in collision. She was boarded by two men belonging to the Wallasey Ferries, who took her ultimately into Birkenhead Dock. *The Lionel George*, S. G. December 24, 1885, p. 823. V. not stated.—A. £150

1110. The Belgian galliot L., in consequence of missing stays, got on the Clypera Rocks, near Holyhead. The rocks being very dangerous, and a violent gale raging, her position was perilous. The steam-tug I. K. went to her and towed her into Holyhead Harbour. *The Loochristy*, S. G. Feb. 6, 1855.

Value 1,800l.—Award £150

1111. The brigantine M. ran upon the Arrow bank off the coast of Sussex. A galliot, with a crew of twenty-four men, after a proposal by the crew of the brigantine to abandon her, succeeded in towing her to a place of safety. The salvors incurred considerable risk. *The Margaret*, S. G. March 31, 1861. V. 448l.—A. £150

1112. The M. having sprung a leak when about fifty miles from Yarmouth, was rapidly making water, and the crew became too much fatigued to work at the pumps. A signal of distress was then hoisted, and two fishing smacks, containing sixteen men, put off to her assistance, conducted her to Yarmouth on the next day, and on the following morning into the harbour. *The Mary*, S. G. April 27, 1847.

V. 600l.—A. £150

1113. In December, the barque N. O. was in a dangerous position, about 140 miles from land and S.E. of the Dogger Bank, having lost her foremast in a gale. The smack E. C. towed her about seventy miles, when a screw steamer took charge of her, and she was got safely into Shields. *The New Orleans* (South Shields Pol. Co.), M. M. R. December 30, 1870, p. 1682.

V. not stated.—A £150

1114. The schooner N., 89 tons, from Caen to Liverpool laden with flour, was left by her master and crew at the mouth of the Amoor, off Plymouth, through apprehension of a collision between the N. and a vessel that was driving towards her, she having previously come into collision with other vessels. There was a tremendously heavy sea on, and the N. was lying with both anchors down. The master and crew of the N. endeavoured to clear her of the other vessels that were drifting, and succeeded in getting her clear of the rocks by means of a hawser. *The Nive*, M. M. R. May 12, 1866, p. 594.

V. 2,400l.—A. £150

1115. The steam-tug S., running down between the Mouse and Black Tail Sands, observed the Spanish brig N. lying at anchor. She went to her and tendered her services, which were refused, and the tug left her, but was shortly afterwards signalled to return, the brig having parted from her anchors. The steam-tug thereupon towed her to the St. Katharine's Docks. *The No*, S. G. Dec. 7, 1853.

V. 6,240l.—A. £150

1116. In November, the barque O., with timber, and waterlogged, went ashore twenty-four miles from King's Lynn on the South Sands. A tug was sent for, and stayed by her all night. Next morning she came off, and the tug accompanied her to King's Lynn. *The Oscar* (Lynn Co. Co.), M. M. R. Jan. 21, 1876, p. 87.

V. 4,000l.—A. £150

1117. In November, the schooner P., eighty-six tons, six hands, from Glasgow to Buenos Ayres with coal, when off the Elwick Light was discovered flying signals of distress by the steamer V., 276 tons, from Swansea for Liverpool with tin ore and fourteen hands. The P. had lost her foremast with sails and gear attached, and was otherwise damaged, and almost unmanageable. The V. towed her to the Mumbles, whence she was taken by a tug to Swansea. *The Parana*, S. G. Feb. 6, 1885, p. 86.

V. 1,650l.—A. £150

1118. The sloop P., laden with copper, got on the Mussel Rocks, from which she drifted off and proceeded as far as Dunraven, when she hailed the steamer N. A., which was proceeding from Neath to Bristol. The sloop was in a very leaky state. The steamer took her in tow, lent her several men to work at the pumps, and ultimately got her to Bristol in safety. *The Phanix*, November 21, 1851.

V. 7,050l.—A. £150

1119. In October, the barque P., 347 tons, from Gêfle to Antwerp with coals and iron, was found by the pilot cutter G. about five miles from shore and seven miles east of the New Sand Floats, waterlogged, and abandoned by all but one of her crew. All but the master and two hands of the G., and two pilots of the Humber pilot-boat No. 4, were put on board the P., and navigated her to the Bull Lightship, where a tug was engaged, which towed her on to the mud near Grimsby. *The Poussin*, M. M. R. March 3, 1876, p. 277.

V. 2,800l.—A. £150

1120. The steam-tug P. F. W. was near the Prince's Channel when the fluke of an anchor pierced her bottom, her middle compartment was filled with water, and her fires were put out. Three luggers assisted her; one went to Down for a steamer, the other two remained for eighteen hours near the steamer, and assisted in keeping her head off the rocks. The steamer was ultimately beached without the salvors; the risk was slight. *The Prince Frederick William*, July 16, 1858.

Value 10,000*l.*—Award £150

1121. The brigantine R. and E., of 164 tons, encountered a heavy gale, and was struck by a heavy sea, causing her to ship much water, besides damage to her upper works. The crews of two fishing smacks assisted in pumping her, and after thirty-six hours brought her into Ramsgate Harbour. *The Rebecca and Eliza*, S. G. June 27, 1845.

V. 800*l.*—A. £150

1122. The R., on a voyage from Benin to Liverpool, lost several of her crew from scurvy. She hoisted a signal of distress. The A. bore down upon her, and two of her crew volunteered to go on board the R. and assist in working her home. The services lasted seventeen days. *The Roe*, March 14, 1856, and April 17, 1856; Swabey, 84.

V. 9,350*l.*—A. £150

1123. The master of the R., 78 tons, from Sierra Leone for London, died on the 17th September. On the same day the mate of the M. boarded the R. and conducted her to London. In the course of the voyage the vessel put into the Azores for provisions and some temporary repairs, and reached Cowes on the 13th or 14th November. *The Rowena*, S. G. March 15, 1848.

V. 1,100*l.*—A. £150

1124. In November, the Portuguese schooner S. J., in a stiff gale, drifted from her anchors in Torbay, and struck on the Queen's Quay Rocks. Three men manned a boat and with great difficulty, and the loss of two oars at starting, reached the vessel, got on board, and found that all but the master and mate had left her. They got out a hawser from her, put it in the boat, and took it to the pierhead, and so pulled her off, and got her safely into harbour. *The San Jeronimo* (Churston Ferrers Co. Co.), M. M. R. Jan. 25, 1878, p. 117.

V. 3,000*l.*—A. £150

1125. The schooner S., while rounding the South Foreland, struck on the Long Nose Rock, and hoisted a signal for assistance. She was in great danger. The lugger N., with a crew of eight hands, went to her assistance, and succeeded in forcing her over the rock. The schooner was afterwards stranded, and it was necessary to discharge her cargo, at which the salvors assisted. The services in salving the vessel lasted eight or ten hours, but the salvors worked for six days at the cargo. *The Sophia*, July 25, 1849.

V. 1,500*l.*—A. £150

1126. In December, the smack S., which had been in collision, was in a sinking condition off the Dogger Bank, with her port bow partly stove in. She was discovered by the smack W., the master of which boarded her next morning, her crew having been taken on board the W. the night before. The master and two apprentices pumped her, and with an additional hand from the W. navigated her to Yarmouth, a distance of 150 miles, in two days. *The Sovereign* (Yarmouth Co. Co.), M. M. R. Mar. 5, 1875, p. 295.

V. 255*l.*—A. £150

1127. In December, the brigantine S., from Sunderland for Yarmouth with coals, was run into twenty-five miles E. of Hartlepool by a barque, and totally disabled; her masts and jibboom being carried away. Next morning she was found in this state by the tug S. B., which in from seven to eight hours towed her into the Tyne. *The Susannah* (North Shields Pol. Co.), M. M. R. Dec. 27, 1872, p. 1651.

V. not stated.—A. £150

1128. In December, the brigantine V. was aground on the north part of the Cockle Sand, striking heavily and leaking. Nine men put off in a yawl, and got on board the V. Their services were engaged, and they succeeded in getting her off. They brought her up to the north of Yarmouth Jetty, and kept on working at the pumps. She was eventually taken to Lowestoft. Whilst going up Yarmouth Roads, the yawl astern of the V. was run into by another vessel and sunk. *The Veritas* (Lowestoft Co. Co.), M. M. R. Jan. 15, 1870, p. 86.

V. not stated.—A. £150

1129. The V., from London, was found twenty miles from Vera Cruz with an exhausted crew and damaged sails, and in want of water, by a pinnace, which took her into the harbour. *The Victoria*, S. G. Nov. 22, 1842.

V. 9,700*l.*—A. £150

1130. In October, the V. L., for Newfoundland, which was damaged by collision, and had lost two anchors and a chain, was assisted at some risk by a smack into Cowes. *The Virgin Lass*, S. G. Mar. 2, 1844. Value 1,818*l.*—Award £150

1131. In April, the steamer W., 333 tons register, from South Shields for Christiana, when off the Oxe lighthouse, bearing N. by E. twenty-five miles, and in a moderate breeze, broke her shaft, and, though her sails were immediately all set, owing to the slight wind, she could not make headway, and was perfectly helpless. The schooner M., 130 tons, agreed to tow her, and did so for eight hours, when a tug towed her to Christiana. *The Warkworth*, M. M. R. Jan. 18, 1878, p. 77. V. 10,280*l.*—A. £150

1132. In January, the barque W., 1,006 tons, with empty petroleum barrels and iron ore, was lying between the river Yealm and the Mewstone rock, labouring heavily, with both anchors out and signalling. The Plymouth lifeboat pulled to her from the government tug S., which had towed the lifeboat out to sea. The crew got a tow-rop from the W. to the tug, and she was towed into the Yealm, the lifeboat accompanying her, and remaining by her till the 30th, when she was brought into the Sound and moored in Jennycliffe. Next morning she broke away, and drifted to the outside pier of the Great Western Docks, where she bumped heavily, and was in serious danger of staving in her bows, slipping off the ledge on which she rested, and sinking in deep water. The steam-tug A. L. carried a hawser from the W. to a steam collier, but the two could not do more than keep her head off the pier. The Plymouth lifeboat then put a line from the W. on board the steamer R., and, with the aid of the tugs S. and A. L., the barque was taken into the Sound. £50 to the Plymouth lifeboat, £65 to the Yealm lifeboat, £35 to the tug A. L. *The Wellington*, S. G. May 8, 1885, p. 295. V. 1,400*l.*—A. £150

1133. The ship W., 1,400 tons, was off the Lizard, in imminent danger, having lost her rudder. The pilot cutter, W., put a pilot on board, who conducted her to Falmouth. *The Weymouth*, S. G. April 12, 1859. V. 20,000*l.*—A. £150

1133a. In January, the barque J. F. was in the middle of the Green Grounds, off the Mumbles, with her head to the W.S.W. The sea was washing clean over her, and the wind was blowing hard from S.W. The tug D. G. took her in tow for three quarters of a mile when her engines stopped, owing to the fouling of her paddle-wheel by the rope of the tug P., which was attached to the J. F. without the knowledge of the master of the D. G. The D. G. was so damaged that the P. was obliged to tow her and the J. F. into the Prince of Wales' Dock. *The Jane Fairlie*, M. M. R. Feb. 22, 1884, p. 121. V. not stated.—A. £150

1134. In December, the brigantine E. was found by the smack E. derelict, with four feet of water in her hold, in the fishing-grounds off Yarmouth. Her sails were set, the pumps got to work, and her course was made for Yarmouth, where, accompanied by the smack, she arrived the same day, and next morning, with the assistance of a tug, she was got into harbour. *The Effort* (Yarmouth Co. Co.), M. M. R. Feb. 12, 1875, p. 201. V. 429*l.*—A. £145

1135. In March, the E., in ballast after collision with a steamer, was so disabled that her crew had to take to the boats when off Whitby, and were drifted to Blythe. The E. was found by the T. thus abandoned. Some of the crew of the T. were put on board, and with the assistance of a tug brought her, with the T., into the Tees. *The Ethel* (Middlesboro' Pol. Co.), M. M. R. April 7, 1871, p. 433. V. not stated.—A. £144

1136. In January, the J. and S. was clean swept in a very heavy gale off Grimsby. A Dutch fishing vessel took off her crew, and the smacks C. and Cyclone with the smack W., after eight days, got the derelict into harbour. *The Joseph and Sarah*, M. M. R. February 29, 1884, p. 135. V. 285*l.*—A. £142

1137. In October, a flag of distress was observed by those on board the smack M. M. flying from the Dutch galliot A., during a gale from the S.S.W. The A. was then about three miles outside the Shipwash. They boarded the A., whose crew were pumping and made signs that they were sinking, and asked to be taken to Lowestoft. They sounded the pumps and found 2½ feet of water. The master of the smack took the wheel to Yarmouth Roads, and next day towed her into Yarmouth. *The Alida* (Yarmouth Co. Co.), M. M. R. December 9, 1870, p. 1587. V. 650*l.*—A. £140

1138. The sloop B. I., in consequence of a violent gale, got on the edge of the Cockle Sand. Seventeen beachmen of Caistor proceeded in a lifeboat to her aid, and after considerable exertion boarded her and conducted her to Yarmouth Roads. The services occupied from six to seven hours. *The Bottle Imp*, S. G. April 25, 1855. Value 640*l.*—Award £140

1139. In December, a caisson 64 ft. long and 20 ft. wide, used to close the entrance of one of the Government dry docks at Southampton, was discovered by the tug B., in Gravesend Reach, being taken by the strong ebb tide very fast in the direction of the Kent shore of the Lower Hope. After great manœuvring, the caisson was taken into the Lower Hope and ultimately to Sheerness. *The Owners of a Caisson*, M. M. R. May 12, 1876, p. 589. V. 7,000*l.*—A. £140

1140. In December, the brig C., 270 tons, from Berbice for London with sugar, rum, cotton-seed, &c., was found by the pilot-cutter A. in distress, fourteen miles S.S.W. of Plymouth, having lost her mainmast by the board and her jibboom, the foretopmast also being sprung. The pilot of the cutter agreed to tow the brig to a port of safety for £140, and took her to Falmouth. The captain of the brig had died on the passage, and the mate, who held a master's certificate, signed an agreement for £140. *The Contest* (Truro Mag.), M. M. R. Feb. 10, 1871, p. 178. V. 10,000*l.*—A. £140

1141. The J., laden with cargo, having been in collision with another vessel, was run on the Blythe Sand, and was assisted by the coastguard, whose services were settled by arbitration. The barges R. G. and I. were engaged under an agreement for £20 to take part of her cargo on board, and accompany her to London, which they did. Their services lasted several days, and they claimed for services extraneous to the agreement. *The Jupiter*, Aug. 7, 1850. V. 618*l.*—A. £140

1142. In June, the brigantine L. R., which was aground and striking heavily on the Horse Shoal, was with much difficulty boarded by a pilot from the tug R. H. The wind was blowing a gale from S.W., and there was a very heavy sea. She had both anchors down, her foremast head was destroyed, the gear attached gone, and she was making water. The tug towed her to her anchors, which she slipped, and towards Portsmouth, but soon broke down. She was then run ashore N. of Eastney Fort, and her crew taken off. *The Lord Rolle* (Portsmouth Co. Co.), M. M. R. July 13, 1877, p. 883. V. 432*l.*—A. £140

1143. The brigantine S., from Castle Hall for Newcastle, with paving stones, was sighted in dangerous proximity to the Barber Sand, in a heavy sea and rough weather, with snow. She had lost two anchors and cables, and had only one small anchor left, and she was leaking. Some Caistor beachmen, who went out in their lifeboat, took charge of her and navigated her safely through the Roads and into Yarmouth Harbour. *The Sealark* (Yarmouth Pol. Co.), M. M. R. Mar. 16, 1877, p. 341. V. 600*l.*—A. £140

1144. The S., coal laden, meeting with a severe gale, sustained considerable damage, by which she became leaky, and the master endeavoured to make Blakeney Harbour. The crews of four smacks put off to her aid, and after throwing overboard fifty tons of coals, the S. was brought into a place of safety, and by means of a steam-tug, hired by the salvors, was ultimately conducted into the harbour. *The Star*, S. G. June 23, 1846. V. 686*l.*—A. £140

1145. The barque Y., leaky, was about forty miles from Flamborough Head, the wind blowing a strong gale. Two fishing smacks towed her to Scarborough. *The Yorkshire*, S. G. June 5, 1856. V. 1,200*l.*—A. £140

1146. The sloop G. D., 59 tons, laden with iron, on a voyage from Sunderland to London, met with a severe gale, and was dismasted. She rigged a jury mast, and ran before the wind until she arrived off Drimlington, where the smack F. took her in tow, and proceeded towards the Humber through a heavy sea. From the continued severity of the weather, the salvors were compelled to bring the sloop up. The next morning the smack procured the aid of a steamer, and with her assistance conducted the sloop to Hull. The salvors had paid the steamer £20 for towage, and had incurred a loss of £18 from damage to their own tow-rope. *The Grace Darling*, S. G. May 5, 1852. V. 850*l.*—A. £138

1147. In October, the M., from Cronstadt to London, with timber, ran aground on the Middle Barrow Sand at about high water, and though her engines were reversed and her forward ballast-tank pumped out, she remained fast, and as the tide fell took a strong list to starboard. The steam-tugs W. and T. came up and offered their services, and measures were taken to get the M. off. When the tide rose the tugs made fast to the M.'s stern, and commenced towing at half-speed, which, as the tide made, was increased to full speed, and about one hour and a half afterwards, the M. came gradually off the sand into deep water. *The Milo*, M. M. R. 1886, p. 102.

Value 13,500*l.*—Award £135

1148. In January, the brig Q., from Dublin to Rye, with oilcake, oats, and rags, got on the Great North Wall, Kingstown, damaged her keel, lost her rudder, and had several bilge planks nearly chafed through. Two steamers and a boat with five hands got her off. £60 to each steamer, £15 to the boat. *The Queen*, S. G. Feb. 13, 1854.

V. 1,700*l.*—A. £135

1149. The Q. M., in ballast, got upon the Barrow Sand, and lost her masts and rudder; the smack B. took off the master and crew, and landed them at Sheerness. The yawl U. and the smack R. found the Q. M., derelict, in the South Channel, and towed her to the Little Nore, and subsequently into a basin near Sheerness. A revenue cutter lent an anchor and chain for a few hours to the Q. M. when at the Nore. *The Queen Mab*, 3 Hagg. 212.

V. 250*l.*—A. £135

1150. In March, the brig P. C. while riding in the Gorleston Roads opposite the Monument, broke her chain and drifted to within half a mile of the shore, three cables within, and to the west of, the wreck buoy. In answer to signals, some Gorleston beachmen in a tug went out through a heavy sea on the bar, boarded her, and found her brought up with her only anchor and in danger, if that parted, of going ashore in ten minutes. In seven hours they moored her safely in Lowestoft Harbour. *The Prince Consort* (Yarmouth Co. Co.), M. M. R. April 2, 1875, p. 424.

V. 2,697*l.*—A. £135

1151. In January, the schooner S., with coals, struck on the Doom Bar at the entrance to Padstow Harbour. Her captain and crew took to the boat, and were picked up by the pilot boat. At the request of the captain the salvors, pilots, went to the wreck, and after three unsuccessful attempts boarded her. They removed the sails and running rigging, and by cutting open the decks got out the captain's watch and clothes. The captain advertised her for sale. After this the salvors got four pumps to work, put twenty men on board, and with a tug's aid got her off the bar and towed her to the North Black Padstow. *The Satyr* (Bodmin Co. Co.), M. M. R. 1878, March 1, p. 276.

V. 400*l.*—A. £133

1152. The barque A. ran upon the Gunfleet Sand. Eight smacks, by laying out an anchor and lightening her, got her off. The service lasted twelve hours. *The Adeline*, S. G. Nov. 11, 1853.

V. 1,421*l.*—A. £130

1153. The schooner A. got on the Hasborough Sand, but her crew succeeded in getting her off. She was, however, waterlogged, and in considerable danger; she had lost one of her boats, and was about to be abandoned by her crew. The yawl D., with a crew of nineteen hands, with great difficulty, came to her assistance, and with the help of a tug employed by the yawl, succeeded in getting the schooner into Yarmouth Roads. *The Alfred*, S. G. May 15, 1860.

V. 1,700*l.*—A. £130

1154. In December, the steamer B. got adrift from her moorings, and drifted in the direction of H.M.S. D., anchored off Rock Ferry, from collision with which she was saved by the tug R. T., which made fast a rope and held her. *The Birkenhead* (Liverpool Passage Court), M. M. R. B., Jan. 13, 1882, p. 46.

V. not stated.—A. £130

1155. The schooner B. J., 134 tons, while in the Downs at anchor, the wind being fresh, and there being a short chopping sea, parted from her anchor, and was thereby placed in a position of danger. The pilot in charge made all sail for Dover Roads, when the lugger F. came to her assistance, and procured for her two anchors and a cable from Dover. *The Blue Jacket*, S. G. Nov. 24, 1863.

V. 1,765*l.*—A. £130

1156. In December, the barque B. struck on the Cross Sand, off Gorleston, but was got off. She was boarded when in close proximity to the Sand, by two of a crew of Gorleston beachmen, who were towed out in their yawl by the tug E., and

who took her into the roadstead. *The Bygdo* (Yarmouth Co. Co.), M. M. R. Jan. 7, 1876, p. 21. Value 2,200*l.*—Award £130

1157. In December, the schooner C., making for the Tyne for refuge in stormy weather, was struck by a heavy sea, which carried away her steering gear; and she drifted first to the north, and afterwards to the south pier, at Shields. She was drifting on to the old screw steamer E., but her anchor was let go, and that brought her up. When so brought up, however, she was still in danger of swinging on to the E. and being dashed to pieces, or of going ashore. A tow-line was got on board her just in time to prevent this, from the tug F., which brought her out of her dangerous position, and she was ultimately taken into harbour. *The Cecilia* (North Shields Pol. Co.), M. M. R. Jan. 10, 1873, p. 53. V. not stated.—A. £130

1158. The G., 214 tons, was anchored between Margate and Whitstable. She parted from one anchor and then let go her best bower anchor. The smack P., manned by six hands, fetched an anchor and cable, weighing three tons, from Whitstable. During the smack's absence the barque rode through a terrific gale, and was in great danger. The salvors incurred considerable peril in fetching the anchor and cable. *The Gambia*, May 18, 1849. V. 2,823*l.*—A. £130

1159. In November, the brig M., from Valparaiso to London, slipped her anchor and cable in the Downs. Several Deal boatmen in a large boat took off to her an anchor and cable in a very heavy gale. The boat was damaged. *The Moyne*, S. G. March 5, 1841. V. 45,000*l.*—A. £130

1160. The brig O., 239 tons, got on the Shipwash Sand. The weather and sea were rough, and the brig in great peril. Two smacks got her off the sand, and stayed by her till the 27th of January, when she arrived at Harwich. The smacks were of the joint burthen of sixty-seven tons, and were manned by ten or eleven hands. *The Ohio*, May 16, 1850. V. 2,500*l.*—A. £130

1161. In December, the Swedish barque P., 315 tons register, stranded on the Longsear. The crew landed at Hartlepool; the lifeboat agreed to put off to save as much property as possible. After several attempts, and at personal risk to the salvors, she was got off and taken into Hartlepool. *The Patriot* (Hartlepool Co. Co.), M. M. R. Jan. 1, 1875, p. 22. V. 2,000*l.*—A. £130

1162. In December, the P. of W., from St. John's to London with timber, slipped her anchor and cable and drove through the Gulf Stream. A lugger, with eight hands, brought a heavy anchor and chain to her from Margate during a gale. *The Prince of Wales*, S. G. Feb. 8, 1848. V. 5,180*l.*—A. £130

1163. In January, the brig R. and W. was at anchor, off Dungeness, in rough weather, when the lugger L., with seven hands, came up and stayed by her during the night. Next day she took a message for an anchor and chain, returned, and assisted her till the arrival of a tug. *The Richard and William* (Cinque Ports Comm.), M. M. R. May 15, 1874, p. 624. V. 5,685*l.*—A. £130

1164. In December, the Whitby brig S., with seven hands, all canvas gone, was found by the smack S. from Grimsby, about twelve or fifteen miles off Dillington. Her crew were exhausted, and there was a strong wind blowing. The smack was asked to stay by the S. to save the crew. Through advice given by the smack's master, the brig was got before the wind to Mablethorpe, where she was boarded by the smack, and then taken in tow to the mouth of the Humber, whence a tug took her into Hull for £15. The salvors lost a fishing voyage valued at £100, and sustained damage to the amount of £10 to their trawl. *The Sarah*, M. M. R. Jan. 4, 1884, p. 9. V. 360*l.*—A. £130

1165. In December, the Yarmouth smack S., being disabled by loss of main and mizenmasts, was taken in tow by the C. M. N. On the 17th, the C. M. N. drove on to the Binks and stuck there, the S. also dragging on. The wind was blowing hard and the sea running high. Next morning the S. was found by the steam-tug M., 50 tons, value £3,000, on the look-out for an abandoned smack. She was aground, and the tug, which drew nine feet of water, was in danger of also striking the ground. The M. took the S. to Grimsby, and on her return found that the C. M. N. had broken up and her crew perished. *The Sincerity*, M. M. R. Jan. 11, 1884, p. 26. V. 300*l.*—A. £130

1166. In February, the schooner V. got on the shoal to the S.E. of the South Pier, at the entrance to Sunderland Harbour. Fifteen pilots launched a lifeboat in a heavy sea, went to the vessel, took off the captain and crew, but were unable to get back to the shore with them till ten o'clock next morning. The pilots then returned to the schooner, which was lying broadside on to the sea, with her head E., and the sea washing over her as high as the crosstrees. The pilots boarded her. One returned to the boat and drifted with her to the shore to get a steam-tug, while the others got in the sails, which were all set or loose, and carried the anchors further E. to prevent her holing herself. Two tugs, the H. B. and the C., then came up, and when the tide rose towed her into harbour. *The Vixen* (Sunderland Co. Co.), M. M. R. April 2, 1870, p. 435. Value 900*l.*—Award £130

1167. A pilot smack, of 40 tons, with five men, boarded the ship I. in distress in the English Channel, and towed her into Cowes in two days. *The Industry*, 3 Hagg. 203. V. 2,000*l.*—A. £126

1168. The ship A. R., 1,175 tons, in tow of a steam-tug for the purpose of being docked, touched with her heel on the Pluckington Bank in the Mersey; the steam-tug T. in about twenty minutes towed her off the bank and into the river. *The Anne Royden*, S. G. November 17, 1863. V. 50,000*l.*—A. £125

1169. In December, the C. from Tees to London was for twenty minutes on Whitby Rocks, and came off leaky; her draught was too great to allow of her crossing Whitby Bar. Two boats assisted her back to the Tees. *The Conservative*, S. G. May 11, 1839. V. 2,500*l.*—A. £125

1170. The brig D., 218 tons, in the North Sea, having encountered a very severe storm, was in imminent danger, making water, and with her crew very much exhausted. The fishing smack S. R. was engaged by the master of the D. to tow her to Grimsby, and towed her accordingly some distance with difficulty and risk, but the wind changing to a more favourable point, the master of the D. cast off the tow-rope, and she proceeded on her voyage. *The Diana*, S. G. May 13, 1862; 7 L. T. N.S. 257. V. 1,781*l.*—A. £125

1171. The ketch E., with oilcake, was in distress twenty-three miles off Lowestoft. She was towed into the harbour by the pilot cutter A., which sustained damage while rendering the service. *The Era* (Yarmouth Co. Co.), M. M. R. December 22, 1882, p. 1618. V. 1,028*l.*—A. £125

1172. The Norwegian barque F., 400 tons, laden with timber, struck on the South Scroby Sand, received considerable damage, and was compelled to throw overboard her deck cargo. She was in great danger, and four yawls, manned by forty-four hands in all, went to her aid, and by laying out anchors got her off the sand, and she was ultimately taken to London by a steamer. *The Frederickhe*, March 18, 1852. V. not stated.—A. £125

1173. Owing to the master's ignorance of the locality the H. P. got on the Girdler Sand, but was in no danger. She was removed in a few hours by her crew, with the assistance of twenty-five other men. *The Henry of Philadelphia*, 1 Hagg. 264. V. 2,500*l.*—A. £125

1174. In February, the schooner J. E. whilst riding in Yarmouth Roads, in rough weather, in order to clear a barque which had come into collision with her, and caused her much damage, was forced to ship her port anchor and forty fathoms of chain; she was brought up by her starboard anchor alone. The tug U. S. took her in tow to Yarmouth Harbour. *The John Ellis* (Yarmouth Pol. Co.), M. M. R. March 23, 1877, p. 375. V. 1,200*l.*—A. £125

1175. In December, the smack M. B. was on her starboard broadside on the east side of the Barber Sand. In answer to flare-ups, sixteen Caistor beachmen in a lifeboat went to her. The sea was breaking heavily on the sand, there was much rain, and it was very dark. Six of the beachmen boarded her, and she was placed in safety under an agreement for £125. *The Martin Bayly* (Yarmouth Co. Co.), M. M. R. Dec. 28, 1877, p. 1651. V. not stated.—A. £125

1176. In January, the steamer N. was discovered by the tug M., in the Wold, with a broken propeller and part of her mainshaft gone. She was floating stern foremost towards the N., and the tide was running down. The master of the N. let go his anchor

within half a mile of the shore north of Palling. There was then a dead calm, but the danger of the N. was increased shortly after, when a gale from E.N.E. came on. The M. took her in tow till night, when she brought up in the Roads. Next day there was too heavy a gale to admit of her being taken over the bar; the day after another tug specially engaged came up and took her in. *The Nuphar* (Yarmouth Co. Co.), M. M. R. Mar. 9, 1877, p. 309. Value 12,500*l.*—Award £125

1177. The brig O., damaged by a collision, was in some danger. The smack W. and M. went to her assistance, and the crew, having boarded the brig, assisted in pumping her, and brought her into Yarmouth Roads, where, when the tide flowed, four men in the smack J. boarded her, assisted in pumping till the brig was over the bar, and finally brought her to a quay. £100 to the W. and M., £25 to the J. *The Oscar*, S. G. Jan. 21, 1848. V. 2,067*l.*—A. £125

1178. The brig S., having sprung a leak when off Lowestoft, hoisted a signal of distress. The yawl R. went out to her assistance, and brought her in safety to South-end, and subsequently, with the assistance of a steamer, to London. *The Susan*, S. G. July 9, 1853. V. 1,120*l.*—A. £125

1179. In December, during a terrific gale, the schooner S. in distress was taken in tow by the tug M., whose hawser parted, but was made fast again. The Lowestoft lifeboat came up, and some of her crew boarded the S. The hawser parted a second time. The S. hoisted an ensign with the union downwards, and the tug D. took her in tow to a place of safety. £100 to M., £25 to tug and lifeboat. *The Swift*, M. M. R. Jan. 25, 1884, p. 55. V. 345*l.*—A. £125

1180. In January, the steamer H., which had run on a rock in a dense fog, was taken off by means of a kedge, and navigated by some boatmen to the bar of Holy Island Harbour, where her cargo was removed. *The Hibernia* (Newcastle Co. Co.), M. M. R. June 23, 1876, p. 781. V. not stated.—A. £120

1181. The iron sloop A. C., 159 tons, coal laden, after beating about for three days in a heavy gale and snow storm, was off Flamborough Head. Her deck had been swept by the sea; her boats carried away or stove; she was much damaged, and in great danger. The smack E. towed her to Scarborough. The smack sustained injury to her hawser to the extent of £12, and paid £3 for pilotage. *The Admiral Codrington*, S. G. May 14, 1852. V. 765*l.*—A. £120

1182. In October, the A. R. bound to Whitstable with a cargo of coals, which had struck on the Red Sand at the mouth of the Thames, and had been abandoned by her master and crew, was found adrift by the smack C., eleven of whose crew of seventeen hands boarded her, while the rest went to Gravesend to fetch a tug. The weather was so bad that the master of the tug would not go out till next morning, when he went to the A. R. and towed her to the west bank at the entrance to the harbour of Whitstable, where she lay till she was safely brought into the harbour. *The Alice Richardson*, M. M. R. August 12, 1865, p. 1008. V. 1,200*l.*—A. £120

1183. In December, the brig A. touched on the Long Sand. The tide was half flood and the wind was light from N.N.W. By the assistance of some smacksmen she was got off in about an hour and a half. *The Antias* (Harwich Pol. Co.), M. M. R. December 21, 1877, p. 1622. V. 674*l.*—A. £120

1184. The brig B., in the Downs, came in contact with the brig M., and they remained entangled about an hour, in considerable danger. The lugger B. P. succeeded in extricating the ships, and subsequently conducted the B. to Ramsgate Harbour; the wind blowing heavily from the S.W., and a heavy sea on, with occasional squalls of rain. *The Boxer*, S. G. January 26, 1859. V. 4,095*l.*—A. £120

1185. The schooner C., 145 tons, on a voyage from Dublin to Newcastle, when off the Lizard Point, lost her fore and mainmasts, and was in some danger. There was a strong east wind, and a heavy sea. The J. went to her assistance, and after two or three ineffectual attempts, succeeded in taking her in tow and conducting her to Penzance. The services lasted ten hours. *The Commodore*, S. G. February 15, 1853. V. 880*l.*—A. £120

1186. In December, the schooner D. with railway iron was in the Wold off Winterton in distress, her cargo having shifted in heavy weather, and she was making water fast, and her three hands were exhausted with pumping. She was discovered thus by the

fishing lugger A. Three men from the A. boarded her, and kept the pumps going while she was being taken into Yarmouth Roads, where a berth was secured for both vessels. Six of the crew of the A. were then put on board the D. and managed her during the night. Next morning the services of a tug were secured, and the D. was towed into harbour and moored. There was a great deal of water in her. The A. lost two nights fishing, value about £48. *The Dayspring* (Yarmouth Co. Co.), M. M. R. December 24, 1880, p. 1648. Value 710*l.*—Award £120

1187. The schooner E. M. A. came into collision with the brig F., and was damaged. Her master and crew got on board the F., while the mate of the F. jumped on board the schooner. In this condition the schooner S. fell in with her, about twenty-five miles westward of Almeria, in Spain, put two men and a boy in her, and conveyed her first to Almeria, and afterwards to Gibraltar. *The Elizabeth Mary Ann*, S. G. Nov. 22, 1848. V. 1,500*l.*—A. £120

1188. The brig E. Y. got on the outer edge of Barber Sand, off Caistor, and hoisted a signal for assistance. The wind was blowing on the shore. The weather was bad, and it was a dangerous period of the year. The yawl Z., manned with eleven hands, went to her aid, and was afterwards joined by the yawl S. Anchors were laid out by the yawls, and the brig was ultimately got off the sand and into a place of safety. *The Elizabeth Young*, S. G. April 17, 1851. V. 1,100*l.*—A. £120

1189. In November, the billy-boy schooner E. was riding just above Corton, about 100 fathoms from the shore, on a flood tide, with the sea breaking completely over her, and the wind and weather very rough, with snow squalls. She was taken to Lowestoft by the Gorleston lifeboat, manned by seven hands. *The Elk* (Lowestoft Co. Co.), M. M. R. Jan. 14, 1876, p. 45. V. 1,140*l.*—A. £120

1190. In February, the schooner E. J., from Leith for Middlesborough, with iron rails, in making the Tees, struck on the North Gave on a bank of sand. The weather was bad. The captain and crew left her to seek assistance, and engaged fourteen men, by whom, after several days' work, all the cargo and stores were brought off. The ship was ultimately got off and taken to Middlesborough. *The Ellen Jane* (Stockton Co. Co.), M. M. R. May 9, 1873, p. 595. V. 2,060*l.*—A. £120

1191. In November, the trawling smack F. was espied by the M. sailing before the wind, which was from the S.W., near the Long Sand in Boston Deep. In spite of the efforts of those on board, she ran aground near Wainfleet. Thereupon the crew of the M. boarded her, found an anchor missing, discovered it some 200 yards from her, and recovered it. The next day they got her off, and a steam-tug came to fetch the F. to Grimsby, the M.'s captain accompanying. The crew would not give her up, but took her to the Receiver of Wreck at Grimsby. Expenses of the M. £2 18*s.* 4*d.* *The Foam* (Grimsby Mag.), M. M. R. March 14, 1868, p. 339. V. not stated.—A. £120

1192. In January, the G. was driven out to sea without a crew from the River Wear by ice, and was brought back by six pilots in a tug. £190 was paid to the tug. *The Gamma*, S. G. July 9, 1841. V. 1,650*l.*—A. £120

1193. In August, the Dutch schooner G., from Amsterdam to Trieste, with sugar, sustained much damage in a collision with a screw steamship off Dungeness, and was conducted to Ramsgate by the O. G., with the assistance of a tug, for which £40 was paid. *The Grootzwyk*, S. G. December 8, 1858. V. 6,600*l.*—A. £120

1194. The H. was got off the Maplin Sand by two smacks and two yawls containing fifteen men. *The Harvey*, S. G. December 1, 1848. V. 1,350*l.*—A. £120

1195. The Dutch galliot H., 138 tons, met with a severe gale by which her rudder was damaged and other injury sustained. She hoisted a signal for assistance, and four smacks took her in tow, and conducted her to Lowestoft. The services lasted three days. *The Houthandel*, S. G. May 4, 1853. V. 700*l.*—A. £120

1196. The I., 290 tons, damaged by a violent storm in the English Channel, signalled for assistance, and was boarded off Dunnose, in the Isle of Wight, by a pilot of the smack A. (40 tons and five men), and taken in tow by the A. After anchoring at St. Helen's and Spithead, the I. was taken into Cowes. The services lasted two days. *The Industry*, 3 Hagg, 203. V. 2,000*l.*—A. £120

1197. In December, the brig J. was on the North Sand, and the sea was breaking over her. During the night twenty-six beachmen of Gorleston made three attempts to get to her at great personal risk, but failed, owing to the wind and tide and the stormy weather generally. The fourth attempt was successful, and the crew of the J. were rescued out of the rigging. *The Johns* (Yarmouth Co. Co.), M. M. R. Mar. 14, 1873, p. 336. Value 950*l.*—Award £120

1198. The schooner L. F., 130 tons, was damaged by collision. The cutter Q. V. took her to Great Grimsby. The services lasted twenty-nine hours. *The Linda Flor*, S. G. April 25, 1857. V. 4,384*l.*—A. £120

1199. Some boatmen of Dover landed the master of the L. G. from that vessel off Dover. He obtained two anchors (one of 17 cwt. and one of 15 cwt.), and the boatmen put them on board the L. G. off Hythe. *The Lord Goderich*, 10 Monthly Law Mag. (Notes of Cases), 217. V. 2,500*l.*—A. £120

1200. The barque L., 400 tons, grounded during a thick fog on Corton Sand. Three steam-tugs got her off the sand, and towed her to Lowestoft Roads. *The Luigi*, S. G. Jan. 22, 1862; 7 L. T. N.S. 257. V. 2,350*l.*—A. £120

1201. The ship N. P. struck on the south part of Hasborough Sand; the weather was not very bad, but it was an exposed position, and a bad time of the year. The lugger S., after services of thirty-six hours' duration, but of no peril, got the ship off, and assisted in taking her to Yarmouth. *The Nord Polen*, S. G. May 3, 1860. V. 2,100*l.*—A. £120

1202. The schooner O. H., 115 tons, while at anchor in Yarmouth Roads, was run into, and began to drive, whereupon she made sail for the Cockle Gat, and lay to until daylight, when, having hoisted a signal, the fishing-smack B. came up; the salvors assisted the schooner by repairing the anchor, and steering her until they brought her up near the Cockle Sand. On the next day they hove up the anchor, and steered the schooner clear of the sand, and then engaged the steam-tug S., which towed the schooner into Yarmouth Harbour. *The Otto Herman*, S. G. May 3, 1864. V. 1,300*l.*—A. £120

1203. In October, the steam lighter P., carrying only a single mast and no sails, disabled by the loss of all the blades of her propeller, was found at anchor by the iron paddle-wheel steamer L., value £30,000, 317 tons register, 400 h.-p., from Barrow to Belfast, with mails, forty passengers, twenty-seven hands, off the point of Ayr, and by her taken in about ten hours to Belfast. There was much risk and considerable difficulty in the service, as the P. steered badly; one hawser was broken, value £25, and others chafed and rendered of little value. The P. was in great peril of drifting on shore if her chain had parted. *The Pixie*, M. M. R. Feb. 23, 1883, p. 242. V. 2,300*l.*—A. £120

1204. In February, the steamer P., riding in Yarmouth Roads, was obliged during a heavy gale to slip her anchors to avoid collision with another vessel, and being without anchors or chains ran for Lowestoft Harbour, and took the ground from ten to fifteen feet from the south pier at the entrance. A very heavy sea was running across the harbour at the time, and she was therefore in much danger. The salvors—thirty-seven beachmen—assisted in getting a warp to the north pier, and setting the jib and staysail, by means of which her head was canted. She was got into a place of safety, and the harbour tug R. took her in tow, the salvors assisting at the warps. *The Premies* (Lowestoft Co. Co.), M. M. R. Mar. 12, 1870, p. 338. V. not stated.—A. £120

1205. In July, the brig S. went ashore on some rocks beneath St. Gowan's Head, near Milford Haven. The steam-yacht R., lying in the Haven, set out to her assistance, and, after three hours, reached the S. There was a dense fog, and the crew of the R. were only guided by the sound of the surf in getting round St. Gowan's Head. They were told by the coastguard that the crew of the S. had gone ashore, and found on boarding her that this was so; that they had carried off sails, compasses, and their clothes, and that the ship had 5½ feet of water in her hold. They got her into a creek close by, stayed by under steam all night, and next day she was taken into the Haven. *The Soppho* (Liverpool Co. Co.), M. M. R. Nov. 18, 1870, p. 1490. V. 950*l.*—A. £120

1206. The barque S. P., 699 tons, grounded on the Kimmeridge Ledge, off the coast of Dorsetshire. She was in a perilous position, and was bumping heavily. A pilot and three men put off to her assistance, and by laying out anchors she was got off, and after a service of twenty-seven hours, was safely conducted to Cowes. *The Sarah Park*, S. G. Feb. 3, 1855. Value 12,000*l.*—Award £120

1207. In April, the S., 188 tons register, from Middlesboro' for London with coals, was in collision on the north end of the Blyth Sand with a tug, and sank. The captain and crew abandoned her. The salvors went with divers and two cutters to the Blyth Sand, and found the S. sunk down four feet in the sand. On the two next days, they succeeded in patching the hole in her port bow made by the collision, and moved her further in shore. In four days more, with thirty men and seven pumps, they got the water out of her, raised her, and engaging a tug, got her to London, pumping all the way, and thus saved all her cargo. *The Schiedam* (City of London Co.), M. M. R. May 29, 1869, p. 690. V. 375*l.*—A. £120

1208. In October, the brig S. was in a dangerous position off Harwich, during bad weather, and exhibited a signal of distress. In answer thereto the dandy E. went to her aid, and succeeded in rescuing the S. from her peril, and taking her to Harwich. The boat of the E. was stove in whilst she was assisting the S. *The Sherlock* (Ipswich Co. Co.), M. M. R. Jan. 15, 1870, p. 86. V. not stated.—A. £120

1209. The S., when in Woolwich Reach, in the River Thames, was run into and was in danger of sinking. The crew thereupon quitted her, when the steam-tug *Surprise* towed her in to the shore to prevent her from sinking in deep water. *The Silence*, S. G. March 16, 1855. V. 1,600*l.*—A. £120

1210. In August, the brig S. was disabled by collision with a barque. She was afterwards fallen in with by the smack A. W., which offered her services but they were declined, as one smack was not enough to tow the brig; but the smack B. also coming up, the two agreed to tow the S. to Yarmouth Harbour for £120. The winds being contrary, the S. could not be towed into Yarmouth, but by consent of her captain was, after three days and three nights' towing, brought off Ramsgate, and the next morning got into the harbour. *The Synia* (Ramsgate Co. Co.), M. M. R. Sept. 18, 1869, p. 1203. V. 350*l.*—A. £120

1211. The schooner T. F. in entering Sunderland Harbour, grounded on the rocks to the south of the entrance. Fifty-two men unloaded part of her cargo and hove her off. *The Thomas Ferguson*, S. G. Nov. 29, 1860. V. 800*l.*—A. £120

1212. In October, the Norwegian yacht U., 63 tons, laden with coal and iron, from the Tees to Norway, was drifting about at the mercy of the waves, having lost some sails. The weather was heavy and the wind blowing very hard. Her master and crew were taken on board the smack O. She was then boarded by the mate and four hands of the O., who trimmed the sails, steered her after the O., and stayed on board till the next morning, when the O. took her in tow, and after the rope had parted twice during the towage, which lasted two nights, one whole day, and part of another day, she was got into Grimsby. The O. lost a boat value £18 during the services. *The Urda* (Grimsby Pol. Co.), M. M. R. Oct. 29, 1880, p. 1391. V. 200*l.*—A. £120

1213. The Norwegian brig V., aground on the Knock John Sand, off Essex, in the month of November. Fourteen Colchester smacks went to her assistance. Four were hired by the master for the sum of £40 to carry out a kedge anchor and heave upon it, which they endeavoured to do, but it came home. All the salvors were then engaged, and the lugger O. with great difficulty got over the Sand, and dropped the brig's bower anchor; some of the salvors hove upon it, and after about an hour and a half the brig was got off the sand. There were seventy-one salvors, and the ship was in a dangerous locality, looking to the time of the year; but there was no risk of life to the salvors. *The Valkyrien*, S. G. May 7, 1858. V. 2,020*l.*—A. £120

1214. The galliot V. G. in running for the Humber, struck on the inner Binks Sand, in the vicinity of Spurn Point. Three smacks—fourteen salvors—pumped the galliot, and conducted her to Grimsby. The smacks were at the time they saw the galliot engaged in cod-fishing. One boat was stove, and rendered unseaworthy. *The Vier Gebruder*, S. G. April 21, 1859. V. 1,250*l.*—A. £120

1215. The schooner *W.*, of 53 tons, lost both her masts in a gale, and was taken in tow by the *K. P.*, which could not efficiently tow her. The smack *P.*, 73 tons, nine hands, fell in with them seven miles from the Dudgeon Light, and assisted in towing the *W.* The smack's cargo of codfish was deteriorated in value to the amount of £57. *The William*, S. G. June 18, 1849. Value 1,186*l.*—Award £120

1216. The *W. L.* got into Bigbury Bay, where she was driven between the rocks, and greatly damaged, and the master dismantled her. The owners requested a pilot named Hyde to go to her assistance. He hired ten men at Plymouth, including some pilots, and, accompanied by the steamer *Sir F. D.*, proceeded to the Bay, and brought the *W. L.* into Plymouth in a waterlogged condition. The services lasted two or three days. The ten men hired by Mr. Hyde were the present claimants, the others had been settled with. *The William Lushington*, S. G. Jan. 29, 1850.

V. 2,500*l.*—A. £120

1217. In March, the steamer *R.* for Barcelona with coals, on the Sand of the Cemetery, part of the Long Sand, was boarded by the pilot of the cutter *S.*, and, by his directions and advice, she was got off, after forty tons of water had been pumped out of her after-tank, and eighteen inches out of the fore-tank, and after forty tons of cargo had been thrown overboard. The cutter was damaged to the amount of £18. *The Ringdove* (City of London Co.), M. M. R. July 9, 1875, p. 872.

V. 1,800*l.*—A. £118

1218. The master of the *C. E.*, from London to Sunderland, when nearing the latter port during a heavy storm, found that there was not enough water at the entrance of the Wear, and made for the Tyne. Taking some light near Whitburn to be the Tynemouth Light, he ran his vessel aground. The captain and crew were rescued by the Whitburn lifeboat. The crew (engaged by the run) were discharged by the master. The master engaged the plaintiffs, thirteen men, and twelve of the discharged crew, as salvors, on the agreement that they should have one-third of the value of the stores saved. *The Caroline Elizabeth* (South Shields Pol. Co.), M. M. R. Dec. 29, 1866, p. 1657.

V. not stated.—A. £117

1219. In October, the sloop *G.* was picked up, off Spurn, by the smack *A.*, dismantled and perfectly helpless, in a heavy sea; and with the aid of the smack *S.* was got into a place of safety. *The Gills* (Grimsby Co. Co.), M. M. R. November 26, 1875, p. 1520.

V. not stated.—A. £115

1220. In February, the schooner *M. L.*, with sulphur ore from Pomaron for Ipswich, got hard and fast ashore, between the breakwater and Languard Point, near Harwich. The owner of the smack *A.* and four hands pulled in the smack's boat through broken water to the schooner, and one of the hands got on board and stayed there. Next morning the smacksmen returned, and got on board the schooner. At the captain's request they laid out the anchor, and helped to lighten the ship by throwing out twenty tons of cargo. The wind increasing, the smacksmen advised the captain to engage a tug. This was done, and on the ebb the tug got her clear. One of the smacksmen, a Trinity pilot, then took her into Harwich. Had she remained another day she would have been wrecked. The wind was blowing strong from S.S.E. *The Martha Lloyd* (Ipswich Co. Co.), M. M. R. March 12, 1870, p. 338.

V. not stated.—A. £115

1221. The barque *A.*, greatly damaged, was in the North Sea, about 70 miles from the Spurn, the wind blowing a heavy gale from the W.S.W., with a high sea running. The fishing smack *R. D.* lay close to her all night, and the next day took her in tow, and in seventy hours towed her into Grimsby Roads. The tow-rope broke once, and the two vessels came in collision, by which the smack was considerably injured. A quantity of fish on board the smack was spoiled. *The Anthracite*, June 8, 1849.

V. 800*l.*—A. £110

1222. The brig *B.*, 298 tons, coal laden, struck on the north end of the Corton Sand. The yawl *Y. R.*, with a crew of twenty hands, laid out anchors, and, assisted by a shift of wind and a rise of the tide, got her into deep water, and finally to Yarmouth Roads. The salvors stayed by the brig till 6 p.m. of the following evening. *The Bernard*, S. G. June 14, 1851.

V. 1,100*l.*—A. £110

1223. The sloop *G.* on the 4th November was off the coast of Norfolk, with a signal of distress flying. The smack *H.*, 64 tons, manned by a crew of eight hands, with a

cargo of codfish, saw the sloop about six miles off, drifting out to sea quite unmanageable, with the sea running completely over her. The smack came up, and with difficulty took her in tow, and, with the assistance of the J., another smack which came up shortly afterwards, conducted her, after twenty-four hours' labour, to Yarmouth. The H. sustained damage to the extent of £15, and several of the fish died from the concussion of the vessels. *The Geldstone*, March 7, 1851.

Value 425*l.*—Award £110

1224 The sloop J. and A. was off the Lincolnshire coast disabled, and in great danger, her crew being worn out with fatigue. The fishing smack S. L. took her in tow, and conducted her to the Hull Docks. The services lasted two days. *The Joseph and Ann*, S. G. March 27, 1854.

V. 690*l.*—£110

1225. In March, the schooner J. W. T., laden with salt, was aground on the Barnard Sand, and bumping heavily in a gale of wind. The tide was rising, and she was got off, without much difficulty, by forty men in the Kessingland lifeboat, but when she was got off much care was required to keep her clear of the sands. *The J. W. T.* (Yarmouth Co. Co.), M. M. R. May 19, 1882, p. 622.

V. 785*l.*—A. £110

1226. In November, the Norwegian barque O. fouled the Corton Sand Buoy, and stuck. From this position, which the court did not deem to be one of danger, she was extricated by the tug U. S. and the yawl W., which endeavoured to take her into Yarmouth, but, finding that impossible, took her to Harwich. *The Ogir*, M. M. R. March 14, 1873, p. 335.

V. 1,820*l.*—A £110

1227. In July, the brigantine V., from Gothenburg for Neath, in Glamorganshire, with laths and deals, struck on the sand near the Leman and Owers Lightship, and remained fast. The pumps were manned, but there being found to be eleven feet of water in her, the captain and crew took to the boats and rowed to the Lightship. Next morning they perceived that the V. had floated off the sand, and they returned to her, boarded her, and brought her near to the Lightship, between two sands, a very dangerous place. The master of the P., seeing the danger of the V., and in answer to signals from the Lightship, bore up to her, left two men on board, and then, at the request of the master of the V., set sail for Yarmouth, and brought from thence a tug, by the aid of which the V., though waterlogged, was safely brought into Yarmouth. *The Violet* (Yarmouth Pol. Co.), M. M. R. Aug. 23, 1872, p. 1073.

V. 600*l.*—A. £110

1228. The luggers W. E. and J. J., of Yarmouth, observed the schooner F. H., of Tonsberg, from Frederickstadt to Yarmouth with timber, lying broadside on the Hasborough Sands, her small boat had sunk alongside, and the crew were busy throwing deck cargo overboard. The luggers were at the time engaged on a mackerel voyage, the weather was fine, and the schooner had made hardly any water. The master and three hands from the J. J., and the master and four hands from the W. E., boarded the F. H., and having been engaged by the master, succeeded in getting her off the sands in a few hours' time, by heaving on a small kedge anchor which they laid out. They afterwards got into the roads, and engaged a steam-tug for £5 to tow her in. *The Familien Haat* (Yarmouth Pol. Co.), M. M. R. July 14, 1866, p. 883.

V. 605*l.*—A. £105

1229. In December, the brig B., after collision, was riding at anchor off Yarmouth, near the North Buoy, in four fathoms. In answer to a flare-up, twelve beachmen put off in a yawl and boarded the B. Her anchor was hove up, and the B. was got into a safe position in the roadstead; and on the following morning she was towed by a tug into Lowestoft. £80 to the beachmen, £25 to a tug. *The Byewater* (Lowestoft Co. Co.), M. M. R. Jan. 15, 1870, p. 86.

V. 800*l.*—A. £105

1230. In March, the barque G., from Hull for Venice with coals, in very squally weather, with snow, parted from both her anchors, while riding under the North Foreland. When a little below Corton Lightship, she was boarded by one of eighteen Gorleston boatmen, by whose advice her captain engaged the tug W., the other boatmen being in attendance on her in their yawl. One tug was not sufficient, so the M. was engaged, and the two tugs held her, till there was water enough to admit of her going into harbour, and then took her in. *The Giovanni* (Yarmouth Co. Co.), M. M. R. April 7, 1876, p. 437.

V. 952*l.*—A. £105

1231. In May, the schooner V., from Liverpool to Newcastle with salt, got on the Cross Sand, in a fog, the wind being E.S.E., and the tide falling, with a sunken wreck just under her bows, and another a short distance astern. After about an hour and a-half's towing, the tug V. got her off, and worked her clear of the sands. She was ultimately towed into the roadstead and brought up. *The Venus* (Yarmouth Co. Co.), M. M. R. June 4, 1875, p. 714. Value 800*l.*—Award £105

1232. In January, the barque Y., on her voyage to Cuba, through an error on the part of her master, ran into the Pightle, between the Scroby and Cross Sands. The yawl P., with twenty-four hands, in answer to signals, put off from Gorleston, and reached the Y. simultaneously with the tug R., which was manned by twenty men of the Storm Company. The Y. had brought up in five fathoms of water only, and by one anchor, the chain of the other having broken. The tug's tow-rope was got on board the barque, and the tug towed her to her anchor, which the beachmen were in consequence able to weigh. She was then towed through the Pightle and round the south side of the Scroby, into the roads. The services lasted between five or six hours. *The Yanikale* (Yarmouth Pol. Co.), M. M. R. Feb. 9, 1872.

V. 1,820*l.*—A. £104

1233. The barque A., when in the North Sea, having suffered severely from the weather, hoisted a signal of distress. The smack B. went to her assistance, and after twenty-two hours' labour, brought her to the Humber. *The Actif*, S. G. Feb. 27, 1857, and May 4, 1857.

V. 3,000*l.*—A. £100

1234. The A. struck on the Black Tail Sand. Thirty smacks were employed to take out a portion of the cargo and carry it to the Commercial Docks, and twenty smacks, with their crews, were engaged to take the other portion to Colchester, which they did. The services lasted two days. The crews of the thirty smacks were paid, but the other salvors applied to the magistrates, who awarded a moiety of the nett proceeds of the property salvaged, which the Admiralty Court reduced on appeal to one-third. *The Allandale*, S. G. May 8, 1858.

V. 301*l.*—A. £100

1235. In October, during a very high flood-tide and a gale, the brig A. was observed drifting with the tide off New Brighton. The tug L. went to her assistance, and making fast a hawser towed her into Birkenhead. The hawser broke once during the towage. *The Alexandra* (Liverpool Co. Co.), M. M. R. Dec. 23, 1870, p. 1652.

V. not stated.—A. £100

1236. In December, the barque A. was in a dangerous position near the Black Deep, between the Sunk and South Sand heads, heading E., with the tide rounding into the N.W., running very sharp. Her captain thought he was fifty miles N.N.W. of where he actually was. The master of the smack A., generally employed in salvage services, with great skill, difficulty, and danger got close to the A., boarded her, and, at the captain's request, took command. He sailed her down the Black Deep in a N.E. direction, and afterwards E.N.E. to clear the Sunk Sand, then ran her near the Cork Light to an anchorage, and from thence took her to Harwich. The services lasted fifteen hours. The night was very dark, and the sea very heavy. *The Amalie* (Ipswich Co. Co.), M. M. R. Feb. 2, 1877, p. 149.

V. not stated.—A. £100

1237. In February, the barge A. S., off Dungeness in a heavy gale, and holding on by a single anchor only, was fallen in with by the lugger M., which put two men on board at great risk, owing to the heavy sea, and lay by her all night. Next morning, with the aid of a tug, the A. S. was got into harbour. *The Amy Seymour* (Faversham Co. Co.), M. M. R. Mar. 25, 1881, p. 369.

V. 1,000*l.*—A. £100

1238. The steam-tug S. K., under an agreement to dock the ship A., was towing her down the River Mersey towards the Waterloo Dock, when the barque J. S. came into collision with the A., and, to avoid being damaged, the S. K. cast off the A. The A. and the J. S. then drifted with the tide up the river, and came into collision with the brig Anne. After getting clear of her, the J. S. was brought up by her anchor, and the A. continued to drift alone until she came into collision with the G. L., which was at anchor, and her anchor chain parting, she and the A. drifted together in the direction of the ship H. M. H. Before the A. came into collision with the H. M. H., and while in collision with the G. L., the S. K. came up and got her hawser on board the A., and together with another steam-tug, the L., which had previously rendered assistance, towed away the A. till she was brought up by her anchor and placed

in safety. The S. K. then sent another steamer to assist in docking the A., and herself went to the assistance of the G. L., and towed her away from the H. M. H., with which she had come in contact. The court awarded £100 for the services rendered to the G. L., but dismissed the claim for salvage against the A. and H. M. H. *The Annapolis, Golden Light, and H. M. Hayes*, S. G. July 31, 1861.

Value 36,000*l.*—Award £100

1239. The schooner A., while lying at anchor off Bridlington Bay, in a heavy snow storm, with a gale from the N.E., was run into and considerably damaged, and the crew abandoned her. The crew of the coble S. F. slipped the chain, and in six hours conducted her into Bridlington Harbour. *The Ant*, S. G. July 31, 1850. V. 1,035*l.*—A. £100

1240. The brig A., 157 tons, coal laden, lost an anchor and part of her cable, and ran for Yarmouth Roads to supply her loss. The master went on shore and despatched a boat with an anchor and cable, but was unable to return to his brig by reason of a severe gale which sprung up from the S.S.E. The brig made water, and the crew were exhausted and their lives in some danger. The mate caused a tar bucket to be lighted as a signal for assistance. A number of men with considerable difficulty and danger launched a yawl, but were unable to proceed to the brig, and the steam-tug R. O. then went out, taking some of the yawl's men with her. The tug struck the ground twice, and both paddle-boxes were stove in, and with great risk to life two of the yawl's men were got on board the brig to assist in pumping. The tug towed the brig into Lowestoft. *The Ardwell*, S. G. May 19, 1852.

V. 500*l.*—A. £100

1241. In February, the A., a small vessel, laden with wheat, manned only by a master and two boys, was in great peril off Filey Bay, by reason of stress of weather, the season of the year, the locality, and the small crew. The J. W., observing the signal of distress flying, put off, and conducted the A. into Bridlington Harbour. The services were promptly performed, although they did not last long. *The Ariel*, May 28, 1850.

V. 539*l.*—A. £100

1242. In December, during a severe gale, the brig A., from Newcastle for Erith, with coals, was found one and a-half cable's length off the Inner Scroby Sand, by the crew of the steam-tug R., which also had fifteen beachmen and their boat, the W., on board. The A. had lost her anchor, and a good deal of her canvas, and was unmanageable. The W. was launched and manned by eight beachmen, who, at great personal risk, went to the A., boarded her, and agreed to take her into harbour for £150. The court set aside the agreement, as being obtained under pressure, and excessive. *The Azalea* (Yarmouth Pol. Co.), M. M. R. Dec. 27, 1872. p. 1650.

V. 1,100*l.*—A. £100

1243. In February, the Italian barque B. C. dragged her anchors, got upon the Cardiff Sand, and was in great danger. The tug M. R., after one and a-half hour's towing, took her into a place of safety. *The Bianca Cassanova*, S. G. April 24, 1885, p. 263.

V. not stated.—A. £100

1244. The brig B., off the North Foreland, lost an anchor and chain cable. The lugger L. procured another anchor and chain, for which the salvors made themselves liable, and put them on board the brig, a heavy sea and terrific gale prevailing at the time. *The Blanche*, S. G. March 2, 1862.

V. 1,562*l.*—A. £100

1245. In November, the schooner B., which broke from her anchorage and drifted on to the Maplin Sands, was boarded, during a heavy gale, by four boatmen; and in about a couple of minutes was got out of danger. *The Brilliant* (Colchester Pol. Co.), M. M. R. Dec. 21, 1877, p. 1623.

V. not stated.—A. £100

1246. The brig C. was reaching into Hartlepool Bay during a gale, with a signal for assistance. The lifeboat M. A., manned by eighteen hands, went to and boarded her. A steam-tug came up with some men, but owing to the sea they were unable to board the C.; the lifeboat then went to the tug and took the men to the brig; they were engaged for nine hours in pumping her, and she was afterwards towed by the tug into the Tees. Tender of £100 pronounced for, and salvors condemned in costs to the amount of £20. *The Carlisle*, S. G. Oct. 26, 1855.

V. 1,200*l.*—A. £100

1247. In November, during a heavy gale and in a heavy sea, the schooner C. with a cargo of oats, came into close and dangerous proximity to the Corton Sands, and

signalled for aid. The tug L. S. with several members of the Gorleston Storm Company went out, and at considerable risk succeeded in bringing the vessel in. *The Catherina* (Yarmouth Co. Co.), M. M. R. December 22, 1882, p. 1618.

Value 800l.—Award £100

1248. The C. W., having met with stormy weather, was driven back from the North Foreland into the North Sea as far as Lowestoft, where, having sprung a leak, it was found necessary to get her into that port. A fishing lugger, the C., with a crew of eleven men, tendered their aid, which was accepted, and in boarding the C. W., the C. came into collision with her, and received such damage that she was not able to prosecute her occupation for the remainder of the season. The crew of the C. assisted in pumping the C. W., and ultimately brought her into Yarmouth Roads. *The Charles Williams*, S. G. April 24, 1846.

V. 4,970l.—A. £100

1249. In April, the schooner C. got on the Scroby Sand to the south of Scroby Elbow buoy. The tug M. proceeded to her assistance, and was engaged by the master. Thirty beachmen were taken on board to lighten her, and threw forty tons of her cargo (coals) overboard. She came off next tide, and was taken into harbour in about ten hours. *The Cicerone* (Yarmouth Co. Co.), M. M. R. June 9, 1879, p. 725.

V. 836l.—A. £100

1250. In December, the schooner C. F., 89 tons, from Portmadoc to Middleborough with slates, came into collision off the N. Foreland with a brigantine during a strong gale, and sustained damage. The schooner let go her anchor, and was found by the tug F., 90 h.-p., riding bows under. The tug took her in tow, and the C. F. then slipped her anchors, and was held by the tug till next morning, when the weather moderating she was taken into Ramsgate Harbour. *The Clara Felicia* (Cinque Ports Comm.), M. M. R. March 16, 1877, p. 340.

V. 1,474l. 16s.—A. £100

1251. In February, the C., 191 tons register, with coals from Sunderland for Fécamp, during a gale, with rain, made a good deal of water; she had her foretopsail split to pieces, and rounded to under double-reefed maintopsail and foresail, with her head to the S.E., the wind veering to the westward. The smack T. came up, and the master of the C. agreed to give the master of the T. £150 to put the C. in safety. Subsequently the E. came up and assisted, and the brig was brought to anchor in Yarmouth Roads. The owners contended that the services of the E. were included in the £150; but the salvors denied this. *The Coldstream*, April 20, 1867, p. 498.

V. not stated.—A. £100 to the E.

1252. The brig C. O. grounded on the Newcombe Sand. Some beachmen of Lowestoft laid out the stream anchor and hove her off. The salvors worked at the pumps, and the ship was ultimately laid on the mud near the Graving Dock at Lowestoft. The ship was in some peril. *The Come On*, S. G. May 12, 1859.

V. 2,098l.—A. £100

1253. The schooner C. N. stranded at the mouth of the Humber, and was abandoned by her master and crew. On the rising of the tide she floated off, drifted up the river, and on to the mud near Killingholme Lights. She was there boarded by three men who took charge of her. Shortly afterwards Partington, a master mariner, boarded her. A tug came up, put a pilot on board, and towed the schooner off and up to Hull. All were settled with except Partington. *The Conte Nesselrode*, 1 Lush. 454; S. G. January 21, 1862.

V. 5,000l.—A. £100

1254. The barque C., 195 tons, anchored in the Gull Stream, the wind blowing strong from the N.E. Finding it unsafe to remain there, she attempted on the next day to weigh anchor, but could not, and sent to Ramsgate for a steamer. The G., a powerful steamer, went out and towed her to London. *The Commodore*, March 10, 1852.

V. 5,064l.—A. £100

1255. In December, the schooner C., 155 tons, from Rotterdam to London with potatoes, went ashore on the shingles about four miles from Yarmouth, striking heavily. The weather had been extremely rough, and was threatening, with wind and sea rising. The tug F. D., with a Yarmouth lifeboat in tow, came up, and made two attempts to tow the C., but broke the tow-rope in doing so, and then left her, returning with the lifeboat next day. Another attempt was made, but unsuccessfully, to get her off, but she was finally got off, after having been lightened of her cargo and

pumped. The F. D. then towed her into Cowes Roads in 4½ hours. *The Corymbus*, M. M. R. May 17, 1878, p. 629. Value 1,190*l.*—Award £100

1256. In June, the schooner D. from Dartmouth to Cadiz, in ballast, while entering Cadiz Harbour, got on Cochinoy Rocks, and lay in very great danger, with her bows high and dry, and without her rudder. Two boats from H.M.S. T. got her off. *The Dewdrop*, S. G. Jan. 21, 1841. V. 600*l.*—A. £100

1257. The brig D. off Credew Head, on her voyage from Cardiff to Waterford with coals, lost some spars in a squall, and in answer to signals the steamer C. came up and took her in tow to Waterford, the tow-rope breaking once during the voyage. *The Downes*, S. G. Nov. 1, 1858. V. 500*l.*—A. £100

1258. The brig E. E., 120 tons, anchored by both anchors, parted from one of them, and was in great danger, owing to the proximity of the Scroby Sand. The yawl S. saw the signal of distress made by the brig, and ran down to her; and afterwards got an anchor and cable from Yarmouth, and assisted in conveying the brig to Yarmouth Roads. *The Earl of Errol*, S. G. June 27, 1845. V. 800*l.*—A. £100

1259. The E. G. grounded on the bar off the harbour of Cochin. The vessel P. and fourteen Lascars from the brig H. got her off by lightening her, and laying out an anchor. *The Earl Grey*, S. G. Dec. 5, 1853. V. 13,000*l.*—A. £100

1260. The ship E. went ashore, while entering the harbour at Cork, after collision with the S., and it became necessary to dismantle her and unship the cargo. The salvors conducted the dismantling, part of the time, as agents of the vessel. *The Engelbert* (Dublin Co. Co.), M. M. R. Jan. 23, 1874, p. 115. V. not stated.—A. £100

1261. The E. was ashore on the Newcombe Sand, off the coast of Suffolk. Two smacks, with eighteen men in each, ran out the E.'s best bower anchor and chain, and at high water hove her off to her anchor. They then ran out her kedge with two warps, and hove her further off the ground, where she rode by her kedge while they recovered her anchors. *The Endeavour*, 6 Moore, P. C. C. 334; S. C., 6 Notes of Cases, 57; S. G. July 8, 1847. V. 1,834*l.*—A. £100

1262. The schooner F., approaching Lynn, the weather being hazy, got into a wrong channel, and hoisted a signal of distress. Observing a pilot boat approaching, she substituted a signal for a pilot, but before the boat reached her she ran upon a sand. Five pilots came on board, and by their assistance for seven days the schooner was got off and carried into Lynn. The services were not attended with risk or labour. *The Fox*, S. G. July 9, 1845. V. 1,050*l.*—A. £100

1263. The brigantine G., 104 tons register, from London to Hull with a cargo of rape-seed, struck on the Hook of the Scroby Sand in thick weather, the wind blowing from S.W., and the tide ebb. She sent up flare lights, and the Yarmouth lifeboat went to her aid, and took off the captain and crew, which, it was held, they were not justified in doing, there being no danger to render it expedient to do so. Soon afterwards the Caistor lifeboat, having seen the flares, came up, and her crew boarded the G., and endeavoured to move her, refusing the help of the crew of a steam-tug P., which also arrived. The Yarmouth lifeboat ultimately returned, forcibly ousted the Caistor men, and engaged the P. to take the G. into Yarmouth Harbour, whither she was accordingly towed. Costs were not allowed to the Yarmouth boatmen and the steam-tug. *The George*, M. M. R. June 9, 1866, p. 721. V. 1,660*l.*—A. £100

1264. The schooner G., 185 tons, got upon the Corton Sand, and was in great danger. The wind was E.S.E. and the weather boisterous. Some beachmen lightened her, carried out an anchor, got her off, and with the assistance of a steamer conveyed her to Lowestoft. The salvors violently prevented a steamer from towing the schooner off, by which misconduct they lost a decree for £300. The court awarded the salvors only two-thirds of their costs. *The Glory*, S. G. May 15, 1850; 14 Jur. 676. V. 2,000*l.*—A. £100

1265. In December, the screw steamer H. P. S. was in collision at the entrance of the Tyne with the screw steamer W. T. T., and sunk her. The H. P. S., the tide being ebb, was in danger of drifting on to the sunken steamer. The steam-tug S. made fast to her, got her clear, and proceeded to tow her up the river. She would not steer, had a hole in her bow, and when abreast the New Quay, sheered off to the

north, and was in danger of running down the tugs at Smith's Tiers, North Shields, but was pulled straight by the S. The H. P. S. had to be run ashore at the Limekiln shore, and to be pumped to prevent her sinking. *The H. P. Stephenson* (North Shields Pol. Co.), M. M. R. Feb. 6, 1880, p. 179. Value 7,000*l.*—Award £100

1266. The sloop H., 67 tons, having sustained damage, anchored on the edge of Hasborough Sand. The wind was W. by N., and a heavy sea was running close to the sand, and made a clean breach over the sloop. The fishing smack C., with a crew of nine hands, going to the Dogger Bank for cod fishing, agreed to take the sloop into Yarmouth for £100. The salvors took the sloop to Yarmouth, where they discovered that the property was more valuable than had been represented, and repudiated the agreement. The court held the agreement valid, and pronounced for the tender of £100 with costs. *The Henry*, S. G. Jan. 31, 1851. V. 2,000*l.*—A. £100

1267. In June, the H., from Newport to Altona, with iron, got on the rocks near the Skomar Island, Milford Haven, and was abandoned by all her crew, except the mate and one seaman, and in considerable danger. Three men in open boats boarded her, and got her off without any personal risk. *The Hero*, S. G. Feb. 8, 1839. V. 3,000*l.*—A. £100

1268. In December, the barque I., 589 tons, from Goole for Jamaica, in ballast, was discovered by the tug U. S., 20 tons, riding at anchor by two anchors, near the Newarp Lightship, in tempestuous weather, and requiring assistance. The U. S. tried to hold the I. whilst her windlass was manned and her starboard anchor got in, but failing in this, owing to the weather, she signalled to the tug M., and the two tugs held her while her anchors were got up, and then towed her into Yarmouth Harbour. *The Ida*, M. M. R. March 3, 1876, p. 278. V. 1,375*l.*—A. £100. No costs after tender.

1269. The brig I. O., 307 tons, was in the Gulf of Finland. She was near some dangerous rocks; her anchors were foul, and she was in great danger. Her master applied to the barque E. for assistance. A boat was manned, and a kedge anchor with two hawsers sent to her, by heaving upon which the I. O. was removed from her perilous position, and ultimately brought into a place of safety. *The I. O.*, July 10, 1849. V. 2,526*l.*—A. £100

1270. The barque J. came into collision with a French vessel. The lugger E. G. was employed in assisting the vessels to release themselves, and she then proceeded to Deal and procured a cable and anchor for the J. *The Jane*, S. G. May 26, 1847. V. 12,804*l.*—A. £100

1271. In November, the schooner J. L., from Liverpool for Londonderry with coals, lost her sails during the night in a heavy gale, and had to put back to Holyhead. Next morning, the sea being heavy, and the wind blowing strongly from N.N.W., she became unmanageable, having only one sail left. The Holyhead lifeboat was towed by the tug G. E. round the breakwater, and allowed to drift alongside the J. L., whose crew they found exhausted. Six men from the lifeboat were put on board, and the J. L. was towed into Holyhead and beached. *The Jane Louisa* (Bangor Ad. Co.), M. M. R. Jan. 14, 1881, p. 42. V. 155*l.*—A. £100

1272. In April, the screw steamer L. D., with pig-iron, from Whitehaven, when backing out of Warrington Dock, was jammed, and stuck fast against the dock wall; she was in danger of grounding and breaking her back on the rocks at the entrance to the harbour. The tug M. rescued her. *The Lady Downshire* (Liverpool Pass. Co.), M. M. R. July 21, 1876, p. 911. V. not stated.—A. £100

1273. In February, the L. dropped anchor outside Holyhead Harbour, but in consequence of the strong gale blowing at the time and the heavy sea, was dragging broadside on towards a large steamer which was riding at anchor, head to sea and wind in an exposed position about two cables' length broadside on to the breakwater, and was pitching heavily and ranging about. The tug U. K., seeing the L.'s danger, came up to her, when she was only 300 feet from the steamer, and dragging rapidly towards her. A hawser was made fast, and the L. was towed away just in time to prevent her fouling the steamer and being wrecked. *The Lily* (Liverpool Pass. Co.), M. M. R. March 25, 1881, p. 369. V. not stated.—A. £100

1274. In September, the smack L., after a collision, in which she was injured in her quarter, was about twenty-one miles west of Yarmouth, derelict, with her mizen-

most fallen across the tiller, which was thereby rendered useless, and making a good deal of water. Four hands from the smack P. boarded her, two of whom returned for a hatchet to clear the wreckage, but in trying to fetch the P. the boat in which they were was upset against the P., and one man nearly drowned. The boat with the other man in her drifted towards the smack, in which were the crew of the L. He was taken on board, and the crew of the L. then returned to her, and with the assistance of the two hands left in the P., who joined in the pumping, got her safely to Yarmouth. *The Livonia*, S. G. Oct. 24, 1884, p. 678.

Value not stated.—Award £100

1275. The schooner M., 132 tons, lost her maintopmast and foremast in a squall, and when off Pakefield signalled for assistance. The smack V. towed her into Harwich. *The Mary*, S. G. Nov. 8, 1860. V. 720*l*.—A. £100

1276. In March, the screw steamer M., 496 tons, which had lost her propeller and boats, was, with some difficulty, taken in tow, about thirty-eight miles from Yarmouth, by the steamer W. S., 458 tons. The wind was strong from N.N.W. and the sea running heavily. Soon afterwards the two tow-ropes parted, and the W. S. lay by the M. till next morning, when the M. was taken to Hull by the tug L. C. *The Maude*, M. M. R. June 2, 1876, p. 683. V. 10,600*l*.—A. £100

1277. In March, the schooner M. was boarded, when about a mile and a half outside the Sands, and about three miles from the shore, by some Yarmouth boatmen, who went out in a tug and a yawl. She was found to be making much water and to have all her canvas torn and her mainmast broken. The salvors towed her into the Roads and moored her alongside the Fish Wharf at Gorleston, pumping her all the time. *The Mayflower* (Yarmouth Co. Co.), M. M. R. May 5, 1876, p. 557.

V. not stated.—A. £100

1278. The steamer M. Q., at the mouth of the Mersey, broke one of her paddle-wheels, and hoisted a signal for assistance; the steam-tug A. towed her to the Clarence Dock, Liverpool. *The Mona's Queen*, S. G. March 23, 1854.

V. 12,500*l*.—A. £100

1279. In February, the schooner N., which had lost her master on her voyage from Norway to Venice, and had been knocking about for 110 days, was, with great difficulty and danger, boarded, thirty miles E. of Yarmouth, by the master of the smack H., and finally conducted in safety to Yarmouth Roads. *The Neutral* (Yarmouth Co. Co.), M. M. R. March 3, 1876, p. 280. V. 2,400*l*.—A. £100

1280. The Swedish barque N. H., 210 tons, got on to the Hasborough Sand, the weather being thick and hazy. The lugger P. observed her with signals of distress flying, went to her assistance, and after two days' labour, conducted her to Yarmouth Roads. *The Nicolai Heinrich*, S. G. March 22, 1853. V. 4,000*l*.—A. £100

1281. The fishing lugger P. C. observed the schooner N. about twenty miles from Bridlington, damaged by a gale. The lugger went to her, and after some difficulty took her in tow and conducted her to the Humber, whence by means of a steam-tug hired by the salvors she was taken to Hull. *The Nimrod*, S. G. Jan. 25, 1854.

V. 1,305*l*.—A. £100

1282. The schooner O. W., 136 tons, ran on the Gunfleet Sand; the wind was blowing a gale, and the schooner was in great danger. Several smacks were employed to lighten her. The steam-tug J. and W., fourteen hands, offered her assistance, which was refused. Upon being afterwards signalled, they returned to the schooner, and with some degree of danger towed her off the sand. *The Ocean Witch*, S. G. Feb. 23, 1853. V. 3,000*l*.—A. £100

1283. The schooner O., ninety-six tons, was driven on the Trinity Sand, off Spurn Head, and was in great danger. She lighted a tar kettle. The smack P., laden with a cargo of fish for the Hull market, made for the O., and, on reaching her, found the sea breaking over her. Four of the P.'s crew with considerable difficulty boarded her, and after laying out anchors succeeded, when the tide rose, in getting her off. She was then conducted to Grimsby. The services lasted twenty-four hours. *The Orient*, April 27, 1852. V. 350*l*.—A. £100

1284. The steamship O., 129 tons, loaded with sugar, encountered tempestuous weather, her engine was disabled, and she shipped large quantities of water on deck. Sail was set, and she bore up for Yarmouth. She was in a dangerous position

between the Newcombe and Holm Sands, when the fishing smack B. went off to her with a pilot, who was put on board, and the O. was got clear of the sands and into Yarmouth Roads. The pilot had accepted payment as for pilotage, and the owners contended that a pilot only was wanted. *The Orion*, S. G. Nov. 14, 1850.

Value 3,600*l.*—Award £100

1285. In August, the barque O., off Madagascar, with her master ill and the mate disgraced for incompetence, was navigated to Table Bay and thence to England, by the mate of the barque M. C. *The Ottercaps* (City of London Co.), M. M. R. Mar. 17, 1876, p. 342; Dec. 1, 1876, p. 1523.

V. 7,000*l.*—A. £100

1286. The P., 503 tons burthen, laden with rice, had lost her jibboom and bowsprit, and was at anchor between the Fork and Spike Lights, alongside and to leeward of the brig C., which was also alongside and to leeward of the R., the cables of the P. and C. being under the forefoot of the R. The harbour was crowded with vessels in that quarter; the night was dark, the wind blowing strong from S.E., and the tide ebbing in an opposite direction. The steam-tug W. W. went to the assistance of the P., and after breaking one hawser, succeeded in clearing her from the ruck of vessels in which she had been entangled for twelve hours, and then towed her to Wheeler's Dock. The service involved some skill. *The Phoenix*, 5 (Irish) Jur. N.S. 77, Ad. C.

V. 5,800*l.*—A. £100

1287. The P., 111 tons, on the 24th April, struck on the Gunfleet Sand. Two smacks, with ten men, removed thirty tons of cargo, hove on her anchor, and removed her from her position, and on the 26th carried her safely into Harwich. *The Primrose*, June 18, 1849.

V. 2,385*l.*—A. £100

1288. The brig P., 270 tons, in October, met with a gale of wind, and was damaged. The gale moderated, and the smack F. in a few hours towed her into the Humber. The brig only wanted assistance into the river. The smack's hawser was damaged. *The Polly*, S. G. Jan. 31, 1850.

V. 1,150*l.*—A. £100

1289. In April, the schooner Q. was in a disabled condition, close to a very dangerous sand near Rosspit Buoy, on a lee-shore, in a strong gale, with a heavy sea running. The sea was too rough for any anchors to hold. The tug C. took the Q. in tow, and brought her, under an agreement for £100, to Lynn. *The Queen* (Lynn Co. Co.), M. M. R. May 30, 1873, p. 691.

V. not stated.—A. £100

1290. In October, the steamship R., 717 tons, with sixteen hands and iron ore from Bilbao, ran ashore on a bank outside the bar at the mouth of the River Nervion, in a rough sea with a heavy swell breaking over the bank, and the ship bumped heavily and was being lifted by the sea further on the bank, her engines being powerless to get her off. The wind was moderate from S.W. The steam-tug S., 36 tons, towing a French steamer, saw the peril of the R., and went to her aid. She was eventually towed off by the S., which broke one hawser in rescuing her. *The Redbrook*, S. G. March 20, 1885, p. 182.

V. 17,848*l.*—A. £100

1291. In March, the R., from Newcastle to Southampton, dismasted and damaged seriously by collision in Yarmouth Roads, was abandoned by her crew. She was boarded by hands from H.M. cutter B., and brought into harbour. *The Rosa*, S. G. July 15, 1842.

V. not stated.—A. £100

1292. In March, the barque R. A., 333 tons register, from Sunderland to West Africa with coals, was drifting in the Downs in a N.E. gale, the sea breaking heavily on the Deal shore. In answer to flare-ups the lifeboat V. C. went out to her, and after much difficulty reached her. Five of the lifeboat's crew jumped on board, and with great difficulty got her round the S. Foreland, and her head down channel to get her to Plymouth. The wind and sea increasing, it was thought advisable to take her inside the Isle of Wight and make for Cowes. A pilot was obtained off Yarmouth, and she was got into Cowes. The services lasted forty-eight hours. *The Royal Arch*, M. M. R. May 17, 1878, p. 628.

V. 1,800*l.*—A. £100

1293. In February, the wind blowing a fresh breeze from between S.W. and S.S.W., the weather being thick, with rain, and the night very dark, the S. K. went on the rocks off the mainland, a mile to the S. of Kingsdown, and was rescued from

her perilous position and taken to a safe anchorage by salvors in two galley punts. *The Sarah King* (Portsmouth Co. Co.), M. M. R. Mar. 16, 1877, p. 341.

Value 621*l.*—Award £100

1294. In October, the schooner S. lost her foremast, her mast was split, her crew were exhausted, and she was in danger of sinking. Four smacks came up with her, and, by their exertions, towed her 250 miles, at great personal risk. *The Sarah*, M. M. R. Nov. 19, 1875, p. 1487.

V. 1,348*l.*—A. £100

1295. The schooner S., much damaged and in great danger, with some of her crew frost-bitten, was seen by the smack C., 55 tons, five hands, a few miles from Flamborough Head, with a signal of distress hoisted. The smack, in thirty-one hours, conducted her to the Humber. *The Shaver*, S. G. April 24, 1850.

V. 660*l.*—A. £100

1296. The S. V., 492 tons, much damaged, was off Dartmouth, in rough weather. Two luggers, after services of short duration, and involving no danger, towed her into Dartmouth Harbour. *The St. Vincent*, S. G. June 15, 1860.

V. 3,500*l.*—A. £100

1297. In October, the S. F., 562 tons, from Berdianski, in Southern Russia, to Cork with wheat, lost her rudder, two topsails, her spanker, and some bulwarks in a violent gale, 150 miles from Cape Clear, and rigged a temporary rudder. Forty-five miles from Cork the schooner P. with seven hands came up, put one man on board, made fast to the stern of the S. F., and so acting as a rudder got her with great skill and hazard in thirteen hours to the man-of-war roads in Cork Harbour. *The Stephano Fori*, S. G. March 8, 1858.

V. 12,000*l.*—A. £100

1298. The brig S. was considerably damaged by collision when on the inner side of the North Scroby Sand, a notoriously dangerous place, and the weather was stormy. Eighteen boatmen of Caistor put off in the yawl S., and after thirty-six hours' severs labour conducted the brig to Yarmouth. *The Stokesley*, S. G. May 14, 1852.

V. 1,100*l.*—A. £100

1299. The screw steamer T., 995 tons, and 98 h.-p., was boarded when in a sinking condition by the master of the tug L. W., who conducted her into Dover Bay. *The Thales*, M. M. R. December 3, 1875, p. 1550.

V. 96,000*l.*—A. £100

1300. In December, as the steamer T. was leaving the Sandon Basin, in the Mersey, fully loaded for her voyage, a check rope got entangled in her propeller. The engines were stopped, and she was in danger of being driven by the ebb tide, and a gale then blowing, upon the north pierhead. The tug V. was engaged to tow the T., and with the assistance of another tug got her to an anchorage in the river. *The Thebes*, S. G. July 18, 1884, p. 456.

V. not stated.—A. £100

1301. The schooner T., 126 tons, laden with coals, took the ground on the Cork Sand in a dangerous position, the wind blowing in squalls from the N.W., with hazy weather. The crews of four smacks, twelve in number, laid out two anchors and cables, and lightened the schooner, by which means she was got off the sand, and conducted to Harwich. *The Tino*, S. G. Jan. 20, 1851.

V. 606*l.*—A. £100

1302. In March, the weather being bad, with a heavy sea, and the wind from N.N.E., with hail, the T., with iron and coke, was riding at anchor 100 yards off the shore in Yarmouth Roads, and was driving. She was boarded by some Yarmouth boatmen, who pumped her continuously for about an hour, and afterwards at intervals. The tug P. then came up, and the anchor having been hove up, the T. was taken across the bar. *The Triad* (Yarmouth Co. Co.), M. M. R. May 5, 1876, p. 557.

V. 850*l.*—A. £100

1303. In February, the T., for Poole, in distress, with a broken rudder, and driving to the south off Flamborough Head, was taken in tow by a steamer and towed into Bridlington Bay. *The Trinity*, S. G. May 11, 1839.

V. 1,200*l.*—A. £100

1304. The iron screw steamer V., 59 tons, arrived off Newhaven, and in consequence of there not being sufficient water for her to enter the harbour, took the ground under the East Pier, but was in little or no danger. She was towed off by a steam-tug without danger or difficulty. *The Viborg*, 7 L. T. N.S. 257; S. G. July 17, 1862.

V. 2,500*l.*—A. £100

1305. The schooner V., 144 tons, grounded on the Long Sand in fine weather. Six smacks laid out an anchor, and hove the schooner off the sand. *The Viking*, S. G. Dec. 19, 1856. Value 2,400*l.*—Award £100

1306. In February, the brig V., in a gale off Orfordness, shifted her cargo. The tug C., under an agreement for £100, towed her into Yarmouth Roads. £600 was claimed. *The Vivid* (Yarmouth Pol. Co.), M. M. R. Feb. 14, 1873, p. 210. V. 1,750*l.*—A. £100

1307. The W., 282 tons, got upon the Scroby Sand, a strong flood tide setting to the S.E., and the wind blowing from the S.W. The yawl L., 12 tons, carried out a kedge anchor, and attempted to heave upon it, but it being too light, it came home. They then signalled for further assistance, and the yawl J. came up. A heavier anchor had in the meantime been carried out, and all hands heaving upon it, the vessel came off the sand, and proceeded to Yarmouth. The services were of two and a-half hours' duration. *The William*, S. G. Jan. 13, 1847. V. 3,820*l.*—A. £100

1308. In November, the Z., from London for Boness and Leven, Scotland, got on the Scroby Sand during a gale, and her stern post started. The Gorleston lifeboat M. found her next morning at anchor, about three miles to the southward, with the sea breaking over her, and towed her to Gorleston, pumping her all the way. *The Zephyr* (Yarmouth Co. Co.), M. M. R. Dec. 13, 1878, p. 1589. V. 700*l.*—A. £100

1309. In December, during a gale from E. by N., the steamer V. grounded close to the North Pier, Sunderland, and was bumping heavily. The plaintiffs—pilots and watermen—proceeded at some risk to the end of the North Pier, and succeeded in getting a rope, on which a hawser was bent, attached to the V. They then took it round the head of the pier, and by this means gradually headed the V. into the harbour. She was then taken on the flood tide into a position of safety, and moored at Smith's Tiers. The services lasted eight hours. *The Viking* (Sunderland Co. Co.), M. M. R. March 25, 1880, p. 394. V. 30,500*l.*—A. £100

1310. In March, the brig A., from London to Hartlepool in ballast, while attempting to work northwards through the Cockle Gat, missed stays, fell to leeward, and struck on the Barber Sands, where she remained for some time beating heavily. She was boarded by the crew of the C. lifeboat, who took off her crew. She subsequently drove over the sand, and was taken charge of and navigated into the roadstead by some Scratsby boatmen. *The Ark* (Yarmouth Pol. Co.), M. M. R. April 12, 1872, p. 467. V. not stated.—A. £97

1311. In February, the smack Lady E., having lost two of her crew, was towed during a heavy gale a considerable distance towards the Humber by the smack R., but the R. was then obliged to leave her. She took away all the survivors of her crew. The smack X. found the Lady E. derelict, on her beam ends, with her pumps broken, her hold half full of water, and her masts carried away. The crew of the X. tore up the cabin floor and baled out the water, and after three days' towage got her to the Albert Dock. The X. lost a boat and a tow-rope in the service. £40 to the R., £57 to the X. *The Lady Elizabeth* (Hull Co. Co.), M. M. R. Aug. 2, 1878, p. 981. V. 110*l.*—A. £97

1312. In March, the brigantine C., from Dublin for Liverpool with wood, was off the Anglesea Coast, about twenty-five miles from Holyhead, in a rough sea, and with six feet of water in her hold. She was taken in tow by the steamer B., 277 tons, from Liverpool for Santander, and taken to Holyhead, and pumped in Holyhead for two days, and £23 were incurred in expenses. *The Colorado* (Bangor Ad. Co.), M. M. R. May 11, 1878, p. 630. V. 266*l.*—A. £95

1313. In October, the barque J. A., laden with wheat, was stranded on Bull's Bank, on the coast of Wexford, and abandoned by her crew. She was got off by some coastguardsmen, a pilot, and the crew of a fishing boat. *The Jeune Adolphe*, S. G. March 7, 1849. V. 860*l.*—A. £95

1314. In December, the brig M. J., from Sunderland for Whitstable with coal, encountered a heavy gale off Lowestoft. She was forced to run for shelter into Yarmouth Roads, and brought up there, with the Scroby Sand under her lee, and within a cable's length of her. She was riding very heavily, the sea was breaking

over her, and she was getting into greater danger. A signal was hoisted, and in answer thereto fifteen of the "Storm" Company of Beachmen at Gorleston put off, and, at great risk, owing to the heavy sea on the bar, made their way to and boarded her. The salvors worked for eleven hours, during which time they got out sixty fathoms more cable, and let go a second anchor. They stayed by her for three or four hours in their own craft, then boarded her again, pumped out two and a-half feet of water from her hold, and got up the port anchor. The M. J. was finally towed into harbour by the tug A. W., which, however, for many hours refused to take her in tow, for fear of danger to herself from the proximity of the rocks. £85 to the beachmen, £10 to the A. W. *The Marie Josephine* (Yarmouth Pol. Co.), M. M. R. Feb. 9, 1872, p. 179. Value 750l.—Award £95

1315. The smack F., 60 tons, while engaged on a fishing voyage, about seventy-five miles from the Spurn, the wind blowing a gale from the N., with a heavy sea, fell in with the galliot A. C. in great distress, rolling in the trough of the sea, and having lost both her masts. The smack left one man on board the galliot to assist in pumping and steering her, and took her in tow, finally conducting her to the vicinity of Grimsby Docks, where a steamer was engaged to take her into the docks. *The Anna Charlotte*, 7 L. T. N.S. 257; S. G. January 29, 1862.

V. 93l.—A. £93

1316. The schooner C. found the schooner S., laden with lumber, adrift off the coast of Florida, with nearly two feet of water on her decks. The crew and passengers of the C. removed the deck load of lumber, when the vessel lifted out of the water, and by baling and pumping they so far reduced the water as to discover two auger holes bored through her bottom under the captain's berth. They plugged these up, pumped the vessel out, and brought her into Philadelphia. *The Stewart*, 2 Crabbe, 219, cited in Marvin, 191. [American.]

V. 185l.—A. £92

1317. In January, the schooner A., with Indian corn from Newry to Bayonne, when two days out, met with severe weather in the Channel, could not get into Carlingford Lough, and therefore ran for Dublin, with a south wind. The wind changing to S.W. before she could make Dublin Harbour, she ran for shelter to Howth Head, between the eastern pier and Ireland's Eye. Some coastguardsmen, who put off to her in the lifeboat, were instructed to telegraph for a steam-tug, which was accordingly done, and the steam-tug M. went to the schooner, and took her in tow, but could not bring her further than the Bailey Lighthouse, where the tug left her anchored. In the morning the tug went again to the schooner, which was rolling heavily and had dragged her anchor, and towed her into Dublin Bay. *The Avenir* (Dublin Ad. Co.), M. M. R. Mar. 5, 1868, p. 308.

V. 1,700l.—A. £90

1318. In October, in boisterous weather, the C., from Frederickstadt to London, was in a damaged state off the Suffolk coast, but not in immediate danger. A fishing lugger left the herring fishing, and went to her assistance. The lugger was damaged in the course of the service. *The Chelone*, S. G. Mar. 2, 1843.

V. 1,844l.—A. £90

1319. In January, the Dutch fishing-smack I. C., was riding at anchor, with her mainmast gone and in a helpless condition, about 200 miles N.E. by N. of the Spurn, the wind being strong from S.E. by S., and a heavy cross-sea running. She was found there by the trawl fishing-vessel D., coming back from fishing. The crew of the D. with great difficulty and some danger, boarded the I. C., made fast a 7½-inch hawser, and towed her in about forty-eight hours to the New Sand, where a Hull tug took her in tow, and docked her at Grimsby. *The Inspecteur Caland*, S. G. Feb. 6, 1885, p. 86.

V. 560l.—A. £90

1320. In December, the ship C. of B., while heaving up her anchor in the Mersey, preparatory to docking, was run into by the barque M., while the latter was in collision with the ship J. M. The three vessels were extricated by the tugs W. and H. The M. had then no anchor, and the H. took her into dock. The sea was smooth, the weather foggy, and there was no wind. The W. was under a contract to tow the C. of B., but the court held that more than towage services had been performed. £70 to the H. from the M., £20 to the W. from the C. of B. *The City of Brooklyn*, *The Maggalanes*, M. M. R. Jan. 27, 1871, p. 112.

V. not stated.—A. £90

1321. In October, the brig M., from Shields to Marseilles, in a leaky state off

Yarmouth, was assisted into port in nineteen hours by a smack with fifteen hands. *The Mary*, S. G. Feb. 24, 1884. Value 1,500l.—Award £90

1322. The master of the sloop M. and J., when off Harwich, met with an accident, and shortly afterwards died. The weather at this time was thick, the wind blowing a gale. A fishing smack, the M., was signalled, but the weather was too boisterous to permit the crew to board; shortly afterwards, the weather having moderated, the master of the smack and three men boarded the sloop, carrying their trysail, which they hoisted, and conducted her into Grimsby Harbour. *The Mary and Jane*, S. G. May 9, 1845. V. 830l.—A. £90

1323. The brig N. C., of 200 tons, when off the Suffolk coast, met with tempestuous weather, and lost her masts. The yawl S., with thirty-three men, put off, assisted in cutting away her rigging, and preparing the pumps, and accompanied her into Harwich. *The New Concord*, S. G. December 5, 1845. V. 600l.—A. £90

1324. In October, the lugger S. was about fifty miles E. of the Leman and Ower Sands with signals of distress flying. Her sails were blown away, the wind was strong, and the sea heavy. She was unmanageable, and would have drifted on to the Dutch coast. The master of the smack G. H. came up, got a tow-rope on board, and after three days and three nights towed her into Yarmouth Harbour. *The Stranger* (Yarmouth Co. Co.), M. M. R. Nov. 1, 1872, p. 1393. V. 500l.—A. £90

1325. In July, the smack S., when about five miles off the Dutch coast, during a fresh N.W. wind, and in a heavy sea, was in a distressed condition, with her topmast carried away and otherwise damaged. The smack R. bore down on her, and after three attempts got alongside and took her in tow. The next day, the weather moderating, the master of the S. came on board the R., and entered into an agreement with the master of the R., for the S. to be taken into Yarmouth Roads for £100. This was done in four days from the commencement of the services. *The Sybil* (Yarmouth Pol. Co.), M. M. R. July 14, 1866, p. 883. V. 400l.—A. £85

1326. In October, the brig A., from Shields, got on the Gunfleet Sand, and was assisted off and into Harwich in one day by a smack. *The Ark*, S. G. Jan. 28, 1842. V. 1,900l.—A. £85

1327. In December, the smack H. and E. had lost her bowsprit, mizenmast, and all her canvas, and was towed from the Swarte Bank, about 50 miles from the Norfolk Coast, by the smack N. D. to Yarmouth in two days, the tow-rope breaking twice during the service. £45 for towage, £32 eight days' fishing, £8 for tow-rope. *The Henry and Elizabeth* (Lowestoft Co. Co.), M. M. R. Feb. 7, 1873, p. 179. V. not stated.—A. £85

1328. In September, the Norwegian schooner M. was about ten or twelve miles off Staithes, in a disabled condition. Four of the crew of the W. A., at the risk of their lives, boarded the vessel, and made an agreement to take her into a place of safety for £60. Subsequently a steam-tug was engaged to take her to Newcastle for £90, but owing to the weather she could only take her to Whitby. £60 to the W. A., £25 to the M. *The Magnetta* (Whitby Pol. Co.), M. M. R. Oct. 3, 1873, p. 1265. V. not stated.—A. £85

1329. While the barque V. was lying moored off Blackwall Yard a steamer ran into her, and she sustained considerable damage. A waterman and sixteen others boarded her, and got her on to the mud on the north shore, where she was temporarily repaired, and whence she was taken to dry dock. *The Vestalinden* (City of London Co.), M. M. R. Feb. 16, 1872, p. 210. V. not stated.—A. £85

1330. The galliot W., having stranded, and been thereby damaged, was boarded by the crews of the smacks R. and P. off Grimsby; and by their exertions the water was prevented from gaining on her, and she was got to Grimsby in about two and a-half hours. *The Wigoline* (Grimsby Mag.), M. M. R. March 11, 1865, p. 299. V. 1,000l.—A. £85

1331. A pilot and six men went during a storm, at the risk of their lives, out of Portsmouth Harbour to a vessel in distress, dismasted, without anchors, and bumping on the shore, and piloted her into Portsmouth Harbour. The services (after reaching the vessel) were not of great difficulty or long duration. *The Nicholas*, 3 Hagg. 369. V. 3,000l.—A. £84

1332. In November, the ship N. E., after collision with a steamer in the Mersey, whilst in tow of two tugs, broke away from them, and began to drift towards the Pluckington Banks. The tug F. C., however, made fast her hawser, and towed her off and into the harbour. *The Northern Empire* (Liverpool Pass. Co.), M. M. R. Jan. 12, 1877, p. 52. Value 8,400*l.*—Award £83

1333. In March, the A., from Yarmouth for Shields in ballast, having three days previously lost her masts and bowsprit in a severe storm, was taken in tow by the smack D., and towed into Grimsby Dock in nine days. *The Ariel* (Lynn Co. Co.), M. M. R. April 21, 1876, p. 492. V. 160*l.*—A. £80

1334. In October, the schooner C. lost her anchors and chains in Margate Roads, and was drifting through the Downs with a flare-up light burning. Two hands from the lugger G. boarded her, and the G. returned to Walmer, and took an anchor and chain out to the C., which had then drifted to Folkestone. There was a strong N.N.W. gale and a heavy sea at the time. *The Campage* (City of London Co.), M. M. R. Dec. 2, 1870, p. 1554. V. not stated.—A. £80

1335. In October, the C. from Tobago to London, under jurymasts off Ram Head, Plymouth, was towed by a cutter into Ramsgate Harbour in fair weather. *The Charles*, S. G. July 6, 1839. V. 8,000*l.*—A. £80

1336. The C. was in a dangerous situation off the Needles in a gale; she was rescued by a pilot, and conducted into Southampton. *The Codrington*, S. G. Dec. 17, 1845. V. 11,000*l.*—A. £80

1337. In November, the vessel D., from Ystad to Lowestoft, with oats, was off Lowestoft riding with one anchor. The wind was S.S.W., with a heavy sea running. The D. had three feet of water in her hold, and was making water fast. Some Lowestoft beachmen, who had attempted in vain to launch the lifeboat, finally launched the yawl S., and proceeded to her assistance. After pumping for an hour and a-half they hove up the anchor. She had then four inches of water in her. They had to keep pumping for six or seven hours before the tide admitted of her being taken into the harbour, whither they eventually took her. *The Diana* (Lowestoft Co. Co.), M. M. R. Jan. 11, 1878, p. 50. V. 1,150*l.*—A. £80

1338. The brig D. C., 250 tons, under stress of weather, anchored at the mouth of the Thames, when nine men on board a smack tendered their services and were rejected, but the brig, after parting from her last anchor, soon afterwards accepted their aid. The brig having passed over the Girdler Sands, the smack was despatched to Margate, and brought thence two anchors and cables weighing six tons, which were put on board the brig. *The Duchess of Cleveland*, S. G. March 2, 1848. V. 1,373*l.*—A. £80

1339. In July, the screw steamer E., 2,249 tons register, from Liverpool for New York, was being conducted to an anchorage in the Mersey by the steam-tug P., and had steamed out of the Bramley Moore Dock, through the Wellington Half-tide Dock, into the Sandon Basin, with two check-ropes out. One check-rope parted, the other was broken by the P. running against it, and the E. drifted into the N.E. corner of the Sandon Basin, where she would have taken the ground on the mud had not a steam-tug been signalled for. The steam-tugs K. T. and R. A. arrived, and extricated her from her perilous position. £60 to the K. T., £20 to the R. A. *The England*, M. M. R. May 2, 1868, p. 563. V. 122,800*l.*—A. £80

1340. The screw steamer C., when passing Lundy Island, observed a signal of distress flying on board the vessel E., coal laden, from South Wales for France, and on offering her assistance was told she was sinking. The crew afterwards boarded the steamer, the mate of which, with some of the seamen, went off to the E., and found a hole in her, from which it was inferred that she had been scuttled. They succeeded in stopping it, and conducted her into port. *The Etienne*, S. G. August 23, 1854. V. 252*l.*—A. £80

1341. In March, the ketch F. was about fifteen miles from Fowey, dismasted, and without steerage way. The schooner W. towed her through a heavy sea to Fowey, where the W. was detained four days, and had in consequence to change her place of destination from Wales to Charleston. *The Faith* (Stonehouse Co. Co.), M. M. R. May 2, 1873, p. 563. V. 1,000*l.*—A. £80

1342. The schooner F. B., coal laden, was in a sinking state about thirty miles from Flamborough Head, with a signal of distress flying. The smacks K. and B. went to her aid and took her in tow on the 7th February, and on the 9th they brought her up in Grimsby Roads. The salvors sustained a loss of £39 in aiding the schooner. *The Frederick and Betsey*, S. G. July 2, 1851. Value 240*l.*—Award £80

1343. In leaving Dover Harbour the schooner G. M. struck against the North Pier and drove the fluke of her anchor through her port bow. She hoisted a signal of distress, and the steam-tug L. towed her back into the harbour, and ran her on the mud. *The Gloria de Maria*, S. G. Aug. 9, 1861. V. 5,300*l.*—A. £80

1344. In June, the keel G. I. was driven on to the lightship, near Whitton, during a strong S.E. wind, with a tide of from six to seven knots running. In spite of the exertions of a "purchaseman," named M., who boldly put out in a boat from the keel G., the master and crew of the G. I., who had taken to their boat, were lost. M. then, after some difficulty and with much skill, boarded the G. I., got her before the wind and beached her at Flaxfleet Ness, saving both keel and cargo. £55 to M., £25 to the G. *The Good Intent* (Hull Ad. Co.), M. M. R. Aug. 16, 1872, p. 1041. V. 1,000*l.*—A. £80

1345. The barque H., 557 tons, laden with timber, and in great distress, was descried by the smack O., whilst fishing in the North Sea. Part of the crew in their boat reached the barque, and boarded her at great risk to their lives. The master of the smack was sent for at the request of the master of the barque, and went on board and took charge of the barque, which he conducted to Orfordness. The smack was forty-four tons, with a crew of six hands. The services lasted about sixteen hours, but the smack was detained from her employment for two or three days. *The Haabet*, S. G. Mar. 20, 1852. V. 2,400*l.*—A. £80

1346. In February, the H. and G. was riding at anchor in Bridlington Bay; she was close to the end of Smithwick Sand, and in a most dangerous locality; several ships at anchor were driving, and about 200 vessels had taken shelter in the bay. The weather was tempestuous; she had lost four handspikes, and the anchor could not be raised without them. Her master had broken his collar-bone. An agreement was entered into between the master and the crew of the lugger A. to take the schooner into Bridlington Harbour for £80, to which place she was taken. The agreement was disputed, as having been made under duress. *The Helen and George*, S. G. May 19, 1858. V. 559*l.*—A. £80

1347. The schooner H., laden with iron, was off the Great Orme's Head, in the Irish Channel. She had been considerably damaged by collision. There were only two men on board, the captain having been drowned, and the rest of the crew having gone on board the other vessel. There were four feet of water in her hold, and she was in great danger from the nature of her cargo. There was a strong gale and the sea was high. The smack H. and B. took the schooner in tow, and a steamer was engaged, and the schooner taken to Liverpool. *The Hermoder*, Feb. 4, 1851. V. 4,314*l.*—A. £80

1348. In July, the French brig J. H., from Middlesboro' to a port in France, with pig-iron, got on the Scroby Sand. There was a smart breeze from the east, and much sea. Some Scratby boatmen boarded the J. H., and by getting out a kedge and a warp and manœuvring with the sails, got her off into deeper water to the S.W., and sailed her through the roads into the harbour, keeping two pumps going until they got there, and for some time afterwards. *The Jeune Hortense* (Yarmouth Co. Co.), M. M. R. Sept. 3, 1875, p. 1138. V. 650*l.*—A. £80

1349. The J. B., 700 tons, in attempting to enter the London Docks, became fast on a raised causeway. Two steam-tugs got her off. *The John Bunyan*, S. G. Jan. 8, 1856. V. 12,000*l.*—A. £80

1350. The K. O., having encountered a severe storm in the Bay of Biscay, sustained considerable damage, and unsuccessfully tried to make Lisbon, and then Falmouth, and finally, running before the wind, she arrived near Cowes, where she was met by a pilot cutter, of thirty tons, and taken in charge, and on the following day, with the aid of a government steamer, she was taken into that harbour. *The King Oscar*, S. G. June 23, 1848. V. 1,840*l.*—A. £80

1351. The ship *L. W.*, 1,000 tons burthen, with passengers and a valuable cargo, was on the Owers Sands, near Selsea Bill, and exposed to great danger; twenty-eight feet of her false keel gone, and the captain ignorant of where he was; the crew throwing the cargo overboard; signal of distress flying; wind from the west; morning calm and bright. She was assisted off the sands and directed out of danger by a Trinity House pilot-boat, with her captain and six hands. *The Laughing Water*, S. G. Jan. 21, 1858. Value 18,500*l.*—Award £80

1352. In February, the *M.* from Trinidad to Bremen, slipped both her large anchors in Aldborough Bay. Fifteen smackmen brought off anchors and gave other aid for nine or ten hours in very tempestuous weather. *The Marie*, S. G. April 16, 1841. V. 9,500*l.*—A. £80

1353. In May, the schooner *M. W.*, from Liverpool for Africa with iron pots and gunpowder, was perfectly unmanageable, her captain being drunk and her crew exhausted. She was taken charge of by the crew of the pilot cutter *D.*, and towed into Salcombe Harbour. *The Mary West* (Totnes Co. Co.), M. M. R. June 5, 1874, p. 721. V. 2,300*l.*—A. £80

1354. In February, the *M.*, 233 tons, from Sunderland to London, lost her rudder in Bridlington Bay, at the south end of Smithwick Sand; a cable with six hands, unshipped her own rudder and attached it to the lower rudder-iron of the *M.* *The Mayor*, S. G. June 19, 1850. V. 1,550*l.*—A. £80

1355. In April, the brigantine *N.* drifted ashore on the rocks, near the Lugo Bay. The wind was E. and there was a heavy swell. The boat of the St. Mawes Coast-guard, after being twice thrown on her beam ends by the heavy sea, reached the *N.*, and some of the crew boarded her. They found her crew at the pumps, her deck covered with water, and the *N.* herself striking heavily and getting deeper in the water. The steam-tug *W.*, to whom notice had been sent by the coastguardsmen, came up, and after breaking a hawser and nearly drifting on to the rocks, got the *N.* to a place of safety in about seventeen hours. *The Nina* (Falmouth Pol. Co.), M. M. R. May 4, 1877, p. 568. V. not stated.—A. £80

1356. In April, the French brig *O.*, 185 tons, from Lagos to Rotterdam with palm nuts, was damaged in a collision off Dungeness, with a Russian steamer. The weather was thick with rain, and there was a heavy sea running. The *O.* was boarded by the master of the lugger *V.*, 16 tons, and steered for Dover; but in order to get her there before the ebb tide, the tug *D.*, 95 h.-p., was engaged, and took the *O.* into Dover after an hour's towage, being steered by the men of the *V.* *The Ollivier*, M. M. R. July 2, 1875, p. 839. V. 5,225*l.*—A. £80

1357. In January, the brig *O.*, 260 tons, from Gothenburg to London with cargo and passengers, got on the Leman Sand in the North Sea, and lost her rudder. A pilot and two boats assisted her into Harwich. *The Oscar*, S. G. May 2, 1837. V. 1,800*l.*—A. £80

1358. The brig *P.*, from Sunderland for London, laden with coals, got on shore on the Leigh Middle Sand, at the mouth of the Thames. Twenty yawls, manned with sixty hands, entered into an agreement to lighten the ship and carry out the working anchor for £20, and if they failed to get her afloat, the agreement was to be destroyed. After throwing overboard seventy tons of coals, the master desired them to desist, and lay out the best bower anchor, upon which the agreement was burnt. After laying out another anchor, and further lightening the brig, she was got off and conducted to London, six of the salvors remaining on board until her arrival. *The Peggy*, S. G. Jan. 28, 1853. V. 650*l.*—A. £80

1359. A steam-tug towed a vessel in a disabled state from the Maplin Sand to the West India Docks. *The Reward*, 1 W. Rob. 174. V. 8,000*l.*—A. £80

1360. The *R. K.*, 180 tons, in attempting to put into Yarmouth Roads, on account of the tempestuous state of the weather, came upon a shoal between the Newcombe and Barnard Sands, and was in some peril, the wind blowing strong, with a heavy sea. A smack of fifty-four tons got her off without damage. *The Railway King*, S. G. May 3, 1848. V. 1,600*l.*—A. £80

1361. The *Salacia* and the *S.* having been in collision, and the court having pronounced the *S.* solely to blame, a salvage suit was brought by the *Salacia*, which

rendered aid to the S. to keep her from sinking, and finally assisted her to a place of safety. *The Sappho*, Swabey, 242; S. G. June 3, 1857. Value 1,407*l.*—Award £80

1362. In February, the barque S. A., from Swansea Dock, with coal, which had put back to Mumbles Roads because of the intoxicated state of her crew, took the ground. The tug D. G. came up and took her into a place of safety, and she was brought into port without serious damage. *The Sarah Ann* (Swansea Co. Co.), M. M. R. March 14, 1879, p. 341. V. not stated.—A. £80

1363. The S., whilst waiting for some of her crew outside the harbour of Shields, got upon a sand, from which she was towed off by two steam-tugs in a short time. *The Shannon*, S. G. Dec. 1, 1847. V. 1,600*l.*—A. £80

1364. The barque S. R. P., having on board a large quantity of silver bullion, was stranded during a violent storm on the rocks off Tynemouth, and was in a position of considerable peril, both to herself and her crew. Lieut. Miller of the coastguard service, and three of his men, proceeded to the spot, with Manby's apparatus, by means of which the crew and cargo were saved. They were assisted by a mariner named Armstrong, who boarded the barque in the cradle during the storm and accelerated the landing of the crew and cargo. *The S. R. P.*, S. G. Dec. 8, 1854. V. 4,497*l.*—A. £80

1365. In October, in a gale, during heavy weather, the smack Sir J. A., of 78 tons, when entering Gorleston Harbour, was struck by a heavy sea, and driven foul of the south pier. Four men jumped for the pier, of whom one fell into the sea and was drowned. The tide carried the smack out to sea again, with only the master and one hand, who brought her up about two and a half miles from the pier opposite Hopton, where she was in danger of going ashore during the ebb tide. The Gorleston life-boat, after an ineffectual attempt to warp it out from the south pier, was with great difficulty and danger got out from the north pier and reached the smack, which was slipped from the anchor, and got into harbour after several hours' service. *The Sir John Astley*, S. G. Oct. 30, 1885, p. 697. V. 700*l.*—A. £80

1366. The S., when drifting and in considerable danger of collision during a storm in the Bay of Valparaiso, was assisted by a boat from H.M.S. P., which brought an anchor and cable to her. *The Southampton*, S. G. July 5, 1842. V. 2,000*l.*—A. £80

1367. In June, the schooner T. was just south of the Newarp Lightship, her head-gear all adrift, only one man on board, and in danger of going on to the Cross Sand. Fifteen Winterton beachmen took her through the Hasborough and Cockle Gats and into the roads, where next day a tug was engaged, which took her into Yarmouth Harbour. *The Tordenskjold* (Yarmouth Co. Co.), M. M. R. July 14, 1876, p. 884. V. not stated.—A. £80

1368. The schooner W. and E. struck on a dangerous shoal near Lowestoft, unshipped her rudder, lost her anchors and her windlass, and became useless. The wind was blowing a strong gale from S.W. by S., and a heavy sea was running. Two yawls, with thirty-five hands, got her off, and near to the entrance of the harbour, and a steam-tug towed her into the harbour. One of the yawls went for an anchor. The yawls' services lasted four hours, and the tug's six. *The William and Ellen*, S. G. May 1, 1849. V. 443*l.*—A. £80

1369. In February, the smack J., whilst on the fishing grounds off Yarmouth, lost her rudder. The smack S. C. came up, and was towed astern to steer her. The J., with the S. C. astern, was two days afterwards fallen in with by the smack M. A., off Lowestoft, making for Yarmouth by way of St. Nicholas Gat, and the master of the S. C. accepted the assistance of the M. A. until a steamer came up and took the J. in tow. £55 to the S. C., £22 to the M. A. *The Jane* (Yarmouth Pol. Co.), M. M. R. March 16, 1876, p. 341. V. 305*l.*—A. £77

1370. The schooner E. was between Cuba and Florida, dismasted and full of water; the master and five of the crew were lost. The C. M. took off the surviving passengers and crew, and two trunks were fished out of the cabin and carried to Maine. *The Emblem*, Daveis, 61, cited in Marvin, 193. [American.] V. 120*l.*—A. £76

1371. The A., of 250 tons, laden with wheat, having from stress of weather put into Yarmouth Roads, drove from her anchors. The weather was tempestuous, and

the locality most dangerous. She hoisted a signal for assistance, and the salvors, with great difficulty and risk to life, launched their yawl, and succeeded in boarding the A. They cleared the anchors and proceeded towards Lowestoft, but being unable to enter the harbour, three of the salvors, by agreement, remained on board the A., which proceeded on her voyage to London in safety. An agreement for £50 was signed by three of the salvors. *The Alpha*, S. G. May 8, 1849.

Value 1,600*l.*—Award £75

1372. In March, the ship A., 1,046 tons register, in collision and entangled with the brig M. S., off Penarth Head, was drifting towards the shore, when she was disentangled by the tug H. The sea was rather strong, and the wind blowing rather hard from N. and E. *The Americana*, M. M. R. July 4, 1873, p. 848.

V. 6,700*l.*—A. £75

1373. In March, the schooner A., from Ipswich to Yarmouth, struck on a sunken vessel at the entrance of the harbour. She was warped into Fellowes Dock by thirty men. *The Audacious*, S. G. June 21, 1839.

V. 1,065*l.*—A. £75

1374. In September, the French brigantine B., was about a mile from Rodney Middle Buoy, off Lynn, heading south, and drifting with the ebb tide, the wind blowing hard from E. by N. with a heavy sea. She was waterlogged, but had a cargo of timber; her rudder was unshipped, and jammed hard-a-starboard by the deck-load, which had shifted. The gaff of her mainsail was broken, and her foresail split to ribbons. The master did not know where he was. The tug P., with the pilot-cutter G. L., came up, and two hawsers having been passed on board, the B. was towed into Lynn. *The Benjamin* (Ipswich Co. Co.), M. M. R. Dec. 1, 1871, p. 1523.

V. 790*l.*—A. £75

1375. In November, the schooner B. from London to Kincardine, with a cargo of flour, after having sought shelter in Bridlington Bay, was run into by the brig W., and sustained damage. She remained in the company of other ships (the brig having left her) till next morning, her pumps being worked meanwhile. Three Scarborough coblemen then boarded her, and were, after some discussion, engaged to assist in bringing her into port. They, with the crew, who were much exhausted with pumping, brought her into Grimsby. *The Bessie* (Hull Mag.), M. M. R. Dec. 14, 1867, p. 1589.

V. 1,700*l.*—A. £75

1376. In January, the ship B. was in collision with the barque Belmont. The Belmont was the heavier of the two vessels, and her bow was in contact with the weakest part of the B. A steam-tug dragged the Belmont from the B., the master of which had previously refused the services of the tug. The court reserved the point whether the service rendered to the B., being a consequence of the service rendered to the Belmont, for which the tug was paid according to contract, the tug had any claim against the ship B., and made an award subject to the decision on that point. *The Britannia* (Liverpool Co. Co.), M. M. R. Feb. 24, 1871, p. 241.

V. 1,500*l.*—A. £75

1377. In December, the schooner F. Q. got on the Platters Sand. With the assistance of eleven fishermen, she was got clear of the sand. The schooner was in considerable danger, and could not have got clear without the salvors' assistance. *The Forest Queen* (Ipswich Co. Co.), M. M. R. Jan. 15, 1870, p. 86.

V. not stated.—A. £75

1378. The S. was aground on a sand bank at the mouth of the Elbe outside the channel, and made some water. The G. brought her off after two hours' labour. *The Goliath and Superb*, Assistance, Hamb. H. S. Z. 1873, pp. 136, 407, 408. [German.]

V. 10,875*l.*—A. £75

1379. The J., on the 25th March, got upon the Newcombe Sand, but shortly afterwards floated off with some damage, having made a considerable quantity of water. A boat with eight men was engaged, and an attempt made to conduct the vessel to Yarmouth, but there not being sufficient water to enable her to cross the bar, it was determined to bring her to London, where she arrived on the 29th. *The James*, S. G. June 17, 1847.

V. 750*l.*—A. £75

1380. The smack E. A. found the brig L. on the Sunk Sand just inside the River Humber, abandoned by her crew, and nearly full of water. With the assistance of two other smacks and the original crew of the brig, she was hove to her anchor, and got clear of the sand, and eventually, with the assistance of a steamer, carried into Grimsby Dock. *The Livingstone*, S. G. June 30, 1853.

V. 300*l.*—A. £75

1381. In April, the schooner *M.* was about twenty miles off Bardsey Island, derelict, with eight feet of water in her, and the sea washing over her. She was found thus by the tug *U. S.* Half the tug's crew boarded her by means of the lifeboat; a hawser was got on board, and the tug towed her in about twenty-eight hours to Holyhead. *The Miriam* (Bangor Ad. Co.), M. M. R. June 21, 1878, p. 787.

Value 150*l.*.—Award £75

1382. The *N. C.*, 258 tons, got upon the fork of the South Scroby Sand. Fourteen men in the yawl *R.*, and five men in the boat *H.*, went to her, laid out anchors, and in two hours got the vessel off, and conducted her to Yarmouth. The weather was not severe, but the sand is a very dangerous one. *The Norham Castle*, S. G. Feb. 5, 1850.

V. 1,750*l.*.—A. £75

1383. The schooner *P.*, fifty-eight tons, laden with iron, met with great stress of weather, and laboured heavily, making a great deal of water. She was brought to anchor; the wind increased to a gale, and she parted from her starboard anchor. The remaining part of the chain was shackled upon the inner part of the larboard chain, and veered out to the end. She then slipped from her anchor, and accepted the assistance of the *P.*, of forty-six tons, with five or six hands, which took her to Whitstable. The schooner was in imminent danger, and it was indispensable for her safety that she should be taken to Whitstable, there being no other port near. *The Primrose*, S. G. May 1, 1849.

V. 1,000*l.*.—A. £75

1384. In November, the brigantine *P.*, struck on the Middle Cross Sand, and made a good deal of water. She was taken in tow by a steam-tug, which signalled for further assistance, and in reply some boatmen went to her, and assisted in pumping her from St. Nicholas Gat to outside the harbour. The piermaster refused permission for her to enter in her then condition, so a second pump was got from the shore, and the water having been reduced, she was taken into the harbour. £15 to the boatmen, £60 to the tug. *The Providence* (Yarmouth Pol. Co.), M. M. R. Dec. 13, 1878, p. 1591.

V. 454*l.*.—A. £75

1385. The schooner *P.* had lost her rudder and become unmanageable. She was found in that condition by the steamer *V.*, which towed her to Penzance. *The Providentia*, S. G. July 21, 1847.

V. 441*l.*.—A. £75

1386. In December, the smack *R.*, which had been in collision and had lost her port rigging, had her gear cut away, bulwarks and stanchions gone on the port side, the masthead lantern knocked out, and had only one man and a boy on board. She was boarded about forty miles E.N.E. of Yarmouth by four of the crew of the smack *P.*, who rendered valuable services. The smacks sailed together to Yarmouth, which they reached on the 14th. *The Rainbow* (Yarmouth Co. Co.), M. M. R. Jan. 18, 1878, p. 78.

V. 400*l.*.—A. £75

1387. In February, the *S. E.*, off Aberystwith, had dragged her anchors and was in danger of driving on the rocks or sinking. She was rescued by the steam-tug *A.* and taken by her over the harbour bar. The glass was falling, the wind blowing on shore, and the sea rising. *The Sarah Ellen* (Bangor Ad. Co.), M. M. R. Nov. 16, 1877, p. 1461.

V. not stated.—A. £75

1388. In March, the barque *C.* was taken in tow off the Tuskar by the tug *B. S.*, under an agreement to dock her, but had been left by the tug in the river and was dragging her anchors. She was rescued from imminent danger by the tug on its return. *The Caldbeck* (Liverpool Co. Co.), M. M. R. April 20, 1877, p. 501.

V. not stated.—A. £74

1389. In March, the smack *N.*, about 45 miles S.E. of Yarmouth, was run into by a full-rigged ship and dismasted. The crew of the *N.* climbed up the sides of the ship. The smack *H.* being hard by, put off a boat with some of the crew, who boarded the *N.*, and in two and a-half hours cleared the wreckage. The *N.* was then towed by the *H.* to Yarmouth, which they reached next day, but the *H.* was unable to regain her fishing ground for four days, and thus lost five nights' fishing, the average take being from 5*l.* to 6*l.* worth of fish per night. *The Neptune* (Yarmouth Pol. Co.), M. M. R. March 25, 1880, p. 395.

V. 340*l.*.—A. £72

1390. The brig *A.*, whilst rendering help to the steamer *A.*, which had got adrift in Brigsby Reach, was pricked by an anchor and in danger of sinking, but was rescued by the exertions of the crew of the tug *T.* and four of the crew of the brigant-

tine D. *The Amoret* (City of London Co.), M. M. R. April 3, 1874, p. 433. £50 to the tug, £20 to the brigantine. Value not stated.—Award £70

1391. The schooner B., having lost her topmast, topgallantmast, and some sails, was off Flamborough Head, drifting to the south; there was a heavy sea on at the time, and she was quite unmanageable. A fishing smack succeeded, after twenty-four hours, in towing her into Grimsby Roads. The services were attended with little danger. *The Babthorp*, S. G. May 15, 1860. V. 933l.—A. £70

1392. The brig C., off Hasborough Light in a severe gale, parted from both her anchors and chains, and began drifting. The F. N. towed her to Lowestoft Harbour. *The Clyde*, S. G. March 2, 1861. V. 467l.—A. £70

1393. The French barque D. J. struck on Selsea Bank in thick weather, and was got off and to a place of safety, by the exertions of a pilot and several boatmen. Pilotage was awarded besides the salvage. *The Deux Jules* (City of London Co.), M. M. R. Feb. 26, 1875, p. 265. V. not stated.—A. £70

1394. The F., 200 tons, from Dantzic to London with coals, sprang a leak, her sails were damaged, and she was in a dangerous position off the Leman and Ower Sands, when five hands from a smack boarded her, and by their assistance at the pumps and otherwise she was brought to London. *The Frederick*, S. G. Dec. 17, 1844. V. 2,200l.—A. £70

1395. In February, the sloop F., from Hull for Woodbridge with oilcake, was lying off Woodbridge Haven, when the wind changed to a gale from the S.S.W., with thick rain. She struck on the Whitby Sand and sprang a leak, and her bowsprit was sprung, so that no head-sail could be set. In this condition the services of salvors were engaged, the crew being thoroughly exhausted, and the sloop was rescued. *The Friends* (Lowestoft Mag.), M. M. R. March 6, 1869, p. 307. V. not stated.—A. £70

1396. In March, the screw steamer G., which had a hole knocked in her port side below the water-line, was in a dangerous state. She was taken in tow by the tug H., which was afterwards joined by the tug T., and the two tugs, after some two hours' towage, conducted her safely into the Canada Basin. £45 to the H., £25 to the T. *The Gladiator* (Liverpool Pass. Co.), M. M. R. April 18, 1873, p. 498. V. 80,000l.—A. £70

1397. In June, the cutter G., in a gale off Smith's Knowl, lost her mast, the wreck of which got entangled under her boat. The crew of the fishing lugger Y. J. assisted in getting it clear of the boat, and the Y. J. then took the G. in tow as far as the Cockle Buoy, where a tug was obtained, which took her into the Roads. *The Glance* (Yarmouth Co. Co.), M. M. R. Aug. 11, 1876, p. 1014. V. not stated.—A. £70

1398. In October, the ketch H. F. B., 62 tons, from Spain to London with fruit, was in distress with her sails split and her anchor lost. The steam-tug C. took her in tow off the North Flagship, and towed her from the Tongue Lightship to Nicholson's Wharf, London. It was blowing a gale all the time of the service. *The H. F. Bolt* (City of London Co.), M. M. R. Jan. 28, 1881, p. 112. V. 2,007l.—A. £70

1399. The H., 482 tons, met with a severe gale of wind in the neighbourhood of the Mouse Sand, and lost her larboard anchor and cable. The smack S., of 20 tons, with twelve hands, left Whitstable in the afternoon of the 24th to render assistance to vessels in distress. She was employed by the H. to proceed to Whitstable to procure an anchor and cable. She did so, and procured an anchor of 23 cwt. and a hundred fathoms of chain, with some exertion got it into her boat, and with some skill got it in safety to the H. *The Hercules*, S. G. March 7, 1851. V. 3,670l.—A. £70

1400. The sloop J. and J., having been in collision, was in great danger, from which she was rescued by the steam-tug E., which towed her into Yarmouth. £27 had been paid for the salvage of the vessel, valued at £100. *The John and Jean*, S. G. June 27, 1854. V. 330l.—A. £70

1401. In November, the French dandy M. was on the middle S.W. Scroby Sand, in a dangerous position and bumping. By the exertions of the crew of the yawl W., and the tug V., she was got in safety to Yarmouth. The wind was from the E., and there was a heavy swell. *The Marqueriti* (Yarmouth Co. Co.), M. M. R. Dec. 17, 1875, p. 1620. V. not stated.—A. £70

1402. The Spanish barque *M. L.* got on the Brake Sand, and coming off again was taken in tow by a steam-tug, but the steam-tug was utterly incapable of bringing her at once to Ramsgate; she was, therefore, obliged to come to anchor in an unsafe position. The lugger *B. G.*, manned by seventeen hands, came to the *M. L.*, and after assisting in pumping her, went to Ramsgate and brought her an anchor and another pump. *The Maria Luisa*, S. G. Feb. 28, 1856. Value 2,950*l.*—Award £70

1403. In October, the *S.*, laden with coals, was damaged by collision and leaky, and her crew were exhausted with pumping. She was taken by a fishing smack, in very tempestuous weather, from three miles off the Dudgeon Light into Yarmouth Harbour. *The Sybil*, S. G. Feb. 11, 1841. V. 165*l.*—A. £70

1404. In June, the barque *W.*, bound for Monte Video, was in lat. 34 N., and long. 38 W. Her captain was dead, her mate ill and unable to navigate her, and her crew were all negroes. She was boarded by the master and first mate of the barque *N.*, bound for Jamaica, who undertook to navigate her into port. The mate took charge of her, and brought her into port, leaving the captain of the *N.* to navigate his ship without the assistance of any certificated officer. *The Woodbine* (City of London Co.), M. M. R. July 23, 1875, p. 936. V. not stated.—A. £70

1405. The brig *C.*, with a crew of twenty hands, found the schooner *M.* deserted, and took out of her 140 barrels of flour and a small anchor. *The Maria*, 2 Story, 197, cited in Marvin, 191. [American.] V. 139*l.*—A. £69

1406. In September, the schooner *L.*, with 174 tons of coal on board, from South Shields for Woolwich, about three or four miles off Hasborough, came into collision with a French barque, sustained great damage, and was abandoned by her crew, who got on board the barque. The *L.* was boarded by the crew of the lugger *A.*, then making for Lowestoft with 5½ lasts of herrings. They took her in tow, and sighting the barque made for her, and took off the crew of the *L.*, and then took the *L.* to Yarmouth Roads, after some hours of towage, in rough weather, pumping all the time. A tug was then hired for £10, and the *L.* was taken into Yarmouth Harbour. *The Lively* (Yarmouth Pol. Co.), M. M. R. Oct. 13, 1871, p. 1298. V. 195*l.*—A. £68

1407. In July, the schooner *U.*, from Grimsby for Gravesend with coals, brought up off Kessingland in a leaky state. Twenty-one boatmen of Kessingland got the water under, and subsequently she was taken into the harbour. *The Union* (Lowestoft Mag.), M. M. R. Aug. 26, 1865, p. 1074. V. 360*l.*—A. £66

1408. In May, the *D. L.*, from Demerara to London, got on the Owers Sand, off Selsea Bill, and got off again with the loss of an anchor and chain. Off Dungeness, a Deal lugger was employed to fetch another, and an anchor and chain, weighing about 19 cwt., were procured at Deal, and put on board the *D. L.* in Margate Roads. Weather fine. The services lasted about eighteen hours, and ten men were employed. Cinque Ports Commissioners awarded £95, which the court considered very excessive, and accordingly reduced. *The David Luckie*, 9 Monthly Law Mag. (Notes of Cases), 209. V. not stated.—A. £65

1409. The schooner *D. M.* was discovered about eight miles from Scarborough by the smack *T. B.*, 35 tons, and five hands. The master of the smack agreed to pilot the schooner to Hartlepool for £8, but he afterwards discovered that she was disabled by collision. The wind changed, but the smack towed the schooner into Hartlepool, being engaged three days. The smack suffered damage to the extent of £20. *The Drowning Marie*, S. G. May 1, 1850. V. 1,300*l.*—A. £65

1410. In December, the sloop *F.*, trying to pass through a dangerous channel between the Barnard Sand and the shore, to save a few miles, got aground in a heavy sea. Some Kessingland beachmen, by manœuvring of sails and laying out her anchor, got her off the sand and brought her up off Gorton. Thence she was towed by a tug to Yarmouth. *The Firmin* (Yarmouth Co. Co.), M. M. R. Mar. 2, 1877, p. 276. V. not stated.—A. £65

1411. The brig *H.*, from Guernsey for London, when near Margate Sands, was boarded by two men from a lugger, who subsequently went ashore to fetch an anchor and chain. Meantime the brig had taken a tug and proceeded to the Thames. The lugger followed. *The Hannah* (City of London Co.), M. M. R. Feb. 24, 1871, p. 241. V. not stated.—A. £65

1412. The H. was at anchor, with a signal flying, when a Yarmouth pilot cutter and crew went out to her and found her to be leaking. As they were getting her under weigh to bring her into the harbour the wind changed, and thereupon the master determined to proceed on his voyage to the River Colne, the pilots remaining on board, and assisting at the pumps until their arrival at that place, in thirty hours, their boat accompanying them. *The Hebe*, 2 W. Rob. 247; 7 Notes of Cases, Supp. 1. Value 870*l.*—Award £65

1413. In March, the Italian barque S. C. was fallen in with, in a disabled condition, by the tug S. off Whitby, in a strong sea, and it was arranged that the S. should tow the S. C. into the Tyne. In the course of the towage the rope broke twice, and the second time she drifted on to the rocks off the Herd Buoy and bumped twice. She was ultimately got off and brought into harbour. *The Sarah Caine* (North Shields Pol. Co.), M. M. R. March 28, 1879, p. 405. V. not stated.—A. £65

1414. In August, the smack U. in a storm off the Doggerbank was much damaged and disabled. In answer to signals the smack E. bore up, got a tow-line aboard after some difficulty, and took her to Yarmouth, which they reached in four days. On the way it was necessary to throw overboard from the E. twenty-four packages of fish, value £12. *The Ulysses* (Yarmouth Pol. Co.), M. M. R. August 28, 1874, p. 1106. V. 250*l.*—A. £65

1415. The brig Z., in ballast, was, in consequence of the state of the weather, being driven on to Bridlington Pier. A coble, manned by four hands, went to her assistance, and conducted her into the harbour. *The Zealous*, S. G. May 3, 1855. V. 600*l.*—A. £65

1416. In December, the smack E. when about sixty-five miles from Yarmouth, the wind blowing strong with a heavy swell, hoisted signals of distress. She was a mere hull, with her masts broken and her decks clean swept. The smack P. in answer to her signals went to her, and after two hours' labour made fast a rope and took her into Yarmouth Roads; whence she was towed by a tug into harbour. £55 to the P., £7 to the tug. *The Excelsior* (Yarmouth Pol. Co.), M. M. R. January 10, 1873, p. 53. V. 200*l.*—A. £62

1417. In March, the schooner T. P. from Garston to Kingston with coals, was drifting down the river Mersey dragging her anchor, and in danger of coming into collision with the landing-stage near St. George's Pier, when she was boarded by six boatmen, and, after some difficulty, brought to a safe anchorage. *The Thomas Pearson* (Liverpool Pass. Co.), M. M. R. April 23, 1875, p. 520. V. not stated.—A. £62

1418. The steamer B. S., 425 tons, off Lowestoft, broke down in her machinery; the wind was E.N.E. blowing strong, with a heavy sea running; sail was made, and when off Aldborough Neaps a fishing smack fell in with her, and conducted her into Harwich. *The Black Sea*, S. G. April 3, 1855. V. 30,000*l.*—A. £60

1419. The barque B., 400 tons, got upon the Goodwin Sands. The sloop T., 20 tons, put some men on board, and the barque was soon got into deep water, and anchored off the North Foreland. *The Borderer*, S. G. November 4, 1847. V. 5,000*l.*—A. £60

1420. In December, the ship B. off the Durham Coast, with the wind N.N.E. and a heavy sea running, hoisted signals of distress. The captain of the B. told the captain of the steam-tug P. that the B. was in a distressed condition, and if not taken at once into Hartlepool would sink. The P. went immediately to her assistance. An agreement to take her to Hartlepool for £60 was made, and after twelve hours' towing she arrived there. The pumps were found to be choked, and there were five feet of water in the hold. The tug lent the ship a new hawser, value £20, which was damaged by the towing to the extent of £5. *The Bolton* (North Shields Pol. Co.), M. M. R. January 13, 1871, p. 50. V. 1,000*l.*—A. £60

1421. In November, the schooner C. came into collision with a steamer opposite one of the graving docks on the west side of the Mersey, and was in danger, her crew having left her. Two men on board the flat M. got a hawser attached to the C. from the tug B., which towed her into shallow water, where she sank. At low water when she was left dry, some of the cargo was taken out, and her damages repaired

enough to enable her to float. £45 to the B., £15 to the M. *The Caroline* (Liverpool Pass. Co.), M. M. R. January 15, 1875, p. 76. Value not stated.—Award £60

1422. The fishing smack S. R., when off the Ower Sand in the North Sea, fell in with the ship C., which had sustained some damage from the tempestuous weather. The smack conducted her to the Humber. *The Codan*, S. G. June 3, 1857.

V. 3,174l.—A. £60

1423. In January, during a heavy gale and at high tide, the brig C. was riding near the Corton Sand and in danger of drifting thereon. The lifeboat R. lay by her till the tide eased, having previously taken off the crew. The salvors then got up her anchors and sailed her near the harbour's mouth, where a tug was engaged for £5 and towed her into harbour. *The Cyrus* (Yarmouth Pol. Co.), M. M. R. February 23, 1877, p. 248.

V. 500l.—A. £60

1424. In February, the galliot D. G., from Harlingdon to London, got on the Nore Sand and lost her rudder, the wind being upon the shore. Two smacks towed her off and steered her to Gravesend. *The Drie Gexusteis*, S. G. May 8, 1839.

V. 1,800l.—A. £60

1425. A vessel on shore on a dangerous part of the coast, and in danger, was approached with some risk by eighteen salvors, who succeeded in getting her off the rocks, but were unable to render further assistance until she drifted to a place out of danger, from which she was ultimately carried into harbour. The services lasted about sixteen hours. *The Ebenexer*, 8 Jur. 385.

V. 850l.—A. £60

1426. The schooner E., off the Cape of Delaware, in a dismasted state, was towed to Philadelphia by the pilot boat L. in three days. *The Elvira*, Gilpin, 60, cited in Marvin, 210. [American.]

V. 540l.—A. £60

1427. The F. was off Dover, derelict; the steam-tug P., after services lasting about twenty-one hours, towed her into a place of safety. *The Fairy*, S. G. March 2, 1861.

V. 93l.—A. £60

1428. The schooner F. was aground on the north part of the Scroby Sand; the wind was S.S.W., and the tide about to ebb. The yawl Z., manned with a crew of thirteen hands, went to her aid; they found her beating heavily, the wind forcing her further on the sand. Their services were accepted, and at considerable risk they got the yawl under the schooner to receive the anchors, which were afterwards laid out, and the schooner got off the sands. *The Flora*, November 5, 1851.

V. 500l.—A. £60

1429. In November, the brig G. was about four or five miles off Souter Point. She had been in collision with another vessel, and was much damaged, part of her masts and rigging having been carried away. The steam-tug F. fell in with her, and offered her services, which were accepted for £60, and with much difficulty, owing to the heavy sea, the brig was towed into the Tyne and moored opposite the river police-station. The underwriter disputed the amount of the claim. *The Griffin* (North Shields Pol. Co.), M. M. R. Dec. 12, 1868, p. 1588.

V. not stated—A. £60

1430. A lugger, with a crew of five men, was engaged by a vessel off Dungeness to bring out to her in the Small Downs an anchor (which her pilot swore to be necessary), from Dover. The vessel did not proceed to the Small Downs as she had arranged to do, but the lugger procured the anchor, having shipped a heavy sea in quitting the harbour, and after cruising about the Small Downs all night in search, the weather being dark and squally, on the following morning discovered the vessel, and took on board the anchor. *The Heaton*, 3 Hagg. 90.

V. 16,500l.—A. £60

1431. In September, the schooner H., in a collision off Southwold, had all her port rigging carried away, and her sails torn. Nineteen of the members of a beach company at Southwold went to her, and, being engaged to get her into Lowestoft Harbour, set a large sail of their own, took her in tow, and got her into harbour in about three or four hours, the salvors also pumping all the way. *The Hunter* (Lowestoft Pol. Co.), M. M. R. Oct. 10, 1873, p. 1296.

V. 700l.—A. £60

1432. In November, the brig J., from Labrador for Poole, mistaking a vessel at anchor in Steadland Bay for a pilot boat, ran on the Long Bull Sand. Part of her

cargo was thrown overboard, and she was assisted off and into Poole by the crews of three sloops and a boat, sixteen men in all. *The James*, S. G. March 12, 1841.

Value 1,500*l.*—Award £60

1433. In October, a pilot-galley, manned by a pilot and six hands, rendered assistance to the French schooner *J. M.*, but without danger to the salvors or their property. Some hobbler assisted, and the rope, which was one of the main agents in getting the vessel round into the harbour, was lent by the harbour master. *The Jeune Mathilde*, M. M. R. May 2, 1868, p. 563.

V. 1,605*l.*—A. £60

1434. In September, the French lugger, *La M.*, was running under bare poles on a dead lee-shore, in Tenby Bay, and had a signal of distress flying. Four men from the lifeboat were put on board at great risk, and she was hauled in for Saundersfoot Bay; when under the land the anchor was let go, and ultimately she was taken into harbour. There was a strong gale blowing from S.W., with a heavy sea. *La Marie* (Tenby Pol. Co.), M. M. R. Oct. 16, 1874, p. 1330.

V. not stated—A. £60

1435. In November, the *M.*, from Sierra Leone, lost an anchor and cable, and her crew, partly Africans, were exhausted. A steamer, 100 h.-p., with thirteen hands, towed her from Margate to London. *The Margaret*, S. G. March 4, 1842.

V. not stated.—A. £60

1436. In November, the smack *M. A. M.*, shortly after being cast off by the tug taking her out of Yarmouth harbour, ran across the hawser of a schooner at anchor in the Roads, and continued to rub, being held by the bowsprit of the schooner, which had forced its way through her mainsail. Some yawlmen, with the help of a tug, got her clear. There was a nasty sea on. *The Mary Ann Matilda* (Yarmouth Co. Co.), M. M. R. Dec. 13, 1878, p. 1589.

V. 550*l.*—A. £60

1437. The brig *M.*, when near the River Tees, received some damage to her sails and rigging, the wind at the time blowing a heavy gale, and there being a heavy sea running. The tug *S.* towed her into the Tees without any great difficulty. *The Monkwearmouth*, S. G. Jan. 14, 1845.

V. 1,100*l.*—A. £60

1438. In January, the schooner *R.*, from Newcastle for Poole with coals, slipped her anchors during a storm in the Downs, and made for Dover Harbour; a strong wind was blowing from N.E. with snow. A pilot having been signalled for, a boat came alongside, and two men from a punt boarded her. She was then worked westward to avoid the tide, and when off the Admiralty pier her master signalled for a harbour tug, which with the men brought her safely into harbour. *The Richard* (Dover Comm.), M. M. R. Feb. 9, 1867, p. 181.

V. not stated.—A. £60

1439. In November, the schooner *R.*, laden with wheat, was drifting in a fierce gale towards the Newcombe Sand. Her captain, seeing his danger, employed the plaintiffs, who were out in an open boat, to fetch a tug, and they hailed the tug *D.*, which took her into Lowestoft Harbour in safety. *The Rhodes* (Lowestoft Co. Co.), M. M. R. Jan. 10, 1879, p. 45.

V. 1,200*l.*—A. £60

1440. The *S.*, 70 tons, was driven on the Gunfleet Sand, where the sea made a complete breach over her. The sea was very heavy, and the tide falling. A gale from the southward was blowing, and continued to increase. She hoisted a signal of distress, and the smack *P.*, of 25 tons, and subsequently three other smacks, went to her assistance. *The Solanum*, S. G. May 16, 1850.

V. 290*l.*—A. £60

1441. In April, the screw steamer *St. O.*, 623 tons register, from Constantinople, with grain and thirty deck passengers, got aground near the lighthouse off Seraglio Point. The master tried to heave the vessel off by means of the donkey-engine and a kedge, but failed. The steam-tug *J. M. S.* took the master to Orta Keni, where he engaged hammals (porters) and tubs, and the tug *B. B.* to lie by the *St. O.* till she was afloat, and render any other assistance necessary. The *J. M. S.* conveyed the reliefs of hammals to and from the *St. O.*; and when the *St. O.* was sufficiently lightened, helped the *B. B.* to pull her off the ground. The *J. M. S.* then took in tow six lighters filled with the *St. O.*'s cargo, and all the vessels proceeded into the Golden Horn. *The St. Oswin*, M. M. R. Dec. 14, 1867, p. 1587.

V. not stated.—A. £60

1442. In November, the T., 382 tons, from Rotterdam to London, ran on Blacktail Sand. Two smacks with eighteen men, and a revenue cutter with eight men, got her off. *The Tropic*, S. G. Dec. 19, 1838. Value 5,499*l.*—Award £60

1443. In February, the French steamer V. d'A. got into collision with the schooner G. in the English Channel, and was in danger of being wrecked when the steamer B. went to her assistance, and succeeded in getting her free from danger. *The Ville d'Aurillac* (Swansea Co. Co.), M. M. R. May 1, 1874, p. 562. V. not stated.—A. £60

1444. The barque W., in ballast, while passing Torres Straits, struck upon a coral reef, and was in some peril. Some of the crew of a schooner, the R. M., assisted in lightening her and in laying out a kedge anchor, and she was eventually got off. The R. M. having come to an anchor during these services, her anchor and cable, valued at £30, were lost. The court awarded £30 for salvage, and £30 for the anchor and chain. *The Westminster*, S. G. Nov. 5, 1845. V. 4,000*l.*—A. £60

1445. The steam-tug C. agreed to tow the ship W. B. from Sea Reach to London for £16. Before the service commenced the W. B. missed stays, and got on the Blyth Sand. The tug endeavoured to get her off that tide, and could not. On the next tide she towed the ship off and up to Deptford. *The William Brandt, Junior*, 2 Notes of Cases, Supp. 67. V. 6,250*l.*—A. £60

1446. In June, the Z., 218 tons, from Newcastle for Yarmouth with goods and forty-five passengers, was 100 miles from Yarmouth. She had sustained injury to her machinery, and was unmanageable, heading N. instead of S. The steamer H. took her in tow, and when off the Dudgeon a strong breeze sprang up, which rendered the towage more arduous. After towing eleven hours, the Z. was got safely to Yarmouth Roads, from whence a tug took her into the harbour. The master of the H. risked his insurances by the service. The Z. was not in immediate, but only in probable, danger. *The Zingari* (Yarmouth Co. Co.), M. M. R. Sept. 1, 1871, p. 1106. V. 6,600*l.*—A. £60

1447. In January, the schooner J. N., from Newcastle to Hayle in Cornwall with coals, while off Hasborough, was struck by a brigantine, and her rigging much damaged. Three of the crew of the boat B. boarded her, and the rest went to fetch a tug. Those on board got the schooner to Cockle Gat, where they were met by the tug S., which brought her safely to the harbour, and moored her there. *The Joseph Nicholson* (Yarmouth Co. Co.), M. M. R. Feb. 12, 1875, p. 201. V. 964*l.*—A. £55

1448. In November, the fishing smack L. was dismasted and otherwise damaged in a collision. She was taken in tow by the smack M., near the Well Bank, about fifty miles from Yarmouth, and after sixty-six days' towage was brought to Yarmouth Roads. The M. sustained some damage by fouling the L. during the towage in the severe weather. While waiting in the roads for a tug, the M. lost an anchor and some fathoms of chain. The tug took the L. into the harbour. *The Leader* (Yarmouth Co. Co.), M. M. R. March 14, 1873, p. 337. V. 200*l.*—A. £55

1449. In February, the brig L. was seen standing towards the Scilly Isles, in very rough weather, and flying signals of distress. She was boarded by the crew of the cutter Q., and found to be unmanageable. The cutter, with the help of a steamer, succeeded in getting her into harbour. *The Liberty* (St. Mary's (Scilly) Pol. Co.), M. M. R. March 14, 1873, p. 338. V. not stated.—A. £55

1450. In January, the mail steamer S. was ashore on some rocks near Cape Grisnez. She slipped off the rocks as the tide made, and anchored with her bottom damaged and her engine-room filled with water, but she was prevented from sinking by being built in compartments. Her master was incapacitated, her first mate drunk. In answer to signals the mail steamer P. F. W. came up and took her into Calais Harbour. The service lasted about nine hours. The weather was calm, and it was also clear, except at Calais, where there was a fog. *The Scout*, M. M. R. Feb. 23, 1872, p. 240. V. 1,200*l.*—A. £55

1451. In February, the brigantine S. ran on a flat-topped rock, twelve feet square, just outside Dartmouth Harbour. The tug L. came alongside, and made fast a warp, which at the third haul broke. A second and stronger hawser was then made fast, and she was brought off. *The Swift*, M. M. R. June 8, 1877, p. 725. V. 750*l.*—A. £55

1452. In April, the screw steamer G., in thick rainy weather, and during a heavy wind, got on the Goodwin Sands. The lugger F. N., having vainly tried to save the ship, took off the crew and saved two chronometers and four belts, the value of which was £140. She sustained some damage in the service. *The Glendale* (Newcastle Co. Co.), M. M. R. Nov. 28, 1873, p. 1522. Value 140*l.*—Award £52

1453. In November, the brig P. H., while being brought to Penzance Pier, let go her anchor with too much way on her, and the anchor made a hole in her bottom. Some licensed pilots brought her into harbour during bad weather, and attended to her for some days. *The Pierre Henri* (Penzance Mag.), M. M. R. Dec. 9, 1865, p. 1555. V. 31,000*l.*—A. £52

1454. The schooner A., in ballast, in attempting to enter Bridlington Harbour, drove over the bar, struck against the South Pier, and was in a situation of considerable peril, the weather being very tempestuous. The coble B., manned by eight hands, went to the assistance of the A., succeeded, after great danger, in boarding her, and after three hours' labour placed her in a situation of safety. *The Acheen*, S. G. May 19, 1855. V. 350*l.*—A. £50

1455. In November, the schooner A., in a gale from the W., was in a leaky state about eight miles from and abreast of Yarmouth. She had only two men on board, who were exhausted with pumping for eighteen hours. The lugger H. came up and put on board four men, who stayed by her for three days, after which eight men from the H. worked her into Yarmouth in between eight and nine hours, the H. leading the way. *The Adelaide* (Yarmouth Co. Co.), M. M. R. Jan. 12, 1877, p. 54. V. 586*l.*—A. £50

1456. In November, the barque A., during a gale, was in a dangerous position off Yarmouth, about a quarter of a mile from the coast opposite the monument. She was towed into a safe berth by the tug S., one tow-rope being broken during the towage. *The Adventure* (Yarmouth Co. Co.), M. M. R. Dec. 10, 1875, p. 1586. V. 800*l.*—A. £50

1457. In December, 1870, the Portuguese schooner A. was in a heavy sea, about twenty miles from Lowestoft, the wind blowing hard from the S.E., and she was signalling for help. The master and three out of ten hands of the lugger M. S., with great risk to themselves, boarded the schooner, and at the request of the master, signified by gesture, took her into Lowestoft. The ship was in no danger, but the captain seemed not to know where he was. *The Agnia* (Lowestoft Co. Co.), M. M. R. Jan. 6, 1871, p. 14. V. 3,325*l.*—A. £50

1458. In January, the steamer A., from Bremen for London, was in dangerous proximity to the Newcombe Sands off Lowestoft. She was boarded by the master of the lugger J. and T., and by his directions got clear of the sands, and put on a safe course for London. The master of the lugger had buoyed his fishing lines, worth £20, to go to the A., and they were lost. *The Albatros* (City of London Co.), M. M. R. March 28, 1879, p. 405. V. not stated.—A. £50

1459. The schooner A. was N. of the Binks, and three-quarters of a mile from the broken water, with two flags of distress flying. The smack D., which came up to her, stayed by her till the ebb tide, and then towed her away, until a tug was met with and engaged by the smacksmen to tow her into Grimsby Docks for £8, and she was towed there accordingly. *The Alerte* (Grimsby Pol. Co.), M. M. R. Nov. 13, 1869, p. 1459. V. not stated.—A. £50

1460. The brig A., 161 tons, in a hurricane, drove on the Barber Patch Sand, and was in considerable danger. The Caistor lifeboat went to her, took some of her crew on board, and lay by her during the storm. After the storm was over the A. got off the sand, and was brought up in Yarmouth Roads, attended by the lifeboat. *The Alpha*, 1 Lush. 180; S. G. June 21, 1860. V. 600*l.*—A. £50

1461. In October, the French brig A. M., from Gêfle for St. Brienne laden with deals, was at anchor in dangerous proximity to the North Bank, off Gorleston, and with six or seven feet of water in her hold, her deck cargo having been thrown overboard. A tug with a pilot on board came up, the pilot boarded her, and with great difficulty and risk got a rope from the A. M. on board the tug, which towed her into

Gorleston Harbour through an increasing wind and sea. *The Alphonse Marie* (Yarmouth Pol. Co.), M. M. R. Oct. 16, 1874, p. 1329. Value 950*l.*—Award £50

1462. The Spanish vessel A. encountered tempestuous weather, and sustained considerable damage. She was observed with a signal of distress flying by the fishing smack E., with a crew of ten hands, then lying at Scarborough. The E. went to her assistance, and after clearing away the wreck, took her in tow and conducted her to Bridlington Bay, and subsequently, with the assistance of a coble, into the harbour. Tender of £20 under an alleged agreement, which was denied by the salvors. *The Armonia*, S. G. April 5, 1853. V. 1,800*l.*—A. £50

1463. In November, the schooner A., 111 tons, from Laga to Liverpool with a cargo of manganese, was in Sutton Pool, Plymouth, and dragging her anchors. The weather was very heavy. The L. K. proceeded to her. They alleged that they tried to get her into Sutton Harbour, but finding it was impossible to do so, and in order to prevent her going on to the rocks, they ran her on to a mud bank. The owners denied this, and asserted that she grounded through an attempt to take her into the harbour when there was not sufficient water. She was finally warped into the harbour. *The Arica*, M. M. R. May 12, 1866, p. 594. V. 1,250*l.*—A. £50

1464. In December, the brig A., from Hartlepool for London with coals, was seen, between Britannia Pier and the Jetty, flying distress signals. She had lost two anchors and chains, and had been in collision with a steamer. The tug P. went to her, took her master off, brought him into the harbour and back again, and finally at high tide towed the A. into harbour. *The Attabiah* (Lowestoft Pol. Co.), M. M. R. Jan. 3, 1873, p. 23. V. not stated.—A. £50

1465. In December, the North German brig B., during a gale from S.S.W., off Whitby, was driving to leeward in a tremendous sea; her pumps were choked, she was otherwise disabled, and had two and a-half feet of water in her hold. At the request of the master of the B., the fishing catch D., which came near in answer to signal, stood by the B., and for twenty hours attended her (keeping her head W.) to within sight of the Tees Light, where the captain of the D. engaged a tug to take the B. to the Tyne for £12. *The Blumenthal* (North Shields Pol. Co.), M. M. R. Jan. 17, 1873, p. 86. V. 800*l.*—A. £50

1466. In December, the crew of the smack G., when off the Dogger Bank, saw the smack B. in distress, with no canvas set except a piece of foresail, and flying a distress signal. She had lost all her running gear, her boom and gaff, and all her sails, and had broken her bowsprit. The weather was heavy and the gale strong. The salvors took her in tow, and she reached Yarmouth in four days. *The Bravo* (Yarmouth Pol. Co.), M. M. R. Jan. 2, 1874, p. 23. V. 400*l.*—A. £50

1467. In September, the schooner B. was picked up in distress, sixty miles from the Haytian coast, and brought to Kingston, Jamaica, by the German barque J. R. *The Brisk* (Kingston (Jamaica) V. Ad. Co.), M. M. R. June 2, 1876, p. 693. V. not stated.—A. £50

1468. In December, during a gale, the schooner B., from Methel for London with coals, which had lost her anchor, had her sails split and was otherwise damaged, was towed into harbour by the steam-tug U. S. *The Britannia* (Yarmouth Pol. Co.), M. M. R. Dec. 27, 1872, p. 1651. V. 527*l.*—A. £50

1469. In February, the barque C. C., 451 tons, from Shields for China, off Aldborough was struck by a sea which unshipped the wheel, broke the mainyard, and injured the master and three men. She was taken to Harwich by a yawl with twelve hands and two pilots. *The Captain Cook*, S. G. May 26, 1843. V. 4,000*l.*—A. £50

1470. The fishing smack C. was run into whilst riding in the roads off Lowestoft, during a heavy gale from the S.E. by S. Her master and crew deserted her, but shortly afterwards returned. The pilot boat A., with some difficulty, took the C. into the harbour. *The Change*, S. G. February 14, 1856. V. 800*l.*—A. £50

1471. In November, the barque C., 321 tons, with 2,500 quarters of wheat, was labouring and striking very heavily, during a strong breeze from the S.S.E., with a heavy sea, N.W. of the Black Rock, Portland. She was boarded and pumped by a pilot and his crew, until the tug D. came up and took her into the tidal harbour,

where she soon sank. *The Choice* (Falmouth Mag.), M. M. R. March 18, 1865, p. 331. Value not stated.—Award £50

1472. In February, the barque C. C. was on the Kentish Knock, with her back broken and nine feet of water in her hold, and the wind blowing hard. The smack A. I. went to her, and the master, mate and two men boarded her, and agreed that the smack should lie by her; at night there were eleven feet of water in her. The master of the A. I. stayed on board up to four in the morning, and boarded her again at seven. He remained on board all the next night, and employed the smack R. to assist. The two smacks took off the master and all the crew of the C. of C. next day. The master of the A. I. made five or six journeys between the barque and his smack, and then, at the request of the master of the C. of C., made for Harwich, and landed there the master and crew of the C. of C. about six o'clock p.m. of that day. £32 to the A. I., £18 to the R. *The City of Carlisle* (Harwich Pol. Co.), M. M. R. Aug. 14, 1869, p. 1043. V. 102l.—A. £50

1473. The C. W. was damaged by collision. The steam-tug W. towed her to Grimsby. The services lasted two or three hours, and were attended with no risk. *The Clara Wilsnach*, S. G. May 10, 1861. V. 1,900l.—A. £50

1474. A lieutenant of the coastguard and four of his men boarded a vessel which had some of her crew sick, rendered some slight assistance on board, and landed the master in their boat. *The Clifton*, 3 Hagg. 117. V. 6,800l.—A. £50

1475. The C., of 400 tons, got thirty-five miles out of her track, and was found to be between the Sunk and Lone Sands, towards the latter of which she was proceeding. Some fishermen boarded her, and were engaged by the master, after he had been with much difficulty convinced of his danger, to conduct the vessel into Harwich. *The Cumberland*, S. G. Feb. 25, 1845. V. 2,278l.—A. £50

1476. In September, the screw steamer C., 940 tons, was drifting up the Mersey on a flood tide, with her bows to the westward and broadside to the tide. She came into collision with a steamer of 3,500 tons register, lying at anchor between Egremont and Seacombe Ferries. The tug S. made fast to her, towed her clear, and anchored her off the Huskisson Dock. *The Cyprian*, M. M. R. Jan. 21, 1876, p. 83. V. 28,000l.—A. £50

1477. The brig D. was struck by a tremendous sea and dismasted; juremasts were rigged, and fearing a lee shore, she bore up for the Scilly Islands, and the next day the crew of a pilot cutter put off to her aid, and she was taken in tow for about five minutes, and anchored in about twenty-two fathoms water. A hawser and additional spars and sails having been procured, she was conducted into the harbour of New Grimsby. *The Dosseitei*, 10 Jur. 865; S. G. July 18, 1846. V. 10,000l.—A. £50

1478. In January, the ship E., with guano, when entering Queenstown harbour came into collision with another ship and struck the bottom heavily. The tug L. E. got her off. *The Eagle* (Dublin Ad. Co.), M. M. R. May 7, 1875, p. 584. V. 50,000l.—A. £50

1479. In June, the E., which had started about five minutes previously for Liverpool from Dublin, with sixteen cabin and seventy deck passengers, and cattle on deck and below, took the ground about amidships, listed over to starboard about six inches, and remained hard and fast. The L. towed her off. *The Eblana* (Dublin Ad. Co.), M. M. R. September 21, 1867, p. 1203. V. not stated.—A. £50

1480. The brig E., 193 tons, got upon the Cross Sand, the wind blowing strong, and there being a heavy sea. She then hoisted signals of distress for the pilot cutter T. B. (the crew of which had previously endeavoured to point out to her her danger by signals) which made towards her, but after some time she floated off, and was directed by the cutter how to steer clear of the Sand. One of the pilots then went on board, and inquired if they wished to employ him; the master wished to make an agreement for the pilot to take him to Lowestoft, which the pilot declined, owing to the darkness, but offered to take him to Harwich. The master of the E. would not be taken to Harwich; the pumps had been kept going during the whole of this time, and now sucked, and the vessel accordingly proceeded on her voyage without further assistance. *The Eliza*, 7 L. T. N.S. 257; S. G. July 24, 1862. V. 970l.—A. £50

1481. In August, the brig *E. B.*, 194 tons, from the Tyne for Dordt in a leaky state, was boarded at the entrance to Lowestoft Harbour by some beachmen. Her crew were exhausted with pumping. The salvors set to work pumping, and got the ship ready for towing. A steam-tug was engaged by them, and took the *E. B.* into Lowestoft. *The Emmanuel Brothers* (Yarmouth Pol. Co.), M. M. R. September 10, 1875, p. 1160. Value 600*l.*—Award £50

1482. The schooner *E.*, of 82 tons, laden with iron, was off Cromer, with a signal of distress flying. Nineteen men, in two boats, went out to her assistance, and on boarding her found that she was making a considerable quantity of water; they assisted in pumping her until she arrived at Yarmouth. The master wished six of the salvors only to stay on board, but the whole nineteen insisted in staying on board the schooner and assisting at the pumps after the master had dismissed all but six of them. *The Equity*, S. G. June 11, 1852. V. 800*l.*—A. £50

1483. In March, in a strong north wind with a cross sea, the trawling smack *E.*, 32 tons, was derelict, with her trawl hanging over amidships, and causing her to cant over to windward. She was found thus by the cutter *A.* off Falmouth. After boarding her with some difficulty, the crew of the *A.* cut away the warp that held the trawl, and thus she righted. The *A.* then took her in tow to Plymouth. *The Esmeralda* (Plymouth Pol. Co.), M. M. R. April 14, 1876, p. 470. V. not stated.—A. £50

1484. The ship *F.*, 117 tons, sprang a leak; when off Bawdsey the master and crew of the yawl *W.* boarded her, rendered assistance by pumping, and accompanied her to Ipswich. *The Favourite*, 7 L. T. N.S. 257; S. G. Jan. 22, 1862. V. 470*l.*—A. £50

1485. In November, the brig *F.*, damaged in a collision with another vessel, was taken by the tug *F. C.* into Yarmouth Harbour. *The Friends* (Yarmouth Pol. Co.), M. M. R. Dec. 1, 1876, p. 1526. V. 775*l.*—A. £50

1486. The *G. E.* took the ground while proceeding out of the south outlet of the port of Sunderland. The *G. K.* came up, and a tow-rope was got on board, but almost as soon as the *G. K.* began to haul on it the *G. E.* reversed her engines and got off. *The German Emperor* (Sunderland Co. Co.), M. M. R. Nov. 20, 1874, p. 1489. V. not stated.—A. £50

1487. The schooner *H. B. F.*, 200 tons, in a severe storm dragged her anchors, the sea constantly broke over her, and her crew abandoned her. A steam-tug towed her to the quarantine ground. Time employed, five hours. *The H. B. Foster*, 1 Abbot, R. 224; cited in Marvin, 208. [American.] V. 2,450*l.*—A. £50

1488. The *F. W.* had lost her mainsail, and was thereby considerably limited in her ability to get about. She was taken in tow by a cutter in the open sea during stormy weather, and was brought safely to the Elbe after five hours' labour. The cutter lost a sail value £14. *The Fishing Wherry*, Assistance, Ham. S. Z. 1875, pp. 313, 314. [German.] V. 240*l.*—A. £50

1489. The *H.*, having encountered severe weather and sprung her bowsprit and foremast, after having been thirteen days in a leaky state, ran into the Bristol Channel, where she was fallen in with off the Flat Holm, twenty miles from Bristol, by a steam-tug, which found the crew much exhausted with labour at the pumps, there being seven and a-half feet of water in her hold. The steam-tug remained by her during the night, and towed her into Bristol on the following day, when the water was found to have increased to ten feet. *The Harvey*, 1839, 4 Monthly Law Mag. (Notes of Cases), 153. V. 3,002*l.*—A. £50

1490. The schooner *H.* sustained considerable damage, and shipped large quantities of water, which rendered it necessary to keep the pumps constantly at work, and a signal for a pilot was hoisted. The fishing lugger *R.*, while engaged in the herring fishery, about six miles from the Leman and Ower Sand, observed the schooner, went to her assistance, and conducted her towards Lowestoft, and on the next day, with the aid of a pilot and a steam-tug, she was taken into the harbour. *The Hedwig*, S. G. April 29, 1853. V. 860*l.*—A. £50

1491. The barge *H. P.* was found drifting, bottom upwards, with the flood tide in sea-reach in the Thames; and was secured by two warps and towed by a tug to a

- place of safety. *The Hepzibah Pearson* (City of London Co.), M. M. R. July 7, 1876, p. 853. Value not stated.—Award £50
1492. In November, the schooner H., 62 tons, from Hull for Dover with oil, had been in collision, lost her mainmast, and had her sails damaged. The smack N., thirty-five tons, found her thus off Hollesley Bay, and towed her for eight hours into Harwich Harbour. *The Hwain*, M. M. R. March 21, 1868, p. 369. V. 2,119*l.*—A. £50
1493. The schooner I., 96 tons, had met with great stress of weather, received considerable damage, and shipped a quantity of water; her crew were injured and worn out. Some boatmen of Bridlington took her from Flamborough Head into Bridlington Bay, and pumped her out. Service of short duration. *The Industry*, June 19, 1850. V. 800*l.*—A. £50
1494. In February, the sloop J., with 130 tons of slate and manned by a mate and one boy, was seen to be dragging her anchor. The wind was blowing a gale, and the River Mersey was "in a fearful state." The sloop bumped against the Clarence Dock Pier, and a line from the flat T. was thrown on board, by which the mate and boy were drawn up. The master of the flat then boarded the sloop, and with great difficulty got her into dock. *The James* (Liverpool Pass. Co.), M. M. R. Apr. 17, 1869, p. 500. V. not stated.—A. £50
1495. The fishing smack N., reaching in towards the Cockle Gat, in consequence of stress of weather, observed the barque J. to the south of the north buoy of the Scroby Sand. The barque signalled her to come to her aid, and on three of the smacksmen boarding her, they found five feet of water in the hold. They remained on board all night pumping, when some Gorleston men came out, and the J. was ultimately conducted to Yarmouth Roads. *The John*, S. G. February 26, 1854. V. 1,200*l.*—A. £50
1496. The galliot J. A., when about sixty miles from Southwold, agreed with the fishing smack I. to conduct or pilot her to a Dutch or English port for £50. The weather coming on bad, the smack had to tow the J. A., and claimed salvage. *The Jonge Andries*, Swabey, 226; S. G. April 7, 1857. V. 2,270*l.*—A. £50
1497. In October, the St. Ives pilots fell in with the smack L. abandoned off Cunard's Head, and ultimately got her into Hyde. *The Lenora*, (St. Ives Pol. Co.), M. M. R. Oct. 29, 1875, p. 1393. V. not stated.—A. £50
1498. In January, the schooner L. R., 99 tons, in a S. gale and a heavy sea, struck on the rocks by the Admiralty Pier, Dover, and bumped heavily. The Dover boat, W., went to her, followed by the tug F. M'I., and three times took a tow-rope on board the tug; eventually the L. R. was got off the rocks, and the tug held her till there was water enough for her to enter the harbour, when she was taken there. £33 to the F. M'I., £17 to the W. *The Leon Raymunds*, M. M. R. June 11, 1875, p. 743. V. 824*l.*—A. £50
1499. The brig L. W., from Rye for Sunderland, during a gale of wind, in thick weather, with snow, off Staithes, became unmanageable, would not answer her helm, and drove on to the rocks. The master and crew rowed ashore in the jolly boat to get assistance, and engaged ten men and two cobles, who got her off and brought her, with some seven feet of water in her hold, into Whitby Harbour. *The Lord Warden* (Whitby Mag.), M. M. R. March 14, 1868, p. 339. V. not stated.—A. £50
1500. In November, the schooner L. E. got ashore in Robin Hood's Bay, and was rescued by nine boatmen. *The Louisa Elizabeth* (Stockton Co. Co.), M. M. R. Feb. 26, 1875, p. 266. V. not stated.—A. £50
1501. In January, the barque M. A., from Hamburg for Rio Janeiro with passengers and a valuable cargo, was in a damaged state with a shifted cargo. She was piloted into Grimsby, twenty-five miles distant, by a fisherman. *The Mary Anne*, S. G. June 15, 1837. V. 16,000*l.*—A. £50
1502. The steamboat P. having conducted the brig M. into the port of Sunderland during tempestuous weather, two magistrates for Sunderland awarded £15 for such services. The Court of Admiralty, on appeal, awarded £50. *The Messenger*, S. G. Jan. 22, 1859. V. 1,320*l.*—A. £50

1503. The barque *M.*, having sustained considerable damage by collision, engaged the steam-tug *R. O.* to conduct her from the Scroby Sand to Lowestoft. A gale was blowing, and she was unable to effect it alone. A signal was hoisted, and the steam-tug *E.* came. The two tugs then conducted the barque to Lowestoft in two hours and a-half. *The Metropolis*, S. G. Aug. 7, 1850. Value 5,000*l.*—Award £50

1504. The fishing smack *S.* was proceeding from the Dogger Bank to Hull with a cargo of fish, and when distant about eighteen miles from Flamborough Head, saw the ship *M.* about seven miles to windward with two signals for assistance flying; she went to her, boarded her with some difficulty, and found her in a very leaky state, she having made at one time as much as thirty-four inches of water per hour. The salvors assisted in pumping, &c., and remained by her until she was brought safely up in Grimsby Roads. The services lasted eighteen or twenty-four hours, and the smackmen lost £23 by the spoiling of the fish. The *M.* set up an agreement for £16, but failed to establish it. *The Minerva*, S. G. July 2, 1851. V. 1,569*l.*—A. £50

1505. In February, the steamer *M.*, from Lisbon for London, was aground on the North East Spit of the Margate Sands, heading west, driving further up, and bumping heavily. She was boarded by two of the crew of the Margate lifeboat. Her starboard anchor was let go, the main and mizen trysails set, and her head canted to the N.W. The engines were set full speed astern, and the *M.* came off stern first and was anchored in deep water. *The Moratin*, S. G. July 25, 1884, p. 470. V. 24,000*l.*—A. £50

1506. In July, the brig *N.*, timber-laden, came into Hartlepool Roads in charge of a pilot. There was a heavy sea breaking on the bar. The steam-tug *A.* went out into the bay, and her captain told the pilot there was fifteen feet of water on the bar, and about two feet swell. The pilot asked for a line, and the *N.* was taken in tow. When she got to the bar the vessel struck heavily and "beached" up on the sands. With the aid of the steam-tugs *L.* and *W.* she was got off the bar. She proceeded to sea, where she remained three days, her return being prevented by the weather and tide. The *A.* was damaged to the amount of £9 by being dashed against the *L.* The pilot's licence was suspended for three months for trying to take the harbour when there was not enough water. *The Naiad* (Hartlepool Pol. Co.), M. M. R. September 29, 1866, p. 1233. V. not stated.—A. £50

1507. In December, several boatmen of Deal, in answer to a flare-up from a vessel in the Downs, put off in the lugger *F.*, and found that the light was from the Norwegian barque *N.*, which had taken the ground on the South Brake Sand. There was a gale from W.N.W. and a heavy sea. Several of the lugger's crew boarded the *N.*, got the anchor up, set the mizensail, steered a course down between the Brake and the shore, and brought her up in about six hours close along the coast, whence she was towed to London. *The Nordcap* (City of London Co.), M. M. R. Jan. 26, 1872, p. 116. V. not stated.—A. £50

1508. The brig *O.* got on shore on a shoal called the Barber Patch. Her sails were aback, and she was in some danger. Two boats with twenty hands put off to her, and succeeded in removing her from the sand into deep water. *The Olive*, S. G. July 30, 1850. V. 816*l.*—A. £50

1509. In April, the Portuguese brig *O.*, from South America for Bremen with tobacco, when off Beachy Head, fell in with the lugger *E.* of *Z.*, and agreed with her that, for the sum of £1, she (the lugger) should proceed to Dungeness, and there make inquiry for a pilot for Bremen, that one hand from the lugger should remain on board, and that the *O.* should heave to off Dungeness and wait there for the lugger. The *O.* did not heave to as arranged, because it was discovered subsequently to the agreement that there were symptoms of fire on board her, and she therefore proceeded on to the Downs. *The Ovarouse*, M. M. R. May, 1867, p. 626. V. 6,700*l.*—A. £50

1510. In May, during a strong breeze, the yacht *P.*, having broken from her moorings and drifted against the ferry bridge, was boarded by two servants of the Tranmere Ferry Company, from one of the company's boats, who succeeded in dropping her anchor and securing her. *The Pastime* (Liverpool Pass. Co.), M. M. R. Jan. 18, 1878, p. 79. V. not stated.—A. £50

1511. In April, the schooner P., in a strong wind from N.E. with a heavy sea, whilst being towed by a tug into Gorleston Harbour, grounded outside the South Pier. The tug left her, and some Gorleston beachmen went to her assistance, and got her off and into port in three hours. *The Parthenia* (Yarmouth Co. Co.), M. M. R. June 3, 1861, p. 688. Value 700*l.*—Award £50

1512. In November, the salvors saw signals flying from the Dutch brig P., wheat laden, which was stranded near Berwick Harbour. They went to her and found her fast filling with water and nearly sinking. A North Sea pilot was on board. The salvors took charge of her, and brought her to Berwick, where a Berwick pilot went on board. Finding there was not enough water on the bar for her to enter the harbour, she was beached. *The Pero* (Shields Pol. Co.), M. M. R. Dec. 9, 1870, p. 1588. V. not stated.—A. £50

1513. In September, the schooner P., having been in collision with the F. B., was brought up by her port anchor, about one mile from shore off Deal, inside the Goodwin Sands. The wind was S.W. and strong, and the sea heavy, and the P. sustained damages on her starboard quarter, and her main rigging and shrouds were carried away. She was boarded then by two of the crew of the lugger Y. P. They remained some time, and the wind changing to a stiff gale from N., the P. began to drift, and was in danger of coming into collision with a neighbouring barque. The men assisted the P. into Dover. *The Pomona* (Dover Ad. Co.), M. M. R. Jan. 19, 1872, p. 87. V. not stated.—A. £50

1514. The brig P., 167 tons, in entering the port of Marsala, in Sicily, grounded upon a bank. The master of a British vessel, the W. B., in his boat, went with other parties to her assistance, and through his advice, in about three-quarters of an hour, the vessel forged off, and was brought within the Mole. *The Portia*, 9 Jur. 167; S. G. February 20, 1845. V. 2,400*l.*—A. £50

1515. In July, the Dutch trawler P. No. 2, having lost her mast, was in danger of drifting on to the rocks off the Faroe Islands, but was towed by the smack G. into a place of safety. *The Presto*, No. 2 (Grimsby Co. Co.), M. M. R. January 21, 1876, p. 87. V. not stated.—A. £50

1516. In October, the barque P. grounded on the North Sand when leaving Yarmouth Harbour, and was got off by the exertion of six boatmen of Gorleston. *The Pride* (Yarmouth Pol. Co.), M. M. R. Nov. 7, 1873, p. 1427. V. 400*l.*—A. £50

1517. The brig Q. ran upon the Hasborough Sand. The yawl D., manned by eleven hands, went out to her assistance, and by laying out anchors succeeded in getting her off. *The Queen*, S. G. November 16, 1853; *The Times*, November 17, 1853. V. 1,500*l.*—A. £50

1518. The brig R., when off Portland, was run into by the steamship D., and was dismasted, and sustained other damage; she was thereupon taken in tow by the D., but breaking three hawsers, in consequence of bad weather, the steamer left her and ran for the Needles. The steam-tug R. left Portsmouth, went to the brig, and towed her into Cowes. *The Redport*, S. G. 11th June, 1857. V. 637*l.*—A. £50

1519. In January, the trawler R. got on the Holm Sand, and the yawls Y. P. and L. C., with fifty hands, went in answer to her signals, and, with the help of the harbour tug, got her off. *The Renown* (Lowestoft Co. Co.), M. M. R. Mar. 4, 1881, p. 271. V. not stated.—A. £50

1520. In January, the brigantine R., in thick weather, with the wind S.S.W. and a high sea, was in a perilous position to the E. of the Landguard Fort, in danger of being blown right on to the sands. She was boarded by the master of the smack V. and his crew, who got out a warp, and gradually shifted her head round, and then fetched a tug which towed her first into Harwich, and thence to Ipswich. *The Roma* (Ipswich Co. Co.), M. M. R. Feb. 23, 1877, p. 246. V. 665*l.*—A. £50

1521. In November, the screw steamer R., 900 tons, after collision in the Bosphorus with the steamer D., was run ashore on the Scutari Bank just outside Leander's Tower. The water was level with her deck aft and over her 'tween decks. The hole in her side was stopped, and she was pumped in order to float her in a dock prepared for the ship. She was then got off and floated into deep water, when

she fell over on her starboard beam ends and nearly capsized. She was accordingly taken back by a tug to the bank. By the directions of the plaintiff, who was employed by the ship's agents to get her off into a place of safety, the hawser was removed and the sluices closed, and in two days she was got safely to a dry dock at Constantinople. *The Romulus*, M. M. R. Feb. 15, 1882, p. 103. Value 22,000*l.*—Award £50

1522. In September, the barque S. D. came into collision off Deal with the Austrian barque E., and all her crew, except the mate, went on board the E., but four afterwards returned. The S. D. had her main and mizenmasts carried away, and was otherwise seriously damaged. The luggers W. B. and W. H. went to her aid. One of the luggers fetched the master of the S. D., who was on shore, and the two remained in attendance, two of the crew working on board, for two days, when the barque was taken to the West India Docks. *The Sea Drift*, M. M. R. Feb. 7, 1873, p. 178. V. 2,156*l.*—A. £50

1523. In July, the barque S. came into collision with another vessel in King's Road, off Portishead, and the two vessels were grating together and in considerable danger. The tug V. put off to their aid. The sea was very high, and the hatches of the tug had to be battened down. The tug towed them clear. *The Seagull* (Bristol Co. Co.), M. M. R. Sept. 1, 1876, p. 1102. V. 4,627*l.*—A. £50

1524. In December, the brigantine S. S., in very thick weather got on the West Rock, off Harwich. She was boarded by some of the hands of the smack A., and got off the rock, and to Harwich by their aid. *The Star of the Sea* (Ipswich Co. Co.), M. M. R. March 28, 1879, p. 405. V. 470*l.*—A. £50

1525. In March, in bad weather, with severe hailstorms, the Austrian barque T. R. was drifting in the Mumbles Roads, and would soon have been aground had not the tug F. C. come up, and, getting a line on board, with much difficulty towed her for 3½ hours into Swansea. *The Tre Re* (Swansea Pol. Co.), M. M. R. March 31, 1876, p. 399. V. 1,750*l.*—A. £50

1526. In February, the ship W., in very tempestuous weather off the Northumbrian coast, lost her tiller and her rudder head, drifted past the harbour beyond Cullercoats, and was fast drifting ashore near Whitley, when her anchor was let go, and signals of distress hoisted. The wind was strong from the S., and a heavy sea was running. A steam-tug put off, and in three hours towed her safely into the harbour. There was great risk of the W. drifting ashore if the tug's engines had failed. *The Wigoline* (S. Shields Pol. Co.), M. M. R. March 3, 1871, p. 274. V. 200*l.*—A. £50

APPORTIONMENT OF SALVAGE AWARDS (a).

	PAGE		PAGE
I. BY STEAMERS	2119	XI. TO VESSELS ON SHORE.....	2122
II. BY SAILING VESSELS	2119	XII. TO VESSELS BREAKING FROM ANCHORS OR DRIVING	2122
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V. TO STEAMERS WITH MACHINERY DIS- ABLED	2120	XV. TO VESSELS WITH CREWS DISEASED .	2123
VI. TO VESSELS DERELICT.....	2120	XVI. TO VESSELS WITH MUTINOUS CREWS	2123
VII. TO VESSELS DISMASTED	2121	XVII. TO VESSELS SHORT OF PROVISIONS..	2123
VIII. TO VESSELS WATER-LOGGED OR LEAK- ING BADLY	2121	XVIII. TO VESSELS IN OR AFTER COLLISIONS.	2123
IX. TO VESSELS WITH DISABLED RUDDERS	2122	XIX. TO VESSELS ON FIRE	2123
X. TO VESSELS ON OR NEAR ROCKS	2122	XX. OF SPECIE.....	2123

I. By Steamers—

For services, see No.	Award.	Owners.	Master.	Mate.	Crew.		Expenses.
					Actual salvors.	Constructive salvors.	
107, p. 1942	£2,800 =	£1,500..	£500..	£ —..	£ —..	£800 ..	£ —..
159, p. 1949	2,000 =	1,334....	222....	—....	—....	444....	—....
195, p. 1956	1,600 =	1,000....	150....	—....	—....	450....	—....
202, p. 1957	1,275 =	500....	200....	—....	—....	300....	275
250, p. 1964	1,284 =	839....	145....	—....	—....	300....	—....
261, p. 1966	1,200 =	800....	200....	—....	—....	200....	—....
615, p. 2014	330 =	180....	75....	—....	—....	75....	—....
981, p. 2032	200 =	130....	30....	—....	—....	40....	—....

II. By Sailing Vessels—

No. 179, p. 1953	1,800 =	750....	450....	200....	150*	250....	—....
235, p. 1962	1,400 =	200....	250....	350....	200....	—....	400....
265, p. 1966	1,200 =	200....	150....	—....	600	250....	—....
273, p. 1967	1,200 =	300....	150....	200....	320....	—....	230....
274, p. 1967	1,200 =	700....	200....	—....	100....	—....	200....
291, p. 1969	1,135 =	300....	200....	150....	—....	485....	—....
629, p. 2016	400† =	120....	—....	—....	280	—....	—....

III. By Smacks or Luggers—

No. 311, p. 1973	1,000 =	350....	230....	120....	—....	300‡ ..	—....
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(a) As to apportionment of salvage, see tit. SALVAGE, pp. 1889—1899.

In salvage actions the court does not apportion the salvage unless specially requested to do so. Hence in numerous salvage actions there is no record of the apportionment of the salvage. It is, of course, otherwise in actions of distribution of salvage.

* Second Mate.

† To the T. S.

‡ Crew, £270; 3 boys, £30.

IV. By Unloading or Transhipment of Cargo—

For services, see No.	Award.	Owners.	Master.	Mate.	Crew.		Expenses.
					Actual salvors.	Constructive salvors.	
263, p. 1966	£1,200	= £400..	£200..	£ —..	£ —..	£600..	£ —..
429, p. 1989	740	= 500....	50....	—....	—....	190....	—,....

V. To Steamers with Machinery disabled—

No. 9, p. 1925	8,000*	= 5,300....	600....	—....	—..	2,100....	—....
44, p. 1931	4,500	= 3,000....	600....	—....	—....	900....	—....
47, p. 1932	4,500	= —....	—....	—....	—....	—....	—....
60, p. 1934	4,000	= 2,000....	500....	—....	—..	1,500....	—....
101, p. 1941	3,000	= 2,250....	250....	—....	—....	500....	—....
109, p. 1942	2,700	= 1,900....	300....	—....	—....	500....	—....
123, p. 1944	2,500	= 2,000....	166....	—....	—....	334....	—....
126, p. 1944	2,400	= 1,900....	166....	—....	—....	334....	—....
131, p. 1946	2,250	= 1,100....	400....	—....	—....	750....	—....
139, p. 1954	1,670	= 350....	150....	400....	490....	—..	280....
218, p. 1959	1,500	= 1,100....	150....	—....	—....	250....	—....
233, p. 1962	1,400	= 1,000....	150....	—....	—....	250....	—....
234, p. 1962	1,400	= 1,100....	100	double share	—....	200....	—....
243, p. 1963	1,350	= 900....	100....	—....	—....	350....	—....
258, p. 1265	1,200	= 1,130†	70....	—....	—....	—....	—....
259, p. 1965	1,200	= 900....	100....	—....	—....	200....	—....
261, p. 1966	1,200	= 800....	200....	—....	—....	200....	—....
268, p. 1966	1,200	= 800....	100....	—....	—....	300....	—....
286, p. 1969	1,200	= 900....	100....	—....	—....	200....	—....
291, p. 1970	1,120	= 520....	—....	—....	600	—....	—....
307, p. 1972	1,050	= 900....	50....	—....	—....	100....	—....
364, p. 1980	875	= 600....	100....	—....	—....	175....	—....
442, p. 1999	700	= 300....	100....	—....	—....	300....	—....
445, p. 1992	700	= 480....	60....	—....	—....	160....	—....
552, p. 2007	500	= 250....	90....	—....	—....	160....	—....
601, p. 2012	470	= 350....	70....	—....	—....	50....	—....
611, p. 2014	450	= 300....	50....	—....	—....	100....	—....
706, p. 2026	370	= 280....	30....	—....	—....	60....	—....
752, p. 2032	340	= 40....	50....	—....	—....	250....	—....
965, p. 2058	200	= 134....	—....	—....	66	—....	—....
1060, p. 2069	160	= 100....	15....	20....	—....	25....	—....

VI. To Vessels derelict—

No. 3, p. 1924	16,000	= 5,000..	1,000....	500....	—..	9,500....	—....
10, p. 1925	8,250	= 1,400....	900..	1,000..	3,050....	—..	1,900....
32, p. 1930	{	2,000‡	= 800....	500....	—....	700....	—....
		3,000§	= 1,800....	500....	—....	700....	—....
108, p. 1942	2,000	= 1,600....	200....	—....	—....	200....	—....

* To the S.

† Owners, master and crew.

‡ To the O. F.

§ To the S.

|| To the P.

VI. To Vessels derelict—continued.

For services, see No.	Award.	Owners.	Master.	Mate.	Crew.		Expenses.
					Actual salvors.	Constructive salvors.	
128, p. 1945	£2,300	= £500..	£100..	£ —	£1,550..	£ —	£150..
145, p. 1947	2,000	= 1,200...	250....	—....	—....	550....	—....
156, p. 1949	2,000	= 1,200...	250....	—....	—....	550....	—....
184, p. 1953	1,800	= 800....	300....	200....	250....	—....	250....
197, p. 1956	1,600	= 700....	200....	200....	300....	—....	200....
236, p. 1962	1,400	= 200....	150....	300....	600*	—....	150....
252, p. 1964	1,250	= 100....	150....	325†	525....	—....	150....
263, p. 1966	1,200	= 400....	200....	—....	—....	600....	—....
265, p. 1966	1,200	= 200....	150....	—....	600....	—....	250....
291, p. 1969	1,135	= 300....	200....	150....	—....	485....	—....
299, p. 1971	1,080	= 800....	80....	30....	—....	170‡	—....
353, p. 1979	963	= 500....	200....	100—	149§	—....	14....
358, p. 1980	930	= 100....	80 double share	—....	550....	—....	200....
369, p. 1981	850	= 60....	40....	—....	400....	—....	40...310
409, p. 1987	800	= 410....	150....	40....	—....	200	—....
452, p. 1993	700	= 200....	100....	—....	300....	50¶	50....
541, p. 2003	333	= 74....	74....	—....	—....	185....	—....
550, p. 2004	550	= 100....	100....	100....	150....	—....	100....
604, p. 2013	450	= 337....	—....	—....	113	—....	—....
673, p. 2022	400	= 80....	80....	—....	140....	—....	100....
697, p. 2025	380	= 253....	—....	127....	—....	—....	—....
909, p. 2052	250	= 135....	40....	18....	—....	57....	—....
981, p. 2060	200	= 130....	30....	—....	—....	40....	—....
988, p. 2061	200	= 66....	34....	—....	—....	100**	—....

VII. To Vessels dismantled

No. 217, p. 1959	1,500	= 900....	200....	—....	—....	400....	—....
220, p. 1959	1,500	= 700....	200....	—....	—....	600....	—....
257, p. 1965	1,200	= 750....	150....	—....	—....	300....	—....
406, p. 1986	800	= 600....	75....	—....	—....	125....	—....
698, p. 2025	380	= 100....	80....	—....	—....	200....	—....
1117, p. 2075	150	= 100....	15....	—....	—....	35....	—....

VIII. To Vessels Water-logged or Leaking badly

No. 31, p. 1929	5,000	= 1,800....	300....	600....	1,600††	—....	700....
189, p. 1954	1,670	= 350....	150....	400....	490..	—....	280....
235, p. 1962	1,400	= 200....	250....	350....	200..	—....	400....
240, p. 1963	1,400	=	200††	—....	480..	—....	720§§..
257, p. 1965	1,200	= 750....	150....	—....	—....	300....	—....

* Boatswain, £200; passengers and crew, £400.

† Second mate, £250.

‡ Chief engineer, £70; second engineer, £30; one seaman, £12; two seamen and five firemen, £56; boy, £2.

§ One passenger, £11; one apprentice, £6.

¶ Engineer, £50; pilot, £50; two cabin hands, £60; two men, £40.

¶ To crew of C.

** Franch, £20.

†† Third mate, steward and two seamen.

‡‡ Owners, master and crew.

§§ To the two men, who with the second mate worked the S. N. into port.

VIII. To Vessels Water-logged or Leaking badly—*continued.*

For services, see	Award.	Owners.	Master.	Mate.	Actual salvors.	Crew.	Constructive salvors.	Expenses.
No. 273, p. 1967	£1,200	= £300	.. £150	.. £200	.. £320	.. £	— £230	.. £ —
294, p. 1970	1,100	= 800	... 100	... —	... —	... 200	... —	... —
300, p. 1971	1,080	= 800	... 80	... 30	... —	... 170*	... —	... —
374, p. 1982	819	= 150	... 100	... 220	... 180	... —	... 113	... 56
471, p. 1996	400	= 250	... 50	... —	... —	... 100	... —	... —
540, p. 2005	500	= 300	... 100	... —	... —	... 100	... —	... —

IX. To Vessels with disabled Rudders

No. 24, p. 1927	6,000	= 4,000	...			2,000	 —
43, p. 1931	4,500	= 500	.. 2,000	... —	... —	1,500	... — 500
173, p. 1952	1,900	= 1,500	... 200	... —	... —	200	... — —
181, p. 1953	1,800	= 1,350	... 200	... —	... —	250	... — —
369, p. 1981	850	= 60	... 40	... —	... 400	... —	40	... 310
374, p. 1982	819	= 150	... 100	... 220	... 180	... —	... 113	... 56
442, p. 1992	700	= 300	... 100	... —	... —	300	... — —

X. To Vessels on or near Rocks

No. 76, p. 1937	3,500	= 1,350	...			1,350	 800
202, p. 1957	1,275	= 500	... 200	... —	... —	300	... — 275
442, p. 1992	700	= 300	... 100	... —	... —	300	... — —

XI. To Vessels on Shore

No. 263, p. 1966	1,200	= 400	... 200	... —	... —	600	... — —
429, p. 1989	740	= 500	... 50	... —	... —	190	... — —
651, p. 2018	400	= 100	... 150	... —	... —	150	... — —

XII. To Vessels breaking from Anchors or Driving

No. 645, p. 2018	400	= 50	... 50	... —	... 200	... —	... 100	... —
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XIII. To Vessels without Masters or Mates

No. 235, p. 1962	1,400	= 200	... 250	... 350	... 200†	.. —	... 400	... —
240, p. 1963	1,400	= 200†	... 480	... —	... 720§	.. —	... —	... —
355, p. 1979	950	= 200	... 150	... 500	... —	... 100	... —	... —
363, p. 1980	900	= 100	... 50	... 600	... —	... 150	... —	... —
365, p. 1981	870	= 300	... 200	... 270	.. —	... 100	... —	... —
645, p. 2018	400	= 50	... 50	... —	... 200	... —	... 100	... —
1285, p. 2094	100	= 40	... —	... 60	... —	... —	... —	... —

XIV. To Vessels otherwise Shorthanded

No. 235, p. 1962	1,400	= 200	... 250	... 350	... 200¶	.. —	... 400	... —
453, p. 1993	700	= 200	... 150	... —	... —	... 350	... —	... —
645, p. 2018	400	= 50	... 50	... —	... 200	... —	... 100	... —

* Special awards among crew.

† One man.

‡ Owners, master and crew.

§ To the two men, who with the second mate worked the S. N. into port. || £70 to second mate.

¶ One man.

XV. To Vessels with Crews diseased

For services, see	Award.	Owners.	Master.	Mate.	Actual salvors.	Crew.	Constructive salvors.	Expenses.
No. 240, p. 1963	£1,400	=	£200*	£480..	£ —..	£720†	£ —.. £ —
250, p. 1964	1,284	=	839....	145....	—....	—....	300....	—.... —
274, p. 1967	1,200	=	700....	200....	—....	100....	—....	200.... —
363, p. 1980	900	=	100....	50....	600....	—....	150....	—.... —

XVI. To Vessels with Mutinous Crews

No. 271, p. 1967	1,200	=	300....	700†	..	—....	—....	200.... —
300, p. 1971	1,080	=	800....	80....	30....	—....	170*	.. —.... —

XVII. To Vessels short of Provisions

No. 324, p. 1975	1,000	=	400....	300....	—....	—....	300....	—.... —
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XVIII. To Vessels in or after Collisions

No. 108, p. 1942	2,000	=	1,600....	200....	—....	—....	200....	—.... —
149, p. 1948	2,000	=	1,333....	222....	—....	—....	445....	—.... —
220, p. 1959	1,500	=	700....	200....	—....	—....	600....	—.... —
353, p. 1979	963	=	500....	200....	100....	—....	149¶	.. —.... 14
443, p. 1992	700	=	400....	100....	—....	—....	200....	—.... —
587, p. 2011	500	=	200....	100....	—....	—....	200....	—.... —

XIX. To Vessels on Fire

No. 393, p. 1985	800	=	600....	200		—
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XX. Of Specie

No. 181, p. 1953	1,800	=	1,350....	200....	—....	—....	250....	—.... —
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* Owners, master and crew.

† To the two men.

‡ £400 to four masters.

§ Special awards among crew.

|| To the P.

¶ £11, one passenger; £6, one apprentice.

SEAMEN.

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 II.—ENGAGEMENT.
 III.—DISCHARGE.

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3. *Cancellation or Suspension of Certificate.* See tit. "SHIPPING CASUALTIES INVESTIGATIONS," c. 6.

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5. Evidence.

1. *Entries in Official Log.* See tit. "EVIDENCE," p. 435.

6. Notice of Death of Sea Apprentice. See Pt. I. p. 2130.

7. Enquiry into Cause of Death 2194

8. Creditors 2194

9. Claims after Six Years 2194

Part I. GENERALLY.

1. Application of M. S. Acts.

1. *Generally.**

1. The whole of the third part of this act applies to all seagoing ships registered in the United Kingdom (except such as are exclusively employed in fishing on the coasts of the United Kingdom, and such as belong to the Trinity House, the Commissioners of Northern Lighthouses, or the port of Dublin Corporation, and except pleasure yachts, as to which this part of the act is only partially applicable, see sect. 2, *infra*), and also to all ships registered in any British possession, and employed between any place in the United Kingdom and any place not situate in the possession in which they are registered, and to their owners, masters and crews. See M. S. Act, 1854 (c. 104), s. 109.

2. If in any matter relating to any ship, or to any person belonging to any ship, there appears to be a conflict of laws, then if there is in the third part of this act any express provision on the subject, the case shall be governed by such provision; but if not, by the law of the place where the ship is registered, *Ibid.* s. 290.

3. As to the interpretation of the words "seamen," "master," "her Majesty's

dominions," "United Kingdom," "British possession," "consular officer," "person," "ship," "foreign-going ship," "home-trade ship," *Ibid.* s. 1.

4. This act is to be construed with and as part of M. S. Act, 1854. See M. S. Act Amendment Act, 1862 (c. 63), s. 1.

5. The following acts are to be taken to be part of the M. S. Act, 1854 (c. 104), and construed accordingly. See M. S. Act Amendment Act, 1855 (c. 91), s. 1, and M. S. Act, 1867 (c. 124), s. 1.

6. The following acts are to be construed as one with the M. S. Act, 1854 (c. 104), and the acts amending it. See M. S. Act, 1871 (c. 110), s. 2; M. S. Act, 1873 (c. 85), s. 2; and M. S. Act, 1876 (c. 80), s. 2.

2. *Ships partially exempted.*

(a) *Registered Sea-going Fishing Ships on British Coasts.*

7. Registered sea-going ships exclusively employed in fishing on the coasts of the United Kingdom, sea-going ships belonging to any of the three general lighthouse boards, and sea-going pleasure yachts, are subject to the whole of the third part of the M. S. Act, 1854 (c. 104), except sects. 136, 143, 145, 147, 149, 150—155, 157, 158, 161, 162, 166, 170, 171, 256, 279 and 280—287. See M. S. Act Amendment Act, 1862 (c. 63), s. 13.†

* (1) The title of shipping master is altered to that of superintendent of a mercantile marine office. See the Merchant Shipping Act Amendment Act, 1862 (c. 63), s. 15.

† (2) The purport of the sections from which they are so exempted is as follows:

Sect. 136, requiring certificated masters and mates; and sect. 61, requiring the production of such certificates on specified occasions. Sect. 143, as to the exemption of indentures of apprenticeship from stamp duty, their being required in duplicate, their transmis-

(b) *Sea-going Ships of General Lighthouse Boards.*See Div. (a), *supra*.(c) *Sea-going Pleasure Yachts.*See Div. (a), *supra*.**2. Masters.****1. Generally.**

7a. See tit. MASTERS, p. 1116; and as to masters' accounts, *Ibid.* p. 1123. As to masters' wages, see tit. WAGES.

2. Examination and Certificates.

8. As to the examinations of masters, the certificates of competency or service which may be granted them, the fees for the same, the ranking, record, evidence and periodical production thereof, the provisions in case of lost certificate, and the punishment for fraud or misuse in relation thereto, see tit. TRADE, BOARD OF—, Pt. II. c. 3.

3. Cancellation or Suspension of Certificate.

See tit. SHIPPING CASUALTIES INVESTIGATIONS, c. 6.

3. Mates.**1. Generally.***

9. As to the return to the mate of his

sion to the registrar-general of shipping and seamen, and the mode of recording, assigning, and cancelling them. Sect. 145, as to the production of the apprentice before the superintendent of a mercantile marine office before each voyage with the indenture, and the entering of the apprentice's name on the agreement with the crew. Sect. 147, as to the penalties for supplying seamen without a licence; for employing unlicensed persons to engage seamen, and for receiving seamen illegally supplied. Sects. 149—155, as to the agreements required to be made with seamen prior to their leaving port; and sect. 157, as to the penalty for shipping seamen without such an agreement. Sect. 158, as to the reporting of changes in the crew. Sects. 161 and 162, as to the production of the agreements with the crew. Sect. 166, as to the copy of the agreement with the view of its being made accessible to the crew. Sect. 170, as to the discharge and payment of wages before a superintendent of a mercantile marine office in the United

certificate when a ship is transferred abroad, or his service terminates abroad, see M. S. Act, 1854 (c. 104), s. 205.

2. Examination and Certificates.

See tit. TRADE, BOARD OF—, Pt. II. c. 3.

3. Cancellation or Suspension of Certificate.

See tit. SHIPPING CASUALTIES INVESTIGATIONS, c. 6.

4. Engineers.**1. Examination and Certificates.**

10. As to the examination of engineers, the certificates of competency or service which may be granted them, the fees for the same, the ranking, record, evidence and periodical production thereof, the provisions in the case of lost certificates, and the punishment for fraud or misuse in relation thereto, see tit. TRADE, BOARD OF—, Pt. II. c. 3.

2. Discharge for Misconduct.

See Pt. III. p. 2159.

3. Cancellation or Suspension of Certificate.

See tit. SHIPPING CASUALTIES INVESTIGATIONS, c. 6.

Kingdom. Sect. 171, as to the delivery to the seaman before discharge of an account of wages and deductions, and the entries of the deductions in a book during the voyage. Sect. 256, as to the fines to be deducted from the seaman's wages and paid to a superintendent of mercantile marine office. Sect. 279, as to agreements, indentures and assignments on arrival at a foreign port being deposited with the consul, and at a colony with the officer of customs. Sects. 280—287, as to the keeping of official logs, the entries therein, the delivery thereof to superintendents of mercantile marine, and the sending of them home in the case of the loss or transfer of the ship.

* (3) If the mate acts so improperly as to justify the master in dismissing and degrading him from his office, he is not entitled to wages. But if he is improperly dismissed he is entitled to them. He is not bound to perform the duties of a common seaman. *Thompson v. Busch*, 4 Wash. C. C. 338. [AMERICAN.]

5. Able Seamen.*

1. Rating.

(a) Generally.†

11. A seaman is not (since August 2, 1880), entitled to the rating of A. B., unless he has served at sea four years before the mast. Employment as fisherman in a registered decked fishing vessel does not count for more than three years' service. He must have served at least one year's sea service in a trading vessel. See the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 7.

(b) Certificate.

12. Such service may be proved by certificates of discharge, by a certificate of service from the registrar-general of shipping and seamen, or by other satisfactory proof. The registrar shall grant his certificate for a fee not exceeding sixpence, and in it shall specify whether the service was in whole or in part in a steamer or a sailing ship. *Ibid.*

6. Sea Apprentices.

1. Indentures.

(a) Generally.

13. All indentures of apprenticeship to the sea service are exempt from stamp duty, and must be executed in duplicate. See M. S. Act, 1854 (c. 104), s. 143.

14. As to the implied obligation of seaworthiness in every instrument of marine apprenticeship, see Pt. II. p. 2148.

(b) Transmission.

15. Every person to whom a sea apprentice is bound in the United Kingdom must, within seven days after execution of the indenture in duplicate, transmit both parts to the registrar-general of shipping and seamen or some superintendent, who shall record one part and indorse on the other that it has been recorded, and re-deliver it to the master. See M. S. Act, 1854 (c. 104), s. 143.

(c) Paupers.

16. As to the execution of parish indentures of sea apprenticeship by the

boys and by the guardians or overseers before two justices, who are to ascertain that the boy has consented to be bound, has attained twelve years of age, and is of sufficient health and strength, and that the master is a proper person for the purpose, *Ibid.* s. 142.

(d) Production of—

17. For provisions requiring the master of every foreign-going ship before carrying any apprentice to sea from any place in the United Kingdom to bring him before the superintendent before whom the crew is engaged, and produce the indenture, and assignments thereof (if any); and the names of the apprentice, the date of the indenture and assignments, and the names of the ports at which they have been registered shall be entered on the agreement. Penalty for breach, not exceeding £5. *Ibid.* s. 145.

(e) Notice of Desertion, Death, Assignment or Cancellation.

18. Whenever any indenture of sea apprenticeship is assigned or cancelled, or the apprentice dies or deserts, the master of the apprentice shall within seven days, if the same happens in the United Kingdom, or if elsewhere, so soon afterwards as circumstances permit, notify the same to the registrar-general of shipping and seamen, or some superintendent, to be recorded. Penalty for breach, not exceeding £10. *Ibid.* s. 143.

(f) M. S. (Fishing Boats) Act, 1883.

19. Such portions of the first part of this act as in any way relate to indentures of apprenticeship to the sea-fishing service, or agreements with boys under sixteen years of age with respect to such service, shall apply to all fishing vessels of twenty-five tons register tonnage and upwards. See the M. S. (Fishing Boats) Act, 1883 (c. 41), s. 1.

20. All indentures with boys under this age to the sea-fishing service, and all indentures to that service, are to be entered into before a superintendent of

* (4) See an interesting report to Parliament, by Thomas Gray, Esq., one of the Assistant Secretaries of the Board of Trade, as to British seamen, the ratings, qualifications, and discharge of seamen, crimping, the midge system, advance of wages, &c., anno 1876, Sess. Paper, C. 4709.

† (4a) As to the mode of proceeding for seamen to obtain such rating, see Board of Trade

Instructions to Superintendents of September, 1880.

(5) As to apprentices, see Board of Trade Instructions to Superintendents of August, 1879, p. 55.

(5a) As to excepting boys under sixteen years of age residing with their parents from strict compliance with the provisions of the act as regards agreements, *Ibid.* of February, 1884.

mercantile marine, who is to satisfy himself that the requirements of the act have been complied with, that the boy is not under thirteen years of age, and is of sufficient health and strength, and that his nearest relatives assent to the apprenticeship and its stipulations, and he shall make an endorsement to that effect. All such indentures are to be in triplicate, one to be kept by the master, one by the boy, and one by the superintendent. *Ibid.* s. 4.

21. All such indentures are to be in the forms in the second schedule to the act, otherwise to be void. Her Majesty may by Order in Council annul, modify, or alter any of the provisions in the forms. *Ibid.* s. 5.

22. No boy under the age of thirteen years shall enter into any indenture of apprenticeship to the sea-fishing service; and any such indenture is void. *Ibid.* s. 6.

23. Any person who receives money or valuable consideration from any person for finding an apprentice, or in respect of

a boy under sixteen years being bound by agreement with respect to the sea-fishing service, or from any one on his behalf, or from the boy or any one on his behalf in consideration of the boy being so bound; and every person who makes or causes to be made any such payment, is guilty of a misdemeanour. *Ibid.* s. 7.

24. All such indentures or agreements are void if not entered into before a superintendent of mercantile marine. Penalty against any person taking a boy to sea under a void indenture or agreement, £20. *Ibid.* s. 8.

25. For powers to superintendents to enforce the provisions of such agreements, whether void or otherwise, for the benefit of such boys, *Ibid.* ss. 9, 10 and 11.

7. Money Orders.*

26. For provisions enabling the Board of Trade to give facilities for remitting

* (6) The consul should point out to seamen that if they desire to send home any portion of their wages they can do so by money order, and he should do his best to promote thrift amongst them by this means. See Board of Trade Instructions to Consuls, 1883, par. 98, p. 30.

(7) To guard against diversity of practice among consular officers in the treatment of gains and losses by exchange arising on remittances to the Board of Trade, on account of foreign money orders issued to seamen, consuls are requested—

(a) As regards money deposited by seamen in sterling—To issue money orders for the sums so received (less the commission of 3*d.* in the £), and to convert such sums into currency at the rate of exchange actually ruling on the date of the issue of the money order.

(b) As regards money deposited by seamen in currency—To issue money orders for such sums (less the commission of 3*d.* in the £) at the rate of exchange actually ruling on the date of issue.

(c) As regards the schedule (F. M. O.¹)—To enter the amount in sterling, and the equivalent in currency of each money order issued, in the columns for “sterling” and “currency” respectively.

(d) As regards remittances to London—To remit, by means of short date bills or drafts payable in London, the actual equivalent in sterling of the total in currency of the orders issued, as shown in the schedule (F. M. O.¹), (together with the Board of Trade commission of 1*d.* in the £) on the amount of such orders. *Ibid.* par. 271, p. 77.

(8) For the list of ports at which seamen,

by the system of seamen's foreign orders, are enabled to remit their wages home when they are paid abroad, *Ibid.* par. 271, pp. 77, 78.

(8a) In addition to the above the Indian Government authorize the issue of seamen's money orders at certain ports in India. *Ibid.* par. 272, p. 79.

(9) The system is to be confined to seamen only, and is not, under any circumstances, to be extended to masters of British merchant vessels. *Ibid.* par. 274.

(10) By means of these money orders, which may be issued in favour of the seamen themselves or their relatives or friends, seamen are enabled to remit the whole or any part of their earnings to the United Kingdom at a charge of 3*d.* in the £. Of this sum 2*d.* is to be retained by the consul as remuneration for his trouble, and 1*d.* is to be accounted for to the Board of Trade to cover variations of exchange. *Ibid.* par. 275.

(11) For the directions to be pursued by seamen and consuls in forwarding money orders, *Ibid.* par. 276—284, pp. 79—81.

(12) Money orders may be made payable at the following ports and creeks in the United Kingdom and Channel Islands, viz.: Aberdeen, Aberystwith, Alloa, Arbroath, Ardrossan, Ayr, Ballina, Banff, Barnstaple, Barrow, Beaumaris, Belfast, Berwick, Bideford, Blyth, Borrowstowness, Boston, Bridgewater, Bridport, Bristol, Carnarvon, Campbelltown, Cardiff, Cardigan, Carlisle, Castletown, Chepstow, Chester, Colchester, Cole-raine, Cork, Cowes, Dartmouth, Deal, Douglas, Dover, Drogheda, Dublin, Dumfries, Dundalk, Dundee, Exeter, Falmouth, Faversham, Fleetwood, Folkestone, Fowey, Fraserburgh,

wages and other moneys of seamen and apprentices to their relatives or others by money orders issued by superintendents, and enabling the Board of Trade to cause the amount of any such money order to be paid though lost, see M. S. Act, 1854 (c. 104), ss. 177, 178.

27. Any public officer who grants or issues any money order with a fraudulent intent, is liable to be kept in penal servitude not exceeding four years. *Ibid.* s. 179.

8. Savings Banks.*

1. Generally.

28. For provisions for the establishment of savings banks for seamen at ports in the United Kingdom at mercantile marine offices or elsewhere, the appointment of treasurer, and the application to such banks of the acts now in force relating to savings banks, see 14 & 15 Vict. 1851 (c. 102), and M. S. Act, 1854 (c. 104), s. 180; and further, as to same Board of Trade Instructions to Superintendents of August, 1879, pp. 61—77.

29. These provisions apply to all seamen and their wives and families, whether belonging to the royal navy, the merchant service, or other sea service. See M. S. Act, 1854 (c. 104), s. 180, and M. S. Act Amendment Act, 1855 (c. 91), s. 17.

30. For further provisions enabling the Board of Trade to establish in London a central bank for seamen, and branch savings banks at places in the United Kingdom, with powers to constitute mercantile marine offices, branches of such banks and superintendents of mercantile marine agents of the board in reference thereto, to make regulations for the conduct of savings banks, and providing that all criminal proceedings under the act shall be carried on like similar proceedings under the M. S. Act, 1854, see 19 & 20 Vict. c. 41.

2. Allotment Notes.

31. See Pt. II. p. 2149.

9. Arbitrations by Superintendent.

32. See tit. WAGES, Pt. I. c. 2, s. 3.

10. Measure of Liability when Part Owners.

33. The provisions contained in the ninth part of the M. S. Act, 1854, for the limitation of liability of owners, are not to lessen or take away any liability to which any master or seaman, being also owner or part owner of the ship to which he belongs, is subject in his capacity of master or seaman. See M. S. Act, 1854 (c. 104), s. 516, and see generally thereon, tit. OWNERS, Pt. VI. p. 1334.

11. Liability when Families chargeable to Parish.

34. When during the absence of any seaman on a voyage his wife, children or stepchildren, or any of them, become chargeable to any union or parish in the United Kingdom, it shall be entitled to be reimbursed out of his wages earned during such voyage, sums expended during his absence in the maintenance of all or any of his relations, in the following proportions:—(1.) If only one, half of his wages; (2.) If two or more, two-thirds of his wages. *Ibid.* s. 192.

35. But if during his absence any sums have been paid by the owner to or for any such relation, under an allotment note, such claim for reimbursement shall be limited to the excess (if any) of the proportion of the wages before mentioned over the sums so paid. *Ibid.*

36. For the purpose of obtaining such reimbursement, the guardians or other

Gainsborough, Galway, Glasgow, Gloucester, Goole, Greenock, Grangemouth, Granton, Grimsby, Guernsey, Hartlepool, W., Hartlepool, E., Hayle, Harwich, Hull, Inverness, Ipswich, Jersey, Kircaldy, Kirkwall, Lancaster, Lilanelly, Leith, Lerwick, Littlehampton, Liverpool, London (Tower Hill), Londonderry, Lowestoft, Lyme, Lynn, Maldon, Maryport, Middlesbro', Milford, Newcastle, Newhaven, Newport (Monmouth), Newry, Padstow, Penzance, Perth, Peterhead, Plymouth, Poole, Portsmouth, Preston, Queenstown, Ramsgate, Rochester, Ross,

Runcorn, Rye, Scarbro', Scilly, Shields, N., Shields, S., Shoreham, Skibbereen, Sligo, Southampton, Stockton, Stornoway, Stanraer, Sunderland, Swansea, Teignmouth, Tralee, Troon, Truro, Waterford, Wells (Norfolk), Westport, Wexford, Weymouth, Whitby, Whitehaven, Wick, Wisbeach, Wigtown, Woodbridge, Workington, Yarmouth, Youghal. *Ibid.* par. 285, pp. 81, 82.

* (13) See Order in Council of March 10, 1882, approving scheme relative to naval savings banks.

parish officers in England, Ireland and Scotland, may give the owner notice in writing stating the proportion of the wages claimed, and requiring him to retain it for a period stated, not exceeding twenty-one days from the seaman's return to his port of discharge, and requiring such owner immediately on such return to give to such officers notice in writing thereof; such owner, after receiving such notice, shall be bound to retain the wages claimed, and give notice to them of the seaman's return, and to the seaman of the claim. The officers may upon the seaman's return apply in a summary way in England or Ireland to two justices having jurisdiction in such parish, and in Scotland to the sheriff of the county, for an order for such reimbursement; and such authority may make such order for reimbursement of the whole, or such less amount as they think fit; and the owner shall pay the amount so ordered and the remainder of the wages to the seaman. If no such order is obtained within the period mentioned in the notice to the owner the whole wages are payable to the seaman. *Ibid.* s. 193.

12. Medical Inspectors.*

37. Any local marine board may, on

request of the Board of Trade, appoint and remove a medical inspector of ships for the port, and fix his remuneration, subject to the control of the Board of Trade. See M. S. Act, 1854 (c. 104), s. 226.

38. At ports where there are no local marine boards the Board of Trade may appoint and remove such inspectors, and fix their remuneration. *Ibid.*

39. It is the duty of such inspectors to inspect the medicines, medical stores, lime or lemon juice or other articles, sugar and vinegar, required to be kept on board any such ships (navigating between the United Kingdom and elsewhere, and every foreign-going ship except those mentioned in s. 224). *Ibid.*

40. Such inspection, if made at places where there are local marine boards, shall be made under their direction; and in special cases or at places where there are no local marine boards, under the direction of the Board of Trade. *Ibid.*

41. Such medical inspectors shall for the purposes of such inspection have the same powers as inspectors appointed by the Board of Trade (for which see tit. OWNERS, Pt. I. p. 1208. *Ibid.*

42. Every such inspector, if required by timely notice in writing from the master, owner, or consignee, shall make his inspection three days at least before

* (14) Applications for inspection of seamen should be made by masters or owners to the superintendent of the mercantile marine office at the outport on the form headed L. J. 10, and it, like other forms, may be obtained on application at the mercantile marine office. See Board of Trade Instructions as to Medical Inspection of Seamen, Circular of May, 1876, p. 2, and Instructions to Superintendents of August, 1879, p. 53.

(15) It contains a request that the officer will, as required by the provisions of the M. S. Act, 1867 (c. 124), examine the seamen whose christian and surnames are indorsed thereon, the number of seamen being inserted in the form. The form is then signed by the master or owner of the ship in the presence of the superintendent of the mercantile marine office of the locality, who, on his part of the form, certifies to its having been signed in his presence, and that the fees required (specifying them) have been received by him, and that the medical inspector is authorized to proceed with the examination as requested. This is dated and signed by the superintendent. *Ibid.*

(16) Two shillings a-head are to be paid by the master or owner for the seamen. The superintendent having brought his fees to

account in schedule 9, forwards the document so filled up to the inspector for the port, who at once proceeds to examine the seamen. On completion of the examination he at once makes his report to the superintendent on form headed L. J. 11. This report is signed for each seaman inspected, and a duplicate is given to the owner or master. It contains the christian and surname of the man and the ship for which he was inspected, and further states that on a certain day the medical inspector examined the man and found he was fit for duty at sea, or not fit for duty at sea, for the reasons therein stated. It is signed and dated by the medical inspector and addressed to the superintendent of the mercantile marine office for the locality. The inspection is voluntary, and a seaman may decline to be inspected, and if he declines, the fact is noted in the form instead of the medical inspector's report as to the man's state. *Ibid.*

(16a) A list of the outports of the United Kingdom, giving the names and addresses of the medical inspectors upon it down to that time, is added to the Board of Trade Instructions as to the Medical Inspection of Seamen, Circular 322 A, May, 1876, No. 1324.

the ship proceeds to sea, and if the result is satisfactory shall not again make inspection before the commencement of the voyage, unless he has reason to suspect that some of the articles inspected have been subsequently removed, injured, or destroyed. See M. S. Act, 1854 (c. 104), s. 226.

43. Whenever any such medical inspector is of opinion that in any such ship any of the articles are deficient in quantity or quality, or placed in improper vessels, he shall signify the same in writing to the chief officer of customs of the port, and also to the master, owner, or consignee; and thereupon the master, before proceeding to sea, shall produce to such chief officer of customs a certificate under the hand of the same or some other medical inspector, to the effect that such deficiency or impropriety has been remedied. *Ibid.*

44. Such chief officer of customs shall not grant a clearance without the production of such certificate, and if such ship attempts to go to sea without a clearance, may detain her until such certificate is produced. *Ibid.*

45. Penalty against owner, master or consignee, if such ship proceeds to sea without the production of such certificate, not exceeding £20. *Ibid.*

46. For provisions as to the medical inspection of seamen applying for employment, see the M. S. Act, 1867 (c. 124), s. 10.

13. Costs and Compensation for Frivolous Complaints.

See tit. Costs, c. 44, p. 415.

14. Stamp Duties and Forms.

47. All instruments which by the third part of this act (*i. e.* as to masters and seamen) are required to be made in forms sanctioned by the Board of Trade if made in such form; and all instruments used by or under the direction of the Board of Trade in carrying such part of this act into effect are exempt from stamp duty. See the M. S. Act, 1854 (c. 104), s. 9; see also *Wilson v. Zulueta*, No. 86, p. 2139.

15. Sea-going Fishing Vessels.

1. Generally.

48. See tit. OWNERS, Pt. II. p. 1235.

2. Under M. S. (Fishing Boats) Act, 1883.

(a) Generally.*

49. This act, and the M. S. Acts, 1854 to 1880, the M. S. (Colonial) Act, 1869, and the M. S. (Colonial Inquiries) Act, 1882, may be cited collectively as the M. S. Acts, 1854 to 1883, and shall be construed as though they formed one act. This act shall not apply to Scotland. See the M. S. (Fishing Boats) Act, 1883 (c. 41), s. 1.

50. Such portions of the first part of this act as in any way relate to indentures of apprenticeship to the sea-fishing service, or agreements with boys under sixteen years of age with respect to such service, shall apply to all fishing vessels of twenty-five tons register tonnage and upwards. Such portions of the first part of this act as in any way relate to discipline, or the settlement of disputes between a skipper or owner and a seaman, or to deaths, injuries, punishments, ill-treatment and casualties, and sect. 25 (relating to the inspection by seamen of owners' books and accounts) shall apply to all fishing boats and to the whole fishing service. The remainder of the first part of the act shall apply to trawlers of twenty-five tons register tonnage and upwards, and to no other fishing boats. *Ibid.* s. 3.

51. In this act "fishing boat" means any vessel for the time being employed in the sea-fishing service, but shall not include a boat used by its navigators for catching fish otherwise than for profit. The onus of establishing any exemption or exception under this act shall be upon the person claiming such exemption. *Ibid.*

52. Vessels employed as tenders or carriers to fishing boats, or for the purposes of collecting and conveying to the land the catch of fishing boats, shall for the purposes of this act be deemed to be trawlers. *Ibid.* s. 52.

53. Ships engaged in the whale, seal, walrus or Newfoundland cod fisheries shall be deemed to be foreign-going ships within the M. S. Acts, 1854 to 1883, and

* (17) As to the second hand being allowed in some circumstances to act as skipper in the

skipper's absence, see Board of Trade Instructions to Superintendents of February, 1884.

not fishing vessels; provided, that the ships engaged in the Newfoundland cod fisheries do not belong to ports in Canada or Newfoundland. *Ibid.* s. 53.

54. The registered tonnage of a fishing boat registered under the M. S. Acts, 1854 to 1883, and in the case of an unregistered fishing boat, a certificate stating her registered tonnage (ascertained according to the methods sanctioned by the said acts for the ascertainment of a ship's registered tonnage), and purporting to be given under the hand of a Board of Trade surveyor, shall be conclusive of the tonnage of such boat. *Ibid.* s. 3.

55. The Board of Trade may, by order under the hand of the President of the Board of Trade, to be published in the "London Gazette," exempt any class of such trawlers, or trawlers belonging to any port, from the whole or any portion of the first part of this act from the date in such order mentioned, and may in like manner extend all or any of the provisions of the first part of this act to any fishing boats in such order mentioned; and may in like manner from time to time alter, revoke or amend any order made by the Board as aforesaid. The Board may appoint inspectors, who shall have all the powers of inspectors under the M. S. Act, 1884, to make inquiries for the purposes of this section. *Ibid.*

55a. For provisions for the issue of certificates by the Board of Trade of competency and service of skippers, or as second hands of fishing boats, and that after the 1st of January, 1884, no fishing boat shall go to sea from any port in the United Kingdom unless the skipper thereof is holder of a certificate of competency or service entitling him to act as skipper, *Ibid.* ss. 37—42, and tit. TRADE, BOARD OF—, Pt. II. c. 3.

56. The Board of Trade may establish a register of skippers and second hands certificated as in this act referred to, and a copy or extract from the said register or the register of British shipping at any port, or of fishing boats at any port, purporting to be certified by the person having the custody thereof, or his deputy or assistant, shall be legal evidence of the matters therein stated. *Ibid.* s. 41.

57. When any seaman is, under the agreement, to be paid by a share in the catch, and any dispute arises as to his share, such seaman shall be entitled to inspect, at all reasonable times, the owner's accounts and books relating to such catch; and if any owner refuses or

neglects to submit such accounts or books to such seaman's inspection upon demand made at a reasonable time, he shall, for each offence, incur a penalty not exceeding £20. *Ibid.* s. 25.

58. Every superintendent of a mercantile marine office shall inquire into and hear any dispute between a skipper or owner of a fishing boat and a seaman of a fishing boat as to a seaman's wages, or share of the profits of the voyage or trip, or share of a fishing catch or deductions therefrom, or concerning a seaman's engagement, service or discharge, which either the seaman, owner or skipper shall call upon him to decide; and his decision shall be final and binding on all parties, and shall at the request of either party be put in writing, and when so put in writing if it purports to be signed by him shall be receivable as evidence of the decision, and any facts therein stated in all legal proceedings whatever, and may be enforced by any justice of the peace who has jurisdiction. *Ibid.* s. 46.

59. As to the licensing of seamen's lodging-houses under the sanction of the Board of Trade by the sanitary authority, their inspection and other provisions relating thereto, *Ibid.* s. 48.

60. As to the records and reports to be made by the skipper of every fishing boat to the superintendents of mercantile marine offices of deaths, injuries, offences, punishments or ill-treatment occurring on board his boat while at sea in respect of any member of his crew, and the institution of inquiries, if necessary, by the superintendent of a mercantile marine office, *Ibid.* ss. 43—45.

61. For the offences of seamen and apprentices on board fishing vessels, and the punishments severally apportioned, *Ibid.* ss. 28—35.

62. For the purpose of jurisdiction, punishment, and legal proceedings and procedure, all offences under this act shall be deemed to be offences under the M. S. Acts, 1854 to 1883, and every of them, *Ibid.* s. 51.

(b) *Sea Apprentices.*

See c. 6, p. 2130.

(c) *Shipping Agreements.*

See Pt. II. p. 2144.

(d) *Running Agreements.*

Ibid. p. 2146.

Part II.—ENGAGEMENT.

1. Shipping Agreement.

1. *Generally.**

63. So much of the third part of this act as relates to the shipping of seamen in the United Kingdom applies to all seagoing British ships, wherever registered, and to their owners, masters and crews. See M. S. Act, 1854 (c. 104), s. 119.

64. And so much thereof as relates to the shipping of seamen in foreign ports applies to all ships registered in any of her Majesty's dominions abroad when they are out of the jurisdiction of their respective governments, and to their owners, masters and crews. *Ibid.* s. 109.

65. "Seamen" in this act include every person (except masters, pilots, and apprentices duly indentured and registered), employed or engaged in any capacity on board any ship. *Ibid.* s. 2.

66. The master of every ship, except ships of less than eighty tons register, exclusively employed in trading between different ports on the coasts of the United Kingdom, shall, with every seaman he carries to sea from any port in the United Kingdom as one of his crew, enter into an agreement in a form sanctioned by the Board of Trade, dated at the time of the first signature thereof, and signed by the master before any seaman signs it. It is to contain the following particulars:— (1) The nature, and, as far as practicable, the duration of the intended voyage or engagement; (2) the number and description of the crew, specifying how many are engaged as sailors; (3) the time at

which each seaman is to be on board or to begin work; (4) the capacity in which each seaman is to serve; (5) the amount of wages which each is to receive; (6) a scale of the provisions which are to be furnished to each seamen; (7) any regulations sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt, as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct. Every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seaman in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law. *Ibid.* s. 149.

67. If the master of any ship belonging to any British possession has an agreement with his crew made in due form according to the law of the possession to which such ship belongs or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign only the agreement so made. *Ibid.*

68. Any agreement with a seaman made under the above sect. 149, may, instead of stating the nature and duration of the intended voyage or engagement, state the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is not to extend. See M. S. Act, 1873 (c. 85), s. 7.

69. In home-trade ships, crews or single seamen may be engaged before a superintendent of a mercantile marine

* (18) Whenever a crew is engaged at a mercantile marine office for a long voyage, a copy of the notice to owners on this subject, and of the form Div. 3^a (referred to below), are to be inserted in the official log. See Board of Trade Instructions to Superintendents of Mercantile Marine Offices of Sept. 1880, p. 6.

(19) For provisions as to apprentices, shipping seamen abroad, seamen's articles and penalties, see Revised Statutes of U. S. ss. 4509—4523. [AMERICAN.]

(20) Articles not signed by the master as required by the General Merchant Seamen's Act, 1844. (c. 112), s. 2, now repealed, cannot be enforced. *The Lady Seaton*, Stuart's Vice-Adm. Rep. 260. [LOWER CANADA.]

(21) The shipping articles must declare explicitly the ports at which the voyage is to commence and terminate. *Mayes v. Moss*, Gilpin, 219. [AMERICAN.]

(22) A seaman who contracts for a voyage is bound to a specific performance, and may not elect to pay damages for non-performance. *Ex parte Pool*, 2 Virg. Cas. 276. [AMERICAN.]

(23) As to shipping agreements by American law, see 1 Conkling's American Admiralty Law, p. 117 *et seq.*, and Dunlap's American Admiralty Practice, pp. 219—240.

(24) If the further prosecution of the voyage becomes illegal by war, the original contract is dissolved. But if the mariners, with the consent of the master, remain on board and do duty, they are entitled to compensation in the nature of wages. *The Saratoga*, 2 Gallison's Rep. 178. [AMERICAN.]

(24a) See further, as to agreements with seamen, Board of Trade Instructions to Officers in British possessions abroad as to masters and seamen, revised January, 1875, p. 8.

office in the manner directed for foreign-going ships. See M. S. Act, 1854 (c. 104), s. 155.

70. In cases where several home-trade ships belong to the same owner, the agreement with the seamen may be made by the owner instead of by the master, and the seamen may be engaged to serve in any two or more of such ships, provided the names of the ships and the nature of the service are specified in the agreement; but with this exception all the provisions relating to ordinary agreements for home-trade ships are applicable to agreements made in pursuance of this section. *Ibid.* s. 156.

71. Penalty if a master carries any seaman to sea without entering into an agreement with him in the form, manner, place, and time required, against the master in the case of a foreign-going ship, and against the master or owner in the case of a home-trade ship, not exceeding £5. *Ibid.* s. 157.

72. In the case of home-trade ships of more than eighty tons burden, no agreement shall extend beyond the next 30th of June, or 31st of December, or the first arrival of the ship at her final port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival. *Ibid.* s. 162, sub-s. 1.

73. A mariner is entitled to know what is the precise voyage for which he undertakes. *The Eliza*, 1 Hagg. 186; *The Minerva*, *Ibid.* 350; *The Countess of Harcourt*, *Ibid.* 248; *The George Home*, *Ibid.* 375.

74. In a suit for wages an informality in the mode of hiring will not disqualify from remuneration if the work has been properly done. *The Jane and Matilda*, 1 Hagg. 193.

75. Independently of statute law, an agreement for wages may be made by word of mouth or in writing. *The Prince George*, 3 Hagg. 378.

76. The mariner's contract is for the mariner's protection. He incurs no forfeiture or penalty by not signing articles. It is only the master who does so. *Ibid.*

77. Ship's articles contained a printed

clause (usual in the Baltic trade) to the effect that should the vessel winter abroad, on account of the ice, the officers and men agreed to accept half wages during such detention. The ship went out in search of a freight, when the ice prevented her from getting a cargo, but not from sailing without one, and she wintered abroad. *Held*, that there having been no negligence in endeavouring to procure a freight, the crew were entitled only to such half wages during such her detention. *The Hoghton*, 3 Hagg. 100.

2. Masters.

78. The law will presume that the terms of a master's engagement for one voyage extend, without a new agreement express or implied, to a succeeding voyage which has been performed. *The Gananoque*, 1 Lushington, 448.

3. Coasters under Eighty Tons Register.

79. The masters of ships of less than eighty tons register employed exclusively in trading between different ports on the coast of the United Kingdom are exempted from the necessity of entering into an agreement with their seamen, as provided by sect. 149 of the M. S. Act, 1854 (c. 104).

4. Home-trade Ships belonging to the same Owner.

80. In cases where several home-trade ships belong to the same owner, the agreement with the seamen may be made by the owner instead of by the master, and the seamen may be engaged to serve in any two or more of such ships, provided the names of the ships and the nature of the service are specified in the agreement; but with that exception all provisions therein contained which relate to ordinary agreements for home-trade ships are applicable to agreements under this section. *Ibid.* s. 156.

5. Construction.

(a) Generally.*

81. Even prior to the power conferred by sect. 8 of the M. S. Act, 1880, c. 16, of

* (25) In the courts of law stricter principles of interpretation obtained, and the ignorance and improvidence of seamen, and their inability to appreciate the meaning and effect of a long multifarious instrument led to the frequent scandal of cases of great cruelty and injustice. See Mayne on Da-

pages (4th ed.), p. 212.

(26) So, when the contract was to serve for a specified time for a specified sum, the plaintiff could not recover that sum upon the contract unless he had performed it, nor upon a quantum meruit, unless the non-performance arose from the defendant's act; therefore

rescinding shipping agreements (see c. 2, p. 2148), seamen were, in the Court of

where a seaman was hired for a certain sum, "provided he proceeds, continues, and does his duty on board for the voyage," and he died before the ship's arrival, it was held that no wages could be claimed, either upon the contract or upon a *quantum meruit*. Where the service had been determined before the natural time by the wrongful act of the defendant, some questions of nicety arose, both as to the amount that might be recoverable, and the mode in which it must be sued for. See *Mayne on Damages*, 106.

(27) Or if a sailor, hired for a voyage, took a promissory note from his employer for a certain sum, on condition that he did his duty on board for the voyage, and before the arrival of the ship, he died, no wages could be claimed. *Cutter v. Powell*, 6 T. R. 320, and see same as to special contracts with seamen, 2 Smith's Leading Cases (8th ed. by Maude and Chitty), p. 1; and *Jesse v. Roy*, 1 C. M. & R. 316; 4 Tyr. 626; *Hulle v. Heightman*, 2 East, 145; 4 Esp. 75; *M' Auliff v. Bicknell*, 2 C. M. & R. 263; 1 Gale, 232; 5 Tyr. 1035; *Melville v. De Wolfe*, 4 El. & Bl. 844; 3 C. L. R. 960; 1 Jur. N.S. 758; 24 L. J. Q. B. 200.

(28) So, when a written agreement was made, it became the only evidence of the contract between the parties, and a mariner could not recover anything agreed to be given in reward for his service not specified in the articles. Thus, a promise to pay the mate of a ship, employed in the slave trade, the average price of a slave, if not in writing, could not be enforced (see *White v. Wilson*, 2 B. & P. 116; and *The Isabella*, 2 W. Rob. Adm. Rep. 241), and the same with respect to a promise to pay to a sailmaker, serving in a ship of the East India Company, a monthly sum beyond the wages in the ship's articles signed by him as sailmaker. *Elsworth v. Woolmore*, 5 Esp. N. P. C. 84.

(29) In the absence of a written agreement a claim will lie by way of "*quantum meruit*." A woman sued in the Court of Admiralty for wages for services as cook and steward, and as keeper of the ship and her stores in harbour and dock; she also acted as mariner. Payment was resisted, on the ground of her sex, but the court observed that if the work had been done and properly done, it entitled the performer to remuneration for such employment. *The Jane and Matilda*, 1 Hagg. Adm. Rep. 187. As to claims for wages on a *quantum meruit*, see further *Ealcan v. Thom*, 5 Esp. 6; *Hillyard v. Mount*, 3 C. & P. 93; *White v. Mattison*, 2 Stark, 325; *Jesse v. Roy*, 1 C. M. & R. 316; 4 Tyrw. 626.

(30) The M. S. Act, 1854 (o. 104), like its predecessor, does not render a verbal agreement for wages void, but imposes a penalty on the master, if the agreement is not in conformity with its provisions.

(31) A seaman of a fishing vessel made a special contract for wages, and afterwards was fraudulently induced to sign shipping

articles, agreeing to go on shares. Held, that he might recover on the first contract. *Baker v. Corey*, 19 Pick. 496. [AMERICAN.]

(32) It is the duty of the master to see that the contract between him and the seamen is clear and explicit. If it be doubtful, the construction most favourable to the seamen will be adopted. *Jansen v. Heinrich*, Crabbe, 226. [AMERICAN.]

(33) Any stipulations in shipping articles, which derogate from the general rights and privileges of seamen, will be held void in Admiralty, unless both the nature and operation of the stipulation were fully explained to the seamen, and an additional compensation was allowed, entirely adequate to the new restrictions imposed thereby. *Brown v. Lull*, 2 Sumner, 443; *Harden v. Gordon*, 2 Mason, 541. [AMERICAN.]

(34) The right to wages is not founded on the articles, but on the service. *Mahoon v. Brig Gloucester*, Bee, 395. [AMERICAN.]

(35) If a seaman ships on a general trading or freighting voyage, without any limitation of time or any fixed terminus of the voyage, either party may put an end to the contract at pleasure, provided it is not done at a time or under circumstances particularly inconvenient or injurious to the other party. *The Crusader*, Ware, 437.

(35a) If the shipping articles do not sufficiently describe the voyage, the seaman may leave the vessel at any time; and if the master imprison him because he refuses to remain, this is a tort. *Snow v. Wope*, 2 Curtis, C. C. 201. [AMERICAN.]

(36) If the master of a ship after the commencement of the voyage be by sickness disabled from pursuing it, and a new master is appointed, the shipping contract with the seamen is not thereby dissolved. *U. States v. Hamilton*, 1 Mason, 443; *U. States v. Haines*, 5 Gilpin, 272. [AMERICAN.]

(36a) So of the death, removal, or resignation of the original master. *U. States v. Cassidy*, 2 Sumner, 582; *Bray v. Ship Atalanta*, Bee, 48, 49; *Orne v. Townsend*, 4 Mason, 541. [AMERICAN.] See also *The Brunswick*, Stuart's Vice-Adm. Rep. 139 (Lower Canada); 2 Boulay Paty, 182; Valin, 1532, Liv. 2, tit. 7, art. 2.

(37) For forms as to engagement and discharge of seamen, &c., see 2 Maude & Pollock (4th ed. by Pollock & Bruce), pp. cccxi. to cccciv.

(37a) As to the use of the term "Continent of Europe between the river Elbe and Brest" for "Continent of Europe," see Board of Trade Instructions to Consuls of April, 1886.

(38) As to the engagement of crews of foreign-going ships, see Board of Trade Instructions to Superintendents of Mercantile Marine Offices of August, 1879, pp. 7—21; as to home-trade ships and passenger ships, *Id.* pp. 32—35; and as to colonial ships, *Id.* p. 36.

Admiralty, considered as favourites of the law, and placed particularly under its protection against circumvention, and even misapprehension and error. *The Hoghton*, 3 Hagg. 112; *The Minerva*, 1 Hagg. 358; *The Elizabeth*, 2 Dodson, 407; *The Jupiter*, 2 Hagg. 221; *The Madonna D'Idra*, 1 Dodson, 39; *The Juliana*, *Ibid.* 463; *Neave v. Pratt*, 2 N. R. 408.

82. So the court would consider how far the clauses of the agreement were reasonable and consistent with justice; bearing in mind the ignorance and imprudence of seamen. *The Prince Frederick*, 2 Hagg. 396; *The Luna*, 3 Hagg. 359; *The Test*, *Ibid.* 306.

83. And give the mariner the benefit of any doubt. *The Hoghton*, 3 Hagg. 112.

84. Stipulation in ship's articles "to return to a port in Europe." Ship lost at the mouth of the Thames. A seaman who sued under the contract for wages for some years' service, *held*, not barred by the stipulation. *The Minerva*, 1 Hagg. 357.

85. By a clause in the ship's articles, the seamen serving on board were to lose their wages if they did not return with the ship to the port of London. After serving twenty-seven months, some of the seamen were, with the consent of the captain, exchanged into another ship. *Held*, that if these seamen had lost their wages under the articles, they were entitled to a reasonable compensation for their services under the count for work and labour. *Hillyard v. Mount*, 3 Car. & P. 93; *Pennell v. McIntyre*, July 19, 1845; 17 Jur. 567 [SCOTCH]; *Dickman v. Benson*, 3 Camp. 290.

(b) Rate of Wages.*

86. By ship's articles it was agreed that seamen's wages should be so many dollars per month, payable in United States currency or its equivalent. At the time of discharge the equivalent of a dollar of the United States currency did not exceed the sum of 2s. 1d. of British

money. It was proved to be customary in the ports of London and Liverpool to pay wages, payable in dollars, at the rate of 4s. 2d. per dollar. *Held*, that even supposing the stipulation in the articles was explained to the seamen before signing (which, *semble*, it was not) it was invalid, as an imposition on such a class of men as seamen, and wages pronounced for after the rate of 4s. 2d. per dollar. *The Annie Sherwood*, 2 Asp. 214; 12 L. T. N.S. 582; 13 W. R. 641, 695.

87. The amount of wages due to a seaman under his contract was greatly lessened by a depreciation of the currency at the date of his claim, and it did not appear at what rate his wages were to be calculated. The court allowed him wages at the fullest rate. *The Nonpareil*, 33 L. J. Adm. 201.

88. The plaintiff signed articles to serve as steward at £3 per month, upon a voyage from Liverpool to the West Coast of Africa and back, "the crew, if required, to be transferred to any other ship in the same employ." The plaintiff served on board, pursuant to these articles, for a portion of the voyage, when he was transferred to another vessel of the defendant, on a promise by the master that the rate of pay for the rest of the voyage should be increased to £4 per month; and for this fresh articles were accordingly signed. On the return of the plaintiff to England, the defendant refused to pay the increased rate. *Held*, that the plaintiff was bound to serve under the original articles, and that there was therefore no consideration for the master's promise to pay the increased wages. *Fraser v. Hatton*, 3 Jur. N.S. 694; 26 L. J. C. P. 226; 2 C. B. N.S. 512.

89. *Held*, that where the contract was left imperfect as to the amount of wages, it was open to both parties to supply the omission by parol evidence, notwithstanding that the 2 Geo. 2, c. 36 (now repealed), directed that such agreements should be conclusive and binding. *The Harvey*, 2 Hagg. 82; *The Prince George*, *ibid.* 378.

* (39) If seamen be shipped without signing articles, wages at the highest rate are recoverable. See Conkling's American Admiralty Law, 117; see also Parsons on American Admiralty Law, 574—576, and vol. i. p. 466.

(39a) For caution to seamen signing agreements for payment at a fixed rate of exchange, see Board of Trade Instructions to

Superintendents of August, 1882, and *Ibid.* of April, 1884.

(40) A seaman disrated from a higher station by reason of incompetency, and afterwards duly performing the duties of a lower station, would, it would seem, be entitled to the wages due in respect of each station while he filled it. See Conkling, *Ibid.* 117.

(c) *Designation of Voyage.**

90. In interpreting the second section of 5 & 6 Will. 4, c. 19 (since repealed) the words "nature of the voyage," which is thereby directed to be specified in the mariner's contract, must have such a rational construction as to answer the leading purpose for which that section was framed, that is, to afford to the mariner as much certainty as to the import of his contract as is consistent with the reasonable convenience of trade, viz. a fair intimation of the nature of the service in which he is about to engage himself by such contract. *The Westmoreland*, 1 W. Rob. 227.

91. The M. S. Act, 1854 (c. 104), s. 149, clause 1, requires that the ship's articles should set forth the nature, and, as far as practicable, the duration of the intended voyage or engagement, and therefore the time specified in articles is only to be viewed as a particular of the intended voyage, and the substance of the articles being the performance of the voyage therein described, whether the assigned period fall short or exceed the actual time named, the voyage, if at all undertaken by the seamen, must be fully carried out and completed by them. *The American Union*, 5 (IRISH) Jur. N.S. 380.

92. Ship's articles specified the port of delivery thus: "until her return to a port of discharge in Great Britain or continent of Europe (in either case the voyage to end in Great Britain), and term of time not to exceed three years." *Held*, that on the arrival of the ship at Cowes the seamen were entitled to their discharge, and were not bound then to proceed to Holland. *The Westmoreland*, 1 W. Rob. 226.

93. Seamen executed articles for a

period not exceeding two years, and back to a port of final discharge of cargo in the United Kingdom. *Held*, not justified in leaving their vessel and demanding payment of their wages at a port of call for orders only, even although the period of two years has expired. Action for wages dismissed. *The Triumph*, 5 (IRISH) Jur. N.S. 381; see also *The Louisa Bertha*, 14 Jur. 1007.

94. The voyage in the mariner's contract was described as "from London to Batavia, the East India Seas, or elsewhere, and until the final arrival at any port or ports in Europe." *Held*, not such a sufficient indication of the ulterior port of destination as was due to the mariner, or to satisfy the 2 Geo. 2, c. 36, and that on the arrival of the ship at Cowes for orders the seamen were not bound to proceed on a further voyage to Rotterdam. *The George Home*, 1 Hagg. 370; see also *Minerva*, *ibid.* 347, 361.

95. Under a mariner's contract to navigate the ship "to Van Diemen's Land, *vid* Cork and elsewhere, and back to London," the ship sailed to Sydney, thence to Batavia, and arrived in the Downs. *Held*, that the refusal of a mariner to work under such contract from the Downs to Rotterdam did not work a forfeiture of wages. *The Countess of Harcourt*, 1 Hagg. 248.

6. *Execution.*(a) *Generally.*

96. In the case of all foreign-going ships registered in her Majesty's dominions—(1.) Every agreement made in the United Kingdom (except in the cases of agreements with substitutes therein provided for) shall be signed by each seaman

* (41) A mariner shipped on a voyage "from Boston to the Pacific, Indian, and Chinese Oceans, or elsewhere, on a trading voyage, and from thence back to Boston," two months' wages to be paid on arrival at Canton. *Held*, that the outward voyage terminated at Canton, and that it was not a desertion in a mariner to leave the ship there, and refuse to return to the north-west coast. *Brown v. Jones*, 2 Gallis. 477. [AMERICAN.]

(42) Shipping articles declared the voyage to be "from Philadelphia to South America or any other port or ports backwards and forwards, when and where required, and back to Philadelphia." *Held*, no violation of the contract with the seamen for the master to proceed from South America to Europe, and no justification to them for leaving the

vessel. *Magee v. Moss*, Gilpin, 219. [AMERICAN.]

(43) Shipping articles for a voyage "from Philadelphia to Gibraltar, other ports in Europe or South America, and back to Philadelphia," authorize a voyage directly from Gibraltar to South America, without proceeding to any intermediate European port, but not a return afterwards from South America to a European port. *Douglas v. Eyre*, Gilpin, 147. [AMERICAN.]

(43a) A description in shipping articles, of a voyage from New London to Oporto and elsewhere, means a voyage from New London to Oporto; and the words "and elsewhere" will be rejected for uncertainty. *Ely v. Pectt*, 7 Conn. 239. See *Brown v. Jones*, 2 Gallis. 477. [AMERICAN.]

in the presence of a superintendent of a mercantile marine office: (2.) Such superintendent shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that he understands it before he signs it, and shall attest each signature: (3.) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the superintendent, and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master: (4.) In the case of substitutes of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before a superintendent; and when it cannot be so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen, who shall sign the same in the presence of a witness, who shall attest their signatures. See M. S. Act, 1854 (c. 104), s. 150.

97. When crews or single seamen of home-trade ships are not engaged before a superintendent, the master shall, before the ship puts to sea, if practicable, and if not as soon afterwards as possible, cause the agreement to be read over and explained to each seaman, who shall sign it in the presence of a witness, who shall attest his signature. *Ibid.* s. 155.

(b) Alterations.

98. Every erasure or alteration in any agreement with seamen (except additions made as directed as to substitutes) is inoperative, unless proved to have been made with their consent, by the written attestation (if made in her Majesty's dominions) of some superintendent, justice, or other public functionary, or (if made out of such dominions) of a British consu-

lar officer, or, where there is no such officer, of two respectable British merchants. *Ibid.* s. 163.

7. Fraudulent Alteration.

99. The fraudulently altering or making any false entry in, or delivering a false copy of, any agreement, is a misdemeanour. *Ibid.* s. 164.

8. Stipulations.

(a) Generally.*

100. Every shipping agreement may be so framed as to contain any other stipulations which are not contrary to law. *Ibid.* s. 149.

101. Every stipulation in any agreement inconsistent with any provision of this act is wholly inoperative. *Ibid.* s. 182.

102. *Semble*, a regulation that "every seaman committed to custody for the preservation of good order shall forfeit his wages, together with everything belonging to him on board the ship," is, in point of law, a good and proper regulation. *Rice v. Haylett*, 3 Car. & P. 534.

(b) In bar or Limitation of Rights.

103. No seaman can by any agreement forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he is entitled; every stipulation in any agreement inconsistent with any provision of this act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship is inoperative. See the M. S. Act, 1854 (c. 104), s. 182.†

104. All stipulations in any agreement whereby any seaman incurs any forfeiture or loss if he enters into her Majesty's naval service are void. *Ibid.* s. 214.

(c) Regulations for Discipline sanctioned by Board of Trade.‡

105. In the agreement with every seaman whom he carries to sea from the

* (44) As to the stipulations to be inserted in articles of agreement for steam and sailing ships in regard to the load-line, see Board of Trade Instructions to Superintendents of Mercantile Marine Offices of January, 1886.

† (45) A similar enactment was contained in the preceding act, 7 & 8 Vict. c. 112, s. 5; and see the powers now given to the courts to rescind contracts, c. 2, p. 2148.

‡ (46) The following Regulations for maintaining discipline sanctioned by the Board of Trade, in pursuance of the M. S. Act, 1854 (c. 104), are distinct from and in addition to those contained in the act, and are sanctioned but not universally required by law. All or any of them may be adopted by agreement between a master and his crew, and thereupon the offences specified in such of them as are so adopted will be legally punishable by the appropriate fines or punishments. These Regulations are numbered, and the numbers of

United Kingdom to be entered into by | less than eighty tons registered tonnage,
 the master of every ship except ships of | exclusively employed in trading between

such of them as are adopted must be inserted in the space left for that purpose in the agreement, and a copy of these Regulations must be made to correspond with the agreement by erasing such of the Regulations as are not adopted, and must then be attached to and kept with the agreement which the master of the ship takes to sea with him. If the agreement is made before a superintendent, his signature or initials must be placed opposite such of the Regulations as are adopted.

For the purpose of legally enforcing any of the following penalties the same steps must be adopted as in the case of other offences punishable under the act; that is to say, a statement of the offence must, immediately after its commission, be entered in the official log-book by the direction of the master, and must at the same time be attested to be true by the signatures of the master and the mate, or one of the crew, and a copy of such entry must be furnished, or the same must be read over, to the offender, before the ship reaches any port or departs from the port at which she is, and an entry that the same has been so furnished or read over, and of the reply, if any, of the offender, must be made and signed in the same manner as the entry of the offence. These entries must, upon discharge of the offender, be shown to the superintendent before whom the offender is discharged, or, in the case of a home-trade ship, to some superintendent at or near the place where the crew is discharged, and if he is satisfied that the offence is proved, and that the entries have been properly made, the fine must be deducted from the offender's wages, and paid over to the superintendent.

If, in consequence of subsequent good conduct, the master thinks fit to remit or reduce any fine upon any member of his crew which has been entered in the log, and signifies the same to the superintendent, the fine shall be remitted or reduced accordingly. If wages are contracted for by the voyage or by share, the amount of the fines is to be ascertained in the manner in which the amount of forfeiture is ascertained in similar cases under sect. 252.

	Offence.	Amount of Fine or Punishment.
1	Not being on board at the time fixed by the agreement . . .	Two days' pay.
2	Not returning on board at the expiration of leave . . .	One day's pay.
3	Insolence or contemptuous language or behaviour towards the master or any mate . . .	One day's pay.
4	Striking or assaulting any person on board or belonging to the ship . . .	Two days' pay.
5	Quarrelling or provoking to quarrel . . .	One day's pay.
6	Swearing or using improper language . . .	One day's pay.
7	Bringing or having on board spirituous liquors . . .	Three days' pay.
8	Carrying a sheath-knife . . .	One day's pay.
9	Drunkenness—First offence . . .	Two days' half allowance of provisions.
	Ditto Second offence . . .	Two days' pay.
10	Neglect on the part of the officer in charge of the watch to place the lock-out properly . . .	Two days' pay.
11	Sleeping or gross negligence while on the look-out . . .	Two days' pay.
12	Not extinguishing lights at the times ordered . . .	One day's pay.
13	Smoking below . . .	One day's pay.
14	Neglecting to bring up, open out, and air bedding, when ordered . . .	Half a day's pay.
15	(For the cook)—Not having any meal of the crew ready at the appointed time . . .	One day's pay.
16	Not attending Divine service on Sunday, unless prevented by sickness or duty of the ship . . .	One day's pay.
17	Interrupting Divine service by indecorous conduct . . .	One day's pay.
18	Not being cleaned, shaved, and washed on Sundays . . .	One day's pay.
19	Washing clothes on a Sunday . . .	One day's pay.
20	Secreting contraband goods on board with intent to smuggle . . .	One month's pay.
21	Destroying or defacing the copy of the agreement which is made accessible to the crew . . .	One day's pay.
22	If any officer is guilty of any act or default which is made subject to a fine, he shall be liable to a fine of twice the number of days' pay which would be exacted for a like act or default from a seaman, and such fine shall be paid and applied in the same manner as other fines,	

Superintendent's signature or initials.

ports of the United Kingdom, there are to be included—any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt. See *M. S. Act, 1854 (c. 104), s. 149.*

(d) *Extra Pay.*

See tit. WAGES, c. 12.

(e) *Allotment Notes.*

See Pt. II. p. 2149.

(f) *For Deductions from Wages.*

See tit. WAGES, c. 17.

(g) *Provisions and Regulations for Short Allowance.*

106. The shipping agreement is to contain—A scale of the provisions to be furnished to each seaman; and any regulations as to short allowance of provisions sanctioned by the Board of Trade, and which the parties agree to adopt. See *M. S. Act, 1854 (c. 104), s. 149.*

9. *Special Agreement.*

107. In the construction of special agreements between owners and mariners the Court of Admiralty will take into consideration the disparity of intelligence between the contracting parties, and lean to afford protection to the mariner. *The Minerva*, 1 Hagg. 355; *The Elizabeth*, 2 Dodson, 487; *The Hoghton*, 3 Hagg. 112; *The Jupiter*, 2 Hagg. 221; *The Madonna D'Idra*, 1 Dodson, 39; *The Exeter*, 2 C. Rob. 261; *Buck v. Atwood* (1726), Stra. 761.

108. The plaintiff signed articles to serve as steward in the defendant's vessel at £3 per month, upon a voyage "from Liverpool to the west coast of Africa, to trade in any ports, bays, or rivers therein, and back to a final port of discharge in the United Kingdom, or for a term not to exceed three years." The articles contained amongst other things the following provision: "The crew, if required, to be transferred to any other ship in the same employ, and not to trade on their own account." The plaintiff served on board for a portion of the voyage, when he was transferred to another vessel of the defendant in the same trade, on a promise by the captain that the rate of pay should be £4 per month, and fresh articles

were accordingly signed. On the ship's return the defendant refused to pay the increased rate, but offered to pay at the rate of £3 per month for the whole service. *Held*, first, that the plaintiff's service was limited to three years, and therefore the articles were not invalid for being in the alternative. *Fraser v. Hatton*, 3 Jur. N.S. 694; 26 L. J. C. P. 226; 2 C. B. N.S. 512.

109. Secondly, that the provision for transferring the crew to another ship was not contrary to the 13 & 14 Vict. c. 93, s. 546. *Ibid.*

110. Thirdly, that the provision for transfer was not limited to a transfer of the whole crew collectively, but that the articles constituted an agreement between the owners and each of the crew for himself, and consequently that he was bound to serve under the original articles, and there was therefore no consideration for the master's promise to pay the increased wages. *Ibid.*

111. *Held*, fourthly, that there had been no neglect by the defendant, without sufficient cause, to pay the plaintiff at the rate of £3 per month, so as to entitle the plaintiff to double pay for such neglect under the *M. S. Act, 1854 (c. 104), s. 187. Ibid.*

112. *Held*, lastly, that the circumstance of the fresh articles not having been executed in the presence of a consular agent, was not an objection to their validity, provided they could have been set up. *Ibid.*

113. The plaintiff and the defendant, a foreign agent resident in England, on behalf of P. at Havana, entered into a written agreement that the plaintiff would proceed as fireman and stoker on board a steamer, about to leave London for Havana, to be placed in the service of P., and should receive wages of £5 per month, payable monthly, and £2 per month for provisions. During the outward voyage, rations were to be served out to the plaintiff on account of P.; the contract was to be in force for one year; and if the plaintiff was discharged before that time, three months' wages were to be paid in advance, and a homeward passage. *Held*, first, that the agreement did not require a stamp, being within the exemption in the 55 Geo. 3, c. 184, sched. tit. AGREEMENT. *Wilson v. Zulueta*, 14 Q. B. 405; 14 Jur. 366; 19 L. J. Q. B. 49; 14 J. P. Q. B. 23; 14 L. T. 251.

114. *Held*, secondly, that the defendant was liable for breaches of this agreement by not serving rations during the out-

ward passage, by the discharge of plaintiff before the steamer arrived at Havana, and by the non-payment of three months' wages in advance. *Wilson v. Zulueta*, 14 Q. B. 405; 14 Jur. 366; 19 L. J. Q. B. 49; 14 J. P. Q. B. 23; 14 L. T. 251.

115. A seaman engaging to receive a portion of the profits of the voyage in lieu of wages may maintain an action for wages against the master, and is not a partner. *Wilkinson v. Frasier*, 4 Esp. 182. And see *Dry v. Boswell*, 1 Camp. 329; *Pott v. Eyton*, 3 C. B. 32.

116. The defendant, in consideration of the plaintiff having interest at N., to procure a homeward cargo, engaged him as master. The plaintiff delivered the outward cargo, but being unable to obtain an advantageous cargo at N., obtained one elsewhere, and brought it and the vessel home. In an action for wages, held, that there was a sufficient consideration, as the contract had been executed, and there was only a partial failure of consideration. *Mills v. Blackall*, 11 Q. B. 358; 12 Jur. 93; 17 L. J. Q. B. 31.*

116a. As to agreements with fishermen to be paid by a share of the profits of the fishing voyage, see M. S. Act, 1873 (c. 85), s. 8.

10. Time Agreements.

117. The owner of home-trade ships or his agent may enter into time agreements, in forms sanctioned by the Board of Trade, with individual seamen to serve in one or more ships belonging to him. These agreements need not expire on the 30th June or the 31st December, provided a duplicate of each agreement be forwarded to the registrar-general of shipping within forty-eight hours after it has been entered into. See the M. S. Act, 1872 (c. 73), s. 16.†

11. Fishing Vessels.

(a) Generally.‡

See No. 115, *supra*.

11a. Under M. S. (Fishing Boats) Act, 1883.

118. The skipper of every fishing boat shall enter into an agreement with every seaman (not being a boy under an agreement under the act) whom he carries to sea from any port of the United Kingdom as one of his crew; and every such agreement shall be in a form sanctioned by the Board of Trade, and shall be dated on the first day of signature thereof, and shall be signed by the skipper before any seaman signs the same, and shall contain, besides the particulars enjoined by s. 149 of the M. S. Act, 1854 (c. 104) (as to which, see No. 66, p. 2136), and instead of sub-s. 5 of s. 149, the remuneration which each seaman is to receive, whether in wages or by a share of the catch, or in both ways, and the time from which each seaman's remuneration is to commence. See M. S. (Fishing Boats) Act, 1883 (c. 41), s. 13.

119. The following rules shall be observed with respect to agreements, that is to say—

(1) The skipper shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that he understands it before he signs it, and shall attest each signature.

(2) The agreement is to be signed in duplicate; one part shall be sent by the skipper to the superintendent of the mercantile marine at the port of departure, and retained by him; and the other part, which is to contain a special place or form for the description or signatures of the substitutes or persons engaged subsequently to the first departure of the fishing boat, shall be retained by the skipper.

(3) In the case of substitutes engaged in the place of seamen who have duly signed, and whose services are lost by death, desertion, or other causes, the skipper shall, before the fishing boats put to sea, if practicable, and if not, as

* (47) If seamen bargain for a certain proportion of the ship's freight instead of wages in money, in case freight is not to be had for her when she arrives at the port for which she was bound, and she must go further in quest of it, the seamen must go with her. See *Brown's Civ. and Adm. Law*, 179.

† (47a) This section corresponds with the 149th section of the M. S. Act, 1854 (c. 104), which prescribes the form of the shipping articles.

‡ (48) As to whale fishing agreements, see Board of Trade Instructions to Superintendents of August, 1879, p. 40.

(48a) For provisions as to the engagement and discharge of Shetland and Orkney men in the Northern Whale and Sea Fisheries, and the keeping of a store-book, see notice in Appendix B. to Board of Trade Instructions to Superintendents of August, 1879, p. 103.

soon afterwards as possible, cause the agreement to be read over and explained to the seamen, who shall sign the same in the presence of the skipper, who shall attest their signatures. *Ibid.* s. 14.

120. The agreement may be made by the owner or managing owner instead of by the skipper, and the seamen may be engaged to serve in two or more vessels of the same owner if the names of the vessels and the length and nature of the service, and the rate, periods, and mode of payment are specified. *Ibid.* s. 15.

121. The owners of every fishing boat shall, within forty-eight hours of the boat's departure from port on any voyage, send or cause to be sent to the superintendent of the mercantile marine at the port of departure a true report in a form to be sanctioned by the Board of Trade stating the names of the skipper, seamen, and apprentices who have gone to sea in her, and such other particulars as the Board may require. Penalty for default not exceeding £5. *Ibid.* s. 19.

121*a*. If a skipper carries to sea any seaman with whom no agreement has been made in manner and from and at the time and place required by the act. Penalty not exceeding £5 for each seaman. *Ibid.* s. 20.

12. Running Agreements.

(a) Generally.*

122. As regards foreign-going ships making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages, but so that no such agreement shall extend beyond the next following 13th of June or 31st of December, or the first arrival of the ship at her port of destination in the United Kingdom after such date, or the discharge of cargo on such arrival; and every person entering into such agreement, shall enter into and sign the same as required for other foreign-going ships. See the M. S. Act, 1854 (c. 104), s. 151.

122*a*. In cases of running agreements, the duplicate agreement retained by the superintendent upon the first engagement of the crew shall be transmitted to the registrar-general of shipping and seamen immediately, or be kept by the superintendent until its expiration, as the Board of Trade directs. *Ibid.* s. 153.

(b) Engagement pending.

123. The master of every foreign-going ship for which a running agreement is made is upon every return to any port in the United Kingdom, before the termination of the agreement, to engage before the superintendent of a mercantile marine office at such port any seaman he is required by law so to engage, and is, upon every such return, to indorse on the agreement a statement that no such engagements have been made, or are intended to be made, before the ship again leaves port, or that all such engagements have been duly made as required, and is to deliver the agreement so endorsed to the superintendent of a mercantile marine office. Penalty against any master who willfully makes a false statement in such indorsement not exceeding twenty pounds. The superintendent of a mercantile marine office is also to sign an indorsement on the agreement to the effect that the provisions of this act relating thereto have been complied with, and to re-deliver the agreement to the master. *Ibid.* s. 152.

123*a*. As to similar duties of the master of such a ship in regard to the discharge of any seaman before the termination of the agreement, see No. 163, p. 2151.

(c) Transmission or Delivery.

124. In the case of home-trade ships of more than eighty tons burden, the master or owner shall within twenty-one days after the 30th June and 31st December in each year transmit or deliver to some superintendent in the United Kingdom every agreement made within the six calendar months preceding. Penalty for default against master or owner, not exceeding £5. See the M. S. Act, 1854 (c. 104), s. 162, as amended by the M. S. Act Amendment Act, 1862 (c. 63), s. 15.

(d) Fees.

125. For determining the fees to be paid upon the engagement and discharge of seamen under running agreements, the crew shall be considered engaged when the agreement is first signed, and discharged when the agreement finally terminates, and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen. See the M. S. Act, 1854 (c. 104), s. 154.

* (49) As to running agreements, see Board of Trade Instructions to Superintendents of August, 1879, pp. 30—32.

(e) *Under M. S. (Fishing Boats) Act, 1883.**

126. In the case of fishing boats making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages, or any number of weeks, but so that no such agreement shall extend beyond the next following 30th June or 31st December, or the first arrival of the fishing boat at her port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival: but persons discharged from boats under such agreements shall be discharged in manner provided by this act. See the M. S. (Fishing Boats) Act, 1883 (c. 41), s. 16.

126a. Upon every return to port the skipper is to endorse upon every running agreement all engagements and discharges of seamen which have been made, or the fact that none have been, or are intended to be, made before the boat leaves port. Penalty against any skipper who knowingly makes a false statement £5. *Ibid.* s. 17.

127. The skipper of every fishing boat before finally leaving any port for sea during the continuance of a running agreement after the first making of it, shall sign and send to the nearest mercantile marine office a full and accurate statement in a form sanctioned by the Board of Trade,

of every change which has taken place in his crew. Penalty for breach, £5. *Ibid.* s. 21.

13. *In British Possessions.*

128. Every master of a ship registered in the United Kingdom who engages any seaman in any British possession, or if such ship belongs to any British possession, engages any seaman in any British possession other than that to which the ship belongs, shall, if there is where such seaman is engaged any official superintendent or other officer duly appointed for shipping seamen, engage such seamen before him, and if there is no such officer, then before some officer of customs; and the same rules, qualifications, and penalties as to the engagement of seamen before superintendents in the United Kingdom apply to such engagements in a British possession. Upon every such engagement such officer shall indorse on the agreement an attestation that the same was signed in his presence and otherwise made as required; and if such attestation is not made, the burden of proving that the seaman was duly engaged lies upon the master. See M. S. Act, 1854 (c. 104), s. 159.

14. *Out of Her Majesty's Dominions.†*

129. Every master of a British ship who engages any seaman out of her

* (50) As to the running agreement being accepted for the lists of crew required by sects. 19 and 21 of the M. S. (Fishing Boats) Act, 1883 (c. 41), see Board of Trade Instruction to Superintendents of February, 1884.

† (50a) Whenever a seaman is engaged in any British ship in any port where there is a consul, the sanction of the consul must be obtained; the consul must cause the agreement to be read over and explained to the seaman, or otherwise ascertain that the seaman understands it before he signs it. The seaman must then sign it in the consul's presence, or if he cannot write must make his mark. In no case is any other person to be allowed to sign or make a mark for him. The consul must attest the signature, and indorse on the agreement a statement in the form in Appendix G. See Board of Trade Instructions to Consuls, 1883, par. 50, p. 20.

(51) The consul, if he have any suspicion that a seaman is making a false statement as to his own name, or that of his last ship, should warn him that it will render him liable to a penalty of £5. The consul should ask each seaman to produce his discharge from his last ship. *Ibid.* par. 51, p. 20.

(52) In cases where an agreement has been

made with seamen, and the parties to it desire to make an alteration in it while at a foreign port, all persons interested in the alteration must appear before the consul and signify their consent, and the consul must indorse upon the agreement an attestation that the alteration has been made with such consent in the form in Appendix H. *Ibid.* par. 52, p. 20.

(53) In certain countries the engagement of the subjects of those countries on foreign service is illegal, unless they are provided with certificates from the competent authorities to the effect that there is no objection to their accepting such service. The consul should, therefore, if such a law is in force in the country to which he is accredited, warn masters of British ships, and any natives wishing to ship on board a British ship, that if they do not comply with the laws of the country in this matter, they must bear the responsibility, as her Majesty's Government will not interfere to relieve them from any consequences that may ensue, and the consul should refuse his sanction to the engagement of such natives unless they be provided with the necessary certificate. *Ibid.* par. 53, p. 20.

(54) Agreements entered into at a foreign

Majesty's dominions where there is a British consular officer shall, before carrying the seaman to sea, procure the sanction of such officer, and engage the seaman before him; and the same rules as to the engagement of seamen before shipping masters in the United Kingdom apply to such engagements before consular officers. Upon every such engagement the consular officer shall indorse upon the agreement his sanction thereof, and an attestation that it was signed in his presence and otherwise made as required. Penalty for breach against master not exceeding £20. If this indorsement and attestation is not made upon the agreement, the burden of proving the engagement lies upon the master. *Ibid.* s. 160.

129a. So much of the third part of this act as relates to shipping of seamen in foreign ports applies to all ships registered in any of her Majesty's dominions abroad, when such ships are out of the jurisdiction of their respective governments, and to their owners, masters, and crews. *Ibid.* s. 109.

15. *Lascars or Asiatics.*

130. Any master or owner of a ship, or his agent, may enter into agreements with Lascars or natives of the territories of the East India Company, binding them to proceed to any port or ports in the Australian colonies as seamen or passengers, and there to engage themselves as

seamen in any ship there, and bound to the United Kingdom, or any other part of her Majesty's dominions; and any such master or owner, or his agent, may enter into agreements with such Asiatics, binding them to proceed to any port or ports in the United Kingdom, as seamen or passengers, and there to enter into a further agreement to serve as seamen in any ship there, and bound to any port in such territories. *Ibid.* s. 544, and M. S. Act Amendment Act, 1855 (c. 91), s. 23.

131. But every such agreement must be made in such form, and under such conditions for securing the return of such Asiatics to their own country, and for other purposes, as the Governor-General of India in council, or the governors of the respective presidencies in which the agreement is made, may in council direct. If any such Asiatic so bound is, on arrival, required to enter into a further agreement to serve as a seaman in any ship bound for the United Kingdom, or other parts of her Majesty's dominions, or to any port in the territories of the East India Company, as the case may be, and it is certified by the properly appointed officer for that purpose that such further agreement is a proper one for him to enter into, and in accordance with the first agreement, that the ship is a proper ship for him to serve in, and that there is not, in the opinion of such officer, any objection to the performance of the first agreement, such Asiatic shall be

port within home-trade limits for a run to a port or ports within such limits, must be on the form (Eng. 1) for foreign articles. *Ibid.* par. 54; p. 21.

(55) On the expiration of the original period stipulated an agreement cannot be extended, as the contract becomes void. *Ibid.* par. 55, p. 21.

(56) The master and crew being in attendance, the consul should see that the provisions of the act (ss. 44, 46) as to the master's name being on the ship's register, are complied with. The provisions of the M. S. Acts which require that masters, mates, or engineers shall possess certificates of competency or service, relate only to cases in which ships go to sea from ports in the United Kingdom, and the consul cannot enforce the engagement of certificated officers. When, however, a master, mate, or engineer holds a certificate of competency or service, it should be produced to the consul, and the number of it should be inserted opposite the name of the possessor in any form in which his name appears; and whenever he does not hold one he should be reminded of the provisions of s. 136 of the

M. S. Act, 1854 (c. 104), and s. 5 of the M. S. Amendment Act, 1862 (c. 63), which would be enforced if the ship at any time in the course of the voyage should go to sea from the United Kingdom. *Ibid.* par. 61, p. 22.

(57) Certificates of competency of equal validity with those issued by the Board of Trade are issued in certain of the colonies. For particulars of these certificates, see pars. 45—48. *Ibid.* par. 62, p. 22.

(57a) A stipulation is sometimes inserted in agreements to the effect that the crew may be discharged at some port on the continent of Europe, and some misunderstanding has prevailed as to the effect of such stipulations. Masters should be made to understand that it does not enable them to discharge their crews in a foreign port without the sanction of the consul, or relieve them from the necessity of providing the men with a passage home. Seamen should be made to understand that in the event of their being discharged abroad under such a stipulation they will in all probability not be held entitled to wages for any time subsequent to their discharge. *Ibid.* par. 66, p. 23.

bound to execute, or deemed to be engaged under such further agreement, and to serve in the ship, and to be one of the crew: for every such Asiatic in respect of whom such certificate is applied for, the applicant shall pay to such officer such fee as may be appointed, not exceeding ten shillings. See M. S. Act Amendment Act, 1855 (c. 91), s. 23.

16. Posting up.

132. The master shall at the commencement of every voyage or engagement cause a legible copy of the agreement (omitting signatures) to be put up in a part of the ship accessible to the crew, penalty for default not exceeding £5. See M. S. Act, 1854 (c. 104), s. 166.

17. Evidence.

(a) Generally.

133. An abandonment of a ship relied upon as operating as a dissolution of the seamen's contract must be clearly proved. *The Warrior*, 1 Lushington, 476.

134. Any seaman may bring forward evidence to prove the contents of any agreement or otherwise to support his case, without producing or giving notice to produce the agreement or any copy thereof. See M. S. Act, 1854 (c. 104), s. 165.

135. In an action by a seaman to recover wages, the defendant is compellable to produce the ship's articles. *Johnson v. Llewellyn*, 1 Taunt. 386; 6 Esp. 101.

136. For the old cases as to the production of the agreement, see *The Lord Hobart*, 2 Dodson, 103; *Martin q. t. v. Greenleaf*, 2 Esp. 729.

(b) As to Official Log-books.

137. See tit. EVIDENCE, c. 16, p. 434.

18. Fees.*

138. As to the fees to be fixed by the Board of Trade, and payable upon all engagements and discharges effected be-

fore superintendents of mercantile marine offices, see M. S. Act, 1854 (c. 104), ss. 125, 126.

2. Jurisdiction to rescind Agreements.

139. When a proceeding is instituted in any court as to any dispute between an owner or master and a seaman or apprentice, incidental to their relation as such, or for the purpose of this section, the court may rescind any contract between them, including that of apprenticeship, upon such terms as it may think just. This power is in addition to any other jurisdiction of the court. See the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 8.

140. The term "court" above includes any magistrate or justice having jurisdiction in the matter. *Ibid.*

141. As to the old cases in reference to the construction of shipping agreements, see pp. 2137, 2138.

3. Implied Obligation of Seaworthiness by Owners.

1. Generally.

142. In every contract of service, express or implied, between the owner of a ship and the master or any seaman, and in every instrument of marine apprenticeship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner, that he, the master, and the agent charged with the loading, preparing, or sending her to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time it commences, and during the same; but nothing shall subject the owner to any liability by reason of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her is reasonable and justifiable. See M. S. Act, 1876, (c. 80), s. 5.

* (58) For provisions abolishing all fees on the engagement and discharge of seamen before superintendents in the United Kingdom, see Board of Trade Instructions to

Superintendents of August, 1882.

(58a) As to consular fees, see Board of Trade Instructions to Consuls of August, 1885, and table of fees issued therewith.

2. *Coasters.*

143. The provisions of this act do not apply to any vessel employed exclusively in going from place to place in any river or inland water of which all or part is in British possession. *Ibid.* s. 44.

4. List of Crew, Births, Marriages, Deaths, &c.

See tit. OWNERS, Pt. II. p. 1250.

5. List of Changes in Crew before Sailing.

Ibid. p. 1251.

6. Allotment Notes.*

1. *Generally.*

141. All allotment notes are to be on Board of Trade forms. See M. S. Act, 1854 (c. 104), s. 168.

2. *In whose Favour.*

145. The wife, father or mother, grandfather or grandmother, child or grandchild, brother or sister of any seaman in whose favour an allotment note of part of his wages is made, may, unless the seaman is shown in manner therein mentioned to have forfeited or ceased to be entitled to his wages, and subject, as to the wife, to the provision therein contained, recover the sums allotted by the note, with costs, from the owner or any agent who has authorized the drawing of the note, either in the county court or in the summary manner in which seamen are by this act enabled to sue for and recover wages not exceeding £50. *Ibid.* s. 169; and see No. 149, *infra*.

146. The word "owner" in the 169th section of the Merchant Shipping Act, 1854 (c. 104), where certain remedies are given against an "owner" on an allotment note does not in all cases mean the registered owner. The meaning of the word must be restrained to such actual

owner for the time being (e.g. a charterer in some cases) of the ship as either himself or his master or other authorized agent manages and controls her, and enters into the agreement for the wages of which the allotment note is part. *Meiklereid v. West*, 1 Q. B. D. 428; 45 L. J. M. C. 91; 3 Asp. N.S. 129.

147. The wife of any seaman who deserts her children, or so misconducts herself as to be undeserving of support from her husband, thereupon forfeits all right to further payments of any allotment of his wages made in her favour. See M. S. Act, 1854 (c. 104), s. 169.

3. *Stipulations as to—in Shipping Agreements.*

148. All stipulations for the allotment of any part of the wages of a seaman during his absence made at the commencement of the voyage are to be inserted in the agreement. *Ibid.* s. 168.

149. Every agreement with a seaman required by the M. S. Act, 1854 (c. 104), to be made on a Board of Trade form shall, if the seaman so require, stipulate for the allotment of any part not exceeding one-half of the wages of the seaman in favour of one or more of the persons mentioned in sect. 169 (for which see No. 145, *supra*) of the M. S. Act, 1854 (c. 104), as amended by this section. See the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 3.

4. *On Savings Banks.*

150. The allotment may be made in favour of a savings bank, according to Board of Trade Regulations, and sect. 169 of the M. S. Act, 1854 (c. 104), shall be construed as if those persons were named in the Regulations. *Ibid.* s. 3, sub-s. 2.

151. The sum received in pursuance of such allotment by a savings bank is to be paid out only on application, through a superintendent of a mercantile marine office or the Board of Trade, or by the seaman himself, or, in case of death, by some person to whom it might be paid under sect. 199 of the M. S. Act, 1854 (c. 104). *Ibid.*

* (59) See also the arrangements as to allotment notes contained in the Board of Trade Instructions to Superintendents of September, 1880, and May, 1881.

(59a) Allotment notes in Form L. when

altered in manuscript are not allotment notes in the form sanctioned by the Board of Trade, and are therefore liable to stamp duty. *Ibid.* of February, 1886.

5. *Payment.*

152. A payment under an allotment note begins at the expiration of one month, or, if the allotment is in favour of a savings bank, of three months, from the date of the agreement, or at such later date as may be fixed by the agreement, and is to be paid at the expiration of every subsequent month, or of such other periods as may be fixed by the agreement, and is paid only in respect of wages earned before the date of payment. See the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 3, sub-s. 4.

153. For the purposes of this section "savings bank" means a savings bank established under one of the following acts:—24 & 25 Vict. c. 14 (Post Office Savings Banks); 26 & 27 Vict. c. 87 (Post Office Savings Banks); 17 & 18 Vict. c. 104, s. 180 (Trustee Savings Banks); 19 & 20 Vict. c. 41 (Seamen's Savings Banks). *Ibid.*

6. *Recovery.*

154. In any such proceeding it is sufficient for the claimant to prove that he or she is the person mentioned in the note, and that the note was given by the owner or master or other authorized agent; and the seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the court, either by the official statement of the change in the crew caused by his absence signed by the master, as by this act required, or by a duly certified copy

of some entry in the official log-book to the effect that he has left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence as the court considers sufficient. See M. S. Act, 1854 (c. 104), s. 169.

See also Nos. 145—147, *supra*.

7. *Evidence.*

See tit. EVIDENCE, p. 463.

Part III.—DISCHARGE.

1. *Generally.**

155. So much of the third part of this act as relates to the discharge of seamen in the United Kingdom applies to all seagoing British ships, wherever registered, and to their owners, masters, and crews. See the M. S. Act, 1854 (c. 104), s. 109.

156. It is not necessary for a mariner to prove his own discharge; the onus of proof is thrown on the other party. *The Baltic Merchant*, Edwards, 89.

157. A mariner dismissed the ship without lawful cause is not to be deemed a deserter. *Limland v. Stephens*, 3 Esp. 269; *Sigard v. Roberts*, 3 Esp. 72.

158. The plaintiff signed ship's articles for a voyage from Liverpool to ports in America. The ship sailed on the 5th November, 1853. During the voyage the master shot one of the crew, and the ship was taken into Monte Video, and on the 5th May, 1854, the British consul

* (60) For the old cases thereon prior to this act, see *The Elizabeth*, 2 Dodson, 405, 407, 409, 411, 412; *Robinett v. The Exeter*, 2 C. Rob. 261; *The Beaver*, 3 C. Rob. 92; *Sigard v. Roberts*, 3 Esp. 72.

(61) For provisions as to the discharge of seamen, see Revised Statutes of U. S. ss. 4549—4553. [AMERICAN.]

(62) If the person substituted as master after the signing of articles is grossly incompetent to the duties of his station from want of due skill, or from grossly bad habits, or from profligate or cruel behaviour, the seamen may be justified in refusing to do duty, or to remain by the ship. *U. States v. Cassidy*, 2 Sumner, 582. [AMERICAN.]

(63) A Court of Admiralty will not discharge a seaman from his contract on account of a punishment by the master, unless in a clear case of an abuse of power. *Turner's case*, Ware, 83. [AMERICAN.]

(64) If seamen are induced to ship by a false representation as to the person who is

to command, whether they are bound by the contract, *quære?* *U. States v. Nye*, 2 Curtis, C. C. [AMERICAN.]

(65) The master is not ordinarily justified in dissolving the contract with a seaman and discharging him for a single fault, unless it is of a highly aggravated character. *Smith v. Treat*, Daveis, 266. See also *Hutchinson v. Combs*, 7 Jur. 37; Ware, 65. [AMERICAN.]

(66) The causes for which a seaman may be discharged are ordinarily such as amount to a disqualification, and show him to be an unsafe or an unfit man to have on board the vessel. *Smith v. Treat*, Daveis, 266. [AMERICAN.]

(67) To justify seamen for leaving a vessel before the termination of the voyage, on account of the cruelty of the master, it must be apparent that they could not remain without extreme danger to their personal safety. *Magee v. The Moss*, Gilpin, 219. [AMERICAN.]

there, in pursuance of the 7 & 8 Vict. c. 112, ss. 59, 60 (now repealed), sent the master to England for trial, with the witnesses, the plaintiff being one. In an action for wages, *held*, that the plaintiff having been separated from the ship at a foreign port by authority of the British legislature, and sent to England without any reasonable possibility of his ever being able to rejoin the ship during the voyage, the contract must be considered as dissolved by the supreme authority of the state, which was binding on both parties. *Melville v. De Wolf*, 1 Jur. N.S. 758; 3 C. L. R. 960; 24 L. J. Q. B. 200; 4 El. & Bl. 844.

2. Before Superintendent.

159. As to all British foreign-going ships registered in her Majesty's dominions, all seamen discharged in the United Kingdom shall be discharged and receive their wages in the presence of a superintendent, except where a competent court otherwise directs; penalty for breach against master or owner not exceeding £10. See M. S. Act, 1854 (c. 104), s. 170, and see Board of Trade Instructions to Superintendents of Mercantile Marine Offices of August, 1879, pp. 21—30; as to passenger ships, *Ibid.* pp. 32—35, and as to colonial ships, *Ibid.* p. 36.

159a. And see as to home-trade ships, *Ibid.*

3. Delivery of Shipping Agreement to Superintendent.

160. The master of every foreign-going ship shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver the agreement with his crew to a superintendent at the place; and such superintendent shall then give to the master a certificate of such delivery; and no officer of customs shall clear any foreign-going ship inwards without the production of such certificate. Penalty for default against master not exceeding £5. See M. S. Act, 1854 (c. 104), s. 161.

4. Delivery of List of Crew, and other Particulars, to Superintendent.

161. As to the lists to be made out on Board of Trade form by masters of British and foreign ships whose crews are dis-

charged in the United Kingdom, and as to the delivery thereof to a superintendent, see tit. WAGES, c. 19, s. 3.

5. Under Running Agreements.

1. Generally.

162. In the case of foreign-going ships making voyages averaging less than six months every person engaged under a running agreement if discharged in the United Kingdom shall be discharged as required in the case of seamen belonging to other foreign-going ships. See M. S. Act, 1854 (c. 104), s. 151.

162a. As to discharge under running agreements, under M. S. (Fishing Boats) Act, 1883 (c. 41), see No. 126, p. 2146.

2. Pending.

163. The master of every foreign-going ship for which such a running agreement is made shall, upon every return to any port in the United Kingdom before the termination of the agreement, discharge before the superintendent at such port any seaman he is required by law so to discharge, or shall upon every such return indorse on the agreement a statement that no such discharges have been made, or are intended to be made, before the ship again leaves port, or that all such discharges have been duly made as required, and shall deliver the agreement so indorsed to the superintendent. Penalty against any master who wilfully makes a false statement in such indorsement not exceeding £20. The superintendent shall also sign an indorsement on the agreement to the effect that the provisions of this act relating thereto have been complied with, and re-deliver it to the master. See M. S. Act, 1854 (c. 104), s. 152.

163a. As to similar duties of the master of such a ship, as to the engagement of any seaman pending the running agreement, see Pt. II. p. 2145.

163b. As to running agreements, *Ibid.*

6. By Naval Court.

164. Every naval court may discharge any seaman from his ship, and all orders by such court are conclusive in any subsequent legal proceedings. See M. S. Act, 1854 (c. 104), s. 263; see also 18 & 19 Vict. c. 91, s. 18.

165. As to the proper constitution of a naval court, see tit. JURISDICTION, Pt. II. p. 690.

7. Masters.

See tit. MASTERS, c. 3, p. 1118.

8. Certificated Mate.

166. Any mate whose certificate of competency or service has been retained by the master, shall on his discharge or on payment of his wages have his certificate returned to him by the master, besides receiving the requisite certificate of discharge (as to which see No. 172, *infra*, and No. 210, p. 2159). Penalty for breach against master not exceeding £20. See M. S. Act, 1854 (c. 104), s. 172.

167. In the case of any British ship transferred or disposed of out of H. M.'s dominions, the certificate is to be similarly returned by the master to the mate. *Ibid.* s. 205.

9. Change of Owners or Master.*

168. If the master dies on the voyage and the chief mate succeeds him, the crew are bound by the ship's articles, though the chief mate may be a foreigner. *Renno v. Bennett*, 3 G. & D. 54; 3 Q. B. 768; 6 Jur. 902; 12 L. J. Q. B. 17.

*(68) The seaman, notwithstanding a change of owners or master, continues bound to complete his original engagement, the contract itself being considered as a contract with the ship. *The Scotia*, Stuart's Vice-Adm. Rep. 166 [LOWER CANADA]; and see *United States v. Nye*, 2 Curtis, C. C. 225. [AMERICAN.]

(69) See also note 64, *supra*.

† (70) Retaining seamen on board, by direction of the owner, after the termination of the voyage for which they shipped, amounts to a new contract for the return voyage upon the same terms as the outward. *Thompson v. Faussat*, Pet. C. C. 182. [AMERICAN.]

(71) Though the consul has no magisterial power, he has the right to withhold his sanction to the discharge of a seaman and authority to summon a naval court. These powers, if properly exercised (or if not exercised the possession of them), should be sufficient to enable a consul to exercise a very considerable influence in settling disputes between masters and their crews, and may practically afford a means of punishment of many minor offences by an arrangement between the parties that certain deductions should be made from wages or certain sums should be paid as compensation. It will be for the consul to decide whether it is fit and proper in the

10. Before Commencement of Voyage or One Month's Wages earned.

169. Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, is entitled to receive from the master or owner, in addition to any wages earned, compensation not exceeding one month's wages, and may, on adducing satisfactory evidence thereof, recover such compensation as wages. See M. S. Act, 1854 (c. 104), s. 167.

170. As to old cases thereon, see *Eaken v. Thom*, 5 Esp. N. P. C. 6; *Wells v. Osman*, 2 Ld. Raym. 1044; 6 Mod. 238; *S. P. Mills and Another v. Gregory*, Sayer, 127; *The City of London*, 1 W. Rob. 88; and see *The Debreesia*, 3 Rob. 37. See also 2 Browne's Civ. and Adm. Law (2nd ed.), p. 158.

11. Abroad.†

171. So much of the third part of this act as relates to the discharge of seamen in foreign ports applies to all ships registered in any of her Majesty's dominions

circumstances of each case that it should or should not be settled without reference to a naval court. He will be able to point out what fines and penalties provided by the M. S. Acts are applicable, and will also in many cases have an additional guide in the terms of the agreement, which specifies fines for certain offences. But he should always remember that the consent of both parties is necessary to such settlements, and that his position is not that of a magistrate but of an arbitrator. In grave cases, however, he will do well to avail himself of the assistance of a naval court. See Board of Trade Instructions to Consuls, 1883, par. 173, p. 51.

(71a) See further, as to seamen discharged or left abroad, Board of Trade Instructions to Officers in British Colonial Possessions, revised January, 1875, p. 19.

(72) For the old cases thereon, see *The Elizabeth*, 2 Dodson, 412; *The Jane*, Stuart's Vice-Adm. Rep. 256. - [LOWER CANADA.] *Dunlap's American Adm. Prac.* (2nd ed.) 45.

(73) As to the American cases in reference to the discharge of seamen in foreign ports, see *Hutchinson v. Coombs*, Wars, 65; 7 Jur. 37; *Johnson v. The Coriolanus*, Crabbe, 239; *The Nimrod*, Wars, 9; *Matthews v. Offley*, 3 Sumner, 115. [AMERICAN.]

abroad, when such ships are out of the jurisdiction of their respective governments, and to their owners, masters, and crews. See M. S. Act, 1854 (c. 104), s. 109.

172. Whenever any British ship is transferred or disposed of out of her Majesty's dominions, and any seaman or apprentice does not in the presence of some British consular officer or, if none there, of one or more respectable British merchants there not interested in the ship, signify his consent in writing to complete the voyage if continued, and whenever the service of any seaman or apprentice of any British ship terminates out of her Majesty's dominions, the master shall give to each of them a certificate of discharge on the proper Board of Trade form, and, besides paying his wages, provide him with adequate employment on board some other British ship bound to the port in her Majesty's dominions at which he was shipped, or to such other port there as is agreed upon, or furnish the means of sending him back there, or provide him with a passage home, or deposit with such consular officer or merchant a sum of money deemed by such officer or merchants sufficient to defray the expenses of his subsistence and passage home; and such consular officer or merchants shall indorse upon the shipping agreement particulars of such payment, provision, or deposit. *Ibid.* s. 205.

172a. If the master refuses or neglects to comply with these requirements, such expenses, if defrayed by such consular officer or other person, shall, unless such seaman or apprentice has been guilty of barratry, be a charge upon the ship and the owner, and may be recovered against such owner, with costs, at the suit of the consular officer or other person defraying such expenses, or if they have been allowed to the consular officer out of public monies, as a debt due to her Majesty by ordinary process of law, or as seamen's wages; and if defrayed by the seaman or apprentice, as wages due to him. *Ibid.*

173. If the master of any British ship discharges any seaman or apprentice in any place in any British possession abroad without previously obtaining sanction in writing indorsed on the shipping agreement of some superintendent or similar officer appointed by the local government, or, in his absence, of the chief officer of customs at or near the place, he is guilty

of a misdemeanour, and the functionary shall examine into the grounds of such proposed discharge in a summary way, and may administer oaths for the purpose, and grant or refuse such sanction as appears just. *Ibid.* s. 207. See also *The Camilla*, Swabey, 312; 6 W. R. 840; 31 L. T. 282.

174. Upon the trial of any proceeding for discharging any seaman or apprentice contrary to this act, it lies on the master to produce the sanction, or prove that he obtained it, or that it was impracticable for him to obtain it. See M. S. Act, 1854 (c. 104), s. 208.

175. If any seaman or apprentice belonging to any British ship is discharged or left behind out of the United Kingdom, without the master's full compliance with all the provisions in this act, and becomes distressed and is relieved under this act, or if any subject of her Majesty, after having been engaged by any person (as principal or agent) to serve in any ship belonging to, or to the subject, of any foreign power, becomes distressed and is so relieved, the wages due to such seaman or apprentice, and all expenses for his subsistence, necessary clothing, conveyance home, and burial, in case he should die abroad before reaching home, shall be a charge upon the ship, whether British or foreign; and the Board of Trade may in the name of her Majesty (besides suing for the penalties incurred) recover the wages and expenses, with costs, from the master, the owner for the time being, or, in the case of such engagement for service in a foreign ship, from such master or owner, or person by whom the engagement was made. *Ibid.* s. 213.

176. Such sums shall be recoverable in the same manner as other debts due to her Majesty, or in the same manner and by the same form and process in which wages due to the seaman would be recoverable by him; and in any proceedings for that purpose, production of the account (if any) to be furnished as hereinbefore provided, together with proof of payment by the Board of Trade or the paymaster-general of the charges incurred, shall be sufficient evidence that the man was relieved, conveyed home, or buried (as the case may be) at her Majesty's expense. *Ibid.* s. 213.

177. The Court will not award conduct money in the case of a British registered ship. *The Patriotto*, 11 L. T. N.S. 149; 8 (IRISH) Jur. N.S. 317; 2 Asp. 129.

12. Deviation.*

178. A strict observance of the specified conditions of the mariner's contract as to the voyage is required from the owner. A spontaneous deviation of importance therefrom entitles mariners to their discharge by the law of England; but *aliter* as to deviations arising from unavoidable accident, necessity, or overruling authority. Where by some other codes such alterations are permitted, the mariners are *held* entitled to be compensated. Mariners should be compensated for all material deviations. *The Cambridge*, 2 Hagg. 247, 252.

179. If the master vary the voyage, the seaman can only demand payment for the time he served the ship in port if he do not choose to accompany her on her new destination. The seamen cannot compel the execution of the original contract. *The Elizabeth*, 2 Dodson, 408.

180. The master having set out on a further voyage, not specified in the mariner's contract, and having altered the contract accordingly without the consent of the seamen, they quitted the ship without permission. Claim for wages pronounced for, with half wages from the time of their quitting the ship. *The Eliza*, 1 Hagg. 182.

181. The voyage stated in the ship's articles to be from London to Madras and

Calcutta, and back to the port of London, was deviated from under a new charter-party to the extent of going to the Prince of Wales' Island, and from thence to Calcutta, occasioning the delay of a month. The deviation was not notified, but was known at Madras to the crew, who were dissatisfied, but did not remonstrate. A mariner, on arriving at Calcutta, demanded his discharge, and refused to work in discharging the cargo, for which he was put in irons till the unloading was completed, when he quitted the vessel. *Held*, that such proposed deviation entitled the mariner to his discharge at Madras; that his remaining on board and doing duty on the altered voyage was not an implied consent, nor as the vessel was not, under such new charter-party, to return direct from Calcutta to England, a renewal of his engagement. Wages up to his quitting the ship pronounced for, with costs; though the court inclined to the opinion that the mariner had acted illegally in refusing to work in the discharge of the cargo. *The Cambridge*, 2 Hagg. 243.

13. Conclusion of Voyage generally.†

182. Wages in general are due upon the ship's arrival at the first port of des-

* (74) An alteration of the voyage excuses the mariners for leaving the vessel. *Potter v. Allen*, 2 Root, 63; *Moran v. Baudin*, 2 Pet. Ad. 415. [AMERICAN.]

(75) A change of voyage from that specified in the shipping articles must be actually resolved on and known to a seaman, to authorize him to leave a vessel without forfeiting his wages. *Douglas v. Eyre*, Gilpin, 147. [AMERICAN.]

(76) It is not such deviation as will discharge seamen from their articles, if a ship, through necessity of repairs, puts into a port to make them, and it is the duty of the seamen to remain by the vessel if the repairs can be made within a reasonable time. *Botker v. Towner*, 3 E. D. Smith (N. Y.) 132. [AMERICAN.]

(77) The shipping articles authorized the master to touch at certain intermediate ports, or as he might direct. *Held*, no violation of his contract with the seamen to stop at a place not named, and no justification to them for leaving the vessel. *Wood v. The Nimrod* (*Magee v. Moss*), Gilpin, 83. [AMERICAN.]

(78) Seamen shipped for "a voyage from the port of Liverpool to Constantinople, thence (if required) to any ports or places in the Mediterranean or Black Seas, or wherever

freight may offer, with liberty to call at a port for orders, and until her return to a final port of destination in the United Kingdom, or for a term not to exceed twelve months." The ship went to Constantinople, then returned to Malta, whence, instead of going to a port of destination in the United Kingdom, she came direct to Quebec in search of freight. *Held*, that coming to Quebec could not be considered a prosecution of the voyage. *The Varuna*, Stuart's Vice-Adm. Rep. 357. [LOWER CANADA.]

† (79) In the absence of a written contract a seaman is bound by an implicit contract to remain with the ship till the voyage is ended and the cargo discharged. *Jansen v. Heinrich*, Crabbe, 226. [AMERICAN.]

(80) Generally the termination of a voyage is not completed by the unloading of the cargo at or coming to a port of delivery, but by arrival at the port whence the vessel set out, if the contract was for the whole voyage and not by the run or freight. See 2 Brown's Civ. and Adm. Law (2nd ed.), p. 185. But see the question as to the end of the voyage discussed in Dunlap's American Admiralty Practice, 105; and as to coasting voyages, *ibid.* 124 *et seq.* See also 2 Parsons on American Admiralty Law, 577.

tinuation or delivery. In a voyage from England to Newfoundland, and thence with fish to Spain, *held*, that Newfoundland was not a port of delivery. *Herniman v. Bawden*, 3 Burr. 1844.

183. The articles stipulated for a run to the port of Hull, and the port being too full for entry, the vessel anchored in the mouth of the river, and the seamen left. *Held*, that the vessel had not arrived at the port of Hull. Wages forfeited by reason of such desertion, though *held* not to be a malicious desertion. *The Pearl*, 5 C. Rob. 224.

184. The master having set out on a further voyage, not specified in the mariners' contract, and having altered the contract accordingly without the consent of the mariners, they quitted the ship without permission. Claim for wages pronounced for. *The Eliza*, 1 Hagg. 182.

14. Change of Adventure.*

185. The plaintiff was engaged by the defendant for a voyage not to exceed twelve months from London to any port or ports in North or South America and back to Europe. After sailing war was declared between Spain and Peru, and the vessel was then employed as a tender or store ship to two Peruvian vessels of war, and sailed under the orders of a Peruvian officer. The vessel having put

into Rio, the plaintiff refused to proceed any further, and landed, when he was arrested by the Peruvian authorities as a deserter from a Peruvian vessel, and imprisoned for some days. On coming out of prison he found the vessel had sailed with his clothes, &c., on board. The plaintiff subsequently brought an action against the defendant for a breach of the contract under which he shipped. *Held* (Bramwell, B. *dubitante*), that the contract was to employ the plaintiff on an ordinary commercial voyage, and that the manner in which the vessel had been employed, if not absolutely illegal under the 59 Geo. 3, c. 69, at any rate amounted to a breach of such contract. *Burton v. Pinkerton*, L. R. 2 Ex. 340; 86 L. J. Ex. 137; 2 Asp. 494, 547.

186. *Held*, also, that he was entitled to damages for loss of wages, and that he was entitled to something under the head of general damage for some of the inconveniences he had suffered, but that (Kelly, C. B., dissenting) he was not entitled to anything for the loss of his clothes, or for the imprisonment, such damage being too remote. *Ibid*.

See also Nos. 178—180, 184, *supra*.

15. Dissolution of Adventure.†

187. If the voyage is broken up by consent, and the seamen continue under new

(81) When a seaman ships for a general trading voyage, with no limitation except as to time, the master has a right to his services for that time, between such ports as he may choose, and if he deserts before the expiration of the time, his wages, earned before such desertion, are forfeited. *Noble v. Steele*, 42 Maine, 518. [AMERICAN.]

(82) If the shipping articles do not sufficiently describe the voyage, a seaman may leave the vessel at any time, and if the master imprison him because he refuses to remain and do duty on board, this is a tort. *Snow v. Wope*, 2 Curtis, C. C. 301. [AMERICAN.]

(83) By the well-settled principles of maritime law, where seamen employed for a voyage, or by the month, voluntarily leave the vessel before the termination of the voyage, or the expiration of the time for which they hired, without good cause, or the consent of the master, they will thereby forfeit the wages previously earned. *The Swallow*, Olcott, Adm. 4. [AMERICAN.]

(84) When a ship takes ground within her port of destination, but before arriving at her place of mooring, and afterwards, without having furled her sails or cast anchor, floats

off, and comes to her moorings, the voyage is not ended, and consequently wages are not earned until she has arrived at her moorings. *Taber v. Nye*, 12 Pick. 105. [AMERICAN.]

* (85) The desertion of seamen during a second voyage substituted by parol agreement, for a series of voyages, for which a written contract had been made, and afterwards terminated by consent, cannot be made to enure to the master as a forfeiture of wages earned and due under the first one. *Piehl v. Balchen*, Olcott, Adm. 24. [AMERICAN.]

† (86) A voyage was broken up abroad by a seizure for violating the revenue laws of a foreign country. The seamen *held* only entitled to wages to the time of the seizure. *Oarard v. Dean*, 10 Mass. 143. [AMERICAN.]

(87) A voyage was broken up by seizure for the debts of the owner. Wages *pro tanto* to the time of the seizure were allowed, and one month's additional pay. *Wolf v. Brig Oder* (*Hindman v. Shaw*), *ibid*. 261. [AMERICAN.]

(88) If pending the voyage there be an interdiction of commerce with the port of destination, by war or otherwise, by which the voyage is broken up, no wages are due.

articles on another voyage, they cannot claim under the first articles wages subsequent to the breaking up of the voyage. *The Sophia*, Stuart's Vice-Adm. Rep. 219. [LOWER CANADA.] See also *The Elizabeth*, 1 Dodson, 403.

16. Sale or Transfer of Ship.*

188. When a change of ownership in a British ship takes place, by sale in this country, whilst she is in a foreign port, the contract under which the crew shipped is (*quoad* the new owner) at an end; but if one of the crew continues to serve on board the vessel at the request of an agent of the new owner without entering into any fresh articles, and afterwards, and before the termination of the contemplated voyage, quits with the consent of the master appointed by the new owner, he may, in an action against such

new owner, recover wages *pro rata*. *Robins v. Power*, 4 C. B. N.S. 778; 4 Jur. N.S. 810; 27 L. J. C. P. 257.

189. As to the discharge of the seamen on the sale or transfer of any British ship out of her Majesty's dominions, see M. S. Act, 1854 (c. 104), s. 205; and Nos. 172—177, p. 2153.

17. Abandonment of Ship.

190. The contract with the seamen may be dissolved by the abandonment of the vessel, but the abandonment must be clearly proved. *The Warrior*, 6 L. T. N.S. 133; 1 Lushington, 476.

18. Unseaworthiness.†

191. As to the implied obligation of seaworthiness by owners, see Pt. II. p. 2148.

But if the mariners are subsequently retained by the master to refit the ship, they are entitled to a reasonable compensation. *The Saratoga*, 2 Gallis. 164. [AMERICAN.]

(89) In case of the dissolution of the adventure upon the homeward voyage, seamen are entitled to wages only for the outward voyage and for half the time of detention at the last port before sailing for home. *Locke v. Swan*, 13 Mass. 76; *Swift v. Clark*, 15 Mass. 173; *Hooper v. Perley*, 11 Mass. 545. And they are so entitled, even if they have entered into an agreement not to demand their wages until the return of the ship to her port in the United States, and the delivery of cargo. *Swift v. Clark*, 15 Mass. 173. See also Dunlap's Adm. Prac. 68. [AMERICAN.]

(90) If the voyage be interrupted without the fault of the crew, they shall receive wages during the time they work on board the vessel in port. *The Ship Atalanta*, Bee, 48. [AMERICAN.]

(91) Seamen shipped for a specified voyage which was broken up without justifiable cause, *held*, entitled to their discharge and to damages. *Campbell v. Steamer Uncle Sam*, 1 McAll, C. C. (Cal.) 77. [AMERICAN.]

(92) See also Dunlap's American Admiralty Practice, pp. 45, 68, 77.

* (93) The discharge of the crew by sale of the vessel on execution has the same effect on their rights as the breaking up of the voyage or discharge of the crew by act of the master. *The Hudson*, Olcott, Adm. 396. [AMERICAN.]

(94) A vessel was sold under a decree of the Admiralty at Providence, R. I., at the suit of others of the crew. The libellants

had notice of the proceedings, but did not apply for their wages. *Held*, that their lien on the vessel was at an end. *Trump v. The Ship Thomas*, Bee, 86. [AMERICAN.]

(95) A vessel sailed with a cargo on a voyage from New York to New Orleans and back. She remained at New Orleans more than a year after her arrival, waiting for freight, when the master discharged the seamen, and persuaded them to return with him in another vessel to New York, and get their wages. Afterwards the vessel was sold while at New Orleans, and went a voyage to Liverpool, and thence to New York. Upon her arrival in New York, she was libelled by the seamen for their wages. *Held*, that the forbearance of the seamen to libel the vessel in the port of their discharge was no waiver of their lien, and that they were entitled to full wages to the time of their return to New York. *The Mary*, Paine, 180. [AMERICAN.]

† (96) For the old cases *contra*, see *Conch v. Steel*, 3 Bl. & Bl. 402; 18 Jur. 515; 28 L. J. Q. B. 121; *Eaken v. Thom*, 5 Esp. N. P. C. 6.

(97) Unseaworthiness of a vessel releases the crew from obligation to sail with her, and on showing such condition of the vessel, and that they left her on that account, they may maintain an action *in personam* for wages here, although all parties are foreigners, and are under agreement not to sue while abroad. *The Moslem*, Olcott, Adm. 289, 378; *United States v. Nye*, 2 Curtis, C. C. 225; *United States v. Matthews*, 2 Sumner, 13; *Patrick v. Hallett*, 3 Johns. Cas. 76; *Talcot v. Commercial Ins. Co.*, 2 Johns. 124; *Talcot v. Marine Ins. Co.*, 2 Johns. 130; *Porter v. Andrews*, 9 Johns. 350; *The William Harris*, Ware, 367; 3 Kent's Com. 177. [AMERICAN.]

192. When a seaman signs articles at a foreign port there is an implied warranty of seamanship, and if the ship is unseaworthy, there is consideration for a new contract for extra reward to induce him to sail in her. *Turner v. Owen*, 3 F. & F. 176; see also *Hartley v. Ponsonby*, 7 El. & Bl. 872; 3 Jur. N.S. 746; 26 L. J. Q. B. 322; 5 W. Rob. 659.

193. As to the circumstances under which a vessel will be deemed unseaworthy, see *Christie v. Trott*, 22 L. T. 101.

19. Wreck, or Loss of Ship.

194. The seaman is bound to navigate the ship even in adverse weather inducing shipwreck, and to exert himself to save as much of the ship and cargo as he can. *The Neptune*, 1 Hagg. 236; *The Warrior*, 6 L. T. N.S. 133; 1 Lushington, 476.

195. The authority of the master does not merge in the misfortune of wreck, nor are the seamen at liberty, without staying a reasonable time for the recovery of parts of the ship and cargo (if there be any prospect in his judgment of such recovery), immediately to disperse themselves without some discharge from him. *The Neptune*, *Ibid.* 238.

196. When a merchant ship is abandoned at sea *sine spe revertendi aut recuperandi* in consequence of damage received and the state of the elements, such abandonment taking place *bond fide* and by order of the master for the purpose of saving life, the contract with the mariners is concluded. *The Florence*, 16 Jur. 572.

197. If upon a ship being wrecked the master, improperly disregarding the interests of the owners, discharges the sea-

men, the discharge is nevertheless valid, unless the seamen are proved to have fraudulently accepted their discharge. *The Warrior*, 1 Lushington, 476; 6 L. T. N.S. 133.

198. The master, also co-owner of a ship wrecked in a foreign port, finding it impossible to repair her to a profit, sold the wreck, and on intimation to the other co-owners in this country they did not elect to abandon, but took the benefit of the sale. The master returned home, and was engaged for a considerable period adjusting matters with the underwriters, who would not settle without certain explanations from the master. *Held*, in an action against his co-owners, that he was entitled to payment of his passage money home, and his wages as master from the period of the wreck down to the settlement with the underwriters, the wages being viewed as fixing the rate of charge *quod* agent of the co-owners. *McLagan v. Chime*, March 3rd, 1848; 10 D. 847; 20 Jur. 296. [SCOTCH.]

199. Every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship is wholly inoperative. See M. S. Act, 1854 (c. 104), s. 182.

200. In all cases of wreck or loss of ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo, and stores, bars his claim to wages. *Ibid.* s. 183.

201. Where the service of a seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, the seaman is entitled to wages for the time of service prior to such termination, but no further. *Ibid.* s. 185.*

* (98) For the old law prior to this enactment, see *The Neptune*, 1 Hagg. 239; 7 Jur. 542; *Appleby v. Dodds*, 8 East, 300; *Dunkley v. Bulwer*, 6 Esp. 86; 2 Camp. 320, n.; 1 Sid. 179; 7 Jur. 542; *Anon.*, 2 Show. 283; *Saunders v. Drew*, 3 B. & A. 445; *Brown v. Milner*, 7 Taunt. 319; *The Juliana*, 2 Dodson, 510—516; *The Lady Durham*, 3 Hagg. 202; *Campion v. Nicholas*, Str. 405; *Hernaman v. Hauden*, 3 B. M. 1844; *Harris v. Ives*, Har. & W. 238; *The Reliance*, 2 W. Rob. 122.

(99) Under the 7 & 8 Vict. c. 112, s. 17, now repealed, the seaman was required to produce the certificate of some officer of the ship that "he had exerted himself to the utmost to save the ship," and thus the payment of his wages was contingent on the master being found, and if found, on his consent to certify. Now, however, the *onus* of proof rests on those who

impugn the conduct of the seaman, and who can more readily (if he failed in the performance of his duty) adduce evidence of the fact than he could for establishing the opposite proposition. Digby Seymour on the M. S. Act, 1854, p. 134.

(100) When a voyage is broken up by shipwreck, the master's wages cease from the time the ship and cargo pass out of his hands. For securing and remitting funds to the owners, he is entitled to a just remuneration. *McGilvery v. Stackpole*, 38 Maine (3 Heath), 283. [AMERICAN.]

(101) The duty of a master of a vessel is not discharged in case of disaster until the ship is in a place of safety, or in case of loss, until the proceeds which may be saved are placed at the disposal of the owners, and he is entitled to recover a *quantum meruit* for

20. Capture.*

202. As to the effect of capture on the right to wages, see tit. WAGES, c. 16.

such services, and his expenses for board and medical attendance after the disaster. *Duncan v. Reed*, 39 Maine (4 Heath), 415. [AMERICAN.]

(102) A master employed by the owners of a vessel, though paid by the charterer, has no claim upon the charterer for his services after the wreck of the vessel, in superintending labourers employed by the owners and the underwriters in saving the vessel and cargo. *McGilvery v. Capen*, 7 Gray (Mass.), 523.

(103) The crew of a vessel are not authorized to make without the order of the master a jettison of any part of the cargo in case of a distress. *The Nimrod*, Ware, 9. [AMERICAN.]

(104) Seamen deserting a vessel, under circumstances of distress or danger, forfeit their wages, and are answerable for the damages which may be sustained in consequence of their dereliction of duty. *The Woodrop Sims*, 2 Pet. Adm. 393. [AMERICAN.]

(105) The contract of the seamen is not dissolved by shipwreck; but they are bound to labour to preserve the wreck of ship and cargo; and if they leave the ship without endeavouring to save them they desert their duty, and may forfeit wages antecedently due. *The Two Catherines*, 2 Mason, 319. [AMERICAN.]

(106) The crew of a vessel voluntarily stranded to avoid being driven on a rocky and dangerous part of the coast, are entitled to wages while employed in saving the cargo even after the sale of the vessel is determined upon. *Barnard v. Adams*, 10 How. (U. S.) 270. [AMERICAN.]

(107) It is the duty of mariners to use their utmost endeavours to save the ship, and if they preserve part thereof, the master is bound to allow them a reasonable consideration to enable them to reach their native country; but if they do not use such endeavours, they are not entitled to such provision, but wholly lose their wages on the loss of the ship. Laws of Oleron, cited in Godolphin's Adm. Jur. (2nd ed.), anno 1685, ext. 3.

(108) These "utmost exertions" on the part of a seaman were regarded at common law as his paramount duty, necessarily arising from the nature of his service, and therefore a promise made by the master, when a ship was in distress, to pay an extra sum to a mariner as an inducement to extraordinary exertion on his part, was held by Lord Kenyon to be wholly void. *Harris v. Watson*, Peake's N. P. C. 72.

(109) In cases of shipwreck the seamen are entitled to claim according to the merit of their services an extra reward beyond their

21. Volunteering into the Royal Navy.

See tit. PRACTICE, Pt. III. p. 1702.

wages against the property saved. *The Dawn*, Daveis, 121. [AMERICAN.]

(110) This ought not generally to be less than the expenses of their return home. *Ibid.*

(111) This being in the nature of a salvage reward may be allowed as well against the savings of the cargo as against the payment for the ship as a wreck. *Ibid.*

* (112) In an action for the wages of a seaman after a capture and ransom of the ship, held, that the seaman was entitled to nothing, he being unable to prove that by the custom of merchants he was entitled *pro rata*, as was insisted on his behalf. (See *Chandler v. Meade*, mentioned at the end of the case of *Wiggins v. Ingleton*, 2 Ld. Raym. 1211.) But it seems to be the better opinion that in the case of capture and recapture, if the ship perform her voyage a mariner who has not been separated from her is entitled to his wages on the footing of the original contract, subject perhaps to a proportionate salvage. Abb. Sh. (12th ed.), p. 467.

(113) It is the right and duty of the mariners of a neutral ship after capture to remain by the ship while there is any hope of recovering the property. *Brown v. Lull*, 2 Sumner's Rep. 443. [AMERICAN.]

(113a) This is generally gone when there is a sentence of condemnation, and *a fortiori* when there is a sale thereof pending the proceedings, or under the sentence of condemnation. *Ibid.*

(114) The capture of a neutral ship does not of itself operate as a dissolution of the contract for mariner's wages, but at most only as a suspension of it. *Ibid.*

(115) Capture does not dissolve the contract for wages; at most it is but suspended during the prize proceedings, for the event of which the parties have a right to wait: and by the subsequent restoration of the vessel, the contract revives in its full force, and the parties are remitted to their former character and rights. *The Saratoga*, 2 Gallison's Rep. 178. [AMERICAN.]

(116) If the ship be condemned by a sentence of condemnation, then the contract is dissolved and the seamen are discharged from any further duty on board; and they lose their wages, unless there is a subsequent restitution of the property or of its equivalent value, upon an appeal, or by treaty, with an allowance of freight, in which event their claim for wages revives. *Brown v. Lull*, 2 Sumner's Rep. 443. [AMERICAN.]

(117) If the ship be restored and perform her voyage, the contract is revived, and the mariner becomes entitled to his wages; that is, to his full wages for the whole voyage, if he has remained on board and done his duty, or if, being taken out, he has been unable

22. Illness.*

203. Illness held to be a reasonable and legal cause for a mariner leaving the ship before delivery of cargo or a legal discharge. *The Test*, 3 Hagg. 315.

204. For provisions for the protection of seamen in cases of illness, see Pt. IV. p. 2170.

23. Mutiny.

205. Mariners are not discharged from their duty to the owners of a ship in consequence of a mutiny. They are bound, if possible, to recover the ship by using their best endeavours whenever there is a reasonable prospect of success, but not to sacrifice their lives wantonly. *The Governor Raffles*, 2 Dodson, 18.

24. First and Second Engineers.**1. For Misconduct.**

206. A chief engineer who refused to go to sea unless certain repairs (which the court found to be unnecessary) was done, and who initiated a protest amongst the crew to a similar effect, was dismissed. Held, that his dismissal was justified. *The Marina*, 50 L. J. P. D. 33.

25. Crews of Foreign Ships.**1. Compensation for Wrongful Discharge.**

See tit. WAGES, c. 14.

26. Account of Wages.

207. As to the account of all wages and deductions therefrom to be delivered by the master to the seaman or to the super-

intendent twenty-four hours before the seaman's discharge, see tit. WAGES, c. 19.

208. As to the entry in the official log of the sum due to any seaman or apprentice dying on board any British ship, see M. S. Act, 1854 (c. 104), s. 194, and No. 428, p. 2192.

209. As to the account of wages to be given by the master of any British ship, as due to a seaman or apprentice who dies during the voyage or engagement, to the Board of Trade, British consular officer, officer of customs, or other officer, in the form they may require; and as to the allowance of such account, the vouchers which may be required, the deductions claimed therein, and the verifications thereof, *Ibid.* s. 195, and Pt. VI. p. 2191.

27. Certificate of—

210. Upon the discharge of any seaman, or payment of his wages, the master shall sign and give him a certificate of discharge, on a Board of Trade form, specifying the period of service and time and place of discharge. Penalty for breach against master not exceeding £10. *Ibid.* s. 172.

211. No action will lie against a master for refusing to give a seaman the certificate of discharge required by the 172nd section of the M. S. Act, 1854 (c. 104). The only remedy is to proceed for the penalty. *Vallance v. Falle*, 13 Q. B. D. 109; 53 L. J. Q. B. 459; 51 L. T. 158; 48 J. P. 519; 32 W. R. 769; 5 Asp. 280.

212. As to the certificate to be given to every seaman or apprentice of a British ship discharged out of her Majesty's dominions, on the ship being transferred or disposed of there, see No. 172, p. 2153.

without any fault of his own to rejoin the ship. *Ibid.*

(118) A seaman signed articles without reading them, for a voyage from New York to Archangel and back, as represented to him, but not in fact. The vessel went to Sicily, Sardinia, and Messina, at which places she disposed of her outward cargo, and at the latter place lay seven months, and took her return cargo. She left Messina for Gottenburg, and on her voyage thither was captured, carried in, and condemned. Held, that the seaman was entitled to wages to the arrival and during the stay at Messina, but not from Messina, that being a new voyage, and the capture put an end to the freight as well as the wages for that voyage. *Murray v. Kellogg*, 9 Johns. 227. [AMERICAN.]

* (119) When a seaman can safely proceed on his voyage he is not entitled to his discharge by reason of a temporary illness. *The Tweed*, Stuart's Vice-Adm. Rep. 132. [LOWER CANADA.]

(120) Abandoning a seaman disabled in the service of the ship without providing for his support and cure, held equivalent to wrongful discharge. *The Atlantic*, Stuart's Vice-Adm. Rep. 125. See also Leg. Oleron, Art. 7; Leg. Wisbuy, Art. 19; Leg. Hanse Towns, Art. 45; Ordonnance de la Marine, liv. 3, tit. 4, art. 11; Valin sur l'Art. 11; de l'Ord., tom. 1, p. 721; Locre sur l'Art. 264; du Code Pothier Louage des Matelots, No. 189; *Harden v. Gordon*, 2 Mason, 541; *Reed v. Cunfield*, 1 Sumner, 195.

28. Report of Character.

213. Upon every discharge before a superintendent the master shall make and sign on a Board of Trade form a report of the conduct, character, and qualifications of the persons discharged, or may state in a column in the form that he declines to give any opinion upon such particulars or any of them. The superintendent shall transmit the same to the registrar-general of shipping and seamen or other officer directed by the Board of Trade, to be recorded, and shall, if desired so to do by any seaman, give him or indorse on his certificate of discharge a copy of so much of such report as concerns him. Every person forging or fraudulently altering or using any false certificate or report, or copy, is guilty of a misdemeanour. See M. S. Act, 1854 (c. 104), s. 176.

214. Every master required to keep an official log must enter therein (*inter alia*) a statement of the conduct, character, and qualifications of each of his crew, or a statement that he declines to give an opinion on such particulars. *Ibid.* s. 282.

215. As to entries in official log generally, see tit. EVIDENCE, p. 434.

29. Payment of Wages.

See tit. WAGES, c. 19.

30. Evidence.**1. Generally.**

216. It is not necessary for a mariner to prove his own discharge, the burthen

of proof thereof is thrown on the other party. *The Baltic Merchant*, Edwards, 89.

2. Entries in Official Log.

217. Upon the trial of any information, indictment or other proceeding, against any person for discharging or leaving behind any seaman or apprentice contrary to the provisions of this act, it shall lie upon such person either to produce the sanction or certificate required by the act, or to prove that he obtained the same previously to having discharged or left behind such seaman or apprentice, or that it was impracticable to obtain such sanction or certificate. See M. S. Act, 1854 (c. 104), s. 208.

31. Release.

See tit. WAGES, c. 19.

32. Fees.

See Pt. II. p. 2148.

Part IV. PROTECTION.**1. Space Accommodation.**

See tit. OWNERS, Pt. I. p. 1190.

2. Personal Injury.**1. Generally.***

* (121) For provisions for the protection and relief of seamen, see Revised Statutes of U. S., ss. 4554—4591. [AMERICAN.]

(122) A libel may be maintained in the Admiralty by a father for the consequential damages resulting from an assault and battery of his minor child on the high seas; but to support the action he must show either actual damage, or what is held to be such by intendment of law. *Plummer v. Webb*, Ware R. 75; *Dunlap's Adm. Prac.* 65. [AMERICAN.]

(123) The action may be maintained after the death of the child, although the death was occasioned by the severity of the battery. *Ibid.*

(124) A seaman is entitled to recover damages for an assault and battery—1. When personal violence has been inflicted, if not excessively, yet wantonly and without provocation. 2. When there was provocation and cause, but the punishment was excessive.

3. When the punishment was inflicted with a deadly or dangerous weapon. A rope is the proper instrument. *Forbes v. Parsons*, Crabbe, 283; *Johnson v. Dalton*, 1 Cow. 543; *Benton v. Whitney*, Crabbe, 417; *Carleton v. Davis*, Daveis, 221; *Fuller v. Colby*, 3 W. & M. 1. [AMERICAN.]

(125) In a libel by the seaman against the master for assault and battery, a release of all complaints, required by the master before he would pay the wages due, will be disregarded. *Whitney v. Eager*, Crabbe, 422. [AMERICAN.]

(126) For form of libel, see *Dunlap's Adm. Prac.* (2nd ed.), 452—459.

(127) In accordance with the indulgent principles which govern Courts of Admiralty in deciding upon the rights of seamen, a receipt by a seaman on receiving the sum due to him for wages, stating that it was in full for all services and demands for assaults,

2. *Jurisdiction.**

218. As to the jurisdiction of the Court of Admiralty in such cases, see *The Ruckers*, 4 C. Rob. 73, and Nos. 133, 134, in tit. COLLISION, p. 197.

3. *Defence.*(a) *Generally.*

219. The defence to a charge of cruelty may be a total disapproval of cruelty having been practised, or a justification by proofs of misconduct provoking it, and that misconduct may be confined to an offence immediately preceding, or may likewise include similar antecedent offences. *The Agincourt*, 1 Hagg. 274.

219a. A recent act of misconduct, though of a lighter kind, might properly be punished with a severer correction than due to it if standing alone, if antecedent acts of the same kind had proved the existence of habits of such misconduct, but such antecedent acts should be allied in nature to the subsequent one, and not of a different character. *Ibid.* 280.

220. A justification set up as a defence to a charge of cruelty, referring to bygone acts, is the last which the court would be inclined to favour. *Ibid.* 275.

221. A defence pleading the misconduct in respect of which the punishment complained of was inflicted, may be extended to proof of anterior misconduct *ejusdem generis*. *The Louther Castle*, *Ibid.* 387.

222. On a charge of ill-treatment and undue correction, a justification partly on the ground of an offence recently committed, and partly on account of antecedent offences, *held* not sustained; complaint pronounced for, and £100 allowed, with costs. *The Agincourt*, *Ibid.* 271.

223. An intention to commit a desertion set up as defence to cruelty, the mariner, the ship's cook, having gone on shore (it being a question whether he was authorized to do so), and having in consequence of a disorderly frolic been

locked up in prison as a disorderly person, but released on application of the master; *held* not proved, and such acts not to amount to a desertion. *Ibid.* 281.

224. In an action against the master of an East India Company's ship for personal damage, on the ground of excessive punishment, viz. thirty-six lashes after four or five days' imprisonment in irons, defence set up of negligence of duty and disrespectful conduct on the part of the mariner, accompanied with averments of habitual laziness, negligence, and disrespectful behaviour, *held* to be sufficiently proved, and a justification for the punishment. Suit dismissed accordingly. *The Louther Castle*, *Ibid.* 384.

225. In an action for damages brought by a mariner against the master on account of a violent assault, by which his ribs had been broken, and he had been otherwise grievously injured, there being no substantial defence, £120 and costs decreed. An account in full of all demands taken by the master on paying his wages, *held* not to bar the mariner's claim for damage. *The Enchantress*, *Ibid.* 395.

226. Charge of ill-treatment brought by the mate against the master, *held* not sustained, and the witnesses in support thereof to have perjured themselves. Complaint dismissed with costs. *The Centurion*, *Ibid.* 161.

227. A master is not justified in putting a steward in irons for mere disobedience of orders. Such a proceeding is only justifiable under some strong necessity, such as danger of mutiny. *Carnaghan v. Davidson*, Dec. 13, 1852 (Q. B.).

228. Circumstances in which the court found damages due to the mate of a vessel for an assault upon him by the master, and assessed the damages at £10. *Reekie v. Norrie*, Dec. 21, 1842; 5 D. 368; 15 Jur. 151. [SCOTCH.]

(b) *Master.†*

229. A master of a merchant ship has

battery, and imprisonment against the owner and officers, has been *held* to be no bar to a suit for an assault, battery and imprisonment. 1 Conkling's U. S. Adm. Prac. 442. [AMERICAN.]

* (128) In cases of assault and battery during a voyage, or on the high seas, it may be preferable, when the party guilty of the battery is the owner or master of the vessel on board which the battery was committed, to proceed in the Court of Admiralty. The plaintiff may libel the defendant in that court, and the judge, after examining the evidence, may

himself award damages, or, if he think fit, convene a jury to assist him, and the successful party is entitled to costs. A suit in this court, when the witnesses are staying in this country only a short time, is preferable to an action at common law. 2 Chitty's Gen. Prac. 513.

† (129) It is universally conceded that in case of disobedience of his reasonable commands, or of riotous, disorderly, or insolent conduct, the master of a merchant ship may subject the offender to corporal punishment. His authority in this respect has been likened to

a right well established to inflict corporal punishment on a delinquent mariner in a case of gross misconduct. That right must be supported by the law of England, which is the proper authority for fixing the limits within which one subject of

this realm has a right to inflict corporal suffering on another. *The Agincourt*, 1 Hagg. 272.

230. The law clearly recognizes the authority of inflicting bodily correction upon offending mariners, such punish-

that of a parent over his child, and that of a master over his apprentice or scholar; but, unlike that of a parent, it extends only to the correction of such negligence and misconduct of mariners as relate strictly to their duties as such, or tend to the subversion of the discipline of the ship. Concerning this extraordinary power, so liable to abuse, some of the ancient maritime codes of continental Europe are studiously silent, leaving its existence to be inferred, and its exercise to be justified, from necessity and usage. By the Ordinance of Louis XIV., it is carefully limited and defined. In England, and in this country, there are no statutable regulations upon the subject. Conkling's United States Admiralty Practice (2nd ed.), p. 429.

(130) No punishment can be lawfully inflicted unless for reasonable provocation or cause, and it must be moderate and just, and proportionate to the nature and aggravation of the offence. . . . Unless the master is able to show, not only that there was sufficient cause for chastisement, but also that the chastisement was reasonable and moderate, the mariner may recover damages commensurate with the injury received. *Ibid.* p. 430.

(131) The master of a vessel has a right, in cases of necessity, to correct a negligent, disobedient, or mutinous seaman by corporal punishment or confinement, but the punishment must be reasonable, and not inflicted with unlawful instruments. *Carleton v. Davis*, Davis, 221; *U. States v. Smith*, 3 Wash. C. C. 525; *Jarvis v. Sherwood*, Bee, 248; *Sampson v. Smith*, 15 Mass. 365; *Schelter v. York*, Crabbe, 449; *Pettinghill v. Dinsmore*, Davis, 208; *Dinsman v. Wilkes*, 12 How. (U.S.) 390; *Fuller v. Colby*, 3 W. & M. 1; *Forbes v. Parsons*, Crabbe, 283; *Michaelson v. Denison*, 3 Day, 294; *Brown v. The Maiden*, Gilpin, 31; *U. States v. Wickham*, 1 Wash. C. C. 316; *Wilson v. The Mary*, Gilpin, 31. [AMERICAN.]

(132) The corporal punishment of minors only among seamen is recommended in view of the high character of modern seamen. *Fuller v. Colby*, 3 W. & M. 1. [AMERICAN.]

(133) If the master of a ship use an unlawful weapon, or the seaman is exposed to danger of his life or limbs, he may resort to any necessary species of defence to avoid this danger. *U. States v. Smith*, 3 Wash. C. C. 225; *Fuller v. Colby*, 3 W. & M. 1. [AMERICAN.]

(134) The master may use necessary violence to quell an affray. *Jordan v. Williams*, 1 Curtis, C. C. 69. As to the legality of confinement of seamen in foreign gaols, see *U. States v. Ruggles*, 5 Mason, 192; *Brown v. The Maiden*, Gilpin, 31; *Magee v. Moss*, *Ibid.*

219. [AMERICAN.]

(135) Confinement of the master is illegal. *U. States v. Smith*, 3 Wash. C. C. 78. As to what is a confinement, *Ibid.* 525. [AMERICAN.]

(136) As to the obligation on the master to observe sobriety and self-control, and set a good example, see Conkling's United States Admiralty Practice (2nd ed.), p. 433.

(137) The master may inflict moderate correction on a seaman for sufficient cause, but he must take care that it is not disproportionate to the offence. If he exceeds the bounds of moderation he is treated as a trespasser, and is liable in damages. In respect to the mode of correction it may be by personal chastisement, or by confinement on board ship, in irons or otherwise. There must not, however, be any cruelty or unnecessary severity. The mode, instruments, or extent of the punishment are not laid down by law, but must depend upon circumstances. In cases of urgent necessity, as of mutiny, weapons may be used which would be unlawful at other times; but even in these cases they must be used with the caution which the law requires in other cases of self-defence and vindication of rightful authority. *Dana's Seaman's Manual*, 194.

(138) A passenger must submit to the reasonable rules and usages of the ship; he has no right to interfere with its discipline and internal regulations; indeed, in a case of necessity, and for the order and safety of the ship, the master may restrain a passenger by force, but the cause must be urgent, and the manner reasonable and moderate. *Ibid.* 197.

(139) Masters must not, under colour of discipline, inflict unnecessary or wanton punishment upon those under their control. *The Sarah*, Stuart's Vice-Adm. Rep. 91, *notis*. [LOWER CANADA.]

(140) Damages decreed to a steward for assaults committed upon him by the master, and for compelling him to execute unnecessary and dangerous orders. *Ibid.* 89.

(141) Similar suit not sustained. *The Coldstream*, *Ibid.* 386.

(141a) Though the court will not call in question the official acts of a British consul in a foreign port respecting the crew of a British vessel, it does not follow that it will not investigate the conduct of the master, in procuring the intervention of the consul by which the seaman was imprisoned. If that amounts to a tort, so as to render the master liable for the imprisonment, it stands on the same ground as other torts. *Patch v. Marshall*, 1 Curtis, Ct. Ct. 452. [AMERICAN.]

ment being commensurate with the offence committed, being awarded by due authority, and administered with due moderation. *The Lowther Castle, Ibid.* 385.

231. Ill-usage is a very undefined term, depending much upon the opinion of the person who uses it, and taking its character out of the provocation given and the relation in which the parties stand to each other. *The Lima*, 3 Hag. 353.

232. Holding up fists to strike a master is so near an act of mutiny that the master may quell it by striking the first blow. *Ibid.*

(c) *Officers.**

233. It may be matter of prudence, but is not matter of strict obligation, in East India ships engaged in private trade (though asserted to be so in ships belonging to the East India Company) that the master should communicate with other officers of the vessel prior to the infliction of punishment, nor is any particular mode or instrument of punishment particularly

recognized. It must be left to the common usage in such cases, and to the humane discretion of the party in command. *Ibid.*

(d) *Previous Inquiry.†*

234. In all cases which will admit of the delay proper for inquiry, due inquiry should precede the act of punishment, and the party charged be heard in his own defence, though there are cases which will not admit of such delay. *The Agincourt*, 1 Hag. 274.

235. In cases of correction of seamen it is always desirable, and indeed the duty of the master, to institute an inquiry and have the result of it entered on the log. *Murray v. Moutrie*, 6 C. & P. 471.

(e) *Desertion.*

See Pt. V. p. 2179.

4. *In Service of Ship.‡*

236. If the master or any seaman or apprentice receives any hurt or injury in

* (142) When the master is on board the right to inflict punishment pertains exclusively to him, and it cannot be lawfully exercised by any subordinate officer, even for improper behaviour to himself personally, without the authority or sanction of the master, expressed or implied. In the absence of the master, from the necessity of the case, the officer on board next in rank is clothed with his authority and rights, so far as they are necessary for the due performance of the ship's duties. Conkling's United States Admiralty Practice (2nd ed.), p. 431.

(143) No one but the master can authorize punishment. *U. States v. Taylor*, 2 Sumner, 584. If inflicted by officers, the master being present, and not interfering, he is responsible. *Thomas v. Lane, Ibid.* 1. [AMERICAN.]

(144) If delay be practicable, the officer must report to the master, and leave the duty of correction with him. Except in these cases the officer is liable as a trespasser for any force used with the seamen. If the officer act under the authority, express or implied, of the master, he will not be held liable, even though the punishment should be excessive and unjustifiable, for he is in such cases only the agent of the master, who is responsible for the act. Yet if the punishment be so excessive as to show malice in the officer, or there be anything in his conduct to imply the same, he will be liable in some measure himself. Dana's Seaman's Manual, 199.

† (145) As to due inquiry and hearing the accused, see also Conkling's United States Admiralty Practice (2nd ed.), p. 434.

‡ (146) Subject to sect. 8 of the M. S. Act, 1867 (c. 124), where no difficulty is raised by the express terms of the contract, a seaman disabled by an accident happening in the course of his duty, is entitled to his wages for the whole voyage. See 1 Maude & Pollock on Merchant Shipping (4th ed. by Pollock & Bruce), p. 222, and cases there cited.

(147) Sick mariners are to be provided for at the expense of the ship, and their wages during illness to be paid to them, or on their death to their representatives. *Laws of Oleron*, cited in Godolphin's Adm. Jur. ext. 6, 7.

(148) For any expense the consul may incur at his port in respect of masters and seamen injured in the service of the ship, or for seamen discharged or left behind illegally, whether for medical advice, subsistence (including necessary clothing), or burial, the masters and owners are liable. If such expense is not repaid on the spot by the master, it is to be entered in the account and supported by separate vouchers, and an account in the Form C. 18, is to be transmitted to the Board of Trade in order that the account may be recovered from the owner. See Board of Trade Instructions to Consuls, 1883, par. 117, p. 36.

(149) In giving his opinion as to whether or not a case falls within the words, "hurt or injury in the service of the ship," the consul should be guided by what appears to be the intention of the act, viz., that a seaman shall not have to pay surgical or medical expenses incurred in consequence of hurt or injury received while in the service of the ship. In cases of accidents (wounds, bruises,

the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured, or dies, or is brought back to some port in the United Kingdom, if shipped in the United Kingdom, or if shipped in some British possession to some port in such possession, and of his conveyance to such port, shall be defrayed by the owner without any deduction from his wages. See M. S. Act, 1854 (c. 104), s. 228, sub-s. 1.

237. If any such expenses in respect of the illness, injury, or hurt of any seaman or apprentice, as are to be borne by the owner, are paid by any consular officer or other person on behalf of her Majesty, or if any other expenses in respect of the illness, injury, or hurt of any seaman or apprentice whose wages are not accounted for to such officer under these provisions are so paid, such expenses shall be repaid to him by the master; and if not, the account, with costs, shall be a charge upon the ship, and recoverable from the master or owner as a debt to her Majesty, and by ordinary process of law, or like wages; in any proceeding for the recovery thereof, the production of a certificate of the facts, signed by such officer or other person, with such vouchers (if any) as the case requires, shall be sufficient proof that the expenses were duly paid by such consular officer or other person. *Ibid.* s. 229.

238. Every master of every foreign-going ship whose crew is discharged in the United Kingdom, and of every home-trade ship, is to keep a list on a Board of Trade form of the names of any members

of the crew who have been maimed or hurt, with the times, places, causes, and circumstances thereof. *Ibid.* s. 273.

239. As to lists of this and other matters, see tit. OWNERS, Pt. II. pp. 1250, 1251.

240. The same occurrence which converted the ship into a wreck injured several of the crew. *Held*, that their injuries were received "in the service of the ship" within the meaning of the above sub-section. *Lord Advocate v. Grant*, 4th Series, vol. i. 447. [SCOTCH.]

241. A sailor having become ill through eating diseased meat supplied to him on board his vessel, was put on shore in hospital, and was afterwards brought back to the United Kingdom as a distressed seaman, the expenses incurred being defrayed by the Board of Trade. *Held*, that the sailor had received a hurt or injury in the service of the ship within the meaning of the above sub-section, and that the Board of Trade, which had received his wages from the owners, were not entitled to deduct therefrom the expenses they had been put to. *The Secretary of the Board of Trade v. Sundholm*, 4 Asp. 196.

242. A seaman is entitled to his whole wages, though he has been unable to render his services, if his inability has proceeded either from a hurt received in the performance of his duty, or from natural sickness happening to him in the course of the voyage. *Paul v. Eden*, 6 T. R. 325, n.; *Chandler v. Grieves*, 2 H. Bl. 606, n. (a); 6 T. R. 325, n.

3. During Illness.

See c. 16, p. 2170.

burns, fractures, frost-bites, sunstroke, and the like), there can seldom be any difficulty. Generally speaking, any accident which befalls a seaman when on board ship, whether he be engaged in some specific duty or whether he be doing nothing, even if it occurs through his own fault, should be considered "hurt or injury in the service of the ship." If, however, a seaman be on shore, and not on ship's business when the accident happens, it should not be so considered. When very serious illness is directly traceable to the default of the owner or master in not supplying proper or sufficient food, water, accommodation, medicines, or anti-scorbutics, the consul should treat it as injury in the service of the ship. See Board of Trade Instructions to Consuls, 1883, par. 118, p. 37. And see, further, on this matter, Board of Trade Instructions to Officers in British

Colonial Possessions, revised January, 1875, pp. 26—28.

(150) A seaman whose feet are frozen while in the service of the ship, before he is discharged from the ship, on the return voyage, at the home port, is entitled to be cured at the ship's expense, and it is a charge upon the ship. *Reed v. Curwfield*, 1 Sumner, 195. [AMERICAN.]

(151) A sailor must, in judgment of law, be deemed in the service of the ship while under the power and authority of its officers; and he is entitled to be cured at the expense of the ship of any injury received by him in executing an improper order, or inflicted upon him directly by the wrongful violence of an officer of the ship, in the exercise of his authority as officer to punish him. *Ringold v. Crocker*, 1 Abb. Adm. 344. [AMERICAN.]

4. Supply of Anti-Scorbutics and Medical Stores.*

1. Generally.

243. For provisions for the supply in foreign-going ships of lime, lemon juice, or other anti-scorbutics and medical stores, and for keeping a book containing instructions for dispensing the same, penalty for default not exceeding £20. See the M. S. Act, 1867 (c. 124), ss. 4, 5; and see Nos. 284—287, p. 2170.

243a. For powers to governors of British possessions to make similar regulations, *Ibid.* s. 6.

244. As to the inspection of such stores by medical inspectors, see Pt. I. c. 12, p. 2133.

244a. As to medical stores and medical men on board passenger ships, see tit. OWNERS, Pt. IV. pp. 1298, 1299.

2. Entries in Official Log.

245. As to entry in the official log of seaman or apprentice's refusal or neglect to take anti-scorbutics, penalty for breach, £5. See M. S. Act, 1867 (c. 124), s. 4.

246. Penalty not exceeding £20 for sale of medical stores of bad quality. *Ibid.* s. 5.

246a. As to entries generally in official logs, see tit. EVIDENCE, p. 434.

5. Forced Ashore.

247. The master or other person belonging to any British ship who wrongfully forces on shore or wilfully leaves behind any seaman or apprentice of such ship before the completion of the voyage or the return of the ship to the United Kingdom, is guilty of a misdemeanour. See M. S. Act, 1854 (c. 104), s. 206.

6. Left behind Abroad.

1. Generally.

248. So much of the third part of this act as relates to leaving seamen abroad applies to all ships registered in any of her Majesty's dominions abroad when they are out of the jurisdiction of their respective governments, and to their owners, masters and crews. *Ibid.* s. 109.

249. Where the service of a seaman terminates before the period contemplated in the agreement by reason of his being left on shore at any place abroad under a certificate, of his unfitness or inability to proceed on the voyage, granted

* (152) For the scale of medicine and medical stores authorized by the Board of Trade, see Board of Trade Instructions to Superintendents of Mercantile Marine Offices of August, 1879, p. 54, *Ibid.* revised June, 1885, Circular No. 696; and see further thereon, *Ibid.* Dietary Scales, January, 1886. The Board of Trade have also sanctioned the use of a book called "The Ship Captain's Medical Guide," by Harry Leach, M.D., and published by Simpkin, Marshall & Co., 4, Stationers' Hall Court, E.C. See Board of Trade Instructions to Consuls, 1883, par. 154, p. 44.

(153) Every ship (except those bound to European ports, or to ports in the Mediterranean Sea, and also except such ships and classes of ships bound to ports on the eastern coast of America, north of the 35th degree of N. latitude, and to any islands or places in the Atlantic Ocean W. of the same limit, as the Board of Trade may from time to time exempt from the enactment) must be provided with a sufficient quantity of lime or lemon juice, or of such other anti-scorbutics as may be directed by Order in Council, and these must be served out in accordance with the requirements of the act. Should the consul learn in any case that the provisions of the act have not been complied with, he should warn the offending master, and record the fact on the ship's articles. Lime juice of itself will not prevent scurvy, and the consul

should therefore take every opportunity of urging upon masters of vessels sailing on long voyages the necessity of supplying their crews with fresh potatoes, molasses, &c., and a larger supply of fresh or preserved meats in lieu of salt beef and pork. *Ibid.* par. 155, p. 45.

(154) Under an Order in Council of the 5th August, 1871, ships, vessels, or boats on board of which any person has been attacked with cholera or choleraic diarrhoea during the voyage, may not enter any port or place in the United Kingdom until the clothes and bedding of such person have been destroyed. Care should be taken that superintendents understand this obligation, and the further obligation of disinfecting the berths of cholera patients, and all things besides clothes and bedding likely to carry infection. All cases of cholera should be entered in the official log, and a list of all articles destroyed. In the case of seamen dying of cholera at a foreign port, the consul will give directions for the destruction of the clothing, &c. of the deceased, which should never be sent to the United Kingdom. Any person offending against the above direction is liable under the Order in Council referred to, on summary conviction, to a penalty not exceeding £20. *Ibid.* par. 156, p. 45. And see further thereon, and the transmission of reports thereof to the Board of Trade, see Instructions to Consuls of August, 1885, and *Ibid.* January, 1886.

as therein mentioned, such seaman is only entitled to wages for the time of service prior to such termination. See M. S. Act, 1854 (c. 104), s. 185.

250. If the master of any British ship leaves behind any seaman or apprentice in any British possession abroad without previously obtaining a certificate in writing, endorsed on the shipping agreement, of some superintendent or similar officer appointed by the local government, or in his absence of the chief officer of customs at or near the place, stating the fact and the cause thereof, whether unfitness, inability to proceed to sea, desertion or disappearance; or if he leaves behind any seaman or apprentice at any place out of her Majesty's dominions, without previously obtaining the certificate so indorsed of the British consular officer there, or (in his absence) of two respectable merchants, if there are any such at or near there, he is guilty of a misdemeanour; and these functionaries shall, and the merchants may, examine into the grounds of such alleged unfitness, inability, desertion or disappearance in a summary way, and may for that purpose administer oaths, and may either grant or refuse such certificate as appears to them to be just. *Ibid.* s. 207.

251. Every master of any British ship who leaves any seaman or apprentice on shore at any place abroad in or out of her Majesty's dominions, under a certificate of his unfitness or inability to proceed on the voyage, shall deliver to one of the functionaries before mentioned, or (in the absence of such functionaries) to the merchants by whom such certificate is signed, or, if there be but one respectable merchant there, to him, a full and true account of the wages due to such seaman or apprentice (such account when delivered to a consular officer to be in duplicate), and shall pay the same in money and not by bill, whenever it is practicable to do so, but when it is not practicable to pay in money, he shall pay by a bill drawn upon the owner; and in the case of every bill, such functionary or merchant shall certify by indorsement thereon that it is drawn for money due on account of a seaman's wages, and shall also indorse the amount for which the bill is drawn, and such further particulars as the Board of Trade requires, upon the shipping agreement. Penalty for breach against every such master, not exceeding £10, in addition to the liability for payment of the wages. Penalty against every such master who delivers a false account, not

exceeding £20, in addition to payment of the wages. *Ibid.* s. 209, as amended by the M. S. Act Amendment Act, 1862 (c. 63), s. 19.

252. Sect. 209 is an additional provision in favour of seamen, and does not affect the right of a master. *The Rajah of Cochin*, 1 Swabeay, 478.

253. Every such payment by bill or in money shall, if in any British possession, be made to the seaman or apprentice, and, if out of her Majesty's dominions, be made to the consular officer, who shall, if satisfied with the account, indorse on one of the duplicates thereof a receipt for the amount paid or bill delivered, and return the same to the master; and the master shall, within forty-eight hours after his return to his port of destination in the United Kingdom, deliver it to the superintendent there. The consular officer shall retain the other duplicate, and shall, if the seaman or apprentice subsequently obtains employment at or otherwise quits the port, deduct out of the sum received by him any expenses incurred by him in respect of the subsistence of the seaman or apprentice under this act, except such as the master or owner of the ship is hereby required to pay, and shall pay the remainder to the seaman or apprentice, and deliver to him an account of the sums so received and expended on his behalf; and shall, if the seaman or apprentice dies before his ship quits the port, deal with the same as hereinafter specified in that behalf; and shall, if the seaman or apprentice is sent home at the public expense under this act, account for the amount received to the Board of Trade; and such amount shall, after deducting expenses incurred in respect of such seaman or apprentice, except such as the master or owner of the ship is hereby required to pay, be dealt with as wages to which he is entitled, and be paid accordingly. See M. S. Act, 1854 (c. 104), s. 210.

254. If any seaman or apprentice belonging to any British ship is discharged or left behind out of the United Kingdom, without the master's full compliance with all the provisions in this act, and becomes distressed and is relieved under this act, or if any subject of her Majesty, after having been engaged by any person to serve in any ship belonging to, or to the subject of, any foreign power, becomes distressed and is so relieved, the wages due to such seaman or apprentice, and all expenses for his subsistence, necessary clothing, conveyance home, and burial, if he dies abroad, shall be a charge

upon the ship, whether British or foreign, and the Board of Trade may, in the name of her Majesty (besides suing for penalties incurred), recover the wages and expenses, with costs, from the master, the owner for the time being, or, in the case of such engagement for service in a foreign ship, from such master or owner or person by whom the engagement was made. Such sums shall be recoverable like other debts to her Majesty, or as wages due to the seaman. *Ibid.* s. 213.

2. Evidence.

(a) Generally.

255. In any proceedings for that purpose production of the account (if any) to be furnished as before provided, with proof of payment by the Board of Trade or the paymaster-general of the charges incurred, shall be sufficient evidence that the man was relieved, conveyed home, or buried (as the case may be) at her Majesty's expense. *Ibid.*

256. Upon the trial in any proceeding for leaving behind any seaman or apprentice, contrary to this act, it lies upon the master to produce the certificate in any proceeding, or prove that he obtained it, or that it was impracticable for him to obtain it. *Ibid.* s. 208.

(b) Payment by Bill.

257. When payment is made by bill drawn by the master, the owner of the ship shall be liable to pay the amount to the holder or indorsee thereof; and it shall not be necessary in any proceeding against the owner upon such bill to prove that the master had authority to draw it; any bill purporting to be drawn, and indorsed as required, if produced out of the custody of the Board of Trade or of the registrar-general of shipping and seamen, or of any superintendent of any mercantile marine office; and any indorsement on any such bill purporting to be made as required, and to be signed by one of the functionaries mentioned, shall be received in evidence, and deemed *prima facie* evidence of the facts. See the M. S. Act Amendment Act, 1862 (c. 63), s. 19.

(c) Entries in Official Log.

258. Every master required to keep an official log must enter therein the name of every seaman or apprentice who ceases to be a member of the crew, otherwise than by death, with the place, time,

manner, and cause thereof. See M. S. Act, 1854 (c. 104), s. 282; and for entries therein generally, see tit. EVIDENCE, p. 434.

7. Permission to go Ashore to make Complaint.

259. If any seaman or apprentice whilst on board any ship states to the master that he desires to make complaint to a justice of the peace, or consular officer, or naval officer in command of any of her Majesty's ships, against the master or any of the crew, the master shall, if the ship is then at a place where there is a justice or any such officer, so soon as the service of the ship will permit, and if the ship is not then at such a place so soon after her arrival there as the service of the ship will permit, send or allow such seaman or apprentice to go ashore in proper custody to make such complaint. Penalty for default, not exceeding £10. *Ibid.* s. 232.

260. As to the seaman or apprentice's responsibility for frivolous complaint, see tit. COSTS, p. 415.

8. On Ship's Arrival.

261. Penalty not exceeding £20 against every person not in her Majesty's service, nor duly authorized, who goes on board any ship about to arrive at the place of her destination, before her actual arrival in dock, or at the place of her discharge, without the permission of the master, and the master or person in charge may take the delinquent into custody, and deliver him to any constable or peace officer, to be taken before a justice or justices or the sheriff of the county in Scotland, to be dealt with according to the provisions of this act. See M. S. Act, 1854 (c. 104), s. 237.

262. The respondent was charged under the above 237th section with boarding without the permission of the master of a ship "about to arrive at her place of destination before her actual arrival in dock, or at the place of her discharge." The ship, when the respondent boarded her, had entered the Cumberland Basin, Bristol. The basin is a complete dock, divided from the river Avon by dock gates. Though it forms part of other docks, it is divided by other dock gates from them. She remained in the basin all night, and the next morning was moored further in the floating harbour, and there discharged her cargo. *Held,*

that the ship had not arrived "at her place of destination" by arriving in the port of Bristol, that she had not "actually arrived at her place of discharge," which was the quay where she discharged, but that she had "actually arrived in dock" within the meaning of the section, although the dock was not the dock in which she discharged; and that the justices' decision, dismissing the complaint, was therefore right. *Attwood v. Case*, 1 Q. B. D. 134.

263. When a ship is about to arrive, is arriving, or has arrived at the end of her voyage, every person, not in her Majesty's service or duly authorized for the purpose, who (a) goes on board the ship, without the permission of the master, before the seamen lawfully leave the ship at the end of their engagement, or are discharged (whichever last happens); or (b) being on board, remains there after being warned to leave by the master, or by a police officer, or by any officer of the Board of Trade or of the Customs, shall be liable, on summary conviction, to a fine not exceeding £20, or, at the discretion of the court, to imprisonment not exceeding six months; and the master, or any officer of the Board of Trade, may take him into custody, and deliver him up forthwith to a constable to be taken before a proper court or magistrate. See the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 5.

264. When the government of any foreign country makes similar regulations as to persons going on board British ships so arriving within its territorial jurisdiction, and is desirous that these provisions shall apply to such persons going on board ships belonging to that country in British jurisdiction; her Majesty may, by Order in Council, declare that these provisions shall apply to the ships of such country, and they shall have such effect. *Ibid.* s. 6.*

9. For Twenty-four Hours after Ship's Arrival.

1. Against Lodging-house Keepers or their Agents.

265. So much of the third part of this act as relates to the protection of seamen from imposition applies to all ships regis-

tered in any of her Majesty's dominions abroad when they are out of the jurisdiction of their respective governments, and to their owners, masters, and crews. See M. S. Act, 1854 (c. 104), s. 109.

266. Penalty not exceeding £5 against any person then on board who, within twenty-four hours after a ship's arrival at any port in the United Kingdom, solicits any seaman to become a lodger at the house of any person letting lodgings. *Ibid.* s. 238.

2. Against Persons removing their Effects without Authority.

267. Penalty not exceeding £5 against any person then on board who, within twenty-four hours after a ship's arrival at any port in the United Kingdom, takes out of such ship any effects of any seaman without his personal direction and the permission of the master. *Ibid.*

10. Undue Claims for Board or Lodging.

268. Penalty not exceeding £10 against any person who demands or receives from any seaman or sea apprentice payment for his board or lodging for longer than the true period. *Ibid.* s. 235.

11. Persons detaining or absconding with their Effects.

269. Penalty not exceeding £10 against any person who takes under his control any monies, documents, or effects of any seaman or sea apprentice, and does not return the same or pay the value thereof, when required by him, subject to such deduction as may be justly due, or absconds therewith, and any two justices may, besides inflicting such penalty, by summary order direct the value of such monies, documents, or effects, subject to such deduction, to be forthwith paid to such seaman or apprentice. *Ibid.* s. 236.

12. Commencement of Right to Provisions.

270. A seaman's right to provisions commences at the time at which he commences work, or at the time specified in

* (154a) The above sect. 5 has been applied by Order in Council to ships of Italy, Sweden and Norway, Germany, the United States of America, and Austro-Hungary. See

Board of Trade Instructions to Consuls of January, 1885, and Order in Council of March 2, 1881, October 25, 1881, November 30, 1882, and May 22, 1883.

the agreement for his commencement of work or presence on board, whichever first happens. *Ibid.* s. 181.

13. Bad or deficient Provisions.

1. Generally.*

271. Any three or more of the crew of any British ship may complain to any officer in command of any of her Majesty's ships, any British consular officer, any superintendent, or any chief officer of customs, that the provisions or water for the use of the crew are of bad quality, unfit for use, or deficient in quantity; such officer may thereupon examine, or cause to be examined, the provisions or water; and if they are found of bad quality and unfit for use, or deficient in quantity, the examiner shall signify this in writing to the master, who if he does not thereupon provide other proper provisions or water in lieu thereof, or does not procure the requisite quantity of any so signified insufficient, or uses any such bad provisions or water, shall incur a penalty not exceeding £20. *Ibid.* s. 221.

272. If the officer to whom such complaint is made certifies in his statement that there was no reasonable ground for such complaint, each of the parties complaining shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages. *Ibid.* s. 222.

273. (1) If during a voyage the allowance of any of the provisions any seaman has by his agreement stipulated for, is reduced (except in accordance with regulations for reduction by way of punishment contained in the agreement, and except for any time during which such seaman wilfully and without sufficient cause refuses or neglects duty, or is lawfully under confinement for misconduct, on board or on shore); or (2) If it is shown that any of such provisions are or have been during the voyage bad in quality and unfit for use; the seaman shall receive, as compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages: (1) If his allowance is reduced by any quantity not exceeding one-third of the quantity specified in

the agreement, a sum not exceeding 4*d.* a day; (2) If his allowance is reduced by more than one-third of such quantity, 8*d.* a day; (3) In respect of such bad quality a sum not exceeding 1*s.* a day. *Ibid.* s. 223.

274. If it is shown to the satisfaction of the court before which the case is tried that any provisions the allowance of which has been reduced could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the court shall take such circumstances into consideration, and shall modify or refuse compensation as the justice of the case may require. *Ibid.*

275. A scale of the provisions which are to be furnished to each seaman is to be set forth in the agreement with the seamen. *Ibid.* s. 149.

276. As to the vessels to which these enactments apply, *Ibid.* s. 109.

277. Seamen, owing to the unexpected length of a voyage, had been put on short allowance. They were, on motion, allowed compensation, under the above section. *The Josephine*, Swabey, 152; 2 Jur. N.S. 1148; 28 L. T. 192. See also *Conch v. Steel*, 3 E. & B. 402; 23 L. J. Q. B. 121.

278. By the mercantile and naval service of Great Britain, it is clearly the rule that seamen must be found with provisions as long as they remain on board and are willing to do their duty. *The Castilia*, 1 Hagg. 60; *The Eliza*, *Ibid.* 186.

279. Seamen forced to provide themselves, the ship's provisions being exhausted, are entitled to board wages out of the proceeds of the ship. *The San Jose Primeiro*, 3 L. T. N.S. 513.

279*a.* As to provisions and water on board passenger ships, see tit. OWNERS, Pt. IV. p. 1300.

2. Weights and Measures.

280. Every master shall keep on board proper weights and measures for determining the quantities of the provisions and articles served out, and shall allow them to be used on serving out the same in the presence of a witness whenever any dispute arises about such quantities.

* (155) As to American cases thereon, see *Ship Elizabeth v. Rickers*, 2 Faine, C. C. 291; *Piehl v. Balchen*, Olcott, Adm. 24; *Harden* p.

v. Gordon, 2 Mason, 541; *Ship Washington*, 1 Pet. Ad. 219. [AMERICAN.]

Penalty for default, not exceeding £10. See M. S. Act, 1854 (c. 104), s. 225.

3. Entries in Official Log.

281. The result of the examination as to the insufficiency or bad quality of any provisions or water of any British ship made on the complaint of any three or more of the crew, is to be entered in the official log. *Ibid.* s. 221.

14. Medical Practitioner.

1. On Board what Vessels.

282. As to what vessels are required to carry a medical practitioner, see tit. OWNERS, Pt. IV. p. 1298.

15. Proceedings for Debt pending Engagement.

283. No debt exceeding in amount 5s. incurred by any seaman after he has engaged to serve, shall be recoverable until the service agreed for is concluded. See M. S. Act, 1854 (c. 104), s. 234.

16. Expenses of Illness and Burial.

1. Generally.*

284. So much of the third part of this act as relates to the provisions and health

of seamen applies to all ships registered in any of her Majesty's dominions abroad when they are out of the jurisdiction of their respective governments, and to their owners, masters and crews. *Ibid.* s. 109.

285. (1) If the master or any seaman or apprentice receives any injury in the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured or dies, or is brought back to some port in the United Kingdom, if shipped in the United Kingdom, or if shipped in some British possession to some port in such possession, and of his conveyance to such port, and the expense (if any) of his burial, shall be defrayed by the owner without any deduction from his wages; (2) If he is on account of any illness temporarily removed from his ship to prevent infection, or for the convenience of the ship, and subsequently returns to his duty, the expense of such removal and of providing the necessary advice, with attendance and medicines, and of his subsistence whilst away, shall be defrayed in like manner; (3) The expense of all medicines and surgical or medical advice and attendance given to him whilst on board shall be defrayed in like manner; (4) In all other cases any reasonable expenses incurred by the owner for any seaman in

* (156) A seaman falling sick during the voyage is, by the general maritime law, entitled to be cured at the expense of the vessel. *The Nimrod*, Ware, 9; *The Forest*, Ware, 420; *Holmes v. Hutchinson*, Gilpin, 447; *Ringold v. Crocker*, 1 Abb. Adm. 344; *The Atlantic*, *ibid.* 451. [AMERICAN.]

(157) Whether by specific money wages or by a share in the earnings of the vessel. *The Atlantic*, 1 Abb. Adm. 451. [AMERICAN.]

(158) But this privilege continues no longer than the seaman's right to wages, under the contract in the particular case. *Nevitt v. Clarke*, Olcott, Adm. 316. [AMERICAN.]

(159) As a general principle, the liability of the ship in this regard is limited to the conveyance of the disabled mariner to the United States, or to such period of time as may be reasonable, to enable him to return thither, but this rule is liable to variations. *Ibid.* [AMERICAN.]

(160) A seaman who has misrepresented his health at the time of the contract is liable to be disrated upon subsequent failure, and to be remunerated if at all upon a lower scale. See 3 Kent's Commentaries, 186; *Atkyns v. Burrows*, 1 Peters, 247; *Mitchell v. The Orozimbo*, *ibid.* 250; *Sherwood v. M'Intosh*, Ware, 109.

(161) When a seaman is taken on shore,

in a foreign port, at his own solicitation, from a vessel properly provided with a chest of medicines, and there receives medical attendance and advice, the expenses thereof are to be deducted from his wages. *Pierce v. Patten*, Gilpin, 435. [AMERICAN.]

(162) The master is entitled to be cured at the expense of the ship, in the same manner as a seaman. *Thompson v. Busch*, 4 Wash. C. C. 338; *Harden v. Gordon*, 2 Mason, 541; *Brig George*, 1 Sumner, 151. [AMERICAN.]

(163) A seaman, shipped on board a vessel on a voyage from Philadelphia to Port au Prince, and while at the latter place, fell sick of yellow fever, and was asked by the captain if he would rather remain on board or go ashore to the "Maison de Santé." He chose the latter, and was removed to the hospital. Held, that the hospital bill was properly chargeable to the vessel and owner, and that the seaman was entitled to receive his whole wages without deduction. *Johnson v. Doubly*, 1 Ashmead, 165.

(164) Mariners wounded in the ship's service are to be healed at the ship's charge, but not those getting drunk and wounded on shore, and not in the ship's service. Law of Oleron, cited in Godolphin's Adm. Jur. Exch. 6, 7.

respect of illness, and in respect of the burial of any seaman or apprentice who dies whilst on service, shall, if duly proved, be deducted from his wages. *Ibid.* s. 228.

286. If any such expenses as are to be borne by the owner are paid by any consular officer or other person on behalf of her Majesty, or if any other expenses in that respect are so paid, and the man's wages are not accounted for to such functionary as required, such expenses shall be repaid to him by the master of the ship, and if not so repaid, the amount, with costs, shall be a charge upon the ship, and be recoverable from the master or owner as a debt due to her Majesty, and by ordinary process of law or in the same manner as wages. *Ibid.* s. 229.

287. Whenever it is shown that any seaman or apprentice who is ill has, through the neglect of the master or owner, not been provided with proper food and water according to his agreement, or with such accommodation, medicines, medical stores, or anti-scorbutics as are required by the M. S. Acts, then, unless it can be shown that the illness has been produced by other causes, the owner or master is liable to pay all expenses properly and necessarily incurred by reason of such illness (not exceeding in the whole three months' wages), either by the seaman himself, or by her Majesty's government, or any officer thereof, or by any parochial or other local authority on his behalf; such expenses may be recovered like wages earned. This shall not operate to effect any further liability of the owner or master for such neglect, nor any remedy any seaman already possesses. See M. S. Act, 1867 (c. 124), s. 7.

288. Where a seaman is by reason of illness incapable of performing his duty, and it is proved that such illness has been caused by his own wilful act or default, he is not entitled to wages for the time during which he is by reason of such illness incapable of performing his duty. *Ibid.* s. 8.

289. As to illness as affecting the seaman's right to be discharged, see Pt. III. p. 2159.

290. As to illness as affecting the seaman's right to wages, see tit. WAGES, c. 12.

2. Evidence.

(a) Generally.

291. In any proceeding for the recovery of expenses abroad incurred by

any consular officer or other person on behalf of her Majesty in respect of the illness, injury, or hurt of any seaman or apprentice, the production of a certificate of the facts signed by such functionary, and the vouchers, if any, shall be sufficient proof that the expenses were duly paid by such functionary. See M. S. Act, 1854 (c. 104), s. 229.

(b) Entries in Official Log.

292. Every master required to keep an official log must enter therein (*inter alia*) every case of illness or injury happening to any member of the crew, with the nature thereof, and the medical treatment adopted (if any). *Ibid.* s. 282.

292a. As to official logs generally and entries therein, see tit. EVIDENCE, p. 424.

17. Incumbrance, Sale, or Attachment of Wages.

See tit. WAGES, c. 15.

18. Incumbrance or Sale of unaccrued Salvage.

293. No assignment or sale of salvage made prior to the accruing thereof binds the party making it. See M. S. Act, 1854 (c. 104), s. 233.

293a. See, further, on this head, tit. SALVAGE, pp. 1891, 1892.

19. Irrevocable Powers of Attorney as to Wages or Salvage.

294. No power of attorney or authority for the receipt of any such wages or salvage due or accruing to any seaman or apprentice shall be irrevocable. See M. S. Act, 1854 (c. 104), s. 233.

20. Extortionate Fees.

295. Penalty not exceeding £5 against any person demanding from any seaman or apprentice, seeking employment as such, any remuneration whatever, other than the authorized fees. *Ibid.* s. 148.

21. Volunteering from Merchant Ships into the Royal Navy.

1. Generally.

296. So much of the third part of this act as relates to seamen volunteering into
6 z 2

the royal navy applies to all sea-going British ships, wherever registered, and to their owners, masters, and crews, wherever they may be. See M. S. Act, 1854 (c. 104), s. 109.

297. Any seaman may leave his ship to enter the royal navy, and such leaving shall not be deemed a desertion, nor render him liable to any punishment or forfeiture, and all stipulations to the contrary are void. Penalty not exceeding £20 against any master or owner so stipulating. *Ibid.* s. 214.

298. Whenever any seaman, without having previously committed any act amounting to and treated by the master as desertion, leaves his ship to enter the naval service, and is received into it, the master shall deliver to him his clothes and effects on board, and pay his wages to that time, subject to just deductions. The master shall pay them to the officer authorized to receive the seaman into her Majesty's service, in money or by bill upon the owner, payable at sight to the order of the accountant-general of the navy; the receipt of the officer shall be a discharge for the same, and the bill shall be exempt from stamp duty. If the wages are paid in money, it shall be credited in the muster-book of the ship to the account of the seaman; and if by bill, the bill shall be noted in the muster-book and sent to the accountant-general, who shall have it presented for payment, and credit it to the seaman, but the money shall not be paid to the seaman until he would have been entitled to receive it if he had remained in the ship he quitted. If any such bill is not duly paid when presented, the accountant-general or the seaman may sue thereon or recover the wages as wages are recoverable. Penalty not exceeding £20 against master for breach of any of the above requirements on him upon any seaman so leaving his ship, in addition to his liability to pay and deliver the wages and effects. No officer who receives any such bill shall be subject to any liability in respect thereof, except for its safe custody until sent to the accountant-general. *Ibid.* s. 215.

299. If, upon any seaman leaving his ship for such purpose, the owner or master proves to the Admiralty that he has paid an advance of wages to or for such seaman, and that the seaman had not earned such advance, the Admiralty may pay the owner or master so much of such advance as has not been duly earned, and deduct it

from the wages of the seaman earned or to be earned in the naval service. *Ibid.* s. 216.

300. As to the procedure by the owner for obtaining the allowance of such payments, see tit. PRACTICE, p. 1702.

301. Every master required to keep an official log must enter therein (*inter alia*) the amount of wages due to any seaman who enters her Majesty's service during the voyage. See M. S. Act, 1854 (c. 104), s. 282.

302. As to official logs generally and the entries therein, see tit. EVIDENCE, p. 434.

303. A seaman impressed into the king's service out of a vessel on a voyage, *held*, not entitled to wages for the whole voyage, it not appearing that he had been pressed through the malicious acts of the master or of those under his authority. *The Jack Park*, 4 C. Rob. 308.

304. A seaman belonging to a privateer agreed to receive a certain share of prizes in lieu of wages, and to serve six months on pain of forfeiture of such share. *Held*, not to lose his share in consequence of his being afterwards impressed, and entering on board a king's ship before the six months expired. *Paul v. Eden*, Abb. Sh. (12th ed.), p. 463; *S. P. Chandler v. Grieves*, 2 H. Bl. 606, n.; 6 T. R. 325, n.

305. A mariner quitted his vessel in defiance of the master, with opprobrious language, and without any declaration at the time of his intention to enter a king's ship, which he did, however, within twenty-four hours afterwards. *Held*, that he was guilty of desertion, enuring to a forfeiture of his wages in the merchant vessel, notwithstanding that by the 2 Geo. 3, c. 36, s. 13, it was provided that entry on board a king's ship shall not be deemed a forfeiture of wages, and that the articles of the merchant vessel stipulated that mere absence for less than twenty-four hours should not be deemed desertion; that clause in the articles being *held* to relate to occasional absences, and not to such a wilful denial of authority and refusal of duty. *The Amphitrite*, 2 Hagg. 403, 405.

22. Seamen from Royal Navy sent Home in Merchant Ships.

1. Payment of their Effects and Wages.

306. The monies or effects of seamen invalidated or discharged from any of her Majesty's ships, and sent home in mer-

chant ships, paid to the Board of Trade, or its agents, shall be paid as the accountant-general of her Majesty's navy directs. See M. S. Act, 1854 (c. 104), s. 204.

23. Lien for Wages.

307. For provisions and authorities protecting seamen from forfeiting their

right to or lien for wages, see tit. WAGES, c. 15.

24. Relief of distressed—.

1. *Abroad*.*

308. So much of the third part of this act as applies to the relief of seamen in distress in foreign ports applies to all

* (165) The following seafaring persons who are shipwrecked, discharged, or left behind, and are found in distress in foreign ports, are to be relieved under the direction of the Board of Trade:—

(1) British subjects who have been engaged in British merchant ships;

(2) British subjects who have been engaged in H.M.'s ships;

(3) British subjects who have been engaged in ships belonging to any foreign power which has not concluded an agreement with the British Government for the mutual relief of distressed seamen;

(4) British subjects who have been engaged in ships belonging to a foreign power which has concluded such an agreement, but who are excluded by the terms of the agreement from its operation. All British subjects who are in distress in a foreign country, after being engaged in a ship belonging to that country, are so excluded. For instance, a British subject left behind in Germany from a German ship should be relieved, if necessary, by the British consul, and not by the German authorities;

(5) Foreign subjects who have been engaged in British merchant ships or in H.M.'s ships, except those who are to be relieved by their own governments. See Board of Trade Instructions to Consuls, 1883, par. 111, p. 35.

(166) See Appendix J. for the countries with which the British Government have concluded international agreements for relief of distressed seamen; and for copies of such agreements. Those countries are Germany, by agreement dated May 27, 1879; France, Nov. 5, 1879; Italy, June 8, 1880; Austria-Hungary, Nov. 26, 1880; Sweden and Norway, July 12, 1881; Denmark, July 25, 1883. *Ibid.* Appendix J, pp. 96—101.

(167) British subjects, being seamen, requiring relief, whose service at sea was in a foreign vessel, should, if they have a right to relief under agreement from the government of the countries to which the vessels belong, be referred by the consul to the consuls or other official representatives of such governments, and in any case in which the consul may find it necessary to afford relief provisionally, application for the payment of expenses so incurred should be made to the foreign official who may subsequently take charge of the seaman. If no such reference to a foreign official be practicable, it will be the consul's duty to afford all necessary relief, and to for-

ward a report of the case, together with a statement of the expenses incurred, to the Board of Trade. In affording relief under the terms of the international agreements, the consul must be careful to do so in strict conformity to the conditions contained therein. *Ibid.* par. 111, p. 35.

(168) If six months have elapsed since a seaman left his last ship, he ceases to be a distressed seaman within the meaning of these provisions, and is entitled to no relief whatever. Relief, however, may be extended to any seaman beyond this period, provided he came in charge either of the consul or of the local authorities within those six months, for such period as he remains continuously in the consul's charge beyond this limit. *Ibid.* par. 112, p. 36.

(169) Stowaways and other persons not on the articles of a ship are not entitled to relief as distressed seamen unless they have been employed or engaged in some capacity on board the ship leaving them behind. *Ibid.* par. 113.

(170) Seamen falling or being sick while their ships are in port, are not to be considered as on that account entitled to relief. If, however, a seaman is so ill when the vessel sails as to be unable or unfit to proceed on the voyage, the consul may sanction his discharge on the ground of inability to proceed on the voyage, but the consul should require the master to pay his expenses up to the date of the consul's certificate in his articles of his inability to proceed. *Ibid.* par. 116.

(171) As to the rates to be paid and rewards given for rescue and relief of distressed British seamen at sea, *Ibid.* pars. 127—150, pp. 38—43.

(171a) Relief may be extended to masters, and they may be sent home, in the following cases only:—(1) When injured in the service of the ship. In such cases the owners are liable to repay all expenses, and masters may be relieved and sent home, an account of the expenses being forwarded to the Board of Trade on Form C. 18. (2) When absolutely destitute, *i. e.*, without private property, and unable to obtain credit or private assistance, masters may be sustained at a rate not exceeding twice that allowed to seamen. Clothing of a somewhat better description than that allowed to seamen may be supplied to masters, but no unnecessary articles are to be supplied, and the cost of such articles must never exceed twice the cost of the same article

ships registered in any of her Majesty's dominions abroad when out of the jurisdiction of their respective Governments, and to their owners, masters, and crews. See M. S. Act, 1854 (c. 104), s. 109.

309. For provisions enabling governors, consular officers, and other officers of her Majesty in foreign countries, and where there are no such governors or officers any two resident British merchants, to relieve distressed British seamen or apprentices found abroad, and send them home at the public expense in any British ship bound to the United Kingdom, or to the British possession to which they belong, endorsing on the ship's agreements their names and particulars of their cases, according to the regulations of the Board of Trade. *Ibid.* s. 211.

310. The master of every British ship so bound is to give a passage and subsistence to all seamen or apprentices whom he is so required to take on board his ship, not exceeding one for every fifty tons burden, and to provide each of them with a proper sleeping place protected against sea and weather; and on the production of the proofs therein required is entitled to be paid for the subsistence and passage of every seaman or apprentice so conveyed, and exceeding his complement, such sum per diem as the Board of Trade appoints. Penalty against any person having charge of any such ship failing or refusing to give a passage, and so to provide for any such seaman or apprentice, not exceeding one hundred pounds for each seaman or apprentice. *Ibid.* s. 212.

311. If any seaman or apprentice belonging to any British ship is discharged or left behind at any place out of the United Kingdom, without full compliance by the master with all the provisions in this act contained, and becomes distressed, and is relieved under this act, or if any subject of her Majesty, after

having been engaged by any person to serve in any ship belonging to any foreign power, or to the subject of any foreign power, becomes distressed, and is so relieved, the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and burial in case he should die abroad before reaching home, shall be a charge upon the ship, whether British or foreign, to which he belonged: and the Board of Trade may (besides suing for any penalties incurred) sue for and recover such wages and expenses, with costs, either from the master of the ship or the owner for the time being; and such sums shall be recoverable in the same way as crown debts or wages. *Ibid.* s. 213.

312. The claims of seamen to be so relieved or sent home are subject to such regulations and conditions as the Board of Trade impose. See the M. S. Act Amendment Act, 1862 (c. 63), s. 22.

313. The Board of Trade may issue instructions concerning the relief to be administered to distressed seamen and apprentices (under sects. 211 and 212 of the M. S. Act, 1854 (c. 104)), determining in what cases and under what circumstances relief is to be administered; all powers of recovering expenses incurred with respect to distressed seamen and apprentices, which by s. 213 of that act are given to the Board, extend to all expenses incurred by any foreign government for the purpose, and repaid to such government by her Majesty's government, and also to any expenses incurred by the conveying home of such seamen or apprentices in foreign as well as British ships; all provisions concerning the relief of distressed seamen and apprentices, subjects of her Majesty, which are contained in these sections of the act, and in this section, extend to seamen and apprentices, not subjects of her Majesty,

supplied to seamen. It is expected that masters relieved in these circumstances will repay expenses incurred on their behalf, and they should be required to sign an undertaking to do so in the form given in the Appendix L. See Board of Trade Instructions to Consuls, par. 153, p. 43.

(172) Whenever a distressed Canadian seaman, and who last served in a ship registered at a port of the Dominion, receives relief, an affidavit in the form set forth in Appendix K., which has been approved by the Canadian Government, should be laid before him for his signature. The object is to enable the Board of Trade to obtain repay-

ment from the Canadian Government of the expenses incurred in respect of the seaman. The affidavits should be sent home with the quarterly accounts. In any case in which the seaman is unable to make the affidavit, the reason must be stated against his name in the column for remarks in the subsistence list. *Ibid.* par. 152, p. 43.

(172a) See also, as to the relief of such distressed seamen, Board of Trade Instructions to Officers in British Colonial Possessions, revised January, 1875, pp. 24—33, 34, and *Ibid.* Instructions to Superintendents of August, 1879, p. 51; and as to distressed Lascars, *Ibid.* Instructions of January, 1875, p. 34.

reduced to distress in foreign parts by reason of their having been shipwrecked, discharged, or left behind from any British ship; subject to such modifications as the Board of Trade may think fit. See the M. S. Act Amendment Act, 1855 (c. 91), s. 16.

314. For provisions for the relief and support of disabled seamen found abroad, see Seamen's Fund Winding-up Act, 1851 (c. 102), so far as the same is not repealed by sect. 25 of the M. S. Law Amendment Act, 1853 (c. 131), the M. S. Repeal Act, 1854 (c. 120), and the Statute Law Revision Act, 1875 (c. 66).

2. In the United Kingdom.

(a) Generally.

316. Foreign seamen discharged in Great Britain, and who recover wages in a suit against a foreign ship in which they served, are not entitled as of course to their passage-money home, but will obtain it when their consul certifies that they have gone or are about to go home. *The Raffaelluccia*, 37 L. T. 365.

(b) *Lascars and Natives of India.**

317. The East India Company is to take charge of and send home or otherwise provide for all persons, being Lascars or other natives of the territories under its government, who are found destitute in the United Kingdom; and if any such person is relieved by any guardians or other officers for the relief of the poor, such functionaries may, by letter by post or otherwise, give notice thereof in writing to the secretary of the Court of Directors, specifying, so far as is practicable, (1) The name of the person so relieved or maintained; (2) The part of the territories of the East India Company of which he professes to be a native; (3) The name of the ship in which he was brought to the United Kingdom; (4) The port or place abroad from which such ship sailed, and the port or place in the United Kingdom at which such ship arrived, when he was so brought to the United Kingdom, and the time of such

arrival: the said East India Company is to repay to these functionaries out of its revenues all monies duly expended by them in relieving or maintaining such destitute person, after such notice. See M. S. Act Amendment Act, 1855 (c. 91), s. 22.

25. Natives of Asia or other Countries having no Consul in the United Kingdom.

1. *Return Passage or Means of Return.*

318. If a native of any country in Asia, Africa, or of any of the islands in the South Sea or the Pacific Ocean, or of any other country not having any consul in the United Kingdom, is brought to the United Kingdom in any ship, as a seaman, and left there, and within six months of his being so left becomes chargeable upon the poor rate, or commits any act rendering him liable to be convicted as an idle and disorderly person, or any other act of vagrancy, penalty against the master or owner, or in case of a foreign ship the consignee at the time of the seaman being so left, not exceeding £30, unless he can show the person so left quitted the ship without the consent of the master, or that due means have been afforded by such master, owner, or consignee, or one of them, to such person, of returning to his native country, or to the country in which he was shipped. The court inflicting such penalty may order the whole or any part thereof to be applied towards the relief or sending home of such person. See the M. S. Repeal Act, 1854 (c. 120), s. 16.†

26. Compensation for improper Discharge.

See tit. WAGES, c. 14.

27. Inquiry into Cause of Death.

319. As to the inquiry to be made into the cause of death of any seaman or apprentice dying on board on the voyage, see Pt. VI. p. 2191.

* (173) Expenses on account of Lascars being paid by the Indian Government when over a distressed seaman, being a native of British India, is relieved, attention should be called to the fact by writing against his name, in the column for remarks in the Form C. 20, the words "native of India." The birthplace

of the seaman and port of shipment should also be given. *Ibid.* par. 151, p. 43.

† (174) The penalty in the above section is not to be recoverable in the same manner as wages, but according to the provision of Part X. of the principal act.

28. Extension of Employers and Workmen Act, 1875, to—.*

320. For provisions enlarging the powers of county courts as to disputes between employers and workmen, and giving other courts a limited jurisdiction in respect thereof, and for the adjustment and set-off between employer and workman of all claims incidental to the relation between them, whether liquidated or unliquidated, for damages or otherwise, see the Employers and Workmen Act, 1875 (c. 90).

321. As to the application of the act to Scotland and Ireland, *Ibid.* ss. 14 and 15.

322. The expression "workman" in this act does not include a domestic or menial servant, but means any person who, being a labourer, servant in husbandry, journeyman artificer, handicraftsman, miner, or otherwise engaged in manual labour, and whether under or above twenty-one years of age, has entered into or works under a contract with an employer, verbal or in writing. *Ibid.* s. 10.

323. For provisions extending and regulating the liability of employers to make compensation for personal injuries suffered by workmen in their service, see the Employers' Liability Act, 1880 (c. 42).

324. The expression "workman" in this act means a railway servant, and any person to whom the Employers and Workmen Act, 1875, applies. *Ibid.* s. 8.

325. The 13th sect. of the Employers and Workmen Act, 1875 (c. 90), is repealed so far as it excludes therefrom seamen, and sea apprentices, and that act shall apply to them. See the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 11.

325a. The M. S. Act, 1854 (c. 104), s. 243, which enables a seaman who neglects, without reasonable cause, to join his ship to be punished upon proceedings before a court of summary jurisdiction with imprisonment and forfeiture of part of his wages, by implication takes away any other remedy against the seaman for breach of contract. *The Great Northern Steamship Co. v. Edgehill*, 11 Q. B. D. 225.

326. And the shipowner cannot, where

the amount which he claims does not exceed £10, take proceedings for the recovery of damages under the Employers and Workmen Act, 1875 (c. 90), s. 4. *Ibid.*

326a. The 243rd section of the Merchant Shipping Act, 1854 (modified by sect. 10 of 43 & 44 Vict. c. 16), imposing upon seamen who neglect or refuse to join their ships certain punishments, was held impliedly to take away other remedies from the shipowner, who was therefore held not entitled to recover damages under the Employers and Workmen Act, 1875, as extended by sect. 11 of 43 & 44 Vict. c. 16. *Great Northern Fishing Co. v. Edgehill*, 11 Q. B. D. 225.

327. But by section 54 of the Merchant Shipping (Fishing Boats) Act, 1883, it is enacted: Nothing in the 243rd section of the Merchant Shipping Act, 1854, or in sect. 28 of this act, shall be deemed to have taken away or to limit any remedy by action, or by summary procedure before justices which an owner or master would have but for the said sections, for any breach of contract in respect of the matters constituting an offence under the said sections, but no owner or master shall be compensated more than once in respect of the same damage. *Ibid.*

327a. A mortgagee took possession of and placed a man on the mortgaged vessel, and gave notice to the master that he had taken possession. The master, by direction of the mortgagor, went to sea with the man in possession on board. In a suit *in rem* by the master for wages, and compensation for wrongful dismissal, held, that he had by his conduct forfeited any claim to wages or compensation, except wages earned before the mortgagee took possession. *The Fairport*, 10 P. D. 13; 54 L. J. P. D. 3; 5 Asp. 348.

29. Conditional Advance Notes Illegal.

328. After the 1st of August, 1881, any document authorizing or promising, or purporting to do so, the future payment of money on account of a seaman's wages conditionally on his going to sea

* (174a) *Held*, that a man who was engaged as a fireman on board a steamer, and who, through the negligence of the chief engineer, and while executing his orders, fell into the crank pit of the engine, which was left by

the chief engineer not properly protected, was not a seaman within the meaning of the Employers' Liability Act, 1880, and damages awarded him accordingly. *Grace v. Cawthorne*, Southwark Co. Co. February 20, 1883.

from any port in the United Kingdom, and made before those wages have been earned, is void. See the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 2.

329. No money paid in satisfaction or in respect of any such document shall be deducted from a seaman's wages, and no person shall have any right of action, suit, or set-off against the seaman or his assignee in respect of any money so paid, or purporting to have been so paid. *Ibid.*

330. Nothing in this section shall affect any allotment note made under the Merchant Shipping Act, 1854. *Ibid.* s. 2, sub-s. 3.

30. Right of Complaint of Unseaworthiness or Insufficient Accommodation.

331. The owner or master is also liable to pay to a seaman or apprentice such compensation for his detention under such circumstances as the court may award. See M. S. Act, 1873 (c. 85), s. 9.

See tit. OWNERS, Pt. III. c. 6, p. 1272.

31. Right of Application for Detention of Ship for Survey as Unsafe.

See tit. OWNERS, Pt. III. c. 1, p. 1258.

32. Seamen's Licensed Lodging-houses.

332. The sanitary authority of any seaport town may pass byelaws for the licensing and periodical inspection of seamen's lodging-houses, for granting to persons so licensed authority to designate their houses as seamen's licensed lodging-houses, and for prescribing penalties for breach of these byelaws. But no such byelaws shall take effect till they have received the Board of Trade's approval. See the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 9.

33. Persons licensed to procure Seamen.

333. The Board of Trade may grant to such persons as it thinks fit licences to engage or supply seamen or apprentices

for merchant ships in the United Kingdom, for such periods, upon such terms, and revocable upon such conditions, as it thinks proper. See M. S. Act, 1854 (c. 104), s. 146.

334. For penalties against any person not licensed, except the owner, master or mate of the ship, or the *bond fide* servant and in the constant employ of the owner, or a superintendent duly appointed, supplying any seaman or apprentice for any ship in the United Kingdom, and against any person employing any unlicensed person, other than persons so excepted, for supplying any seaman or apprentice for any such ship, and against any person knowingly receiving on board any seaman or apprentice so illegally supplied, *Ibid.* s. 147.

335. The respondent having *bond fide* contracted to purchase 1-64th share in a British ship from P., who, though not registered as owner, had the full possession and control of the ship, under a contract to purchase the sixty-four shares, supplied an apprentice to P., who engaged the apprentice for the ship. *Held*, that the respondent was an "owner" within the meaning of the exemption contained in sect. 147 of the M. S. Act, 1854 (c. 104), since, though not a registered owner, he had a contract enforceable in equity for the purchase of a share in the ship. *Hughes v. Sutherland*, 7 Q. B. D. 160; 50 L. J. C. L. 567; 4 Asp. 459.

34. Delay in Payment of Wages.

336. As to the right of masters and seamen to ten days' double pay when the payment of their wages has been improperly delayed, see tit. WAGES, c. 14.

35. Persons enticing to desert, or harbouring Deserters.

337. Penalty against every person who persuades or attempts to persuade any seaman or apprentice to neglect or refuse to join, proceed to sea in, or desert, his ship, or otherwise absent himself from his duty, in respect of each such seaman or apprentice, not exceeding £10; and against every person who wilfully harbours or secretes the seaman or apprentice, knowing or having reason to believe him to have so done, not exceeding £20. See M. S. Act, 1854 (c. 104), s. 257.

338. Although all the formalities pre-

scribed by sect. 150 of the M. S. Act, 1854, may not have been complied with in the engagement of a seaman, it is an offence under sect. 257 of the act to persuade or attempt to persuade such seaman from joining. *Austin v. Olsen*, L. R. 3 Q. B. 208; 37 L. J. M. C. 34; 3 Asp. 52; 9 B. & S. 46.

36. Sailors' Homes.*

339. As to the powers of corporations, associations, or trustees to appropriate lands for sailors' homes, see M. S. Act, 1854 (c. 104), s. 546.

Part V. OFFENCES AND PUNISHMENTS.

1. Generally.†

340. So much of the third part of this act as relates to discipline applies to all ships registered in any of her Majesty's dominions abroad when they are out of the jurisdiction of their respective governments, and to their owners, masters and crews. See M. S. Act, 1854 (c. 104), s. 109.

341. Any master, seaman, or appren-

tice of any British ship who by wilful breach of duty, neglect of duty, or drunkenness, does any act tending to the immediate loss, or serious damage of the ship, or to endanger the life or limb of any person belonging thereto, or who by such conduct refuses or omits to do any lawful act proper to be done by him for preserving the ship from such loss or damage, or any person belonging to her from immediate danger to life or limb, is guilty of a misdemeanour. *Ibid.* s. 239.

341a. For provisions as to discipline, ill-treatment, punishments, injuries and casualties in relation to crews of British fishing vessels, see M. S. (Fishing Boats) Act, 1883 (c. 41), ss. 28—35, and 43—45; and Board of Trade Instructions to Superintendents of Mercantile Marine Offices of September, 1883.

2. Persons liable to Discipline.

342. Every seafaring person whom the master of any ship is, by act of parliament, compelled to take on board and convey, and every person who goes to sea in any ship without the consent of the master or owner or other person entitled to give such consent, shall, so long as he

* (175) See for notification of the International Commission of the Bosphorus relative to the establishment of refuge houses for shipwrecked mariners at the entrance of the Black Sea, Constantinople, October 1^o, 1868, 14 Hertlet's Collection of Treaties, 557.

† (176) As to the criminal offences of seamen, see Stone's Justices' Manual, 21st ed. by Kennett, 1882, pp. 517, 519.

(177) See act of the Government of New Zealand for preventing desertion and other misconduct of seamen belonging to foreign ships, 13 Hertlet, 1045.

(178) Crimes committed on the high seas on board any British ship, and offences against property or person committed at any place in foreign countries by any person who at the time of the commission of the offence belongs to any British ship, or by any British subject who has within the previous three months belonged to any British ship, are subject to the same punishments and may be tried in the same manner as if they had been committed within the jurisdiction of the Admiralty in England, that is to say, according to the common law of England. See Board of Trade Instructions to Consuls, par. 185, p. 55.

(179) The consul will, however, remember that, subject to any special provisions by treaty, offences against the municipal law

of any country, committed within the limits of that country, although committed on board a British ship and by British subjects, whether they may be tried by British law or not, are certainly liable to be tried by the courts and according to the law of that country. The consul will also remember that persons committing offences on board a foreign ship, though British subjects, are liable to be tried by the law of the country to which the ship belongs. *Ibid.* p. 186.

(180) The master has the sole and exclusive command on board the vessel, and the inferior officers, as well as the common sailors, are bound to obey his lawful commands. *Butler v. M'Leellan*, Ware, 219. [AMERICAN.]

(181) The general authority of the master by the common law to correct the offences of his crew, provided such correction be exercised with patience and discretion, was expressly recognized by 13 & 14 Vict. c. 93, s. 78, but is not referred to in the M. S. Act, 1854 (c. 104).

(182) Though a master of a ship, in a foreign port, has a right in certain cases to imprison on shore a mariner under his command, yet he can exercise that right only in cases of flagrant offences, and where there is a positive necessity of removing the offender. *Buddington v. Smith*, 13 Conn. 334. [AMERICAN.]

remains in such ship, be subject to the same laws and regulations for preserving discipline, and to the same penalties and punishments for offences constituting or tending to a breach of discipline, to which he would be subject if he were a member of the crew and had signed the agreement. See M. S. Act, 1854 (c. 104), s. 245.

3. Barratry.

See tit. GOODS, CARRIAGE OF—, Pt. III. p. 534; and as to MARINE INSURANCE, Pt. XXII. p. 1038.

4. Desertion.

1. Generally.*

343. Whenever any seaman lawfully

* (183) For the old common law cases as to the effect of desertion, see *Anon.*, Mod. 93; *M'Donald v. Jopling*, 4 M. & W. 285; 1 Horn & H. 271; 2 Jur. 790; *Edward v. Trevellick*, 4 C. L. R. 1605; 4 El. & Bl. 59; 1 Jur. N.S. 110; 24 L. J. Q. B. 9; *Frontine v. Frost*, 3 B. & P. 302. And for the Admiralty cases, see *The Baltic Merchant*, Edwards, 91; *The Castilia*, 1 Hagg. 61; *The Cambridge*, 2 Hagg. 246; *The Test*, 3 Hagg. 316, n.; *The Two Sisters*, 2 W. Rob. 138; *The George*, 1 Hagg. 168, n.

(184) Arrangements by agreements, &c. have been entered into between Great Britain and foreign powers (as shown in Appendix P.) for the mutual surrender of seamen not being slaves, who desert from merchant ships of the contracting parties. On the desertion of a seaman or apprentice from a British ship at a port in such territories or colonies, or where the local authorities are willing to do so, the consul may apply to the authorities to assist in the apprehension and conveyance on board his ship of such deserter. The arrangements do not, however, apply to deserters from British ships who are subjects of the country where the desertion takes place. See Board of Trade Instructions to Consuls, 1883, par. 174, p. 51.

(185) Such arrangements have been made with the following countries:—Austria, dated April 30, 1868; Belgium, July 23, 1862; Brazil, April 22, 1873; Chili, Oct. 4, 1854; Colombia, Feb. 16, 1866; Denmark, June 21, 1881; France, June 23, 1854; Germany, Nov. 5, 1879; Greece, August, 1875; Italy, August 6, 1863; Madagascar, June 27, 1865; Morocco, Dec. 9, 1856; Netherlands, Feb. 14, 1854; Nicaragua, Feb. 11, 1860; Peru, April 10, 1850; Portugal, July 3, 1842; Russia, Jan. 12, 1859; Salvador, Oct. 24, 1862; Sandwich or Hawaiian Islands, July 10, 1851; Siam, April 18, 1855; Spain, April 19, 1860; Sweden and Norway, August 4, 1852; Tunis, July 19, 1875; Turkey, April 19, 1865. For the terms thereof, see Appendix P. *Ibid.* pp. 126—137.

(186) As to desertion generally, and that the wages of deserters are not to be treated as forfeited unless so decided by a competent court, or by a superintendent under a reference to him, see Board of Trade Instructions to Superintendents of August, 1885, p. 37.

(187) See also act of the Government of the Bahamas to enable the masters of foreign merchant vessels arriving within those islands to obtain the arrest of seamen deserting from

or refusing to return in such vessels, 13 Hertslet, p. 1072.

(188) And act of the Government of Victoria to consolidate the law relating to seamen (deserters, &c.), *Ibid.* p. 1074.

(189) To constitute a desertion under the general maritime law, there must be a quitting of the vessel with the intention of abandoning her altogether, and not returning. A mere leaving of the vessel without permission is not a desertion. *The Rowena*, Ware, 309; *Cloutman v. Tunison*, 1 Sumner, 373; *Spencer v. Eustis*, 8 Shep. 519; *Cotel v. Hilliard*, 4 Mass. 664; *Dunn v. Comstock*, 2 E. D. Smith (N. Y.), 142. [AMERICAN.]

(190) This rule applies both to officers and seamen. *Cloutman v. Tunison*, 1 Sumner, 373; *The Rowena*, Ware, 309. [AMERICAN.]

(191) As to the necessity under the provisions of the Act of July 20th, 1790, of an entry in the log-book of the fact of the name of the seaman, and of his having gone without leave, see *Magee v. Moss*, Gilpin, 219; *Wood v. The Nimrod*, *Ibid.* 83; *Snell v. The Independence*, *Ibid.* 140; *Cloutman v. Tunison*, 1 Sumner, 373; *Brig Betsey v. Duncan*, 2 Wash. C. C. 272; *The Schooner Phoebe v. Dignam*, 1 *Ibid.* 48; *Spencer v. Eustis*, 8 Shep. 519; *Knagg v. Goldsmith*, Gilpin, 207; *Malone v. Bell*, 1 Pet. Ad. 139; *Jones v. The Brig Phoenix*, Gilpin, 201; *Ulary v. The Washington*, Crabbe, 204. [AMERICAN.]

(192) Unarticled seamen are not subject to forfeiture of wages for desertion. See 1 Conkling's American Admiralty Law, 122.

(193) For further American cases as to desertion and the effect thereof, see *The Mary*, Ware, 454; *The Eagle*, Olcott, Adm. 232, 386, 387; *Cloutman v. Tunison*, 1 Sumner, 373; *Phillips v. The Scattergood*, Gilpin, 1; *U. States v. Barker*, 5 Mason, 404; *U. States v. Smith*, 1 Mason, 147; *Cranmer v. Gernon*, 2 Pet. Adm. 391; *Webb v. Duckingfield*, 13 Johns. 390; *Dixon v. The Cyrus*, *Ibid.* 407; *Knagg v. Goldsmith*, Gilpin, 207; *The Cadmus v. Matthews*, 2 Paine, C. C. 229. [AMERICAN.]

(194) The charge for a person necessarily employed in the place of a seaman, who has voluntarily absented himself, and has been apprehended and detained in goal, is to be deducted from his wages. *Brower v. The Maiden*, Gilpin, 294; *Pierce v. Patton*, *Ibid.* 436; *Snell v. The Independence*, *Ibid.* 140. [AMERICAN.]

(195) If seamen bargain for a certain proportion of the ship's freight instead of wages

engaged, or any sea apprentice is guilty of desertion, he is liable to forfeit all or any of the clothes and effects he leaves on board, and all or any of the wages he has earned; and also, if such desertion takes place abroad, at the discretion of the court, to forfeit all or any of the wages he may earn in any other ship until his return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages. See M. S. Act, 1854 (c. 104), s. 243, sub-sect. 1, as amended by M. S. (Payment of Wages and Rating) Act, 1880 (c. 16), Sched.

344. Whenever any seaman lawfully engaged, or any sea apprentice is guilty of offences as follows: neglecting or refusing, without reasonable cause, to join or proceed to sea in his ship, or of absence without leave at any time within twenty-four hours of the ship's sailing from any port, or of absence at any time without leave and sufficient reason from his ship or his duty, not amounting to or treated as desertion by the master, he is liable, at the discretion of the court, to forfeit out of his wages a sum not exceeding two days' pay, and also for every twenty-four hours of absence a sum not exceeding six days' pay, or any expenses properly incurred in hiring a substitute. See M. S. Act, 1854 (c. 104), s. 243, sub-sect. 2.

345. Whenever any seaman or apprentice is brought before any court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such court may, if the master or owner, or his agent, so requires, cause him to be conveyed on board for the purpose of proceeding on the voyage, or deliver him to the master or mate of the ship, or the owner or his agent, to be by them so conveyed, and may order any costs and expenses properly incurred on behalf of the master or owner by reason of the offence to be paid by the offender, and, if necessary, to be deducted from his wages earned, or in course of earning. *Ibid.* s. 247.

346. Within the United Kingdom a seaman or sea apprentice is not liable to

imprisonment for deserting or neglecting, or refusing without reasonable cause, to join his ship or to proceed to sea in her, nor for absence without leave within twenty-four hours of his ship's leaving port, or at any other time. See the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 10.

347. In the United Kingdom, when at the commencement, or during any voyage, any seaman or apprentice refuses or neglects to join, or deserts from, or refuses to proceed to sea in, any ship in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master, mate, owner, ship's husband, or consignee may, with or without the assistance of local police officers or constables, who are directed to give the same, if required, convey him on board. But if he so requires he shall first be taken before a proper court; and if it appears to that court that he has been conveyed on board, or taken before it on improper or insufficient grounds, penalty against the person so proceeding not exceeding £20, which, however, shall be a bar to any action for false imprisonment. *Ibid.*

348. In the United Kingdom, if a seaman, or apprentice to the sea service, intends to absent himself from his ship or his duty, he may give notice thereof to the owner or master, not less than forty-eight hours before the time he ought to be on board; and in that event, the court shall not exercise any of the powers conferred on it by sect. 247 of the M. S. Act, 1854. *Ibid.*

349. But subject thereto, the powers conferred by sect. 247 may still be exercised, notwithstanding the abolition of imprisonment for desertion and similar offences, and of apprehension without warrant. *Ibid.*

350. Nothing in this section shall affect sect. 239 of the M. S. Act, 1854, making misconduct endangering ship, life, or member, a misdemeanour. *Ibid.*

351. The ancient maritime law with reference to desertion has not been abrogated by statute law except in cases to which statute law exclusively applies. *The Westmoreland*, 1 W. Rob. 221; *The Two Sisters*, 2 W. Rob. 137.

352. Desertion to work a forfeiture of

in money, in case freight is not to be had for her when she arrives at the port for which she was bound, and she must go further in

quest of it, the seamen must go with her. See 2 Browne's Civ. and Adm. Law (2nd ed.), p. 179.

wages must be without any *animus revertendi*. *The Roebuck*, 2 Asp. N.S. 387.

353. As to what constitutes desertion, see *The Agincourt*, 1 Hagg. 281.

354. As to the sending of copies of entries and certificates of desertion abroad to the registrar-general, see No. 375, p. 2184.

2. Conduct amounting to—.*

355. Action for wages by a seaman who left the ship with the permission of the master for a short time, but refused to return when required by the master, dismissed with costs, wages being held forfeited by reason of desertion. *The Bulmer*, 1 Hagg. 163.

356. A mariner who quitted his ship on being ordered so to do by the mate, and on applying to the master on shore for his discharge was directed to return to the ship, which he refused and neglected to do, but engaged himself on board another ship. *Held*, to have forfeited his wages, such conduct amounting to desertion. *The Jupiter*, 2 Hagg. 221.

357. A sailor, under articles providing for a forfeiture of wages in case of breach of any of his engagements, among which is that of serving faithfully during the voyage, can recover nothing if he is left ashore in the course of it owing to his own fault in being absent, though he had no intention of deserting. *Sherman v. Bennett*, M. & M. 489.

3. Conduct not amounting to—.†

358. The seaman went on shore (it being a question whether or not he was authorized to do so), and, in consequence of a disorderly frolic, was locked up in prison as a disorderly person, but released on application of the master. Such acts *held* not to amount to desertion. *The Agincourt*, 1 Hagg. 281.

359. The conduct of seamen in quitting the ship in a foreign port in consequence of a quarrel with the master, it being

questionable whether he did not during the quarrel give them permission to depart, *held*, though improper, not to amount to desertion. A tender of wages up to the time of their joining another vessel, made by the master before action, pronounced for, but without costs. The court likewise refused to pronounce for any allowance for the travelling expenses, &c. of the seamen to join the other ship. *The Frederick*, *ibid.* 211.

360. Articles of agreement for service in a privateer contained a clause imposing forfeiture of wages for twenty-four hours' absence without leave, and also the following memorandum in the margin, viz., "to leave at the end of three months if the ship be in port and in perfect safety." The ship belonged to London. The master's cook, who had signed these articles, brought an action against the master for wages. It appeared that the plaintiff had served ten months, and on his return from a cruise, while the ship was in Yarmouth Roads, and the master was on shore, he asked leave of the mate to go on shore and see his wife, but was told by the mate that he could not say whether he might have leave or not; the plaintiff, however, went on shore, and did not afterwards join the ship. *Held*, that, under such circumstances, the master could not have refused the plaintiff leave without a sufficient reason, and the jury having found that the ship was in a place of safety when the plaintiff quitted it, a verdict was given for the plaintiff, of which the Court of Common Pleas afterwards approved. *Neave v. Pratt* (1805), 2 N. R. 408.

361. If seamen go on shore on the ship's duty, and when the boat is about to return, request to be permitted to remain on shore to get some victuals, which is refused, and the boat goes without them, if they afterwards go and offer to return to their duty on board the ship, it is not a desertion. *Sigard v. Roberts*, 3 Esp. 71.

* (196) If a seaman sent on shore in the employment of the ship neglects to return to his duty, the ship continuing at the port a sufficient time to give him opportunity to do so, the master in the meantime making inquiry for him, such voluntary absence will be a desertion, and forfeit his wages. *Piehl v. Balchen*, Olcott, Adm. 24. [AMERICAN.]

† (197) A British seaman does not forfeit his wages merely by coming on shore to demand legally payment of his wages, but this must be done within forty-eight hours. *Bab-*

bel v. Gardner (*The Brig Catherine*), Bee, 87. [AMERICAN.]

(198) Seamen absent from a ship without any fault of their own are nevertheless entitled to full wages. *Five Seamen v. Fair American*, Bee, 134. [AMERICAN.]

(199) It is not desertion for a seaman to leave the vessel against orders to go before a consul to complain of his treatment, nor merely to threaten to desert. *Hart v. The Otis*, Crabbe, 52. [AMERICAN.]

362. A seaman dismissed the ship without lawful cause is not to be deemed a deserter. *Limland v. Stephens*, 3 Esp. 269.

363. A seaman quitted the vessel at Swansea, on her return voyage (her port of discharge being London), without leave, and remained absent two days, but under circumstances denoting an *animus revertendi*, he having afterwards offered to return to his duty. Such conduct held not to amount to a total desertion. Wages pronounced for accordingly, with costs, and, under the circumstances of the case, without any deduction on the ground of temporary desertion. *The Two Sisters*, 2 W. Rob. 125.

364. A master of a vessel was sent home by the British consul on a criminal charge, and the mate was sent home also by direction of the consul as a witness. The master was subsequently discharged. Held, that the mate, who acted under such order, was not guilty of desertion so as to forfeit his wages. *Cross v. Hyne*, 3 Asp. 80.

4. Justification.

(a) Generally.

365. If a seaman or apprentice belonging to any ship is detained on a charge of desertion or any kindred offence, and if upon a survey of the ship being made under sect. 7 of the M. S. Act, 1871 (c. 110), it is proved that she is not in a fit condition to proceed to sea, or that her accommodation is insufficient, the owner or master of the ship shall be liable to pay to such seaman or apprentice such compensation for his detention as the court, having cognizance of the proceedings may award. The M. S. Act, 1873 (c. 85), s. 9.

(b) Ill-treatment.*

366. If a master of a ship by inhuman treatment compel a sailor to quit a ship, it is not such a desertion as will amount to a forfeiture of his wages for the voyage performed. *Limland v. Stephens*, 3 Esp. 269.

367. To a plea of desertion, replication, that while the plaintiff was serving as seaman on board the C., the captain and officers flogged and punished him with great and unreasonable cruelty and severity, and that such flogging and punishment were not rendered necessary by his mutinous or improper conduct, but were unnecessary and unreasonable; that the plaintiff requested the captain and officers to desist, which they refused to do, whereupon the plaintiff, having reasonable grounds to believe that they would continue to flog and punish him with great and unreasonable cruelty and severity, in order to escape therefrom, deserted from the ship. Held, a good answer to the plea. *Edward v. Trevellick*, 4 El. & Bl. 59; 1 Jur. N.S. 110; 24 L. J. Q. B. 9.

368. The plaintiff to a plea of desertion replied, that he was a negro, and that negroes are bought and sold as slaves in divers States of the United States; that he was serving on board the C., and, before he deserted, the captain of the ship threatened to sell him, the plaintiff, as a slave to citizens of the United States; that San Francisco is situated in one of the United States, to wit, in California, and that the plaintiff had just and reasonable grounds for believing, and did believe, that, on the arrival of the ship at San Francisco, the captain was about and meant to carry his threat into execution; and that in order to prevent the captain from selling him as a slave, the plaintiff deserted. Held, no answer to the plea. *Ibid.*

(c) Imprisonment.

369. Seamen were refused by the captain permission to go on shore, under circumstances rendering the refusal a harsh and indiscreet act of authority. They went on shore to complain thereof, and at the complaint of the captain were confined for twenty-five days in the House of Correction. Held, that the seamen were justified by such mode of treatment in retiring from the ship, and that their having

* (200) Seamen who are obliged to leave the vessel during the voyage in consequence of the cruelty of the master and mate are entitled to their wages to the time of leaving. *Rice v. The Polly and Kitty (Moran v. Baudin)*, 2 Pet. Ad. 420. Such seamen are entitled to the full wages of the voyage. *Ward v. Arnes*, 9 Johns. 138; *Sherwood v. McIntosh*, Ware, 109. [AMERICAN.]

(201) Repeated acts of cruelty and oppression on the part of the master will justify a seaman in deserting the vessel. *Steele v. Thacker*, Ware, 91. [AMERICAN.]

(202) But not a single act of assault and battery, although it may exceed the bounds of moderation, unless there be reasonable grounds for apprehending that such acts of oppression will be repeated. *Ibid.*

so done did not enure to a forfeiture of wages. *The Minerva*, 1 Hagg. 368.

370. Seamen refused to work, went ashore without leave, to seek advice as to the ship's articles, which were obscure, were imprisoned for such conduct, and refused, under advice, to return. Wages pronounced for. The threat of illegal imprisonment, even to enforce a lawful obligation, is an important ingredient in the consideration of such a case. *A fortiori* is the imprisonment itself, as taking away all *locus penitentiae* by bodily duress, for had not the threat been used or the imprisonment inflicted, the seamen might have returned to their duty. *The Westmoreland*, 1 W. Rob. 216, 225.

See also Nos. 325—327, p. 2176, and No. 346, p. 2180.

(d) *Illness.**

371. Illness held to be a reasonable cause for a mariner leaving the ship before delivery of cargo, or a legal discharge. *The Test*, 3 Hagg. 315.

(e) *Bad Provisions.†*

372. Action for wages by a seaman who had engaged to serve on board a collier from Shields to London and back, and quitted the vessel at the port of London in consequence of not being supplied with provisions. *Held*, that an aban-

donment of the ship under such circumstances did not work a forfeiture of wages. Wages pronounced for accordingly, with costs. *The Castilia*, 1 Hagg. 59.

(f) *Delay in Unloading.‡*

5. *Evidence.*

(a) *Generally.§*

373. If the master of any British ship leaves behind any seaman or apprentice at any place situate in any British possession abroad, on any ground whatever, without previously obtaining the sanction in writing indorsed on the agreement of the British consular officer there, or in his absence of two respectable merchants, stating the fact and the cause thereof, whether such cause be unfitness or inability to proceed to sea, or desertion or disappearance, he shall for each such default be guilty of a misdemeanour. See M. S. Act, 1854 (c. 104), s. 207.

(b) *Entries in Official Log.*

374. Upon the desertion of any seaman an entry thereof shall be made in the official log-book, and shall be signed by the master and also by the mate or one of the crew, and in any subsequent proceeding such entry shall, if practicable, be produced or proved; and in default of

* (203) If a sick seaman be sent from a ship to a hospital in a foreign port, and the ship leaves the port without his rejoining her, he is not to be regarded as absent without leave, so as to stop the running of his wages. *Nevitt v. Clarke*, Olcott, Adm. 316. [AMERICAN.]

† (204) When a seaman justifies his leaving the ship in a foreign port on the ground that bad provisions were supplied, they must be really bad and unfit for the men's support. *Ulary v. The Washington*, Crabbe, 204. [AMERICAN.]

‡ (205) If the master or owner defers beyond a reasonable time to unload the vessel, such laches may be regarded as equivalent to a discharge of the seamen. *The Eagle*, Olcott, Adm. 232, 386, 387. [AMERICAN.]

(206) But see this question discussed in Dunlap's *American Admiralty Practice*, 105 *et seq.*

§ (207) Whenever a seaman is left behind on account of desertion, an entry of the desertion must be made in the official log-book, and must be signed by the master, and also by the mate or one of the crew. This entry in the log-book must be shown to the consul, and he will then examine into the allegation of the desertion so made; and if, after full

inquiry, he is satisfied it is correct, but not otherwise, he will endorse upon the agreement a certificate in accordance with the provisions of sect. 207 in the form in Appendix Q. The consul will then make copies of the entry in the official log-book, and of the certificates so endorsed by him upon the agreement, and will certify the same to be true copies, and seal them with his official seal, and will transmit them by the first opportunity to the Registrar-General of Seamen, 82, Basinghall-street, London, in order that they may be produced in evidence if required. See Board of Trade Instructions to Consuls, par. 175, p. 52.

(208) The burthen of proving desertion lies upon him who sets it up in answer to a claim for wages, but when that has been proved as required by sect. 250, it lies on the seaman or apprentice so charged with desertion to show a proper certificate of discharge, or to justify on legal grounds the fact of his leaving the ship, unless he can show that no entry has been made in the official log, or effectually impeach the truth of it, or otherwise shake the credibility of the evidence adduced against him. Maclachlan on Merchant Shipping (3rd ed.), p. 247.

such production or proof the court hearing the case may, at its discretion, refuse to receive evidence of the offence. See M. S. Act, 1854 (c. 104), s. 243.

375. In all cases of desertion from any ship abroad, the master shall produce the entry of the desertion in the official log-book to the person thereby required to indorse on the agreement a certificate of such desertion; and such person shall thereupon make and certify a copy of such entry, and also a copy of the certificate of desertion; and if he is a public functionary he shall, and in other cases the master shall, forthwith transmit such copies to the registrar-general of shipping and seamen in England, who shall, if required, cause the same to be produced in any legal proceeding; and such copies, purporting to be so made and certified, and to have come from the custody of the registrar, shall in any legal proceeding relating to such desertion be received as evidence of the entries therein appearing. *Ibid.* s. 249.

376. Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion, it is sufficient to show that the seaman or apprentice was duly engaged in or belonged to the ship, and quitted it before the completion of the voyage or engagement, or if the voyage was to terminate in the United Kingdom and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book, unless the seaman or apprentice produces a proper certificate of discharge, or otherwise shows to the satisfaction of the court that he had sufficient reasons for leaving his ship. *Ibid.* s. 250.

377. The certificate of a consul (given under the 207th section of the M. S. Act, 1854 (c. 104)), that a seaman had deserted, held not to be conclusive evidence of the fact of desertion, in proceedings taken by the seaman for wages. *Lewis v. Jewhurst*, 2 Asp. 489.

378. To constitute a total desertion entailing a forfeiture of wages, the onus of proof lies upon the owner. *The Two Sisters*, 2 W. Rob. 138.

6. Copies and Certificates sent to Registrar-General.

See s. 5, *supra*.

5. Absence without Leave.

See c. 4, *supra*.

6. Neglect or Refusal to join or proceed to Sea.

See c. 4, *supra*.

7. Quitting Ship before secured, without Leave.

See tit. WAGES, c. 17.

8. Misconduct endangering Ship, Life, or Member.

380. Any master, seaman, or apprentice belonging to any British ship who by wilful breach or neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board such ship, or who by wilful breach or neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, is guilty of a misdemeanor. See M. S. Act, 1854 (c. 104), s. 239.

381. The above section is not affected by anything in this section which abolishes imprisonment for desertion, absence without leave, or neglect or refusal to join or proceed to sea, and makes other provisions in lieu thereof. See Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16).

9. Wilful Disobedience.

382. A seaman for wilful disobedience to any lawful command is liable to imprisonment not exceeding four weeks, with or without hard labour, and, at the discretion of the court, to forfeit out of his wages a sum not exceeding two days' pay. See M. S. Act, 1854 (c. 104), s. 243, sub-s. 4.

10. Mutinous Conduct.

See tit. WAGES, c. 16.

11. Continued Wilful Disobedience, or Neglect of Duty.

383. A seaman for continued wilful disobedience to lawful commands, or continued wilful neglect of duty, is liable to

imprisonment not exceeding twelve weeks, with or without hard labour, and at the discretion of the court, to forfeit for every twenty-four hours' continuance thereof a sum not exceeding six days' pay, or any expenses properly incurred in hiring a substitute. See M. S. Act, 1854 (c. 104), s. 243, sub-s. 5.

12. Insubordination.

See tit. WAGES, c. 16.

13. Assaulting Officers.

384. A seaman assaulting any master or mate is liable to imprisonment not exceeding twelve weeks, with or without hard labour. See M. S. Act, 1854 (c. 104), s. 243, sub-s. 6.

14. Combining to disobey, Neglect Duty, or Impede Navigation.

385. Any seaman lawfully engaged, or any sea apprentice combining with any of the crew to disobey lawful commands, neglect duty, or impede navigation of the ship or the progress of the voyage, is liable to imprisonment not exceeding twelve weeks, with or without hard labour. *Ibid.* s. 243; sub-s. 7.

15. Wilful Damage or Embezzlement.

1. Generally.*

386. Any seaman wilfully damaging

* (209) Dishonesty is a sufficient cause for degrading a steward and putting him before the mast. *Sherwood v. M'Intosh*, Ware, 109. [AMERICAN.]

(210) The theft of a portion of cargo by a mariner works an absolute forfeiture of wages. *Alexander v. Galloway*, 1 Abb. Adm. 261. [AMERICAN.]

(211) Cooks have no right to the slush of the ship. *Parker v. Ship Calliope (Black v. Ship Louisiana)*, *Ibid.* 272. [AMERICAN.]

(212) Remnants of ship's stores are not perquisites of the steward. *Ibid.* 268. [AMERICAN.]

† (213) When an embezzlement has arisen from the fault, fraud, connivance, or negligence of the crew, they are bound to contribute to it in proportion to their wages; when the embezzlement is fixed on an individual, he is solely responsible. When it is clearly shown to have been made by the crew, but the particular offenders are unknown, and from the circumstances of the

the ship, or embezzling or wilfully damaging any of her stores or cargo, is liable to forfeit out of wages a sum equal to the loss sustained, and, at the discretion of the court, to imprisonment not exceeding twelve weeks, with or without hard labour. *Ibid.* s. 243, sub-s. 8.

387. If the cargo be embezzled or injured by the fraud or negligence of the seamen, the owner has a right to deduct a compensation from the wages of those whose misconduct has produced the injury. *Molloy*, b. 2, c. 3, s. 9; 2 Show. 167; 1 Ld. Raym. 650.

388. An act of embezzling is a reason for withholding a proportionate part of the wages of a mariner, but does not work a forfeiture of the whole. *The Malta*, 2 Hagg. 172.

389. A seaman entered the master's cabin in his absence, with three or four others of the crew, and drank three bottles of wine from a locker left open, and afterwards, though rather tipsy, returned to his work. *Held*, that such conduct did not amount to a forfeiture of wages. *The Gondolier*, 3 Hagg. 191.

390. Amongst the most important of the duties of chief mate are a due vigilance, care, and attention to preserve the cargo from robbery, but he is not responsible for any embezzlement that may occur not arising from any neglect of duty on his part. *The Duchess of Kent*, 1 W. Rob. 285.

2. Evidence.†

391. If during the voyage part of the cargo be plundered, but by whom cannot

case strong presumptions of guilt apply to the whole crew, all are liable; but where no fault, fraud, connivance, or negligence, is proved as against the crew, and no reasonable presumption is shown against their innocence, the loss must be borne exclusively by the owner or master. *Speer v. Pearson*, 1 Mason, 104. [AMERICAN.]

(214) In no case are the innocent part of the crew to contribute for the misdemeanors of the guilty; and in a case of uncertainty the burden of proof of innocence does not rest with the crew, but the guilt of the parties is to be established beyond all reasonable doubt before the contribution can be demanded. *Ibid.*

(215) The fact that the seaman has been acquitted on a criminal trial, for the larceny of a part of the cargo, is not conclusive to rebut the charge, when set up as a defence against his suit for wages. *Ibid.* [AMERICAN.]

be ascertained, the seaman does not in consequence of such embezzlement forfeit his wages. *Thompson v. Collins*, 1 N. R. 347.

392. And *semble*, in such a case he is not even liable to a proportionate deduction from his wages, in common with the other sailors, on account of such embezzlement. *Ibid.*

393. In a claim for wages preferred by the steward, opposed on the ground of a deficiency in the linen, charged as embezzled or lost by the negligence of the steward, *held*, that proof of the loss was not sufficient, but that it must be shown that the articles had been delivered into his custody, and that the deficiency was imputable to him. Wages pronounced for. *The Lady Campbell*, 2 Hagg. 10.

394. Proof of a bottle of spirits being seen in the mariner's chest, *held* to be insufficient to sustain a charge of embezzlement working forfeiture of wages. *The Test*, 3 Hagg. 315.

16. Smuggling causing Loss.*

395. A seaman for any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, is liable to pay to such master or owner a sum sufficient to reimburse him for such loss or damage; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy. See M. S. Act, 1854 (c. 104), s. 243, sub-s. 9.

396. By certain clauses in the ship's articles, it was provided that if contraband goods were found in the forecabin the seamen living therein should forfeit their wages and £10 penalty. *Held*, that the discovery of such goods there was not conclusive to work a forfeiture of wages against any of the seamen not alleged and proved to have been personally implicated in the offence. *The Prince Frederick*, 2 Hagg. 394.

17. Neglect or Refusal to work.

See tit. WAGES, c. 17.

18. False Statement of Name and Ship.

397. Penalty not exceeding £5 against any seaman who on or before being engaged wilfully and fraudulently makes a false statement of the name of his last ship or of his own name, and the penalty may be deducted from any wages he may earn by virtue of such engagement, and shall, subject to reimbursement for loss and expenses (if any) from any previous desertion, be paid like other penalties under this act. See M. S. Act, 1854 (c. 104), s. 255.

19. Wrongful Complaint of Provisions.

See tit. WAGES, c. 17.

20. Stowaways.

398. Penalty against any person who secretes himself and goes to sea in any ship without the consent of the owner, consignee, master, mate, or person in charge of such ship, or person entitled to give such consent, not exceeding £20, or imprisonment with or without hard labour not exceeding four weeks. See M. S. Act, 1854 (c. 104), s. 258.

21. Waiver.

See tit. WAGES, c. 16.

22. Inquiry into Incompetency of Master, Mate, or Engineer.

See tit. SHIPPING CASUALTIES INVESTIGATIONS, c. 5.

23. Evidence.

1. Generally.

See tit. EVIDENCE, c. 28, p. 462.

2. Entries in Official Log.

399. In any legal proceeding in reference to the offences enumerated in s. 243,

* (216) Smuggling may be considered in diminution or in bar of the seaman's or master's wages, it being an offence in the nature of barratry, causing loss and delay to

the vessel, for which he would justly be subject to make amends by forfeiture or subtraction of wages. *Scott v. Russell*, 1 Abb. Adm. 258. [AMERICAN.]

(for which see Nos. 343, 344, p. 2180), the entries as to the offence required to be made in the official log are, if practicable, to be produced or proved, and in default the court hearing the case may refuse to receive evidence of the offence. See M. S. Act, 1854 (c. 104), s. 244.

See tit. EVIDENCE, c. 16, pp. 435, 436.

3. Desertion.

See c. 4, p. 2183.

24. Apprehension of Deserting or absenting Seamen.

400. Whenever any seaman or apprentice is brought before any court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of his having deserted or absented himself therefrom without leave, such court may, if the master, owner, or agent so requires, cause him to be conveyed on board or deliver him to the master, mate, or owner or his agent, to be by them so conveyed, and may order any costs and expenses properly incurred by the master or owner by reason of the offence to be paid by the offender, and, if necessary, to be deducted from any wages he has earned or may afterwards earn. See M. S. Act, 1854 (c. 104), s. 247, as amended by Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), 2nd Sched.

401. Owners are not liable for an abuse by the master of the powers conferred on him by the M. S. Act, 1854 (c. 104), s. 246 (now repealed), of apprehending deserters without a warrant. *O'Neil v. Rankin*, 3rd Series, vol. ii. p. 538. [SCOTCH.]

25. Costs of Conviction or Imprisonment.

402. Where in any proceeding as to seamen's wages it is shown that any seaman or apprentice has in the course of the voyage been convicted of any offence by any competent tribunal, and rightly punished for it, the court may direct a part of the wages due, not exceeding £3, to be applied in reimbursing any costs properly incurred by the master in procuring such conviction and punishment. See M. S. Act, 1854 (c. 104), s. 251.

403. It may direct all or any of the costs of the master or owner in procuring

the imprisonment of any seaman or apprentice in a foreign port, or in his maintenance whilst so imprisoned, to be paid out of his wages then or subsequently earned. *Ibid.* s. 263, sub-s. 5.

26. Forfeitures.

1. Generally.

See tit. WAGES, c. 16.

2. By Naval Courts.

See tit. JURISDICTION, Pt. II. p. 690.

3. Application.

404. All clothes, effects, wages, and emoluments which under these provisions are forfeited for desertion, shall be applied in the first instance towards the reimbursement of the expenses occasioned thereby to the master or owner of the ship; and may, if earned subsequently to the desertion, be recovered by such master, or owner, or his agent, as the deserter might have recovered the same if not forfeited; and in any legal proceeding relating to such wages the court may order the same to be paid accordingly; and subject to such reimbursement the same shall be paid into the Exchequer as the Treasury may direct; and in all other cases of forfeiture of wages under these provisions, the forfeiture shall, in the absence of specific directions, be for the benefit of the master or owner. See M. S. Act, 1854 (c. 104), s. 253.

27. Fines.

1. Generally.

404a. See Pt. II. p. 2141, and as to deduction from wages, see tit. WAGES, c. 17.

2. Mode of Enforcing—.

405. Whenever any seaman commits an act of misconduct for which his agreement imposes a fine, which it is intended to enforce, an entry thereof shall be made in the official log-book, and a copy of such entry furnished or read over to the offender, and an entry of such reading over, and of the reply (if any) of the offender, shall be made, subject to the conditions before specified. See M. S. Act, 1854 (c. 104), s. 256.

405a. Such fine shall be deducted and paid over as follows: if the offender

is discharged in the United Kingdom, and the offence and such entries in respect thereof are proved, in the case of a foreign-going ship to the satisfaction of the superintendent before whom the offender is discharged, and in the case of a home-trade ship, to the satisfaction of the superintendent at or nearest to the place at which the crew is discharged, the master or owner shall deduct such fine from the wages of the offender, and pay the same over to such superintendent; and if before the final discharge of the crew in the United Kingdom any such offender enters any of her Majesty's ships, or is discharged abroad, and the offence and such entries are proved to the satisfaction of the officer in command of the ship he so enters, or of the consular officer, officer of customs, or other person by whose sanction he is so discharged, the fine shall be deducted, and an entry of such deduction shall then be made in the official log-book (if any) and signed by such officer or other person; and on the return of the ship to the United Kingdom the master or owner shall pay over such fine, in the case of foreign-going ships, to the superintendent before whom the crew is discharged, and in the case of home-trade ships to the superintendent at or nearest to the place at which the crew is discharged. See M. S. Act, 1854 (c. 104), s. 256.

406. Penalty against any master or

owner neglecting or refusing so to pay over such fine not exceeding six times the amount of the fine retained by him; no act of misconduct for which any such fine has been paid shall be otherwise punished under the provisions of this act. *Ibid.*

3. *By Naval Court.*

407. Every naval court may decide any questions as to fines arising between any of the parties to the proceedings before it; all such orders are conclusive in any subsequent legal proceedings. *Ibid.* s. 263, sub-s. 4.

4. *Evidence.*

(a) *Entries in Official Log.*

See tit. EVIDENCE, c. 16, p. 435.

28. Conveyance of Offenders and Witnesses to nearest British Court.*

408.—(1) Whenever any complaint is made to any British consular officer of any offence on the high seas committed by any master, seaman, or apprentice belonging to any British ship, such consular officer may inquire into the case on oath, and take steps for placing the offender under restraint and sending him to the

* (217) Upon a complaint being made to the consul of any offence against British law having been committed on the high seas, or if without complaint he becomes aware of any serious offence having been committed on board a British ship, he may inquire into the case upon oath, and may summon witnesses before him for that purpose, and if there is evidence which, in the opinion of the consul, is sufficient to substantiate the charge, he may send the offender to some place in the British dominions, at which he can be tried. As prosecutions in such cases have often failed for want of the observance of the proper formalities or for want of evidence, or for the want of a prosecutor, or of witnesses; and as sending home prisoners involves very serious expense, the consul will be careful to observe the following rules:—

(218) The consul will not send home the offender at the public expense unless the crime is murder, attempt to murder, piracy, slave trading, manslaughter, aggravated assault, wilful destruction of the ship, deliberate and concerted mutiny, or some other offence of a very serious nature involving

risk to the life or welfare of others. See Board of Trade Instructions to Consuls, par. 188.

(219) In cases of petty theft, and also in cases of insubordination and of other crimes of that description, the consul will in no case send the offender for trial, unless the master or agent of the ship, or some other person against whom the offence has been committed, undertakes to prosecute and to pay the expenses of sending home the offender and witnesses. This undertaking must be such as to be satisfactory to the consul, and must be forwarded by him to the Board of Trade. *Ibid.* par. 190, p. 96.

(220) The consul must in no case send the offender for trial unless he at the same time sends the necessary witnesses to give *viu* evidence at the trial, or is satisfied that they are about to proceed to the place where the trial is to be held. *Ibid.* par. 190.

(221) The consul should also send the original depositions. *Ibid.* par. 200, p. 58.

(222) See for other instructions to consuls in reference to sending offenders for trial, *Ibid.* paras. 191—200.

United Kingdom, or to any British possession where there is a court capable of taking cognizance of the offence, in any ship belonging to her Majesty or any of her subjects. (2) For this purpose such consular officer may order the master of any British ship bound to the United Kingdom or such British possession to give a passage and subsistence during the voyage to such offender, and the witnesses, but not more than one offender for every 100 tons register, or more than one witness for every fifty tons. Such consular officer shall endorse upon the agreement of the ship such particulars with respect to any offenders or witnesses sent in her as the Board of Trade requires. (3) Every such master shall on his ship's arrival in the United Kingdom, or British possession, give the offender into custody. Penalty for breach not exceeding £50; the expense of imprisoning the offender and of so conveying him and the witnesses in any other than the ship to which they belong, are part of the costs of the prosecution, or to be paid as costs incurred on account of seafaring subjects of her Majesty left in distress in foreign parts. See M. S. Act, 1854 (c. 104), s. 268.

408a. Where a fugitive or prisoner is authorized to be returned to a port of her Majesty's dominions, in pursuance of Part I. and Part II. of this act, such person may be sent thither in any ship belonging to her Majesty, or any of her subjects. For this purpose the authority signing the warrant for return may order the master of any such ship to afford a passage and subsistence during the voyage to such person, his custodian, and the witnesses, but the master is not required to receive more than one such person for every 100 tons or more than one witness for every fifty tons. The authority shall endorse on the ship's agreement such particulars as to the person or witness sent as the Board of Trade may require. The master shall, on his arrival, cause such person, if not in custody, to be given into custody. Penalty for breach, after payment of a reasonable amount for expenses, £50. The Fugitive Offenders Act, 1881 (c. 69), s. 27.

409. The British consul sent home the master of a British ship on a criminal charge, and the mate as a witness. The master was subsequently discharged. *Held*, that the consul had authority to order the mate home. *Cross v. Hyne*, 3 Asp. 80.

29. Defence of Unseaworthiness or Insufficient Accommodation of Ship.

410. As to the right of any seaman or apprentice proceeded against for desertion, neglect, or refusing to join or proceed to sea in his ship, or being absent from or quitting the same without leave, when one-fourth of the seamen of the ship allege that she is, by reason of unseaworthiness, overloading, improper loading, defective equipment, or otherwise, not in a fit condition to proceed to sea, and that her accommodation is insufficient, to have such allegations inquired into by the court in which the proceedings are taken, provided the seaman or apprentice proceeded against complained to the master of such circumstances before leaving the ship, and as to the survey of the ship for that purpose, the costs of the survey, and the compensation to be made to the parties according to the result of the inquiry, see tit. OWNERS, Pt. III. p. 1272.

30. Persons liable to Discipline.

1. Seamen sent Home.

411. Seamen whom masters of ships are compelled to convey, and persons going in ships without leave, are to be subject to the same regulations for preserving discipline, and to the same penalties and punishments for offences, as the crew. See M. S. Act, 1854 (c. 104), s. 245.

2. Stowaways.

See No. 411, *supra*.

31. Jurisdiction.

1. Generally.

412. All offences against property or person committed out of her Majesty's dominions by any master, seaman, or apprentice at the time, or within three months previously, employed in any British ship are to be deemed offences committed within the jurisdiction of the Admiralty of England; and the costs and expenses of prosecution thereof may be similarly paid. See M. S. Act, 1854 (c. 104), s. 267.

413. If any British subject, charged with having committed any crime or offence on board any British ship on the high seas, or in any foreign port or har-

hour, or if any person, not a British subject, charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any court of justice in her Majesty's dominions which would have had cognizance thereof if committed within its ordinary jurisdiction, such court shall have jurisdiction to try the offence as if such offence had been committed within such limits, but this shall not interfere with the act of 12 & 13 Vict. c. 96. See the M. S. Act, 1855 (c. 91), s. 21.

414. When any court, justice, or magistrate has power to order payment of any seamen's wages, penalties, or other sums of money, if the party directed to pay is the master or owner, and it is not paid as prescribed in the order, the functionary making the order may, in addition to any other powers of compelling payment, direct the amount unpaid to be levied by distress, or pouncing and sale of the ship, her tackle, furniture, and apparel. See M. S. Act, 1854 (c. 104), s. 523.

415. As to the prosecution of offenders under M. S. Acts, 1854 and 1876, see tit. OWNERS, Pt. II. p. 1254.

416. A foreigner, a ship's carpenter, belonging to a foreign merchant ship, was indicted for conspiring in this country, with the foreign owner and master, to destroy or cast away the vessel, with intent to prejudice the owners or insurers of ship or cargo (the counts charging an intent to defraud). It was admitted the prisoner was party to the scuttling the

ship on the high seas, but the jury were directed to consider whether the prisoner was a party in this country to a previous plan or conspiracy to destroy the ship, not limited to its destination on the high seas, the principal offence not being triable in this country. As to a conspiracy so limited, *quære*. *Reg. v. Kohn*, 4 F. & F. 68.

2. Naval Courts.

See tit. JURISDICTION, Pt. II. p. 690.

3. Consular Officers.

See c. 28, p. 2188.

Part VI.—DECEASED.

1. Generally.*

417. So much of the third part of this act as relates to the wages and effects of deceased seamen and apprentices, applies to all sea-going British ships, wherever registered, of which the crews are discharged, or whose final port of destination is, in the United Kingdom, and to the owners, masters, and crews of such ships. See the M. S. Act, 1854 (c. 104), s. 109.

418. The master of every foreign-going ship, whose crew is discharged in the United Kingdom, must keep a list on a Board of Trade form of the clothes and other effects belonging to any of the crew who have died, with a statement of the manner in which they have been dealt

* (224) But see the 189th section, and the words by or on behalf of in that section.

(225) As to wages and effects of deceased seamen, see Board of Trade Instructions to Officers in British Colonial possessions, revised January, 1875, pp. 35—38; *Ibid.* of July, 1882; and Board of Trade Instructions to Superintendents of August, 1879, pp. 42—51.

(226) For provisions as to the wages and effects of seamen, see the Revised Statutes of U. S. ss. 4524—4548. [AMERICAN.]

(227) The death of the master does not terminate the contract with the seamen. *U. States v. Cassidy*, 2 Sumner, 582; *Bray v. Ship Atalanta*, Bee, 48, 49; *Orne v. Townsend*, 4 Mason, 541. [AMERICAN.] See also *The Brunswick*, Stuart's Vice-Adm. Rep. 139. [LOWER CANADA.] 2 Boulay-Paty, 182; Valin, 1632, liv. 2, tit. 7, art. 2.

(228) A mariner shipped as an able-bodied seaman when in fact he had a fatal disease, of which he died soon after the vessel sailed.

The claim of his administrator for wages was not allowed. *Writer v. Ship Richmond*, 2 Pet. Ad. 263. [AMERICAN.]

(229) Seamen shipped for the whole voyage, and died before the return of the vessel. Their administrators were allowed wages till the ship's return. *Walton v. Ship Neptune*, 1 Pet. Ad. 142; *Armstrong v. Same*, *Ibid.*; *Scot v. Brig Greenwich*, *Ibid.* 155; *Sims v. Jackson*, *Ibid.* 157, n.; *S. C.*, 1 Wash. C. C. 414. [AMERICAN.]

(230) The representatives of a seaman who died on the voyage in the service of the ship are entitled to his wages for the whole voyage. *Johnson v. The Coriolanus*, Crabbe, 239. [AMERICAN.]

(231) The law maritime will not sustain a claim for wages by the legal representatives of a seaman beyond the time of his death where the engagement was by the month. *Natterstrom v. Ship Hazard*, Bee, 441. And see 1 Conkling's Admiralty Law, 140; 2 Parsons on Maritime Law, 578. [AMERICAN.]

with, and the money for which any of them have been sold. *Ibid.* s. 273.

419. The names of any members of the crew who have died or otherwise ceased to belong to the ship, with the times, places, causes, and circumstances thereof. *Ibid.*

420. Also of the wages due to any of the crew who have died at the times of their respective deaths. *Ibid.*

421. If any seaman or apprentice to whom wages are due, notwithstanding that freight has not been earned, dies before they are paid, they shall be paid and applied like the wages of seamen who die during a voyage. *Ibid.* s. 184.

422. The 7 & 8 Vict. c. 112, s. 15 (since repealed, but similar to sect. 188 of the M. S. Act, 1854 (c. 104)) did not give any jurisdiction to a justice of the peace to adjudicate upon a claim for wages by the administrator of a deceased seaman, and such administrator was not deprived of his right of action by sect. 16. *Hollingsworth v. Palmer*, 4 Exch. 267; 18 L. J. Exch. 409.

423. On motion, at the instance of the master, for warrant of arrest against the proceeds of a ship for wages due to certain seamen who had died on the voyage, and which wages therefore he was (under 4 & 5 Will. 4, c. 52, since repealed) called upon to pay over to the Seamen's Hospital within three months, under a penalty of double the amount, the court, intimating a desire to protect the master, and a doubt whether the consent of the Seamen's Hospital should not first be ascertained, directed the case to stand over, the registrar having suggested that the payment could not be safely made without an appearance for the representative of the owner. *The Dunvegan Castle*, 3 Hagg. 329.

424. Wages due to deceased seamen prior to 1 Will. 4, c. 25, decreed, subsequently to such act, to be paid out of the proceeds of a derelict which had been condemned as a droit of Admiralty. *The Speculator*, *ibid.* 330, n.

425. *Semble*, the representative of a

seaman hired by the month is entitled to a proportion of wages to the time of his death, if he can prove a usage to pay a proportionate sum in such cases. *Cutter v. Powell* (1795), 6 T. R. 320; 2 Smith's Leading Cases, 8th ed., p. 1. See also *Armstrong v. Smith*, 1 B. & P. (N. R.) 299.

2. In the United Kingdom.

1. Payment of Effects and Wages.

(a) To Superintendent.

426. Whenever any seaman or apprentice dies in the United Kingdom, and is entitled to claim from the master or owner wages or effects, such master or owner shall pay and deliver or account for the same to the superintendent at the port where the seaman or apprentice was, or was to have been, discharged, or to the Board of Trade, or as it directs. See M. S. Act, 1854 (c. 104), s. 198.

3. Abroad.

1. Inquiry into Cause of Death.*

427. When any death happens on board any foreign-going ship, the superintendent shall, on the arrival of such ship at the port where the crew is discharged, inquire into the cause of such death, and make on the list of the crew delivered to him an indorsement that the statement of the cause of death therein contained is, in his opinion, true or otherwise; and shall for the purpose have the powers given to Board of Trade inspectors (see as to same tit. TRADE, BOARD OF); if it appears to him that any such death has been caused by improper means, he shall report the matter to the Board of Trade, or if the emergency so requires, take immediate steps for bringing the offender to justice. *Ibid.* s. 269.

* (232) Whenever a death happens on board a British ship, whether in the case of a British subject or a foreigner, the consul should inquire into the cause of the death and the circumstances attending it, using, if necessary, the powers mentioned in s. 13 of the M. S. Act, 1854 (c. 104), and report the result to the registrar-general of seamen, or should any serious complaint be made by the master

or any of the crew as to the manner in which the deceased lost his life, he should summon a naval court, when if it appears that the death has been caused by violence, ill-treatment, neglect, or other improper means, he should be guided by the instructions relating to naval courts, and also by para. 185—200, and par. 291. See Board of Trade Instructions to Consuls, of 1883, par. 158, p. 47.

2. *Payment of Wages and Charge, Sale, and Delivery of Effects.*

(a) *Generally.**

428. Whenever any seaman or apprentice belonging to or sent home in any British ship, whether a foreign-going or home-trade ship, employed on a voyage to terminate in the United Kingdom, dies during such voyage, the master shall take charge of all money, clothes, and effects which he leaves on board, and shall, if he thinks fit, cause all or any of them to be sold by auction at the mast or other public auction, and shall thereupon sign an entry in the official log-book containing—(1) A statement of the amount of money and a description of the effects; (2) In case of a sale, a description of each article sold, and the sum received for it; (3) A statement of the sum due to the deceased as wages, and the total amount of the deductions (if any) to be made therefrom; and cause such entry to be attested by a mate and one of the crew. See M. S. Act, 1854 (c. 104), s. 194.

429.—(1) If the ship proceeds at once to any port in the United Kingdom without touching at any foreign port, the master

shall within forty-eight hours after his arrival deliver the effects then unsold, and pay the money and proceeds of sale and balance of wages to the superintendent there: (2) If the ship touches and remains for forty-eight hours at some foreign or British port abroad, the master shall report the case to the British consular officer or officer of customs there, and give him any information he requires as to the destination of the ship and probable length of the voyage; and such officer may thereupon require the effects, money, and wages to be paid to him, and shall upon such payment give the master a receipt, and the master shall within forty-eight hours after his arrival at his port of destination in the United Kingdom produce the same to the superintendent there; and such consular officer or officer of customs shall indorse and certify upon the agreement with the crew such particulars as to such payment as the Board of Trade requires: (3) If such officer does not require such payment and delivery to be made to him, the master shall take charge of the property, and within forty-eight hours after his arrival at his port of destination in the United Kingdom

* (233) If ships touch and remain forty-eight hours at a foreign port, the consul will inquire whether any seaman has died during the voyage or at the port. In cases where such death has happened, and the consul finds after inquiry that the vessel is bound direct, or will shortly return to the United Kingdom, he will not demand the wages and effects unless special circumstances render it expedient; but when the consul finds that the settlement of the claims of relatives will be unduly retarded if delivery of the wages, &c. by the master is delayed until the arrival of the ship in the United Kingdom, he will require from the master the payment of the wages of the deceased either in cash or by bill on the owners, and the delivery of his effects or of the proceeds of sale of them. An account in the form C. 15 must be delivered by the master to the consul, who will compare it with the agreement and official log-book, and allow only such deductions from wages as are just and lawful, placing his initials against such deductions in the column set apart for that purpose in the form. He will also be careful not to allow any deductions in respect of any payment made in contravention of s. 2, sub-s. (1) and (2), and s. 3, sub-s. (4) of the Merchant Seamen (Payment of Wages and Rating) Act, 1880. See Board of Trade Instructions to Consuls, 1883, par. 160, p. 48.

(234) The British Government have agreed with the Governments of France, Germany,

Sweden, and Norway to deliver to their respective consuls-general in London the wages and effects received by the Board of Trade under the provisions of the M. S. Act, 1854 (c. 104), of seamen belonging to those countries who have died on board British merchant vessels, and these Governments have on their part agreed to deliver to the nearest British consul the property of British seamen dying on board their merchant vessels or on shore in their territories. The consuls will, therefore, report to the Board of Trade the particulars of the deaths of such British seamen, receive their wages and effects, deal with them, and account for them to the Board of Trade as if the seamen had belonged to British ships. Copies of the notes exchanged between the British Government and the Governments of France, Germany, Sweden, and Norway will be found in the Appendix B. *Ibid.* par. 171, p. 50.

(235) Declarations have been made between the British Government and the Governments of Denmark, Italy, and Russia relative to the disposal of the estates of deceased seamen, of which copies will be found in Appendix O. The consul will hand over the property of deceased Danish, Italian, and Russian seamen (as provided for by the terms of the declarations) to their respective consuls, and will account for the property of British seamen received from the Governments of Denmark, Italy, and Russia as if the seamen had belonged to British ships. *Ibid.* par. 172, p. 50.

pay the same to the superintendent there. *Ibid.* s. 195.

429a. The master shall in all cases in which any seaman or apprentice dies during the voyage give to the Board of Trade, or to such officer or superintendent an account in the form they require, of the effects, money, and wages, and no deductions claimed shall be allowed unless verified as therein mentioned. Upon due compliance with the provisions required, the superintendent shall grant to the master a certificate to that effect, and no officer of customs shall clear inwards any foreign-going ship without production of such certificate. Penalty for breach against the master, and failing him the owner, not exceeding treble the value, or £50. And he shall be accountable for the property to the Board of Trade; and the property shall be recoverable like wages. *Ibid.* ss. 195, 196.

430. If any such seaman or apprentice, or any seaman or apprentice who has within six months preceding his death belonged to a British ship, dies abroad, in or out of her Majesty's dominions, leaving any money or effects not on board his ship, the chief officer of customs or the British consular officer at or nearest to the place shall claim and take charge of the same; and if he thinks fit, sell all or any part thereof, and shall quarterly, or as the Board of Trade directs, remit to the paymaster-general all such money or proceeds of sale, and render such accounts thereof as the Board of Trade requires. *Ibid.* s. 197, as amended by M. S. Act Amendment Act, 1862 (c. 63), s. 20.

See also Nos. 418—425, *supra*.

(b) *Seamen lost with Ship.*

See tit. WAGES, c. 1.

(c) *Formalities required in Wills.**

431. As to nuncupative wills of seamen made at sea, see 1 Vict. c. 26, s. 11; and 1 Williams on Executors, 8th ed. pp. 118—125.

431a. As to the wills of petty officers and seamen in the royal navy, see 11 Geo. 4 & 1 Will. 4, c. 20; and 1 Williams on Executors, 8th ed. pp. 400—406.

432. When the deceased seaman or

apprentice has left a will the Board of Trade may refuse to pay any such wages or effects to any person claiming under a will made on board ship, unless in writing, and signed or acknowledged by the testator in the presence of and attested by the master or first or only mate of the ship; and may refuse to pay the same to any person not related to the testator by blood or marriage though claiming under a will not made on board ship, unless it is in writing, and is signed or acknowledged by the testator in the presence of and attested by two witnesses, one being a superintendent, minister, officiating minister, or curate of the place where it is made, or, in a place where there are no such persons, some justice of the peace, British consular officer, or officer of customs. See M. S. Act, 1854 (c. 104), s. 200.

433. Whenever any claim made under a will is rejected by the Board of Trade on account of the will not being so made and attested, the wages and effects shall be dealt with as if no will had been made. *Ibid.*

(d) *To Next of Kin or Legatees.*

(aa) *Probate or Administration, when required.*

434. If the money and effects of any deceased seaman or apprentice in the hands of the Board of Trade or its agents, including moneys received for effects sold before delivery to the Board of Trade or by its direction, do not exceed fifty pounds, then, subject to other provisions, and to all such deductions for expenses incurred on his behalf and allowed by the Board, the Board may pay the same to any claimants who prove themselves to the satisfaction of the Board to be his widow or children, or to be entitled under his will, or under the statutes of distribution of intestates' effects, or to be entitled to procure probate or letters of administration or confirmation, although no such grant has been taken out, and shall be thereby discharged from all further liability in respect thereof, or the Board may require probate, letters of administration, or confirmation to be taken out, and then pay the

* (236) For provisions as to seamen's wills that persons may act for the accountant-general of the navy in his duty as inspector of the seamen's wills, see Order in Council of 19th July, 1862.

(237) See Order in Council of December 28th, 1865, regulating the duties of the inspector of seamen's wills, and establishing a repository for wills of seamen and marines, 12 Hertslet's Treaties, 1085.

legal representatives; and all claimants so paid shall apply the same in due course of administration. If such money and effects exceed fifty pounds, then, subject to other provisions and to deduction for expenses, the Board shall pay same to the legal representatives of the deceased. See M. S. Act, 1854 (c. 104), s. 199.

4. Expenses of Burial.

1. *If Injured in Ship's Service.*

435. As to the right of any master, seaman, or apprentice, hurt or injured in the service of his ship, if he dies therefrom, to have the expense of his burial defrayed by the owner without any deduction from his wages, see M. S. Act, 1854 (c. 104), s. 228, and Pt. IV. p. 2163.

2. *If discharged or left behind Abroad.*

See Pt. III. p. 2152.

3. *In other Cases.*

436. Any reasonable expenses duly incurred by the owner in respect of the burial of any seaman or apprentice who dies whilst on service, shall, if duly proved, be deducted from his wages. See M. S. Act, 1854 (c. 104), s. 228, sub-s. 4, and Nos. 284, 285, p. 2170.

See also note 154, p. 2165.

5. Evidence.

1. *Entries in Official Log.*

See tit. EVIDENCE, p. 435.

6. Notice of Death of Sea Apprentice.

See Pt. I. p. 2130.

7. Inquiry into Cause of Death.

See No. 427, p. 2191.

8. Creditors.

437. No creditor of a deceased seaman or apprentice shall be entitled to claim from the Board of Trade his wages or effects, or any part, by virtue of letters of administration, or of confirmation in Scotland, taken by him as creditor. No such creditor shall be entitled to payment of his debt out of such wages and effects,

if the debt accrued more than three years before the death of the deceased, or if the demand is not made within two years after such death. Every person making a demand as creditor shall deliver to the Board an account in writing in such form as it requires, subscribed with his name, stating the particulars of his demand and his place of abode, and verified by declaration before a justice. If before such demand, any claim to the wages and effects made by his widow or child or next of kin, or under a will, or otherwise, has been allowed, the Board shall (*semble*, on the demand being made), give notice to the creditor of the claim allowed, and the creditor shall have the same rights against such person as if the person were the legal personal representative of the deceased. If no claim by any such person has been allowed, the Board shall proceed to investigate the creditor's account, and may for that purpose require him to prove it, and to produce all books and papers relating thereto; and if the creditor satisfies the Board of the justice of his demand, in whole or part, it shall be paid accordingly, so far as the assets in hand extend, and such payment shall discharge the Board from all further liability; but if the Board is not satisfied the demand shall be disallowed. The Board may delay the investigation of any such demand for one year, and if in the course of that time a claim to the wages and effects of the deceased is substantiated by anyone interested therein, as the widow, or other parties before mentioned, the Board may pay the same to such person, and the creditor shall have the rights before mentioned against such person. See M. S. Act, 1854 (c. 104), s. 201.

9. Claims after Six Years.

438. When no claim to wages or effects of deceased seamen or apprentices received by the Board of Trade is substantiated within six years, it is in the discretion of the Board to allow or refuse the claim. As to the payment by the Board of such unclaimed sums into the Exchequer, *Ibid.* s. 202.

439. The punishment for forging or fraudulently altering any document to show a right to such wages or effects, and for using the same, knowing it to be false, is penal servitude, or imprisonment for the periods there stated. *Ibid.* s. 203.

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1. Generally.*

1. This act shall be construed as one with the M. S. Act, 1854 (c. 104), and the acts amending the same. The M. S. Act, 1876 (c. 80), s. 2.

2. It was the intention of the legislature that the provisions of the Merchant Shipping Acts, 1854 to 1856, should apply as well to cases in which the vessel had been merely stranded or damaged, as to cases in which it has been materially damaged. *The Albert Edward*, May 4, 1878.

3. Held, that the position of the Board of Trade is not that of a public prosecutor; at all events in the inception of the proceedings, but rather that of an inquirer in the public interest into the

circumstances attending the casualty. *Dimorah and Dorunda*, October 30, 1876, 21 Sol. Jour. 9.

4. It is not the sole duty of this court to deal merely with the certificates of masters and mates, but one of its chief duties, and one for which the court was specially appointed, is to inquire into all circumstances attending the casualty. *The Calenick*, Jan. 22, 1878.

5. It is the duty of the court to report how the casualty occurred, and whether by the misconduct or otherwise of the officer in charge. The Board of Trade are bound to make a charge in circumstances requiring it, and the court is equally bound to give an opinion thereon, although from the vessel not having been

* (1) The return of cases in the Wreck Commissioner's Court has been completed to the end of 1884, showing 469 cases—viz., 189 strandings, 81 collisions, 150 foundered, abandoned, and missing vessels, 49 other casualties. See the evidence of H. C. Rothery, Esq., wreck commissioner, in first report of the Royal Commission on Loss of Life at Sea, Sess. Paper, 1885. C. 4577, p. 80.

(2) For full information upon the subject of this title, see Murton's Wreck Inquiries,

1884, *passim*.

(3) As to the casualties which may be made the subject of a formal investigation, *Ibid.* pp. 71—84.

(4) And the persons subject to the authority of the courts holding investigations, *Ibid.* pp. 84—101.

(5) As to what is a British ship, and the extent to which the enactments apply to foreign ships, *Ibid.* pp. 72—80.

materially damaged, the court cannot deal with the master's certificate. *The Albert Edward*, Report of May 4, 1878.*

6. Even when the court, from whatever cause, is prevented from dealing with the master or officer's certificate, it is not relieved from the necessity of stating its opinion as to his conduct, as it is a court of inquiry, and, therefore, it is its duty to say what in its opinion may have caused the loss or abandonment of the vessel, quite independently of whether a charge has or has not been preferred by the Board of Trade. *The Damiatta*, Report of Nov. 14, 1877.*

7. On an inquiry under the M. S. Acts into the conduct of a master in respect of a shipping casualty, the court may proceed with the inquiry, notwithstanding that no charge is made against him by the Board of Trade. *Ex parte Minto*, 35 L. T. 808; 25 W. R. 251.

8. Casualties happening on two separate voyages may be the subject of one inquiry. *The Amcott*, Report of Sept. 30, 1881.*

9. After an explosion of coal gas from insufficient ventilation, the vessel was loaded with another cargo of similar coal with the same ventilation, but was stopped by the Board of Trade, and was then fitted with proper ventilation. *The Alne Holme*, 9th May, 1881.

10. As to the detention of unsafe or unseaworthy ships, see tit. OWNERS, Pt. III. p. 1258.

11. As to unsafe or unseaworthy ships, *Ibid.* and same title, part, and chapter in Addenda.

12. As to deck and grain cargoes, and dangerous goods, *Ibid.* Pt. V. p. 132, and same title and part in Addenda.

2. Preliminary Inquiry.†

1. Generally.

13. Whenever any ship is lost, abandoned, or materially damaged, or causes loss or material damage to any other ship, on or near the coasts of the United Kingdom, or whenever by reason of any casualty to or on board of any ship on or near such coasts loss of life ensues; or whenever any one of these events happens elsewhere, and any competent witnesses thereof arrive or are found in the United Kingdom, the inspecting officer of the coastguard, or principal officer of customs residing near the place where such witnesses are, or any other person appointed by the Board of Trade, may make inquiry respecting such loss, damage, or casualty; and shall for that purpose have all the powers given by the first part of this act to Board of Trade inspectors. See M. S. Act, 1854 (c. 104), s. 432. †

14. Every officer of the Board of Trade, every commissioned officer of any of her Majesty's ships on full pay, every British consular officer, the registrar-general of seamen and his assistant, every chief officer of customs in any place in her Majesty's dominions, and every superintendent of mercantile marine offices may, in cases where he has reason to suspect that the provisions of this act or the laws for the time being relating to merchant seamen and to navigation are not complied with, exercise the following powers:—He may require the owner, master, or any of the crew of any British ship to produce any official log-books or other documents relating to such crew or

shall not be a formal inquiry.

(7a) As to the procedure on preliminary inquiries, the appointment of an interpreter, the oaths of the witnesses, the preliminary particulars, and the report to be made by the principal officer, see Board of Trade Instructions as to Wrecks, Casualties, and Salvage, 1886, pp. 11—21.

(8) The preliminary inquiry in reference to the misconduct of a master or officer, where there has been no shipping casualty, is usually made at the direction of the Board of Trade by the Registrar-General of Seamen, who is appointed an inspector for that purpose, under the M. S. Act, 1854 (c. 104), as to which, see No. 16, p. 2198.

† (8a) As to the extent to which this and the following sections apply to foreign ships, see the opinion of the law officers of the crown, cited in Murton's Wreck Inquiries, p. 81.

* (5a) The reports of shipping casualties are printed by the Board of Trade, and copies sent to Lloyd's, the Customs Houses, and all general shipping authorities.

† (6) For an account of these preliminary inquiries, see Murton's Wreck Inquiries, 1884, pp. 30—40.

(6a) As to the preliminary inquiries with regard to shipping casualties to be made by receivers of wreck, inspecting officers of coastguard, principal officers of customs, and persons specially appointed thereto by the Board of Trade, *Ibid.* p. 31; and see Board of Trade Instructions as to Wrecks, Casualties, and Salvage, 1886, pp. 4—8.

(7) The inquiries by the receiver of wreck, and other functionaries above referred to, are made in the form of taking depositions from the witnesses, which depositions are forwarded to the Board of Trade, which decides therefrom, whether there shall or

any member thereof in their respective possession or control; he may require any such master to produce a list of all persons on board his ship, and take copies of such official log-books, or documents, or of any part thereof; he may muster the crew of any such ship; he may summon the master to appear and give any explanation concerning such ship or her crew, or the said official log-books or documents. See M. S. Act, 1854 (c. 104), s. 13.

15. Penalty not exceeding £20 against any person who, upon requisition by any person so authorized, refuses or neglects to produce any such official log-book or document, or to allow the same to be inspected or copied, or impedes any such muster of a crew, or refuses or neglects to give any explanation he is so to give, or knowingly misleads or deceives any person so authorized to demand any such explanation. See M. S. Act, 1854 (c. 104), s. 13.

See also No. 44, p. 2201.

2. Inspectors.

16. The Board of Trade may from time to time, whenever it seems expedient to them so to do, appoint any person, as an inspector, to report to them: (1) upon the nature and causes of any accident or damage which any ship has sustained or caused, or is alleged to have sustained or caused; (2) whether the provisions of this act, or any regulations made under it have been complied with; (3) whether the hull and machinery of any steamship are sufficient and in good condition. *Ibid.* s. 14.

17. Every such inspector shall have the following powers: (1) he may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof to which the provisions of this act apply, not unnecessarily detaining or delaying her from proceeding on any voyage; (2) he may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make; (3) he may, by sum-

mons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make; (4) he may require and enforce the production of all books, papers, or documents which he considers important for such purpose; (5) he may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination. *Ibid.* s. 15.

18. As to witnesses so summoned being allowed such expenses as they would be allowed if attending on subpoena before any court of record, or in Scotland the Court of Justiciary; and as to the taxation of such expenses by the registrar and deputy-registrar of the Admiralty Division, or by one of the masters of the Queen's Bench Division in England or Ireland, or by the Queen's and lord treasurer's remembrancer in Scotland, *Ibid.*

19. Penalty not exceeding £10 against every person who refuses to attend as a witness before such inspector, after having been required so to do, and tender of his expenses, or who refuses or neglects to make answer, give any return, or produce any document in his possession, or to make any declarations. *Ibid.*

20. Penalty against any person who wilfully impedes any such inspector in the execution of his duty, whether on board any ship or elsewhere, not exceeding £10, and he may be seized and detained by such inspector or other person, or by any persons he may call to his assistance, until taken before a justice of the peace or proper officer having jurisdiction. *Ibid.* s. 16.

See also No. 290, p. 2238.

3. Jurisdiction.

1. Wreck Commissioner.*

21. The lord chancellor may appoint wreck commissioners for the United

* (9) The first wreck commissioner appointed is Henry Cadogan Rothery, Esq., M.A., formerly registrar of the Court of Admiralty. He is the only wreck commissioner yet appointed.

(10) As to the salary of or payment to the wreck commissioner, see M. S. Act, 1876 (c. 80), s. 39.

(11) See for a full account of the jurisdiction and powers of courts of formal inves-

tigation in the United Kingdom, Murton's Wreck Inquiries, 1884, pp. 56-100.

(12) The choice between the wreck commissioner, stipendiary magistrate, and justices for the tribunal is exercised by the Board of Trade. Murton's Wreck Inquiries, p. 55.

(13) Having regard to the purpose for which a wreck commissioner was appointed, as declared by the legislature, the Board

Kingdom, not exceeding three, and remove any of them. If a wreck commissioner is appointed for Ireland, the Lord Chancellor of Ireland has the appointment, with power of removal. See M. S. Act, 1876 (c. 80), s. 29.

22. The wreck commissioner, at the request of the Board of Trade, holds formal investigations into any loss, abandonment, damage, or casualty under the eighth part of the M. S. Act, 1854 (c. 104), and for that purpose has the jurisdiction and powers conferred on two justices, and all the provisions of the M. S. Acts, 1854 (c. 104) to 1876 (c. 80), with respect to investigations conducted under the eighth part of the M. S. Act, 1854 (c. 104), apply to investigations held by a wreck commissioner. *Ibid.*

23. (1) Whenever any ship on or near the coasts of the United Kingdom or any British ship elsewhere has been stranded or damaged, and any witness is found at any place in the United Kingdom; or (2) Whenever a British ship is or is supposed to have been lost, and any evidence can be obtained in the United Kingdom as to the circumstances under which she proceeded to sea or was last heard of, the Board of Trade (without prejudice to other powers) may cause an inquiry or investigation to be held, and all the provisions of the M. S. Acts, 1854 (c. 104) to 1876 (c. 80), apply thereto, as if it had been held under the eighth part of the M. S. Act, 1854. *Ibid.* s. 32; and see further as to locality of jurisdiction, s. 521.

24. For further powers see the M. S.

Act, 1854 (c. 104), as amended by the M. S. Act, 1876 (c. 80), s. 31.*

2. Stipendiary Magistrate.†

25. For powers to the Board of Trade to direct an inquiry before the wreck commissioner, a stipendiary magistrate, or two justices, who shall thereupon proceed to hear and try the case, and shall send a report to the Board of Trade, containing a full statement of the case and of their or his opinion thereon, and such report of or extracts from the evidence, and such observations (if any) as they or he may think fit, see the M. S. Act, 1854 (c. 104), s. 433; and the M. S. Act, 1876 (c. 80), s. 29.

26. If the Board of Trade so directs, the person bringing the charge to its notice shall be the party having the conduct of the case. See M. S. Act. 1854 (c. 104), s. 433.

27. As to the payments to the stipendiary magistrate for his services, *Ibid.*, as amended by M. S. Act, 1876 (c. 80), s. 39.

28. As to the power of the magistrate or two justices to make orders as to costs, and the discretion given to the Board of Trade to pay costs, see M. S. Act, 1854 (c. 104), s. 436.

29. See, as to criminal proceedings, the Territorial Waters Jurisdiction Act, 1878, c. 73.

See also No. 74, p. 2205.

3. Two Justices.‡

4. Assessors.§

30. The wreck commissioner, or other authority holding a formal investigation

of Trade always assigns as many inquiries as possible to be heard by him. He holds all investigations which take place in London, and also proceeds, at the request of the Board of Trade, when required to any part of Great Britain to hold an inquiry. *Ibid.*

(14) As to the extent of the wreck commissioner's jurisdiction over foreign vessels, see the opinion of the law officers of the crown cited, *Ibid.* p. 18, and pp. 81—83.

* (14a) In practice these powers are now only exercised by a receiver of wreck.

† (15) If the case cannot be heard by the wreck commissioner then in places where there is an experienced stipendiary magistrate the investigation is committed to the latter. Murton's Wreck Inquiries, p. 53.

(16) As to the tribunal of the stipendiary magistrate, see Evidence of the Wreck Commissioner before the Royal Commission, p. 100.

(17) The stipendiary magistrate or justices when they formerly investigated a casualty could not sit outside the local limits of their jurisdiction, nor could they take cognizance

of casualties which occurred beyond those limits. See *In re Peerless*, Lush. 30; 1 Q. B. 143; *Helier v. Hundred de Benhurst*, 4 Cro. 211; *Reg. v. Stainforth*, 11 Q. B. 66; *Ex parte Green*, 7 Q. B. D. 273; *Combe v. Delabere*, 22 Ch. D. 316, in Murton's Wreck Inquiries, 1884, p. 65.

(17a) Occasionally it is impossible or inexpedient, owing to the special circumstances of the case, or to the engagements of the wreck commissioner, to assign the inquiry either to him or to a stipendiary magistrate. It is then held before justices, but such occasions are comparatively infrequent. Murton's Wreck Inquiries, p. 53.

‡ (18) As to the objections to the tribunal of two local justices, see the Evidence of the Wreck Commissioner before the Royal Commission on Loss of Life at Sea, anno 1885, c. 4577, pp. 89, 100.

§ (19) See as to assessors generally, Murton's Wreck Inquiries, 1884, pp. 47, 55; and as to their payment, M. S. Act, 1854 (c. 104), s. 436, as amended by M. S. Act, 1876 (c. 80), s. 39.

into a shipping casualty, holds the same with the assistance of assessors. See M. S. Act, 1876 (c. 80), s. 30, as amended by the Shipping Casualties Investigations Act, 1879 (c. 72), s. 3, and S. C. R. 1879, No. 4.

31. The assessor or assessors for each investigation are appointed as prescribed by general rules. See the Shipping Casualties Investigations Act, 1879 (c. 72), s. 3, sub-s. 2.

32. The power of appointing assessors for these investigations is vested in the Secretary of State. See S. C. R. 1879, No. 4.

33. No appointment by the Secretary of State of any assessor is open to question as not in accordance with, or not giving full effect to the requirements of, these rules. See S. C. R. 1879, No. 8.

34. As to the assessors being taken in order of rotation in their class or subclass, and as to their classification and qualifications, *Ibid.* Preamble.

35. There are four classes, viz. :—

Class I. Mercantile Marine Masters.—

(a) Five years' service as a master in the merchant service, of which two years must have been service in command of a sailing ship, with a certificate of competency; (b) Five years' service as a master in the merchant service, of which two years must have been service in command of a steamship, with a certificate of competency.

Class II. Mercantile Marine Engineers.—Five years' service as an engineer in the merchant service, with a first-class certificate of competency.

Class III. Royal Navy.—Rank of admiral or captain and three years' service in command of one of her Majesty's ships at sea, or rank of staff commander and three years' service in that rank in one of her Majesty's ships at sea.

Class IV. Persons of Nautical Engineering or other special Skill or Knowledge.—(a) Such qualification as is in the opinion of the Secretary of State requisite for ordinary cases; (b) such qualification as is in the opinion of the Secretary of State requisite for special cases. *Ibid.*

36. As to the list of assessors being in force for three years, with power to add or remove, see the Shipping Casual-

ties Investigations Act, 1879 (c. 72), s. 3, sub-s. 1.

37. Subject to any special additional appointment the Secretary of State may make in any case where special circumstances appear to him to require it, assessors shall be appointed as follows: (1) Where the investigation appears likely to involve the cancelling or suspension of the certificate of a master or mate, at least two assessors shall be appointed from Class I.; (2) Where that of a master or mate of a sailing ship, one at least of the assessors from sub-section (a) of Class I.; where that of a master or mate of a steamship one at least of the assessors from sub-section (b) of Class I.; and (3) where that of an engineer, one at least of the assessors from Class II. See S. C. R. 1879, Nos. 5 and 6; and the Shipping Casualties Investigations Act, 1879 (c. 72), s. 3, sub-s. 3.

38. The Board of Trade informs the Secretary of State when and from which class assessors ought in their opinion to be appointed in order to give due effect to these rules; but the Board must not request the appointment of any individual assessor. See S. C. R. 1879, No. 7.

See also No. 40, *infra*.

39. In all cases of investigation one assessor at least must concur in the report, or the officer's certificate cannot be cancelled or suspended. See M. S. Act Amendment Act, 1862 (c. 63), s. 23, sub-s. 6.

40. See also No. 74, p. 2205.

5. Local Marine Boards.*

41. If the Board of Trade has reason to believe that any master or mate is from incompetency or misconduct unfit to discharge his duties, the Board of Trade may institute an investigation or direct the nearest local marine board, convenient for the parties and witnesses to attend, to do so, and such local marine board shall, with the assistance of a local stipendiary magistrate (if any), and if none such, of a competent legal assistant to be appointed by the Board of Trade, conduct the investigation, and summon the master or mate to appear, and give him full opportunity of making a defence, and shall

* (20) And for an account of investigations by local marine boards or tribunals specially appointed by the Board of Trade, their powers

and procedure, Murton's Wreck Inquiries, pp. 130—148.

for the purpose of such investigation have all the powers given by the first part of this act to inspectors appointed by the Board of Trade (see as to same, c. 2, p. 2197), and may make such order as to costs as they may deem just; and shall on the conclusion of the investigation report to the Board of Trade. See M. S. Act, 1854 (c. 104), s. 241.

42. A local marine board may suspend or cancel the certificate of competency or service of any master, mate, or engineer, if, upon any investigation in pursuance of the preceding sections, he is reported to be incompetent or to have been guilty of any gross act of misconduct, drunkenness, or tyranny. See M. S. Act, 1854 (c. 104), s. 242,* as amended by the M. S. Act Amendment Act, 1862 (c. 63), s. 23, sub-s. 1 and 2.

43. Where there is a local marine board, and a stipendiary magistrate is a member of such board, all such investigations shall, whenever he happens to be present, be made before such magistrate. See M. S. Act, 1854 (c. 104), s. 241.

44. As to rehearing before the wreck commissioner after an investigation by a local marine board, see No. 322, p. 2240.

6. Scotland.†

(a) Generally.

45. As to any investigation to be held in Scotland, the Board of Trade may, if it thinks fit, remit the same to the Lord Advocate to be prosecuted as he may direct. See M. S. Act, 1854 (c. 104), s. 437, as amended by M. S. Act, 1876 (c. 80), Sched.

46. As to the delivery up and dealing with the certificates of the officer whose conduct is in question, *Ibid.* s. 438, and M. S. Act Amendment Act, 1862 (c. 63), s. 23, and M. S. Act, 1876 (c. 80), s. 3, sub-s. 4.

* (21) It seems a local marine board is put in action by the Board of Trade when a master or officer has misconducted himself, but there has been no loss of life or loss or damage of property.

† (22) In Scotland, there are no stipendiary magistrates whose services are available for inquiries: and they are held either before the wreck commissioner, before justices, or before a sheriff or sheriff's substitute, under sect. 501 of the M. S. Act, 1854. See Murton's Wreck Inquiries, p. 53.

‡ (23) It has not yet been found necessary to make such an appointment.

(24) The appointment of the wreck com-

47. In Scotland the person or persons directed by the Lord Advocate to conduct the investigation have the same powers as two justices or a magistrate in England. *Ibid.* s. 438, and *Ibid.* s. 2.

48. All matters and things that may, in pursuance of the eighth part of this act, be done by or to any justice or any two justices may, in Scotland, be done also by or to the sheriff of the county, including the sheriff substitute. See M. S. Act, 1854 (c. 104), s. 501.

(b) On Appeal.

See c. 18, p. 2243.

7. Ireland.

(a) Generally.

49. If it becomes necessary to appoint a wreck commissioner in Ireland, the Lord Chancellor of Ireland has the appointment. See M. S. Act, 1876 (c. 80), s. 29.†

50. As to any of the justices of the peace for Dublin, and any resident magistrate being, for Ireland, included under the term "stipendiary magistrate," *Ibid.* s. 42.

(b) On Appeal.

See c. 18, p. 2243.

8. Isle of Man.

51. As to a high bailiff being, for the Isle of Man, included under the term stipendiary magistrate, *Ibid.* s. 43.

9. Naval Courts.‡

52. See as to the jurisdiction and proceedings of naval courts generally, and in the investigation of shipping casualties, tit. JURISDICTION, Pt. II. p. 690, and *Ibid.* in Addenda.

missioner being for the United Kingdom, he may exercise jurisdiction in Ireland, though he has not yet been requested to hold an inquiry there. See Murton's Wreck Inquiries, 1884, p. 55, n.

(25) In Ireland, cases are remitted to resident magistrates, and, failing these, to justices. *Ibid.* p. 55.

(26) But no inquiry has been heard by a resident magistrate or by two justices for many years. *Ibid.*

‡ (27) See also as to such investigations by naval courts, and their jurisdiction, powers, and procedure, *Ibid.* pp. 158—179.

10. *British Colonies.**(a) *Generally.*

53. If the respective legislative authorities in any British possession abroad, by any acts, ordinances, or other appropriate legal means, apply or adapt any of the provisions in the third part of this act contained, to any British ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates and crews thereof, such provisions shall in respect of the ships and persons to which the same are applied be enforced, and penalties and punishments for the breach thereof recovered and inflicted throughout her Majesty's dominions in the same manner as if such provisions, penalties and punishments had been hereby adapted, applied, or imposed. See M. S. Act, 1854 (c. 104), s. 288.

54. Every act, ordinance or other form of law to be passed by the Governor-General of India in Council, or other legislative authority, in pursuance of this act, shall be subject to the same right of disallowance or repeal, and require the same sanction and formalities, and be subject to the same conditions as are required for the validity of any other act, ordinance, or other form of law passed by such authorities. *Ibid.* s. 289.

55. If in any matter relating to any ship or to any person belonging to any ship there appears to be a conflict of laws, then if there is in the third part of this act any provision on the subject which is hereby expressly made to extend to such ship, the case shall be governed by such provision, and if there is no such provision, the case shall be governed by the law of the place where the ship is registered. *Ibid.* s. 290.

56. The legislative authority of any British possession shall have power by any act or ordinance confirmed by her

Majesty in Council, to repeal wholly or in part any provisions of this act relating to ships registered in such possession. *Ibid.* s. 547.

56a. The provisions of this act do not apply to any vessel employed exclusively in going from place to place in any river or inland water of which the whole or part is in any British possession. The M. S. Act, 1876 (c. 80), s. 44.

57. The powers of every court of inquiry authorized by legislative authority in any British possession to inquire into charges of incompetency or misconduct of masters, mates or engineers, or as to shipwreck or other ship casualties, are in cases of British ships as therein mentioned, extended as therein mentioned to certain cases beyond such British possessions. See M. S. (Colonial Inquiries) Act, 1882 (c. 76), s. 3.

58. The legislative authority in any British possession is empowered to authorize courts or tribunals to make inquiries into such cases. *Ibid.* s. 4.

58a. No inquiry shall be held under this act into any casualty or charge of incompetency or misconduct which had once been the subject of an inquiry, as therein mentioned, and reported on by a competent court or tribunal in any part of her Majesty's dominions, or in respect of which the certificate of a master, mate, or engineer has been suspended or cancelled by a naval court, and where an inquiry has been commenced in the United Kingdom, no inquiry shall be made in the same case under the authority of this act in any British possession defined as therein mentioned. See the M. S. (Colonial Inquiries) Act, 1882 (c. 76), s. 3.

59. The power of suspending or cancelling the certificate (whether of competency or service) of any master or mate or engineer, after investigation made by any court or tribunal authorized or to

* (28) Statutory provisions relating to shipping casualties investigations have been made in British India, and in the following British Colonies: Bahamas, Barbados, Bermuda, British Guiana, British Honduras; Canada—British Columbia, Nova Scotia, New Brunswick, Ontario, Prince Edward Island—Cape of Good Hope, Ceylon, Falkland Islands, Fiji, Grenada, Hong Kong, Jamaica; Leeward Islands—Antigua, Anguilla, Dominica; Malta, Mauritius, Natal, Newfoundland, New South Wales, New Zealand, Queensland, St. Lucia, St. Vincent, Sierra

Leone, South Australia, Straits Settlements, Tasmania, Tobago, Trinidad, Turks and Caicos Islands, Victoria, Western Australia. See Murton's Wreck Inquiries, p. 411.

(29) For such statutory provisions, *Ibid.* Appendix, pp. 411—555, and tit. JURISDICTION, Pt. II. pp. 691—760.

(30) As to colonial certificates of competency, and the consul's power of detention thereof, under certain circumstances, see Board of Trade Instructions to Consuls of February, 1884.

be authorized by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters or mates or engineers of ships, rests with such court or tribunal when it finds that he has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss or abandonment of or serious damage to any ship, or loss of life, has been caused by his wrongful act or default. *Ibid.* s. 242, as amended by the M. S. Act Amendment Act, 1862 (c. 63), s. 23.

60. The powers of suspending or cancelling any certificate of any master, mate or engineer, in the M. S. Acts, 1854 to 1880, are applicable to any such court or tribunal. See M. S. (Colonial Inquiries) Act, 1882 (c. 76), s. 5.

(b) *Rehearing or Appeal.*

61. A rehearing of the case may be ordered, and if there has been no rehearing, or it has been refused, an appeal lies to the Probate, Divorce and Admiralty Division of the High Court of Justice in England, if the certificate has been granted under the M. S. Act, 1854 (c. 104), or the M. S. (Colonial) Act, 1869 (c. 11). See M. S. (Colonial Inquiries) Act, 1882 (c. 76), s. 6.

11. *Foreign Courts.*

(a) *Generally.*

62. Whenever it has been made to appear to her Majesty that the government of any foreign state is desirous that any of the provisions of the M. S. Acts, 1854 to 1876 (cc. 104—80), or of any act amending the same, shall apply to the ships of such state, her Majesty may, by Order in Council, declare that such of the provisions with such limitations as are in such order specified shall apply, and they shall thereupon apply to the ships of such state, and to their owners, masters and crews when not within the jurisdiction of such state, in the same

manner as if they were British ships. See M. S. Act, 1876 (c. 80), s. 37.*

(b) *Germany.*

(aa) *Generally.*†

63. See tit. JURISDICTION, Pt. IV. p. 785.

(bb) *On Appeal.*

64. If the marine court has suspended the certificate of a master or mate, or has not complied with the petition to this effect of the commissioner, then in the former case the master or mate, and in the latter case the commissioner, may appeal to the superior marine court. See Law of 27 July, 1877, sect. 27.

4. *Owners.*

1. *Generally.*

65. For cases in which the owner was held to blame for the ship being badly stowed, overladen, unstable, undermanned or otherwise unseaworthy, see tit. OWNERS, Pt. III. p. 1258, and same title and Part in Addenda; and for cases in which he was to blame in respect to the loading or stowage of grain cargo, *Ibid.* Pt. V. p. 1323, and same title and Part in Addenda.

66. For provisions authorizing the condemnation of the owners in all or part of the costs of the inquiry, see tit. COSTS, p. 415, Nos. 811, 813; and for cases of such condemnation, see same title and chapter in Addenda.

2. *Machinery.*

67. It is the duty of owners to see that the engines are entrusted only to engineers holding Board of Trade certificates, but their responsibilities do not end there; they are equally bound, if they think fit to entrust the sole care of the engines to the chief engineers, to see that they are qualified to perform that duty. A man may be quite fit to take charge of the engines of a small vessel on a short run, and yet not fit to be left in the uncontrolled management of them in harbour, without any supervision by anyone.

* (31) No such Order in Council, with respect to formal investigations, has yet been published. See remarks in Murton's Wreck Inquiries, 1884, pp. 82—84.

† (32) At the request of the commissioner, and after it has been proved that a German master or mate has caused the casualty or

its consequences owing to the want of proper qualifications, the permission to execute his calling may be withdrawn by decision of the marine court. A master whose certificate has been suspended may also be prevented from doing the duties of a mate. See Law of 27 July, 1877, s. 26. [GERMAN.]

Owners are bound, independently of any statutory obligation, to act as reasonable men, and as reasonable men they ought to take every means in their power to ascertain that the chief engineers whom they appoint are fully equal to the duties with which they are to be entrusted, and more particularly after they have ceased to employ either a superintending or consulting engineer. If they choose to dispense with the services of such a person, they should at any rate cause the vessel to be regularly surveyed by Lloyd's surveyor, or by some other competent and independent person. *The Jones Brothers*, No. 544, March 12, 1880.

3. Boilers.

68. Loss of life and damage from the explosion of a boiler on board a steamer of 743 tons gross register, at Bilboa. *Held*, that proper measures were not taken by the chief engineers to ascertain the thickness of the plates for twelve months before the explosion; that the boilers were, on the day of the accident, worked at too high a pressure, *i. e.* 33 lbs., considering their state; that the cause of the explosion was the bursting of the bottom plate of the port combustion chamber, owing to the neglect to which the boilers had been subjected for some time, and to the consequent reduction of that plate at the place of fracture to a bare sixteenth of an inch thick; and that the owners did not take proper measures to ensure the safety of the steamer and her machinery, and were to blame for the explosion and loss of life resulting therefrom. The managing owner condemned in £100 *nomine expensarum*, £50 towards the expenses of the court, and £50 towards those of the Board of Trade. *Ibid.*

69. Loss of life and damage from a boiler explosion on board the paddle-wheel steam-tug *T.*, of 14·84 tons register. While engaged in towing a vessel, a joint of one of the mud-hole doors of the star-board boiler gave way and commenced to leak. Some months previously the owner had caused alterations to be made in the boiler, in effecting which the doors and the joints were placed on the outside of the boilers, and it was the joint of one of these doors which leaked. Repairs having been executed, the water was again let

into the boiler. The joint, however, not being quite tight, two men were securing the mud-hole door, tightening the blow up and standing on the spanner, forcing it down with all their might, when suddenly the cast-iron door inside the boiler gave way, releasing the mud-hole door, and allowing the steam and water to rush from the boiler into the stoke-hole, and a fireman was severely scalded and died. *Held*, that cast iron should not be used for such a purpose as mud-hole doors or their fittings, and that outside joints in such doors were highly objectionable. The owner was severely censured. *The Traveller*, April 16, 1880.

69a. For further cases as to boilers, see *The Louvain*, No. 2189, May 31, 1884; *The Maid of Orleans*, No. 2553, May 21, 1885.

4. Insurance.*

70. On an inquiry into the loss of a vessel, questions as to her cost and insurance held relevant. *The Roscote*, Jan. 28, 1885.

71. The barque *R.* was built in 1863 for £12,000, and was well kept up. She was insured for £6,000. The court considered she was not over insured though fully insured. *Ibid.* Jan. 29, 1886.

71a. The value of the vessel was held to be £14,000. She was insured for £21,000. The owner unduly, and improperly prolonged the proceedings on the investigation by refusing to give information to the Board of Trade as to the insurances on the vessel, and, when called as a witness, to give evidence thereon, in consequence of which an adjournment took place, and certain underwriters were made parties, and certain further witnesses were called by the Board of Trade. He was condemned in £70, part of the costs of such witnesses, and in £50, part of the costs of the underwriters. *The Furius*, No. 2825, 11th February, 1886.

5. Cancellation or Suspension of Certificates of Masters and Officers.†

1. Generally.

72. The wreck commissioner may suspend or cancel the certificate (of com-

* (33) As to evidence on the question of insurance of the ship, the subject of the casualty, see the Evidence of the Wreck

Commissioner before the Royal Commission on Loss of Life at Sea, anno 1885, p. 93.

† (34) For instances of what has been held

petency or service) of any master, mate, or engineer, when, upon any investigation conducted under the provisions contained in the eighth part of this act, it is reported that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default. See M. S. Act, 1854 (c. 104), s. 242, as amended by the M. S. Act Amendment Act, 1862 (c. 63), s. 23, sub-ss. 1, 2, and M. S. Act, 1876 (c. 80), s. 9.

72a. A naval court constituted as therein mentioned may similarly cancel or suspend such a certificate. *Ibid.*

73. When a master, mate, or engineer is superseded by any Admiralty court or naval court, his certificate may be similarly treated. *Ibid.*

73a. When a master, mate, or engineer is shown to have been convicted of any criminal offence, his certificate may be so treated. *Ibid.*

74. When, upon any investigation before a local marine board, a master, mate, or engineer is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness, or tyranny, his certificate may be similarly treated. *Ibid.*

74a. When, upon any investigation made by any court or tribunal authorized by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by it to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default, and such report is confirmed by the governor or person administering the government of such possession, his certificate may be similarly treated. *Ibid.*

75. Such power extends to cancelling or suspending the certificates of engineers. *Ibid.*

75a. No certificate shall be cancelled or suspended under this section unless a copy of the report or a statement of the case upon which the investigation is

ordered has been furnished to the owner of the certificate before the commencement of the investigation, nor unless one assessor at least expresses his concurrence in the report. *Ibid.*

76. The court may hold an inquiry involving an officer's certificate, notwithstanding that the officer has been proceeded against criminally, and has been found innocent. *The Agnes*, Feb. 19, 1878; *The Benbow* and *The Ostrich*, Feb. 7, 1878.

76a. The court will not deal with an officer's certificate, unless expressly asked to do so at the time of handing in the questions. *The Guadiana*, July 30, 1885.

77. The court has no power to deal with the certificate of service granted under the Canada Act (c. 17), and Order in Council of Aug. 19, 1871. *The Chillianwallah*, No. 226, March 9, 1878. Nor in the case of a Guernsey vessel. *The Rifleman*, Feb. 16, 1886.

77a. The court has clearly no power to deal with United States' certificates. *Ibid.*
See also Nos. 21—25, *supra*.

78. For cases in which the master was held to blame for the ship being overladen, unstable, badly stowed, improperly ballasted, or otherwise unseaworthy, see tit. OWNERS, Pt. III. in Addenda.

79. And in respect to the loading or stowage of a grain cargo, see No. 96a, p. 2209, and tit. OWNERS, Pt. V. in Addenda.

79a. And in respect of explosion or combustion in a coal cargo, see No. 163, p. 2218.

2. Suspension of Certificate of Service during Suspension of Certificate of Competency.

80. Application that a master whose certificate of competency was suspended should have his certificate of service returned to him refused, as this would have enabled the master to present himself with his certificate of service before some shipowner, and obtain the command of a vessel while his certificate of competency was under suspension, and the certificate of service was therefore also suspended for the same time. *The Hispania*, Aug. 18, 1879.

by the wreck commissioner to amount to a "wrongful act or default" in cases in which the master, mate's or engineer's certificate has actually been dealt with, see Murton's Wreck Inquiries, pp. 90—92.

(35) When a master or officer is charged

with blame for a shipping casualty, certificates and evidence of previous good conduct are invariably received by the court of inquiry. See Wreck Commissioner's Evidence before Royal Commission on Loss of Life at Sea, anno 1885, p. 94.

3. *Delivery up and Transmission to Board of Trade of Certificate.*

81. The wreck commissioner, justices, magistrate, board, court or tribunal by which the case is investigated or tried, may require the officer whose conduct is in question to deliver up his certificate, but no master, mate or engineer shall be required to deliver up his certificate, unless it is suspended or cancelled. See M. S. Act, 1854 (c. 104), s. 438, as amended by the Shipping Casualties Investigations Act, 1879 (c. 72), s. 3, sub-s. 4.

82. Every master, mate or engineer whose certificate is suspended or cancelled must, upon demand of the tribunal, deliver his certificate to them, or, if not so demanded must, upon demand, deliver it to the Board of Trade, or as it directs. Penalty for default not exceeding £50. See M. S. Act, 1854 (c. 104), s. 242, and M. S. Act Amendment Act, 1862 (c. 63), s. 24, as amended by the Shipping Casualties Investigations Act, 1879 (c. 72), s. 3.

83. The tribunal, if it determines to cancel or suspend the certificate, is to transmit it to the Board of Trade with its report. See M. S. Act Amendment Act, 1862 (c. 63), s. 23, sub-s. 3.

4. *Return or Grant of New Certificate.*

84. The Board of Trade may return any certificate which has been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate of the same or any lower grade in lieu thereof. *Ibid.* and *Ibid.* s. 23, sub-s. 4.

5. *Attempt to scuttle Ship.*

85. Loss by abandonment of the four-masted iron ship, F. A., of 1,899 tons register, laden with iron, coal, coke, &c., and bound from Glasgow for Calcutta. Four days after leaving port a heavy gale sprang up, during which the vessel received some damage, and it was subsequently found that she was making water. On the 28th the master and crew abandoned the vessel, which was subsequently picked up, with three feet of water in her, by a vessel whose master found that the pipe which led from the after sea-cock

had been cut. He stopped the pipe, and took the F. A. to Madeira. The master was found guilty, on his own confession, of cutting the pipe and improperly abandoning the ship, and was sent to England for trial, but the summons against him was ultimately dismissed on the ground of insufficient evidence. *Held*, on an inquiry before the wreck commissioner, that the master was guilty of very grave misconduct in allowing the sluice in the collision bulkhead to remain open, and in cutting the suction pipe in the after-peak, and turning on the water into the hold, and further that the vessel was improperly and prematurely abandoned, and his certificate was cancelled. *The Falls of Aston*, 1st July, 1882. See also *The Furius*, Feb. 11, 1886.

6. *Bad Navigation.**

86. Inquiry into the stranding of the brig R. on the rocks north of Alnmouth, while on a voyage from Norway to Sunderland, and laden with wood (pit props). *Held*, that as the vessel was running on a lee shore, the master, knowing his position only from dead reckoning, ought to have been specially careful, and to have obtained correct casts of the lead, which would have prevented the casualty; and his certificate suspended for six months. *The Rescue*, December 18, 1876.

87. Stranding and loss with ten lives of the iron-screw steamship C., of 333 tons gross register, bound from Bilboa for Newport, Monmouthshire, and laden with about 350 tons of iron ore. She was, after leaving Bilboa, laid on a N.- $\frac{1}{2}$ -W. course, and so continued until the rocks off Pennarche Point were seen, when her course was altered more southerly for half-an-hour, after which a more northerly course was resumed, and shortly afterwards she struck on the easternmost rocks of the Saints. *Held*, that the stranding and loss was due to the master having mistaken the rocks off Pennarche Point for those off the west point of the Saints, and to his having omitted to get sufficiently far to the west before he again resumed his course to the north. That whether or not proper precautions were taken by the master to ascertain the deviation of his compasses, it was clearly his duty to have taken every opportunity to

* (36) See, for the variations of the compass at the different places in the British Isles, the variation chart corrected by the

Hydrographer of the Navy, and published annually by Potter & Sons, 31 Poultry, E.C., and others.

correct his compasses, and not to trust to his deviation card alone. That it was quite possible for the master to have ascertained his position, and that the neglect to use the lead after the rocks had been sighted off Pennarcho Point, and before he again laid his course to the north, was not justifiable, and undoubtedly tended to the loss of the *C.*, but the court was not asked by the Board of Trade to deal with the master's certificate. *The Cerwyn*, July 19, 1880.

88. Abandonment and loss of the wooden barque, *C.*, of 356 tons gross register, built in 1857, laden with 539 tons of coal, and 30 tons of coke, and bound from Sunderland to Motril, near Malaga, in Spain. The master determined to go north about, and after passing through the Pentland Firth had got, on the 6th of February, to the westward of the Isle of Lewis. Up to this time the *C.* had not made much water, but on the 6th she began to make a good deal of water, keeping the crew almost continually at the pumps; she was then put about for Long Hope, at the south end of the Orkneys. Before reaching it, however, the wind came away from the eastward, and the master, after various changes of his course, tried to get into Stornoway. The pumps had been kept continually at work, and the crew had to clear them several times from the small pieces of coal which got into them. At length they became choked, and the water then increased rapidly, the vessel began to get unmanageable and to settle down, and she then foundered. *Held*, that the pumps were not sufficiently protected from the cargo, that the vessel was not navigated with proper and seamanlike care, that the master was to blame in that respect and for having attempted to go north about at that time of the year, and also for having neglected to get the vessel into a port of safety, or to obtain assistance for that purpose, and that the owner was to blame for having sent the vessel to sea in an unseaworthy state. The court ordered master's certificate to be suspended for twelve months, but recommended the allowance to him of a first mate's certificate in the interval. It appeared that the master had within three or four years lost three vessels, and out of the nine or ten vessels he had commanded he had lost five by foundering. *The Cowslip*, March 11, 1885.

89. Stranding of a vessel of 420 tons gross register, laden with a general cargo of about 450 tons, bound from Liverpool

to Bristol. She took the ground on the western end of the Scarweather Sand. As the tide rose she floated, but it was found that she had lost her rudder and rudderpost; upon which a steam-tug was engaged, and she was taken into Swansea. *Held*, that the stranding of the vessel was due to her having been kept E.- $\frac{1}{2}$ -S. until she had passed the Scarweather Lightship, and got close to the Scarweather Sand, due allowance not having been made for the strong ebb tide which was running at the time, and which caused her to take a N.E. course from off Ilfracombe; that the master was not on deck for two hours before the stranding, and until it was about taking place, during which time the safety of the vessel required his personal supervision, that the order given by him to the mate to keep her close-hauled to the wind was not a proper order, that the vessel should, before the stranding, have been put about, that the master was not justified in leaving the deck in charge of the boatswain, who held no certificate, without giving him special instructions as to the course he was to follow. And that the mate, knowing that the vessel was drifting on the sand, was not justified in leaving the deck in charge of the boatswain, or in going below, without giving the master any warning of the danger in which the vessel was. That the vessel was not navigated with proper and seamanlike care, and that the master, mate, and boatswain were all of them responsible for the casualty. The court suspended the master's certificates both of competency and of service for six months, and the master's certificate of competency of the first mate for three months; but recommended that they be allowed first mates' certificates during the suspension. *The Hispania*, Aug. 18, 1879.

90. Stranding of the barque *C.*, of 741 tons gross register, laden with 915 tons of coal, and bound from South Shields to Leghorn. At 6.30 Cape Grisnez was sighted nearly right ahead, or a little on the port bow, bearing S.W. by W., distance from six to seven miles. Soundings were thereupon taken which gave fifteen fathoms, and the *C.* was kept away a couple of points, at 8 p.m. Cape Grisnez was abeam bearing S.E., distant about five miles; upon which the vessel was put upon her original course, and so continued until she struck on the S.W. extremity of the Ridge Sand. *Held*, that the stranding was due to the wrongful acts and defaults of the master in

having, after Cape Grisez Light had been observed bearing S.E. distant five miles, kept the vessel too long on a course which, if continued, would inevitably land her on the Ridge. The court accordingly suspended the master's certificate for three months. *The Caldera*, March 4, 1879.

91. The steamship *L.* in May left Mercyna, in Asia Minor, with a cargo of grain bound for Leghorn. On the evening of the 14th, shortly after passing the Faro light in the Straits of Meseina, she struck the rocks abutting on Lisabianca, a small island between Stromboli and Lipari, and became a total loss. *Held*, that the cause of the loss was that the master had allowed the vessel to get out of a course intended to take the vessel between the Lipari Islands and Stromboli. The court was also of opinion that the vessel was not sufficiently manned, that there were not enough hands on deck to do the work required in navigating the vessel; that there was a failure of duty in respect of those in charge of the vessel in not taking steps to verify her position, and that the master was to blame in not having reduced the speed when the weather became thick. On the whole, the court was of opinion that the vessel had not been navigated with proper or seamanlike care, and that the casualty was due to the master's default, and it suspended the certificate of the master for six months. *The Llamshen*, July 16, 1885.

92. The barque *R.* was built of iron at Liverpool in 1863, and her tonnage was 586-92. She left Calais for Glasgow in ballast on December the 23rd, 1884, with a crew of fourteen hands, the seamen being runners shipped at Calais. The Maiden's Light was sighted at 6 p.m. on the 31st, bearing W. distant from four to five miles, Corsewall Light was sighted right ahead, distant five to six miles, at 10-10 the same evening, and the master then set a course north-east by north, to make Pladda Light. By midnight the weather had become very thick. She was kept away gradually until Corsewall Light bore S.S.E., with the wind blowing hard from the south. The master brought the ship up to wind, and she lay to under lower topsails, heading east-south-east. He expected to pick up Pladda Light, but it was not visible, and the fog-horn was not heard. A few minutes after 7 a.m. land was seen on the lee bow, distant about a mile. An attempt was made to wear the ship, but before this could be done the vessel struck on a reef

and became a total wreck. The crew got ashore. The court was of opinion that the cause of the casualty was probably the master's miscalculation as to the distance from Corsewall Point to the Pladda Light, and the distance which the vessel had run before midnight. Proper courses had been set, but the master, who had only a crew of runners, and uncertificated officers, ought not in thick weather to have left the vessel from 12 to 7 drifting to leeward before the southerly gale, and ought to have made more allowance for the force and set of the tides and such leeway. His certificate, however, was not dealt with. *The Roscote*, January 28, 1885.

93. The iron steamer *J. R.*, schooner rigged, 716 tons gross register, with engines of 90 h-p. combined, left Sunderland in February with a crew of fourteen hands and 740 tons of coal for London. At 5.30 p.m. she was put on a S. by E. course, and proceeded at full speed, though the weather was thick and hazy. At 7.30 the master went below; about half an hour afterwards the mate saw a flare of a shore light on the starboard quarter, and shortly afterwards what he took to be a black fog bank. Then breakers were seen, and he gave the order to starboard, but the vessel, before it could be carried out, struck, and went ashore abreast of the village of Boulby, Yorkshire. *Held*, by the wreck commissioner, that if the master chose to put the vessel so close to the land, he ought not to have left the deck; that it was necessary in the thick weather that special precautions should have been taken going at full speed, that the look-out was bad, and that both master and mate were in default: the master for putting her on a dangerous course, and going below, without leaving special instructions with the officer of the watch; the mate for not having, when he saw the supposed fog bank, called the master, or put her head off the land. Considering, however, the very high character they both received, the court only suspended the master's certificate for three months, and the mate's for one month, the master being allowed a chief mate's certificate during the suspension. *The Joseph Rickett*, March 3, 1886.

94. Upon an inquiry into the stranding of the steamer *D.*, *held*, that the casualty happened through misjudgment of distance and absence of use of the lead, and also, that the *D.* was not navigated with proper and seamanlike care. The master ordered to pay £20 towards expenses. *The Devonian*, Jan. 13, 1885.

95. See, also, for other cases of bad navigation and suspension of masters' certificates, *The Jeanie*, No. 2354, Nov. 5, 1884; *The Nineote*, No. 2362, Nov. 1, 1884; *The Avebury*, No. 2370, Nov. 20, 1884; *The Austria*, Nov. 5, 1884; *The Finchley*, No. 2363, Nov. 12, 1884; *The Flower of the Fleet*, No. 2636, July 31, 1885; *The Windermere*, Feb. 12, 1885; see also Nos. 109—112, *infra*.

7. Improper Abandonment.

96. Loss of a sailing ship of 299 tons register, laden with resin and staves, and bound on a voyage from New York to Antwerp, held due to the conduct of the master in abandoning her with the crew without sufficient cause, and for damaging her and taking away her pump boxes to make her sink more rapidly. The master's certificate would have been cancelled had not the court been prevented by the nature of it from dealing with it. *The Chillianwallah*, No. 226, March 9, 1878.

96a. The V. was an iron steamer of 2,401 tons gross and 1,570 tons net register, built in 1871. She left New Orleans for Bremerhaven with twenty-eight hands, and a cargo of 10,000 bushels of maize and 6,406 bales of cotton, and about 500 tons of bunker coals. When she left New Orleans she was in a good and seaworthy condition, the cargo was properly stowed, and there was apparently no danger of shifting. In the course of the voyage the ship developed a list which, it was contended on behalf of the owners and master, was due to her having taken in water, but which the court thought was due to the north-west wind; and the master thereupon abandoned and set fire to her, though he was then only 200 miles from the Lizard. The V. was of the estimated value of £19,000, and was insured for £19,000, and her freight for £1,000. Held, that the master had acted prematurely in abandoning her, and was not justified in setting fire to her, and was alone to blame, but as it was his first command, and he received a high character, the court did not deal with his certificate. *The Viceroy*, Jan. 20, 1886.

See also No. 85, p. 2206, and Nos. 252, 253, p. 2234.

8. Drunkenness.

97. On an inquiry by way of re-hearing before the wreck commissioner and assessors into the stranding and loss of a small

iron ketch of 135 tons gross register, built to be sent out to Santos, to bring down goods from the interior to the coast, held, that the stranding and loss of the vessel was due to her having been allowed to get too near to the shore before any attempt was made to put her about, and, upon her then missing stays, to the helm having been put up to wear her instead of the anchor having been let go; that the master was to blame for having been down in his cabin, and in a state of intoxication, for some hours before the vessel went ashore, and when the safety of the vessel required his personal supervision; and that the chief mate was also to blame for having kept the vessel on her course heading direct for the shore until she was too close to enable her, after missing stays, to wear, and for not having thereupon dropped her anchors. The court cancelled the certificate of the master, and suspended the master's certificate of the chief mate for six months. *The Bertioga*, January 3, 1883.

98. Stranding and loss of a steamship; Held, due partly to her having been sent to sea without being sufficiently ballasted, and partly to the unskilful navigation of the master, who was incapable of the efficient performance of his duties through drink at different times during the voyage, and his certificate ordered to be cancelled. *The Beverley*, March 28, 1877.

99. The master of a leaky vessel remained in his cabin under the influence of drink, and when a fire broke out on board improperly refused at first to allow it to be extinguished, and broached a cask of rum which he partook of with his crew. Held, that he was unfit to command a ship, and his certificate cancelled, but he was recommended for a first mate's certificate. *The Falcon*, March 23, 1883.

100. Loss of a ship. The master was proved to have suffered throughout the voyage from the effect of over-indulgence in drink, and his certificate suspended for twelve months, the court intimating it would have cancelled it altogether had he been proved to have been an habitual drunkard. *The Oleander*, Nov. 29, 1880.

9. Neglect of Duty.

101. Inquiry into the loss of the wooden sailing ship O., of 647 tons register, built in 1869, laden with 900 tons of pig iron, and bound from the Tees for Philadelphia. Shortly after sailing she met with heavy weather, and

was found to be making water; and six days after sailing the master and crew abandoned the vessel. *Held* that, considering the nature of the cargo, the materials she was built of, and her age, the vessel was much overladen; also that the master was to blame in that respect, and also for going to sea, knowing that only one pump was in working order; for neglecting to have the ballast ports properly caulked, and for prematurely abandoning the vessel. The court suspended his certificate for six months. *The Othere*, May 10, 1880.

102. Inquiry into the loss of the iron screw steamer A., of 230 tons, laden with 410 tons of iron ore, and about 33 tons of coal in her bunkers, and bound from Bilbao for Swansea. Shortly after leaving port stormy weather set in, and some of the coal was washed into the bilges, choking the pumps. The boilers, which were in a dirty condition, primed so much that the pressure of steam had to be reduced. At length the engines stopped, and the vessel began to drift. The master refused assistance, but when off the Lizard the weather became worse, and finally the master and crew abandoned the vessel, and she shortly afterwards went down. *Held*, that the loss of the vessel was due partly to the defective state of her machinery, partly to the weight of her cargo, and partly to the insufficient supply of coal which she had on board for the return voyage. *Held*, further, that the master was to blame for not taking a sufficient quantity of coal on board, and for not accepting the services of the steamer when the coal had run out, and the water was gaining on the vessel, and that the chief engineer was also to blame for not informing the master of the state of the engines and boilers before leaving Bilbao; but their certificates were not dealt with. *The Athlete*, July 20, 1882.

10. *Misconduct not occasioning Loss or Damage.*

104. The M. S. Act, 1876 (c. 80), does not extend the jurisdiction to suspend or cancel the certificate of the master to cases not within the M. S. Act, 1854 (c. 104), ss. 242, 432. There is, therefore, no power to suspend the master's certificate where there has been no loss of life, nor material damage to life or to the ship. *Ex parte Story*, 3 Q. B. D. 166; 47 L. J. Q. B. 266; 38 L. T. 29; 26 W. R. 329; *The Ayton*, Nov. 28, 1877; *The Albert Edward*, May 4, 1876.

105. On an investigation as to damage to a sailing ship off Cape Horn, *held*, that the master was guilty of very grave acts of misconduct, but that none of those acts in any way contributed to the casualty, which was due entirely to the extreme severity of the weather, and to the ship having been pooped when the first officer was in command, without fault on his part. *Held*, further, that as none of the acts of misconduct of the master contributed to the casualty, the court had no power to deal with his certificate. *The Kate Kellock*, January 9, 1879.

11. *Collision.*

(a) *Generally.*

106. As to the power to order a formal investigation in a case of loss of life by collision, see No. 72, p. 2204.

107. As to the stay of proceedings by the wreck commissioner in a case of collision where an action between the two ships was pending in the Admiralty Division, see *The Gerarda* and *The Benares*, Murton's Wreck Inquiries, p. 43.

108. Inquiry into a collision between the steamships I. and M. off the Sunk Light on the 4th inst., resulting in the loss of the first-named vessel and two lives. The wreck commissioner *held*, that the two ships were vessels crossing so as to involve risk of collision, within the meaning of Article 16 of the Sea Collision Rules, the M. having the I. on her starboard side; it was, therefore, her duty to have got out of the way. The master of the M. said that he would have ported his helm, but that he was close to the West Rock Buoy. *Held*, however, that the collision took place a mile and a-half from the buoy; that there was therefore no reason why he should not have ported; and that, assuming he had been close to the buoy, it was his duty to have stopped his engines, and reversed full speed, instead of starboarding as he did. The court suspended the certificate of the master of the M. for three months, with a first mate's certificate during the suspension. *The Isle of Arran* and *The Mayfield*, October 25, 1885.

(b) *Bad Navigation.*

109. On an inquiry as to a collision in Sea Reach in the Thames between the steamer T. and the sailing ship M., attended with loss of life, *held*, that the collision was due to the negligent navigation of the T. by her master (1) in having allowed her to get so far over to

the south shore as to be inside the Middle Blyth Buoy, where the M. was at anchor; (2) in not having stopped and reversed full speed as soon as he saw the M. ahead; and (3) in having, when his helm was hard-a-port, ordered it to be put hard-a-starboard on sighting the M. The court suspended his certificate for three months, but recommended the allowance of a first mate's certificate in the interval. *The Masonic* and *The Thetford*, December 22, 1881.

110. Inquiry into the cause of a collision between the Greek barque P. and the British emigrant ship H., by which eight lives were lost on board the P. *Held*, that there was a want of proper discipline on board the H. in transmitting the reports of the look-out, and a delay in giving the proper orders thereon, and that the collision was due to a neglect of proper precautions by the master of the H., but his certificate would not on that account be suspended. *The Hurunui* and *The Pater*, November 28, 1876.

111. On an investigation into a collision between a barque and a steam ship, *held*, that the collision was caused by a want of due care and caution on the part of the second officer of the steamship in not slowing when he entered a fog bank, and he was admonished to be more careful in future, but his certificate was not dealt with. *The Dinorah* and *The Dorunda*, July 27, 1876.

112. On an investigation into the circumstances attending damage to a sailing ship by collision with a steamer, *held*, that both vessels were to blame; the sailing ship, because her lights were improperly placed, and the steamship, for not having given way in time. *The Brothers* and *The Vindolana*, No. 199, January 15, 1878.

(c) *Neglect to stay by other Vessel.*

113. Every master or person in charge of a British vessel who, after collision with another ship, fails without reasonable cause to render assistance or give the information by this act required of him is to be deemed to have caused the collision through his wrongful act, neglect or default, and is guilty of a misdemeanour; and if he is a certificated officer, an inquiry into his conduct may be held, and his certificate may be cancelled or suspended. See M. S. Act, 1873 (c. 85), s. 16.

114. On an investigation into the loss of the sailing ship H., attended with loss

of life, through collision with the sailing ship E., *held*, that the H. was not to blame for the collision, and that the master of the E. was to blame for a bad look-out, and for not having taken more active measures to save those on board the H., and his certificate suspended accordingly for three months. *The Helena* and *The Electryon*, Nov. 27, 1878.

115. A collision occurred between the H. and the P. The master of the H., after the collision, neglected, without sufficient cause, to render assistance to the P., which was sunk with the loss of eight lives. The court suspended the master's certificate for a year. *The Hurunui* and *The Pater*, November 28, 1876.

116. *Held*, that the master of a steamer was to blame for not giving way in due time, and for not staying by the other ship after the collision, when he could have done so without danger to his own vessel, and his certificate accordingly suspended for six months. *The Brothers* and *The Vindolana*, No. 199, Jan. 15, 1878.

See also as to Canada, No. 121, p. 2212.

12. *Allowance of Lower, during Suspension of Higher, Certificate.*

117. On an application that a master whose certificate was suspended might be allowed a first mate's certificate during the interval, the court consented to recommend to the Board of Trade that he be allowed a first mate's certificate, considering that it was better that he should be employed at sea, although in an inferior capacity, in the study and practice of a seaman's duties rather than that he should be detained on shore doing and learning nothing. *The Hispania*, Aug. 18, 1879.

118. The wreck commissioner decided that when a master's certificate is suspended, it will generally recommend his being allowed a mate's certificate in the interval. *The Rescue*, December 18, 1876.

119. The court, on suspending a chief mate's certificate as master, left it to the Board of Trade to say whether, having regard to his antecedents, he should be allowed a first mate's certificate during the suspension. *The Bertioga*, January 3, 1883.

120. See also Nos. 88, 89, 93, 99, 108, and 109, *supra*.

13. *Dismissal of Master.*

See tit. MASTERS, p. 1118.

14. *Colonial Courts.*

121. Every person in charge of a British Canadian ship who fails without reasonable cause to render such assistance, or to give such information as aforesaid, shall be deemed guilty of a misdemeanour, and if he is a certificated officer under Canadian authority, an inquiry into his conduct may be held, and his certificate may be cancelled or suspended. See Canada Dominion Act, 43 Vict. c. 27, in 15 Hertslet's Treaties, p. 972.

121a. See also No. 77, p. 2205; and as to the colonial courts which have made statutory provisions in relation to the cancellation or suspension of colonial certificates of masters, mates, or engineers, see note 26, p. 2201.

15. *Foreign Courts.*

122. As to the suspension or cancellation of licences of American masters, mates, pilots, and engineers, see Regulations of Board of Supervising Inspectors, revised to February 1886, pp. 31—36.

See also No. 77a, p. 2205. [AMERICAN.]

122a. A master or mate whose certificate has been suspended may be reinstated by the chancellor after the lapse of a year, if it can be taken for granted that in future he will satisfy the requirements of his calling. See Law of 27 July, 1877, sect. 34. [GERMAN.]

6. **Engineers.**

123. The powers given to the Board of Trade or to any local marine board of instituting investigations into the conduct of any master or mate whom it has reason to believe to be from incompetency or misconduct unfit to discharge his duties, are extended to certificated engineers. See the M. S. Act Amendment Act, 1862 (c. 63), s. 11.

123a. Inquiry into loss of life on board the screw steamer M., of 634 tons register. The M. arrived at Gravesend from the Tyne, and as she was about to proceed to London the chief engineer instructed the second engineer to open

the main stop valves upon the boilers. Whilst the second engineer was engaged in doing this a rush of steam and boiling water, consequent upon the sudden lifting of one or both of the safety valves, caused him injuries of which he died. *Held*, that the safety valves were not in good order, that the lifting gear of one of them worked so stiffly that it failed to be of use, that the covers of the boxes were most inefficiently fastened, and that the pressure gauges were not reliable; and the court blamed the owner in respect thereof. *Held*, further, that the cause of the casualty was—(1) Undue pressure in the boilers, and probable great variation of the pressure in one as compared with the other; and (2) the safety valves hanging up and then becoming suddenly released, and opening to such an extent as to cause the water to mix with the steam and rush out so violently that the escape pipe failed to relieve the pressure, so that an imperfectly fastened cover of the valve box had such a strain brought upon it as to blow out the substance forming the joint, partially raise the lid, and allow of the escape of steam and boiling water; and the court blamed the chief engineer for his neglect in not ascertaining the load per square inch on the safety valves, and in not getting up steam to lift the load on the safety valves to ascertain whether they and the gear connected with them were in good working order. *The Meredith*, August 21, 1880.

124. See also Nos. 68, 72—76, p. 2204, and No. 345, p. 2243.

7. **Pilots.**

125. The court may inquire into the pilot's conduct, notwithstanding that it has no power to deal with his licence. *The Ostrich* and *The Benbow*, February 7, 1878.

8. **Other Persons.***9. **Coal Cargoes generally.†**1. *Improper Mode of Loading.*

126. Inquiry into the sinking in Sydney

* (37) As to persons other than certificated officers who may be made parties to an inquiry, see Murton's Wreck Inquiries, pp. 98—100.

(38) As to the power of the court to award costs against them, *Ibid*.

† (39) Important information on the coal export trade, the methods of shipment em-

ployed at the various ports, and the descriptions of coal exported, is given in the Report and Appendix thereto of the Royal Commissioners appointed to inquire into the Spontaneous Combustion of Coal in Ships, 1876, c. 1586.

Harbour of the steel screw steamer A., of 5,588 tons gross register, while the A. was lying alongside the quay, taking in coals through the bunker ports on the starboard side. The master observed that the vessel had a list to starboard, and he had her moved out to moorings in the bay so as to enable her to be coaled on both sides at the same time. By 8 a.m. on the 9th November she had taken in 1,621 tons of coal. No further coaling was done until about midnight on the 10th, but next day, while taking in coals at the forward bunker ports on the starboard side, the vessel sank, drowning five of her crew. She was afterwards raised, and returned to the United Kingdom. *Held*, that the casualty was the result of a series of small mistakes; that the owners sent the ship to sea without having her curves of stability calculated, and the position of her centre of gravity and metacentric height ascertained, and should have supplied that information to the master; that the number of certificated officers on board, viz., four, was not sufficient; that the master should have been warned by previous occasions on which the vessel had taken a list while coaling, and should not have turned in when he came aboard on the morning of the casualty without seeing that the chief officer was attending to his duties, knowing that coaling had been going on for more than two hours on the starboard side; and that the chief officer should not have turned in, but stayed up to see the coaling shifted round to the port side. *The Austral*, 6th October, 1883.

2. Stowage.

127. Inquiry into the loss, with all hands, of the sailing ship P., of 276 tons register, bound from Cardiff for Rio Grande do Sul with 422 tons of South Wales steam coal, known to give off explosive gas very freely. Midships a space

large enough to hold forty tons of coal was left, another space being left forward. *Held*, that the vessel was exposed to danger from the cargo not having been properly stowed and trimmed, rendering it liable to shift in heavy weather; but that there was no evidence to show the cause of the loss. *The Penwith*, 17th February, 1881.

128. On an inquiry into the loss of the iron barque M. R., of 1,085 tons, laden with 1,623 tons of coal, and bound from Newport for Valparaiso: *Held*, that the casualty was due to the shifting of the cargo, which was not properly stowed or secured from shifting, the shifting boards extending only between the main and mizen hatches, and there being nothing to prevent cargo shifting in the fore part of the hold. The master and managing owner held to blame. *The Moel Rhiwan*, 19th March, 1884.

129. On an inquiry into the loss of the steamer N., of 93 tons register, laden with 171 tons of steel rails, and bound from Workington for Bowling in the Clyde, and lost off the Mull of Galloway. *Held*, that the master did not act prudently in putting to sea, knowing that bad weather was prevailing, and with the barometer falling; that the cargo was not properly stowed, there being a space of from eight to ten feet in length from the ends of the cargo to the two bulkheads of the hold, and a space of four feet in depth from the top of the cargo to the underside of the deck, and that means ought to have been taken for securing the cargo by shoring or otherwise. *The Norseman*, 27th February, 1880.

10. Explosions of Coal Gas.

1. Generally.*

130. Explosion and spontaneous combustion of coal originate from distinct

* (40) Some coals are liable to explosion—i. e., to develop large quantities of gas, the ignition of which causes an explosion, blowing up the ship, or large parts thereof. See the Report and Evidence of the Royal Commissioners appointed to inquire into the Spontaneous Combustion of Coal in Ships, 1876, c. 1586. I. p. xxiii.

(40a) The commissioners report that certain descriptions of coal are intrinsically dangerous for shipment on long voyages. *Ibid.* pp. viii. and xxiv.

(41) The commissioners recommend, in

order to avoid the shipment of dangerous coal, thorough inquiry on the part of shippers into the character of the coal they propose to ship, and subsequently a careful scrutiny of the coal before shipment, in order to see that the coal contracted for has been actually supplied. *Ibid.* p. viii.

(42) The commissioners recommend water and steam as the most effective agents in extinguishing fire in coal cargoes, and do not approve of the modes for generating carbonic acid gas and applying it to the ignited portions of coal, as, though the gas may be

causes inherent in coal, so distinct that they can hardly co-exist. Explosions generally occur soon after the vessel has left port, and when the gases are more freely given off, and are allowed to accumulate on the surface. Spontaneous combustion is a slow process originating in the body of the coal, and due to the presence in the coal of iron pyrites and other substances. *The Richmond*, Dec. 20, 1878.

131. The court expressed its approval of the practice adopted by shippers of coal of giving written notices as to its gaseous qualities, and suggested that the notices should be more widely distributed. *The Uganda*, 24th April, 1880.

132. The ordinary evaporation or loss of gas from coal when stored in open sheds and exposed to the influence of the atmosphere, is from eight to twelve per cent. in six months. The coal in question contained 8,000 cubic feet of gas in every ton; so that in six months it would give off about 800 cubic feet, taking the mean of ten per cent. as the loss in that period, which would be at the rate of 4·4 cubic feet per ton per day. The 400 tons then stored in the mainhold would, upon this assumption, give off 1,760 cubic feet upon the average in the twenty-four hours after allowing a very wide margin; 1,760 cubic feet of gas, if mixed with ten times its volume, that is to say, with 17,600 cubic feet of atmospheric air, would produce a mixture of the most violently explosive character. The cubical capacity in the 'tween-decks was about 15,000 feet. Therefore the 1,760 cubic feet of gas given off from the 400 tons of these coals in twenty-four hours would be quite sufficient to render the whole of the air in the 'tween-decks violently explosive. *The Sardinian*, June 27, 1878.

133. The gas of South Wales coals when mixed with more than sixteen times its own volume of atmospheric air is per-

fectly safe; when, however, the proportion of the air is six parts or under six parts to one of gas, it will burn but not explode; all mixtures in which the proportions of atmospheric air are between six and sixteen to one of gas are more or less dangerous, the most explosive mixture being one volume of gas to ten of air. Evidence quoted with approval by the wreck commissioner in *The Sardinian*, June 27, 1878.

See also No. 203, p. 2225.

2. Ventilation generally.*

134. With a view to guard against explosion, free and continuous egress to the open air, independently of the hatchways, should be provided for the explosive gas by means of a system of surface ventilation, which would be effective in all cases whatever. Report of Royal Commissioners, quoted, with approval, by the wreck commissioner. *The Amadine*, June 11, 1877.

135. The coal gas which by its mixture with oxygen is productive of an explosive atmosphere, is a light gas which will readily find its way to the surface of the coal. All it requires, therefore, is to have free and constant egress from the surface of the coal into the open air. Report of Professor Abel and Dr. Percy, quoted, with approval, by the wreck commissioner in *The Amadine*, June 11, 1877; *The Sardinian*, June 27, 1878.

136. The majority of the casualties from explosion seem to occur from making the gas dependent for its egress upon the hatchways, which in the event of rain or heavy weather are liable to be covered and battened down. The gas then accumulates between the surface of the coal and the deck, and mixing with the air with which it is confined, forms an atmosphere which only needs the application of a flame to explode. Report of

useful in excluding atmospheric air, which is essential to support combustion, it will not, like water, exert any very sensibly cooling effect. *Ibid.* p. xxiv.

(43) A scientific paper by Dr. Percy and Professor Abel, describing the chemical conditions tending to produce explosion of coal gas, is appended to the Report. *Ibid.* p. xxvi.

* (44) Important information in regard to the ventilation of coal-laden ships and the fittings to be used therein for such purpose is given in the Report.

(45) See also as to surface ventilation of coal cargoes the Board of Trade Instructions

to Surveyors of July, 1882, in tit. OWNERS, p. 1331, n.

(46) As to surface ventilation of coal cargoes, see Instructions to Surveyors thereon issued by the Board of Trade in 1882. Consecutive Office, No. 202, and Appendix to Evidence before Royal Commission on Loss of Life at Sea, 1885, C. 4577, p. 604.

(47) For provisions as to opening the hatchways of coal-laden vessels lying in Penarth dock, basin, or harbour, see Regulations of May, 1876, for Penarth Harbour and Dock (No. 31), published by W. Lewis, Printer, Duke-street, Cardiff.

the Royal Commissioners, quoted, with approval, by the wreck commissioner in *Ibid.*

137. The only danger in the Cardiff smokeless steam coal is from the inflammable gas emitted by it. All coals give out inflammable gas and are dangerous, especially when taken rapidly from the mine and placed on board vessels in large quantities. Surface ventilation is therefore highly necessary. The hatchways and ventilators should be kept as open as possible, and every means adopted to cause a current of air to pass over the coals. Perfect immunity may be attained by adopting the simple precaution of ventilation. Evidence quoted, with approval, by the wreck commissioner in *The Sardinian*, Jan. 27, 1878.

3. Proper Ventilation.*

138. The Royal Commissioners appointed to inquire into the causes of explosion and combustion of coal on board ship, recommend (among other things), that, with a view to guard against explosion, free and continuous egress to the open air, independently of the hatchways, should be provided for the explosive gases by means of a system of surface ventilation, which would be effective in all circumstances of weather. See Board of Trade Official Cautions of September, 1885, p. 3.

139. An aperture at one end and another aperture at the other end of the hold, by creating a current of air over the surface would facilitate the escape of the gas, but this is all that is needed; no expensive or complicated machinery, nothing, in fact, but an aperture or apertures for the gas to escape into the open air. *The Richmond*, December 20, 1878.

140. Loss of life and damage from explosion on board a steamer of 1,179 tons register, laden with 2,180 tons of coal from the Ferndale Collieries. The only ventilation was by four holes cut along

the side of the lower deck, with a view to the carriage of grain. Forward of the fore-hatch there was no means for the gas to escape, and the lower fore-hatch was quite filled up with coal halfway up the coamings. The coal had been freshly worked, and was in a condition to give off large quantities of gas. *Held*, that had the vessel been fitted with two ventilators, one in the fore part of the lower hold, passing through the seamen's berths and up through the deck, and another at the other end of the vessel, the casualty would not have occurred. *The Caduceus of London*, 1st August, 1878.

141. Loss of life and damage from explosion on board a steamer bound from Cardiff for Gibraltar, and laden with South Wales coal, called Davis's Merthyr steam coal. In consequence of heavy weather the hatches were battened down, and two days afterwards an explosion occurred. *Held*, that the explosion was clearly due to the want of proper ventilation, and that vessels carrying such cargoes should be fitted with efficient deck ventilators. *The Levant*, Board of Trade Official Caution of September, 1885.

142. Loss of life and damage from explosion the day after the loading of a steamer of 2,577 tons register, bound from Liverpool for Quebec, laden with 405 tons of Nixon's, Crawshay's, and Ebbw Vale coal. The coal was stowed in the lower main-hold for the ship's use, and allowed to accumulate in the 'tween decks, there being no ventilation whatever from either the main-hold or the 'tween decks. A light was taken into the 'tween decks when the air was in a highly explosive state, and an explosion followed. *Held*, that ventilating shafts fitted with cowls, causing a continuous current of air over the surface of the coal, would effectually prevent such explosions. *The Sardinian*, 27th June, 1878.

143. *Held*, by the wreck commissioner, that simple, adequate, and inexpensive

* (48) The commissioners recommend that every coal-laden ship should be fitted with shafts or ventilators piercing the upper deck, but not carried down on to or through the coal, with cowls always trimmed so as to form a downcast and upcast for the current of air, which would then pass continuously, and in all weather, over the surface of the coal, carrying with it any explosive gas as fast as it is evolved. Report of the Royal Commission appointed to inquire into the Spontaneous Combustion of Coal, p. xxiv.

neous Combustion of Coal, p. xxiv.

(49) Surface ventilation is necessary in all cases of cargoes of coal laden on board large vessels, and the ventilation should be so arranged that there should be at least one or more tubes going through the main deck into every hold. Statement of Government Inspector of Mines for South Wales in Board of Trade Official Caution as to Coal and Coal Gas of September, 1885, p. 19.

ventilation may be secured by having two ventilators, one in the fore and the other in the after part of the vessel, fitted with cowls, so adjusted as to allow the air to go in at the one and pass out at the other, space being left between the coal and the under side of the deck, so as to allow a free passage of air. *The Union*, 20th February, 1879.

144. Every coal-laden ship should be fitted with shafts or ventilators piercing the upper deck, but not carried down to or through the coal, with cowls always trimmed so as to form a down-cast and up-cast for the current of air which would then pass continuously and in all weathers over the surface of the coal, carrying with it any explosive gas as fast as it is evolved. Report of Royal Commissioners, quoted with approval by the wreck commissioner, in *The Amadine*, June 11, 1877; *The Sardinian*, June 27, 1878.

145. On an inquiry into the loss of the iron screw-steamer *P.*, of 1,043 tons register, laden with coals, and bound from Cardiff to Genoa. *Held*, that the vessel was not properly ventilated, and that she should have had two ventilators to each hold, one in the fore part and the other in the after part, piercing the upper deck, and with a clear space under the deck between the ventilators, in order that there might be always a free current of air passing over the surface of the coals in the 'tween decks. The court, however, thought the loss of the vessel was due to other causes. *The Prometheus*, 18th February, 1880.

146. All steam-coals give off inflammable gas, which is liable to explosion if allowed to accumulate. By the adoption of simple and inexpensive precautions for ventilation, the serious consequences to

be otherwise apprehended are entirely obviated. In addition to the hatchways being kept open during the process of loading, and partially so during the first few days, weather permitting, at sea, we recommend the placing of two upright pipes, say six feet in length and twelve inches diameter, one fore and the other aft, in each bunker or hold of the vessel containing the coal, and descending until flush with or within two or three inches of the under side of the deck. The top of each pipe should be fitted with a moveable cowl, so as to be subject to the action of the wind, and a space left in the trimming of the coal immediately below the deck, so as to allow a free circulation of air between the two pipes placed in each bunker or hold. By such an arrangement a continual current of air would be conveyed by one of the pipes into one end of the bunker or hold, and escape at the other end, and in its passage sweep away gas. Evidence quoted with approval by the wreck commissioner in *The Sardinian*, June 27, 1878.

147. *Held*, that whenever large quantities of coal are stored in one compartment, a current of air should be made to pass continually over the surface of the coal to carry off the explosive gases as soon as they are evolved, and which could be readily effected by having two ventilating shafts, one at each end of the compartment, fitted with cowls trimmed so as to form a downcast and upcast for the current. *The Sardinian*, 27th June, 1878.

4. Improper Ventilation.*

148. The Board of Trade give notice that they are advised that vessels laden

* (50) To depend on ventilation from the hatchway is unwise in the highest degree, because, as soon as the vessel meets with bad weather and takes in water over on the deck, the hatches are put on to prevent the water getting down into the hold. Statement of Government Inspector of Mines for South Wales in Board of Trade Official Caution as to Coal and Coal Gas of September, 1885, p. 19.

(51) The *S.*, carrying a cargo of coal of 2,050 tons from Hull to San Francisco, was detained by the Board of Trade for imperfect ventilation. The ship when detained was fitted with a box ventilator in each of the fore, main, and after hatches (Venetian on two sides similar to ventilators used in rice

cargoes), passing down through the body of the coal, and having the lower end pointed and stopped up. There was also one 14-inch iron cowl ventilator passing through the fore-castle and main decks; one trunk ventilator with skylight top leading through midship house and main-deck; one 18-inch iron cowl abaft mainmast, leading to water-tanks; and two 12-inch cowls through poop and main-decks to store-room right aft. The alterations made were as follows: The two after-ventilators were boxed, and continued through the store-room deck to cargo. The tank ventilator was opened out to cargo at main deck, and the trunk and fore-castle ventilators were accepted, being suitable for surface ventilation. The three wood-box

with coal, and not provided with surface ventilation, are dangerous to human life, and it is their intention to prosecute those persons who send or take, or attempt to send or take to sea, or are parties to doing so, any British coal-laden ships which, on account of the absence of sufficient surface ventilation, are in such unseaworthy state that the life of any person is likely to be thereby endangered. See Board of Trade Official Caution of September, 1885, p. 1.

149. Certificated masters and officers are especially warned that neglect on their part will, in the event of accident, be brought to the notice of the wreck commissioner or of the court investigating the case. *Ibid.*

150. The iron screw steamer R. was lost with all on board. She was 1,382 tons register, laden with coals, bound from Cardiff to Bombay. The R. had five cowl ventilators, of which four went down to the lower holds, one of them to each hold. She had also twelve ventilating bollards; her masts were hollow, having openings into the lower holds and the 'tween decks; and she had a trunk or shaft ventilator of considerable size from the tank, forward of the engine-room. In addition to all this she had immediately beneath the upper deck a box ventilator, about 6½ inches square, running the whole length of the 'tween decks, with the two ends closed up, but with the openings at every 8 feet, and leading finally into the main funnel at about 10 or 12 feet up. *Held*, that, although the system of ventilation adopted might be well suited for the carriage of cattle (for which it was provided), it was not well suited for coal cargoes, having regard to the danger of explosion by the gas not being sufficiently diluted before it passed into the funnel, and to the danger of its there coming in contact with flame or a burning cinder. *The Rathmore*, July 23, 1880.

151. In the after hold in which the explosion occurred, and in which were stowed 673 tons of coal, there were two ventilators; one in the fore part of the hold, about a foot abaft the bridge, and the other about the middle of the hold, immediately abaft the after hatchway. Both were from 3 feet to 4 feet out of the

centre line of the ship, the former being on the starboard side and the latter on the port side. They consisted of cowls some 4½ feet high, made of sheet iron, which fitted over iron combings standing about 9¾ inches above the deck, and with a diameter inside of about 12 inches. In case of bad weather the cowls could be unshipped, wooden plugs inserted, and covered with tarpaulins. These were the only means, apart from the hatchways, for ventilating the after hold. *Held*, that these ventilators were neither sufficient, nor were they properly constructed so as to be serviceable in heavy weather. *The Blythville*, January 26, 1886.

152. The iron schooner A., of 106 tons gross register, left Glasgow, bound for Exeter, laden with 176 tons of coal, and was not after heard of. The only ventilation for the hold, besides the hatches, was a booby hatch on the after hatch. *Held*, that the means of ventilating the hold were wholly insufficient, and that no clear space was left between the top of the coal and the deck for ventilation; but that the loss of the vessel was probably not owing thereto, but to her being overladen. *The Adina*, November 22, 1880.

153. Whilst the loading was going on, and until shortly before the vessel left Liverpool, the hatches were kept open; but before leaving Liverpool the hatches on the steerage deck were put on, and part of the hatches on the orlop deck. There was no ventilation whatever, except by the hatches, from either the lower main hold or the 'tween decks, and there was no means for the gases to escape when the hatches were covered up. *The Sardinian*, June 27, 1878.

154. The schooner M., of 93 tons register, bound from West Hartlepool for Ramsgate, with 156 tons of coal, had no means of ventilation except through the hatchways. *Held*, that the vessel, therefore, was not properly ventilated, but that there was not sufficient evidence to show the probable cause of her loss. *The Merton*, August 17, 1880.

155. See also, as to the insufficiency of ventilation by the hatches only, *The Magic*, March 10, 1880.

156. As to the insufficiency of four pairs of ventilating bollards which would

ventilators in the hatchways were removed, and testing-pipes in each hatch put in their places. The result of the tests in these pipes

is stated. See Board of Trade Handbill, No. 62, July, 1884, as to the detention of *The Sutherlandshire*.

be closed in bad weather, see *The Kensington*, March 25, 1880.

157. Loss with all hands of the wooden vessel *G.*, of 199 tons, laden with gas coal, and bound from Gijon for Valencia. *Held*, that the ventilation, consisting only of two small ventilators in the fore-castle, was insufficient. *The Garmouth*, Board of Trade Official Caution of September, 1884.

158. As to the impropriety of leaving no space over coals to allow of a current of air, see *The Kensington*, March 25, 1880.

159. For further cases of defective ventilation, see Nos. 140—142, *supra*, and Nos. 184—191, 195, 201, pp. 2220—2224, and 235, p. 2228.

5. Breakage of Coal.*

160. Monsieur Vassard, a French chemist, having an intimate knowledge of English coals, says that the Cardiff coal is hard and brittle, and contains light carburetted hydrogen; that the emission of gas in such coal is caused by the breaking up of the larger fragments, thus opening the cells in which the gas is contained. Each cell contains gas, and it is the fracture or leakage which liberates the gas. This description of the gas was assented to by the manager of the Warrington Gasworks, and quoted with approval by the wreck commissioner. *The Sardinian*, June 27, 1878.

See also Nos. 171, 177, 182, 205, 206, *infra*.

6. Freshly-worked Coal.

161. Fresh-worked coal is a more powerful fuel than coal which has been worked for some time. The fresher the coal, and the larger the lumps put on board steamers, the greater the quantity of gas given off in the holds and bunkers of steamers. Evidence quoted with approval by the wreck commissioner. *Ibid*.

162. Of the 405 tons of coal put into the main hold, 200 had been sent from the colliery between the 19th and the 30th of April, and were put on board on the 3rd and 4th of May. The remaining 205 tons which were put in on the 7th had only been sent from the colliery between the 1st and 4th of May. *Semble*, they were shipped too soon. *Ibid*.

See also No. 137, *supra*, and Nos. 171, 173, 177, 178, 180—182, *infra*.

7. Bad Stowage.

163. Inquiry into loss of life and personal injury by explosion of gas on board the steamship *C.*, laden with coals and bound from Cardiff to Bordeaux. The cargo in the after-hold was so trimmed as to form a heap which filled up the hatchway, a large space being left at each end, thus affording no means of escape for any gas which might collect. There was also in the same compartment a quantity of patent fuel, and some bark from a cordwood cargo. Shortly after passing the Cefny Wrack an explosion occurred, killing an able seaman, severely injuring the second engineer, and doing considerable damage. *Held*, that the explosion was due to the ignition of gas, which had leaked from the after-hold into the shaft, and thence into the steerage. And that the master was to blame for allowing the vacant spaces in the after-hold, and for not seeing that the cargo was properly stowed and trimmed, so as to afford sufficient ventilation. The court suspended his certificate for three months. *The Columbine*, February 25, 1880.

See also Nos. 187—189, and 201, *infra*.

8. Shifting Boards.

164. On an inquiry into the loss with all hands of the iron screw steamer *E.*, of 676 tons register, laden with coals, and bound from Cardiff for Marseilles, *held*, that the stowage of the cargo was defective, for that the vessel should have been fitted with shifting boards fore and aft, both in hold and 'tween decks. *The Estepona*, December 31, 1880.

165. As to shifting boards in grain-laden ships, see tit. OWNERS, Pt. V. c. 3, p. 1326, and same tit. cap. 2 in Addenda.

9. Inodorous Coal.

166. The gas given off by the South Wales steam coal is inodorous, owing to the very small quantity of sulphur which it contains. The absence of a smell of gas is no proof whatever in the case of South Wales steam coal, that gas is not

* (52) For full particulars and descriptions in regard to the different modes of loading coal and their effect on its breakage, see Re-

port of Royal Commission as to spontaneous combustion, *supra*.

present and in dangerous quantities. *The Richmond*, Dec. 20, 1878.

167. Some kinds of South Wales coal contain only a small quantity of sulphur, so that its gas cannot be detected by smell. *The Bonnie Dunkeld*, October 25, 1878.

168. The coal from Nixon's, Crawshay's, and Ebbw Vale Collieries is peculiarly free from sulphur, containing only about .055 per cent., or a little more than $\frac{1}{20}$ th per cent., and is therefore inodorous, whereas some coals contain as much as 7, 8, and 10 per cent. of sulphur, and the general average of Lancashire coals is 2 per cent. *The Sardinian*, June 27, 1878.

10. Characteristics of Coals from different Collieries.*

169. Coal from the Auckland Park Colliery, in the north of England, is not of so gaseous a nature as to cause explosion. *The Merton*, August 17, 1880.

170. South Wales steam coal, from the Ocean Steam Coal Company, gives off explosive gas very freely, but is not liable to spontaneous combustion. *The Penwith*, February 17, 1881.

171. All South Wales steam coal is of a very fiery character. It has a tendency to give off gas in large quantities for some time after it has been wrought, and when it has been broken up, as it necessarily would be on being thrown down into the hold of a vessel: the gas so given off, being mixed in the proportion

of one part to from six to sixteen parts of atmospheric air, becomes a highly explosive compound, the force of the explosion being greatest when mixed with from ten to twelve parts of atmospheric air. *The Richmond*, December 20, 1878.

172. Although South Wales coal gives off gas in such large quantities and of so dangerous a character, it readily passes off if it is allowed free access to the air, its specific gravity being only .55. *Ibid.*

173. There seems no objection to ship South Wales steam coal very soon after it has been wrought, provided that proper precautions are taken by proper ventilators to allow the gas to escape. *Ibid.*

174. The coal from the Risca and North Dunraven Collieries is a very fiery coal, giving off large quantities of explosive gases. *The Blythville*, January 26, 1886.

175. Risca black vein coal is a fiery coal giving off large quantities of gas, but quite safe to be carried, with proper ventilation. *The Abne Holme*, May 9, 1881.

176. Semi-anthracite coal is known to be of a most explosive nature, and the owners of the collieries from whence it is obtained issue notices to captains thereon, warning them to keep their hatches open for several days after the completion of the loading, and not to permit any flame in the hold or any other part of the vessel where gas may collect. There is also a bye-law of the Penarth Dock Company to the same effect. *The Caduceus*, August 1, 1878.

* (53) For a list of the different kinds of coal and collieries in England, Wales, and Scotland, and their characteristics, see Report and Appendix of Royal Commissioners as to Spontaneous Combustion of Coal in Ships, 1872 (C. 1586, I.), p. 234.

(54) Many of the Scottish collieries from which steam coal is raised give off fire-damp, and explosive gases are also given off in the cannel seams. At some parts of the Scotch coalfield fire-damp has not been seen, but, speaking generally, there are no seams of coal worked in Scotland, either "common" or "cannel," where, at one place or other of the mineral field, fire-damp has not been found. Report of 9th December, 1878, of Inspectors of Coal Mines in Scotland in Board of Trade Official Caution as to Coal and Coal Gas of September, 1885, p. 17.

(55) The South Wales ocean steam coal is a hard semi-anthracite coal, and is used for steam purposes only. There are several col-

lieries belonging to the Ocean Steam Coal Company. The quality of the coal worked in all the company's collieries is practically the same. The coal is a fiery coal, but not more so than other steam coal. It gives off gas during the working of the coal, and in a greater or less degree for several days after it is worked. Statement of Government Inspector of Mines for South Wales in Board of Trade Official Caution as to Coal and Coal Gas of September, 1885.

(55a) The "ocean steam coal" is not a dangerous coal to carry on board ship, provided some ventilation of the hold in which it is put be insisted upon. *Ibid.* p. 18.

(56) South Wales steam coal seems more likely to cause explosion and less likely to cause combustion. Report of the Royal Commission appointed to inquire into the Spontaneous Combustion of Coal in Ships, 1876, c. 1586, I. p. 235.

177. The coal from the Newport Abercarne Black Vein Steam Coal Colliery is semi-bituminous, and has all the properties of the ordinary South Wales coal, giving off, when newly wrought or broken, a considerable quantity of explosive gas. *The Streonshalk*, June 24, 1879.

178. Newly-wrought coal from the Newport Abercarne Black Vein Steam Coal Colliery gives off great quantities of inflammable gas. *The Magic*, March 10, 1880.

179. Coal from the Cyfartha Collieries is semi-anthracite, and of a very gaseous nature, and requires free surface ventilation. *The Greece*, March 1, 1880.

180. South Wales coal, belonging to Nixon's, Crawshay's, and Ebbw Vale Collieries, is a fiery coal, giving off a great quantity of gas, especially when freshly worked, but admirably adapted for steam purposes. Crawshay's and Nixon's both came from the Aberdare upper four-feet seam; and although the Ebbw Vale did not come from the same seam, it was very like it in character, all being hard smokeless South Wales coal, a semi-anthracite. *The Sardinian*, 27th June, 1878.

181. Coal from the collieries in the Rhondda, Aberdare, and Merthyr Valleys, when freshly wrought, gives off gas very freely. *The Llanishen*, November 8, 1880.

182. Coal from the Seven Sisters Colliery, near Neath, is highly anthracitic, giving off a considerable quantity of gas for some time after it has been worked. The coal raised from the mine on the 11th, 13th, and 14th, and shipped on the 16th and 17th, would be in a condition to give off a considerable quantity of gas. The throwing it down the hold would also, by breaking it up, tend still further to liberate the gases. *The Bonnie Dunkeld*, October 25, 1873.

183. Arley gas coals, from Pearson's and Knowles' mines, in Lancashire, are of an inflammable nature. *The Kensington*, March 25, 1880.

11. *Specific Cases.*

(a) *Generally.*

184. Personal injury and damage from explosion at Cardiff on board a screw steamer of 676 tons, laden with 1,242 tons (exclusive of 167 tons for the bunkers) of coal from the Rhondda, Aberdare, and Merthyr Valleys, consisting of 535 tons of large coal, the remainder being small.

The steamer had two ventilators in the fore-hold, one in the main-hold, and two in the after-hold. The engineers' mess-room, where the explosion took place, was divided from the after-hold by a single wooden bulkhead, not air-tight, and the only means of ventilation it possessed was a flange fitted in the deck, through which the stove pipe was carried. The flange was fitted with a cap on the outside to prevent rain, &c. from going below, and on the under-side was further protected by a piece of wood buttoned to the deck, so that there was no ventilation of the mess-room except the companion and two screw ports. The fore part of the after-hold was filled with coal up to the coamings of the hatchway, which was closed, and the wings on each side were filled tight-up. At ten p.m. on the day after the loading was completed the third engineer struck a match in the mess-room, and an explosion took place. *Held*, that the ventilation was defective, the cargo improperly stowed, and the leakage of gas from the hold to the mess-room not properly guarded against by an efficient bulkhead, for which deficiencies the owners were adjudged to pay £10 towards the cost of the inquiry. *The Llanishen*, November 8, 1880.

185. Explosion and loss of life on board a steamer of 657 tons register laden with 1,369 tons of Risca black vein coals, on a voyage from Newport (Mon.) to Gibraltar. The only ventilation, with the exception of the hatches, was, as regarded the main-hold only, by means of two bollards of fourteen to fifteen inches in height on each side of the vessel, abreast of the foremast, fitted with screws two and a-half to three inches in diameter. *Held*, that the means adopted for ventilation were quite insufficient, and that the owners were to blame for the deficiency. The managing owners ordered to pay £100 towards the costs of the inquiry. *The Abne Holme*, May 9, 1881.

186. Inquiry into loss of life and damage from explosion of coal-gas on board the iron screw steamer *S.*, of 4,376 tons gross register. She was laden with 1,604 tons of coal, 405 tons of which were in the lower main-hold. The *S.* left Liverpool on the 9th of May, bound for Quebec, with a crew of 103 hands, 60 cabin and 355 steerage passengers. Next morning she arrived at Moville, Lough Foyle, and came to anchor. While engaged in checking off cargo there two of the crew went into the hold with a lamp,

when a violent explosion took place, setting the ship on fire. Every effort was made to extinguish the flames, but in vain. She was therefore moved into five fathoms of water, and, the injection pipes having been opened, the water was let in, and she settled down, thus extinguishing the fire. She was subsequently raised, pumped out, and brought back to Liverpool. *Held*, that the explosion was due to the gas from the 405 tons of coal which were stowed in the lower main-hold having been allowed to accumulate in the 'tween decks above it, there being no ventilation whatever from either the main-hold or the 'tween decks, and to a light having been taken down there when the air was in a dangerously explosive condition. *The Sardinian*, June 27, 1878.

187. Personal injury and damage from explosion on board an iron screw steamship of 1,588 tons gross register, bound from Newport to Savona, laden with 1,695 tons of newly-wrought coal, from the Newport Abercarne Black Vein Steam Coal Colliery. 338 tons were stowed in the fore-hold, about 600 tons in the main-hold, and 757 tons in the after-hold. The main-hold was quite full, but in the fore-hold the coal was sloped away forward, and in the after-hold it was sloped away aft, for the purpose of trimming the vessel, thus leaving empty spaces in the fore part of the fore-hold and in the after part of the after-hold, the empty space in the after-hold being sufficient to contain from five to six wagon loads more of coal. The coal was trimmed from the centre into the wings, leaving a manhole or passage down the centre from end to end for the purpose of facilitating the escape of the gas. In each hold there were two ventilating pipes or tubes, each about nine inches in diameter, and fitted with cowls, the one being in the fore part and the other in the after part of the hold. These tubes just pierced the upper deck, and stood about four or five feet above it. In addition to the tubes there were to each hold two pairs of ventilating bits, with orifices of from three to four inches across. The ship left port on the 10th. On the evening of the 12th the wind commenced to blow and the hatches were battened down and the ventilating bits closed. The ventilating tubes were shut from the time of leaving port, and the cowls stowed away. The gas from the coal in the after-hold could, therefore, only escape through the grating in the floor of the store-room; and as the hatchway over the

store-room and the ventilating bits were closed, the gas would pass from the store-room through the door into the spare berth, and from thence into the saloon. On the morning of the 13th, the explosion occurred in the after part of the vessel, seriously injuring the master among others. *Held*, that the explosion was caused by the gas escaping from the after-hold into the store-room through a grating in the floor which was the only means of escape left open, and thence through the door in the cabin bulkhead into the spare berth, and thence into the saloon, where a fire was burning, by which most probably the gas was ignited; that the master was not justified in neglecting to ship the ventilating cowls, and in closing the ventilating bits when the hatches were battened down, but his certificate was returned to him. *The Streonshalk*, June 24, 1879.

188. Loss of life and damage from explosion on board an iron screw steamship of 1,355 tons gross register, bound from Cardiff to Savona, laden with a cargo of "Colliery Small" coal, consisting of 1,800 tons of coal, exclusive of 250 tons of bunker coal. Of this quantity 725 tons were placed in the after-holds; but the holds not being completely filled the coal was sloped away aft, leaving an empty space in the after part both of the lower hold and of the 'tween decks. The ventilation was, in the forehold, two scuttles, about 14 or 16 inches in diameter, and in the after-hold two similar scuttles, one of which, however, had been included in a small bread tank which had been constructed by the carpenter, thus leaving only one scuttle for the ventilation of the after 'tween decks. These scuttles were fitted with close and open covers, and as they stood only about 7 inches above the deck, would have to be closed in bad weather. A ventilating cowl was also fixed upon each hatchway. The ship left Cardiff on the 12th, and at noon the same day a violent explosion occurred in the after part of the vessel. At the time of the explosion the hatches were being put on the after hatchway, the main hatchway having been previously battened down. *Held*, that the explosion was due to gas from the coal in the after-hold having accumulated in the empty spaces left in the after parts of the 'tween decks and lower-hold, and to this gas having become ignited probably by a live coal or spark from the funnel, and that the accumulation of gas was due to the

coal having been trimmed so close to the deck as to prevent a free current of air passing over the surface of the coals. *The Buteshire*, April 26, 1879.

189. Injury to the person and damage by explosion in a brigantine of 188 tons gross register, laden with 313 tons of South Wales coals, and bound from Swansea to Torquay. The brigantine had but one hold running the whole length of the ship fore and aft, having three hatches opening into it, a fore, a main, and an after hatch. The cabin was aft below the deck, and forward of the fore-hatch and below the deck was a sail-room. The coals were so trimmed as to slope down from aft forwards, leaving a space more or less between them and the deck. On the evening of the 17th, after the whole of the cargo had been taken in, the fore and main hatches were put on. On the evening of the 18th, the main and after hatches were closed, and the fore-hatch left open. There was no ventilation except by the hatches. On the 19th the weather appearing squally, all the hatches were battened down. On the evening of the 20th a match was lit in the sail-room, and the explosion immediately took place. *Held*, that the explosion was owing to the closing of the hatches, and the want of ventilation. *The Bonnie Dunkeld*, October 25, 1878.

190. Personal injury and damage from explosion on board an iron screw steamer of 937 tons register, bound from Penarth to Malta, and laden with 1,685 tons of ordinary South Wales steam coal, freshly worked when shipped. Over the fore-hold and about 10 feet from the forward bulkhead were four ventilating bollards standing about two feet above the deck and about the height of the hatch-coamings, and having orifices of about four inches in diameter. There were also four similar bollards over the after-hold about 10 feet from the after bulkhead. The ship left port on the 25th. Portions of the three hatches were left open for ventilation until the 27th, when the weather becoming stormy, all the hatches were closed and battened down. In the evening of the 28th the chief engineer went into the screw tunnel with a light, and shortly after an explosion occurred in the 'tween decks abaft the after hatchway. *Held*, that the explosion was due to an accumulation of gas in the after-hold, which gas passed into the screw tunnel and communicated with the light

in the mouth of the tunnel; that the small ventilating bollards were totally insufficient for purposes of cargo ventilation; that the owners were blameable for not providing better means of ventilation; and that the master was blameable for proceeding to sea without satisfying himself that the vessel had been provided with adequate means of ventilation. *The Charles W. Anderson*, January 22, 1879.

191. Personal injury and damage from explosion on board an iron sailing vessel of 188 tons register, bound from Sunderland to Portsmouth, and laden with 288 tons of Tunstall Wallsend house coal from the Ryehope Colliery, freshly worked. In the stern of the vessel, in a line with and under the wheel, were two ventilators four inches in diameter, and rising about two feet six inches above the deck. These ventilators went through the deck, terminating about half an inch below it, and were closed by means of plugs; but *held*, that these ventilators were for the lazarette, and not for ventilating the cargo. After the loading was completed on the 10th, the main hatch was covered over, but the fore and after hatches were left off. On the 11th, the main and after hatches were battened down, and the ventilators plugged. The fore hatch, however, was left off. On the 12th, preparations were made for sailing, and the plug from the port ventilator was removed, but a match was struck in the lazarette which caused the explosion. *Held*, by the wreck commissioner, that the explosion was due to the master having improperly battened down the hatches, and to the ventilators used being totally inadequate for ventilating the cargo. *The Union*, February 20, 1879.

192. A schooner of 138 tons, bound from Swansea to Plymouth, with a cargo of 228 tons of anthracite coal, 70 tons being small screenings, and the remainder large coal. The vessel had only one hold, and the cargo was trimmed from the fore-castle bulkhead to the cabin bulkhead aft, sloping at each end to three or four feet from the deck beams, but there was not less than four inches space at any part beneath the beams. She had three hatchways and two ventilators of five and a-half inches diameter fitted with cowls, one at the extreme after part of the hold and the other abreast the foremast on the port side. On leaving port the main hatch was battened down, and about eleven hours afterwards the fore

and after hatches were put on. There was a fire burning in the forecastle, and at eight p.m. an explosion took place. *Held*, that the ventilators, although they might have ensured sufficient surface ventilation in calm weather, were not properly trimmed, one being altogether unshipped, and the cowl of the other being fixed to the flange by oxidation, that the explosion was owing to defective ventilation, and to the gas having found its way through the forecastle bulkhead to the forecastle fire. The master was severely censured, but he was uncertificated. *The Uganda*, April 24, 1880.

193. Loss of life and damage from explosion on board an iron screw steamer of 707 tons register, bound from Hull for Hamburg with a cargo of coal and general goods, including sulphate of ammonia. On going down the Humber she was found to be leaking in the forehold. Pumps were set going, but when about sixty-eight miles out at sea, the leak not decreasing, and there being a strong smell of ammonia, she was put back for the Humber. Attempts were made to discover the leak, and on the hatch of the forehold being removed and a light brought to the opening an explosion took place, setting the ship on fire. She was then run on Trinity Sand, where she filled, but was afterwards raised. The forehold was not ventilated, there were stowed there seventy-nine tons of coal (twenty-six tons of Monk Bretton and fifty-three tons of Swaithe Main), and then thirty tons of sulphate of ammonia, forty-eight drums of caustic soda, casks of twist, shoddy, &c. *Held*, that the explosion was owing to the leak, which caused the coal and other cargo to become wet and greatly heated, thereby generating gas, which was ignited by the light. *The Empress*, Board of Trade Official Caution of September, 1885, p. 16.

194. Damage from explosion at Penarth on board a screw steamer of 909 tons, laden with ocean steam coal. The steamer had five holds, divided by bulkheads. The lower part of hold No. 3, called the tank hold, was used, when the vessel was light, as a water ballast tank, and was separated from the upper part, forming No. 3 hold, by an iron covering or deck pierced by a hatchway 7 feet 6 inches in diameter, and by a man-hole 18½ inches by 15 inches, which, with a 4-inch pipe carried up to the 'tween decks, was the only means of ventilation.

No. 3 hold was ventilated by 7-inch pipes carried about 4 feet above the upper deck and fitted with cowls. At the time of shipment the coal was newly wrought, and in a condition to throw off a large quantity of gas. The day of the 13th had been very sultry, and the night was excessively hot. At 11 p.m. the explosion occurred in No. 3 hold where trimmers, using naked lights, were employed. *Held*, that the gas in the tank in the lower part of No. 3 hold found its way through the interstices of the coal which blocked up the hatchway and man-hole in the top of the tank, and, coming in contact with one of the lights, exploded, firing the gas in the tank below. *Held*, further, that the ventilation of the tank was imperfect, and that when naked lights are used in the trimming of coal cargoes their use should be accompanied by great attention to ventilation. Since the explosion, the owners had provided additional means of ventilation, including two 6-inch ventilators in the lower tank. *The Horseguards*, September 11, 1880.

195. Loss of life and damage from explosion on board an iron screw steamer of 3,242 tons net register, bound from London for New York, with a general cargo. The explosion occurred at Hoboken, New Jersey. Her bunker, coal being semi-anthracite, and of a very gaseous nature, required free surface ventilation. Of these bunker coal 413 tons were stowed in the midships in the lower hold, beneath the orlop deck, which deck was also partly filled with cargo. Above this another batch of coal was stowed upon the steerage or 'tween decks. The ventilation of the lower mainhold had been entirely neglected when the vessel was loaded. At Hoboken, while the vessel was being hauled alongside the wharf, four stevedore's men went on board, and after removing the hatches of the orlop deck went into the mainhold with a lamp, which caused the explosion. *Held*, that the casualty was due to the stevedore's men taking a light into the hold, where the gas had accumulated owing to the absence of ventilation. *The Greece*, March 1, 1880.

196. Explosion on board a steamer of 832 tons net register, laden with a cargo of Dunraven steam coal, and bound from Cardiff to Rochefort. The loading occupied five days, and the coal was received on board in a very wet state from rain, and after leaving Cardiff she met with

heavy weather and shipped a quantity of water, and the hatches were put on, thus causing the explosion. *The Summerlee*, April 11, 1881.

197. Loss of life and damage from explosion on board a steamer in dock. She was berthed in the Alexandra Dock at Newport, and on the same day took in a cargo of Abercarn coal, 300 tons being shipped in the fore-hold and about the same quantity in the after-hold. She then commenced to ship bunker coal, and the hatches were put on. The coal was then tipped on the top of the hatches and wheeled from thence to the bunkers. At two o'clock in the morning the explosion occurred. The court recommended that greater care should be used in shipping gaseous coal, and that bunker coal should be shipped first, in order to obviate the closing of the vessel's hatches while in dock. *The Chrysolite*, Board of Trade Official Caution of September, 1885, p. 5.

198. Damage from explosion of coal gas on the 22nd November on board an iron screw steamer of 1,390 tons gross register, bound from Newport for Marseilles with a cargo of 1,498 tons of coal, besides 251 tons in her bunkers. She left on the 18th. The weather threatening with rain, the captain did not open the ventilators, but took off the two foremast hatches to allow the gases to escape. On the 19th, as the vessel was shipping heavy seas fore and aft, the hatches were battened down, and remained so until 7 a.m. on the 20th, when the two foremast hatches were again taken off, but about 7.30 p.m., the wind again blowing strong with a heavy sea, the hatches were again closed, and from this time the weather was very bad, and so continued till the explosion occurred in the after-hold, causing serious damage, and rendering it necessary to run for Lisbon. *The Blythville*, January 26, 1886.

(b) *Suspension of Certificates of Masters.*

199. Personal injury and loss from explosion of gas of a steamer of 694 tons gross register, laden with 1,233 tons of South Wales coal, and bound from Penarth to Malta. The ship left on the 22nd of November, when a gale sprang up, and a heavy sea having set in, the hatches, which till then had remained open, were put on and securely battened down. On the afternoon of the 23rd the explosion took place. Before the explosion there was no ventilation at all

from the holds, the hatches having been battened down, the ventilating bollards closed, and the hole for the ventilating cowl over the lazarette plugged up. The gas thus accumulated was exploded by a lighted candle taken down into the lazarette. Some of the ship's plates in the after-hold were blown out by the explosion, and the ship made so much water that it was necessary to abandon her. Considering the number of these cases, the real or assumed ignorance of captains on the subject, the serious consequences likely to result from the neglect of proper precautions, that in this case the master neglected altogether to use the means provided for ventilating the hold, failed to see that the ventilating bollards were in proper working order, allowed them to remain closed from the time of leaving port, neglected to place the ventilating cowl to the lazarette after it had been unshipped, and failed to raise the hatches to give ventilation to the holds as soon as he might and ought to have done, although he knew that there were no other means of ventilation to the holds; the court suspended his certificate for six months, but recommended that he be allowed in the interval a first mate's certificate. *The Richmond*, Dec. 20, 1878.

200. The wreck commissioner observed that if it had been proved that a copy of the paper entitled "Explosions of Coal Gas on board Ship, Official Caution" had been served on the master his sentence would not have been so lenient. *Ibid.*

201. Loss of life, personal injury, and damage from explosion on board a screw steamer of 498 tons register, off Penarth, laden with coals. The main-hold was filled with large steam coal from Messrs. Waynes' pits near Cardiff. The fore-hold was partly filled with small coal, the screenings of the steam coal, and it was trimmed so as to leave a passage under the hatchway, the coal sloping forward. The after-hold was also partly filled with screenings, which were trimmed so as to form a heap of coal which filled up the hatchway and across the vessel, but of which the two ends sloped fore and aft, leaving a large space at each end of the hold. The ship had four ventilators in the main-hold, but no means of ventilation for either the fore or after-hold except the hatchways. *Held*, that the master was to blame in allowing empty spaces in the after-hold,

especially having regard to the fact that no ventilation was provided, except by the hatchways; and also for not seeing that the cargo was properly stowed and trimmed; and his certificate was suspended for three months. *The Columbine*, February 25, 1880.

11. Spontaneous Combustion of Coal.*

1. Generally.

202. The Board of Trade give notice that as vessels laden with coal which, from its nature, is unfit for carriage on long voyages, are dangerous to human life, it is their intention to prosecute those persons who in future send or take, or attempt to send or take, to sea, or are parties to doing so, any British coal-laden ship which, on account of the nature of the coal on board, is in such unseaworthy state that the life of any person is likely to be thereby endangered. See Board of Trade Official Caution of September, 1885, p. 21.

203. There are two sources of danger in coal cargoes, one from the explosion of the volatile gases which coal gives out, the other from spontaneous combustion in the coal itself. They are quite distinct and separate, and the causes which tend to produce the one would not produce the other. Per the Wreck Commissioner, *The Amadine*, 11th June, 1877; and see No. 130, p. 2213.

204. The breakage of coal in its transport from the pit to the ship's hold, the shipment of pyritic coal in a wet condition, and especially ventilation through the body of coal cargoes, conduce to spontaneous combustion, even though the coal may not be unfit for conveyance on long voyages. See Report of Royal Commissioners, quoted with approval by

the Wreck Commissioner in *The Amadine*, 11th June, 1877.

2. Breakage of Coal.

205. The so-called spontaneous development of heat which occasionally takes place in coal is due to chemical changes which certain substances occurring in the coal undergo through the agency of atmospheric oxygen; iron pyrites is one of the principal substances, the oxidation of which is attended by the development of heat. If the heat is confined it may rise to ignition point, and in that case spontaneous combustion follows. *Ibid.*

206. Other circumstances tend to produce spontaneous combustion, as, for instance, the presence of water in the coal where there are iron pyrites, as the moisture promotes oxidation of pyrites. The breaking up of coal which occurs to a more or less considerable extent before and during its shipment, obviously favours the absorption of oxygen, and consequently increases tendencies to heating. See Report of Professor Abel and Dr. Percy, quoted with approval by the Wreck Commissioner in *The Amadine*, *supra*.

See also Nos. 160, 171, 204, *supra*, and No. 242a, p. 2231.

3. Analysis and Screening of Coal.

207. *Held*, that immunity from spontaneous combustion in cargoes of bituminous coal is chiefly to be obtained by careful analysis of a fair bulk of the veins of coal intended for shipment, and by throwing out all shale and other substances peculiarly liable to heat. *The Eta*, June 17, 1882.

208. See also No. 242a, p. 2231.

4. Small Coal.

209. The court observed upon the

* (57) A scientific paper by Dr. Percy and Professor Abel, describing the chemical conditions tending to originate and develop spontaneous combustion, is appended to the Report of the Royal Commissioners appointed to inquire into the Spontaneous Combustion of Coal on board Ship, 1876, c. 1586, I. p. xxvi.

(58) The commissioners recommend that, in order to make known the descriptions of coal liable to combustion, the inspectors of

mines should be instructed to hold inquiry into all cases of spontaneous combustion occurring in cargoes of coal taken from their respective districts. *Ibid.* p. xxv.

(59) And that exporters should be required always to record on their specifications the denomination of the coals forming the cargo. *Ibid.*

(60) As to spontaneous combustion of coal, see the Evidence of the Wreck Commissioner before the Royal Commission, pp. 203, 220.

evidence in the Report of the Royal Commission on Spontaneous Combustion, as to the danger from an accumulation of small coal in a compressed mass under a hatchway, where spontaneous combustion generally originates. *The British Empire*, March 7, 1883.

210. See also Nos. 231, 236, 237, 241, 244—249, *infra*.

5. *Shipment Dry.**

211. *Held*, that every means should be taken to ship the coal in a dry state. *The Eta*, June 17, 1882.

212. See also Nos. 236, 238—242a, 245—249, *infra*.

6. *Ventilation Improper.*

213. So far as spontaneous combustion is concerned ventilation would be an element of danger rather than otherwise. If the air could permeate every part of the coal it might carry off the heat and prevent its arriving at the ignition point, but this is practically impossible, and if the coal is in a condition suitable for generating heat, the introduction of atmospheric air into the hold would tend by oxidation to develop heat and thus induce spontaneous combustion. *The Amadine*, 11th June, 1877.

214. See Nos. 239, 250, *infra*.

7. *Shipment of Combustible Articles with Coals.†*

215. *Held*, that tallow or other combustible articles should not be carried in coal-laden ships. *The Gadskill*, March 18, 1882.

216. *Held*, that the shipment of oil and matches with coals was highly dangerous. *The Forest Queen*, March 17, 1880.

8. *Thermometers.‡*

217. The ship was ventilated by vertical shafts, four in number, and all fitted with

lattice tops; No. 1 was 5ft. 6in. by 2ft. 6in., and was placed at the after part of the forecabin and just pierced the 'tween decks; No. 2 was about 3ft. 6in. square, and was about midway between the fore and main hatches and went down to the keelson; No. 3 was also 3ft. 6in. square, and was about midway between the main and after hatchways, and just pierced the 'tween decks; No. 4 was likewise 3ft. 6in. square, and was abaft the after-hatchway and close to the mizen-mast and went down to the keelson, so that Nos. 1 and 3 which just pierced the 'tween decks were very well adapted to ensure a system of surface ventilation, whereas Nos. 2 and 4, going down as they did to the keelson, would pass through the body of the coal and in case of heat being generated in the hold a large quantity of oxygen would pass down them which would tend to feed the fire. *Held*, that Nos. 2 and 4 should have been made to terminate as Nos. 1 and 3 did at the 'tween decks, or taken out altogether and tubes placed in the hatchways as recommended by the Commissioners in their report on Spontaneous Combustion on board Ships. The vessel was provided with six thermometers, three of which were suspended in Nos. 2, 3, and 4 ventilating shafts, but as No. 2 ventilating shaft was about midway between the fore and the main hatchways, No. 3 between the main and after hatchways, and No. 4 abaft the after hatchway and close to the mizen-mast, the thermometers were all at a distance from the hatchways where spontaneous combustion would be most likely to originate. *Held*, therefore, that the means provided were not well adapted to test the temperature of the coal, and that there ought to have been metal tubes in the vicinity of the hatchways down which the thermometers could have been lowered to the keelson, as it is in the neighbourhood of the hatchways where there is generally an accumulation of small coal that the fire

* (61) As to the effect of wet on coal cargoes, see the Report of the Royal Commission appointed to inquire into the Spontaneous Combustion of Coal in Ships, 1876, c. 1586, I. p. xx.

(62) The breakage of coal in its transport from the pit to the ship's hold, and the shipment of pyritic coal in a wet condition, conduce to spontaneous combustion, even though the coal may not be unfit for convey-

ance on long voyages. *Ibid.*

† (63) As to the errors in regard to ventilation of coal cargoes in reference to combustion, and the impropriety and danger of through ventilation of such coal, *Ibid.*

‡ (64) That when coal is being carried on long voyages, the temperature in the various portions of the cargo should be tested periodically by thermometer, and registered in the log, *Ibid.*

would be first developed. *The Cilurnum*, 22nd October, 1885.

218. Loss by fire of a vessel bound from Liverpool for Valparaiso, in August, laden with 1,000 tons of coal, part of which was particularly liable to spontaneous combustion. Some of it had been shipped in a wet condition, and it was also much broken in loading. The ventilation of the ship was deficient, and in bad weather there was none at all, as the hatches, when down, covered the mouths of the ventilators. On the 2nd October the cargo was observed to be on fire, and notwithstanding the efforts made to keep it under, the master and crew were finally obliged to abandon the ship. *Held*, that the master was to blame for having no thermometers, for not having seen that the hose was in a proper state of repair, and for not having examined all the ventilators before sailing, and for not having from time to time examined into the state of the cargo. *The Annie Richmond*, March 18, 1878.

219. *Held*, that metal tubes, fitted from the upper part of the coal to the bottom of the hold in each hatchway, as recommended by the Royal Commissioners, would give the most reliable results as regards the detection of cargo heating. *The Eta*, June 17, 1882.

220. The court recommended that ships carrying coal on long voyages should be fitted with tubes, by which the temperature of the coal can be tested. *The Cowden Law*, January 21, 1885.

221. The wreck commissioner called attention to the great value, as instanced in this case (for particulars of which see No. 251, *infra*), of the use of the tubes and thermometers for testing the temperature of the coal. *The Alpha*, December 12, 1883.

222. See also Nos. 237—243, 246, *infra*.

9. Force Pump.

223. A force pump should be carried, as the slow process of watering by buckets might keep up the oxidation. *The Eta*, June 17, 1882.

223a. A fire engine and hose should be

carried, and the master should see they are in proper order. *The Annie Richmond*, March 18, 1878.

224. See also Nos. 241, 249, *infra*.

10. Characteristics of Coals from different Collieries.*

225. Coal from the Carfin colliery, in the Motherwell district of Lanarkshire, contains more or less iron pyrites in nodules and laminae. *Held*, that it was unsuitable for long voyages. *The Alpha*, December 12, 1883.

226. The coal from No. 3 pit of the Bog colliery, in the Hamilton district, Lanarkshire, is a "hard splint" coal, containing pyrites, but not dangerous for long voyages with proper precautions. *The Kilmoden*, December 8, 1881.

227. Coal from the Middleton or Silkstone main seam of Messrs. Pope and Pearson's colliery in the West Riding of Yorkshire, like the coal from the neighbouring collieries, contain portions of iron pyrites, which can be removed by screening. Underlying this seam there is an inferior coal called "Whetstones," said to contain a considerable quantity of pyrites. *The Delaware*, December 26, 1881; *The Maritime Union*, March 1, 1882.

228. *Held*, that coal from the Swan Lane colliery near Wigan, is not intrinsically dangerous, but should be double screened. *The Kismet*, Board of Trade Official Caution of September, 1885, p. 31.

229. Coal from the Main Delf seam of the West Lancashire Colliery Company is particularly liable to spontaneous combustion. *The Annie Richmond*, March 18, 1878.

230. As to how far the West Hartley coal is free from iron pyrites, see *The Amadine*, 11th June, 1877.

231. The coal from the Garngoch Colliery near Swansea, is a "through and through" (*i.e.* unscreened) semi-bituminous coal. About 70 per cent. is small, and, being a tender coal and loaded with the ordinary tip and shoot, a very large proportion would be small when it reached

* (65) For a list of the different kinds of coal and collieries in England, Wales, and Scotland, and their characteristics, see Report and Appendix of Royal Commissioners as to Spontaneous Combustion of Coal in Ships, 1876 (c. 1586, I.), p. 234.

(66) Lancashire and north country coals

seem generally more likely to cause combustion, and less likely to cause explosion. *Ibid.*

(67) The steam coal raised in the South Wales coalfield is not liable to spontaneous combustion, *Ibid.* and Statement of Government Inspector of Mines for South Wales in Board of Trade Official Caution of Sept. 1885, p. 19.

a vessel's hold. It is a very dangerous cargo for long voyages. *The Leon Crespo*, May 8, 1882.

232. Coal from the low main seam of the Cambois Colliery and from the yard seam of the Cowpen Colliery are both very similar in character. They are open burning steam coals, not liable to give off any large quantity of inflammable gas, and contain only a small portion of iron pyrites which can be readily detected and separated from it. It is a coal which, if properly screened and cleaned, is well fitted for shipment on long voyages. *The Ciburnum*, 22nd October, 1885.

233. The Polkemet coal is stated to be a rich gas coal containing scarcely any pyrites or sulphur, and not liable to spontaneous combustion. The Gilbertfield Ell coal contains pyrites, and gives off fire-damp freely. *The Hazel*, Board of Trade Official Caution of September, 1884, p. 30.

233a. As to splint coal, and the coal of that character, from the Bog and Home Farm Collieries, near Hamilton, and the extent of its liability to spontaneous combustion, see *The Falcon*, March 23, 1880.

11. Specific Cases.

234. Loss of life and of ship by fire caused by spontaneous combustion of coals on board an iron sailing ship of 1,966 tons gross register, laden with a cargo of 2,600 tons, of which 1,600 tons was coal, and bound from the Tyne to San Francisco. She left on the 29th June, and on the 17th August following a slight vapour was observed coming out of the ventilating shaft between the fore and main hatches, accompanied with a strong smell of chemicals, upon which the main hatch was taken off, and a strong smell came up; as, however, the temperature was normal, it was thought it arose from some casks of bleaching powder stove in the main hatchway. On the following morning, the temperature of the hold was still normal, but there was a very strong smell of chemicals in the main hatchway as well as in the ventilating shaft, but the vapour had diminished. In the evening the temperature was still normal, and the vapour scarcely perceptible. The smell, however, continued, and the hatches were taken off to get rid of it. They remained off until 4 a.m. on the following day, the 19th, when rain coming on, they were put on for a couple of hours and again taken off when it was

found that smoke was coming up the main hatchway, and although the temperature in the ventilating shaft remained normal, that in the main hatchway rose to 85°. The hatches were then battened down, and every aperture closed up, and holes bored, down which water was poured for some hours into the hold. At about 3 p.m. an explosion carried away the whole of the hatches and the deck between the fore and main hatchways, and broke the deck beams on each side short off, and in consequence of the damage the ship was abandoned, and she afterwards sunk. *Held*, that the fire was due to spontaneous combustion. *The Ciburnum*, October 22, 1885.

235. Loss from spontaneous combustion of coal on board a three-masted composite vessel of 547 tons register, laden with 325 tons of Hartley coals, 50 runlets of coal tar, 180 cases of matches, 1,900 cases of gin, 500 cases of brandy, 440 cases of wine, 352 cases of bottled beer, 72 packages, and 102 crates of crockery, and bound from London to Penang. The ship had but one hold, but there was a small space forward divided from the hold by a bulkhead, and which contained the ship's spare coal, provisions, &c., access to which was obtained by the fore-scuttle, just abaft the windlass. On deck was a deckhouse for the crew, the officers being lodged aft. The coals were shot down through the main hatchway, then trimmed across the ship amidships as high as the hold beams, and sloped forward as far as the bulkhead, and aft beyond the mizen-mast. In the fore part the coals were levelled, and the barrels of coal tar laid upon them up to the bulkhead forward. Above these were placed cases of crockery, barrels of beer, and other things. The matches were stowed above the hold beams, and under the deckhouse. All gin, brandy, and wine was stowed aft. For ventilation there was a sliding panel in the fore and aft hatches, with covers to be put on in case of bad weather. The main hatch was battened down. On the afternoon of the 30th August and on the 6th December, there was a strong sulphurous smell in the cabin. On the 7th and 8th the vapour increased, but nothing was done to ascertain the cause. On the 9th the vapour increased considerably, and a ventilator was made, and put down through a hole cut in the cabin floor. There were afterwards clear signs that the ship was on fire. Water was pumped down through the fore hatch with the

force pump, and afterwards a number of holes were cut in the deck, and an attempt was made to flood the deck, but the fire increasing, the ship was stranded. There was no explosion, but the ship was on fire from one end to the other. *Held*, that the mode of ventilating the cargo by means of sliding panels in the fore and aft hatches was not a proper one, but that they in no way contributed to the loss of the ship, which loss was caused by spontaneous combustion of coal on board; that the master was to blame for not having taken any steps to ascertain the cause which ultimately led to the burning of the vessel from the night of the 6th until the 9th when the fire broke out; but that as the only charge made against him was for not attending to the ventilation of the hold, the neglect of which would not have occasioned the explosion, the court returned him his certificate. *The Amadine*, June 11, 1877

236. Loss by spontaneous combustion on board a wooden ship of 1,500 tons net register, laden with a cargo of 2,264 tons of coal, bound from Hull for San Francisco, and contained portions of iron pyrites not screened, and with probably in the cargo some coal called "Whetstones," said to contain a considerable amount of pyrites. About seventy per cent. was small coal, some of it merely dust, and it was shipped in a saturated state. The ship left Hull on the 17th of May, and on the 6th of October gas and sulphur were detected coming up the fore hatch. The master allowed the hatches to remain open. The next day the smoke and heat increased, but no measures were taken until the 8th, when the crew dug down under the fore and main hatches, but finding that the coal became hotter they left off. Nothing further was done until the 11th, when the master, finding that the fire was gaining and the decks becoming hot, ordered water to be poured down into the hold. The ship was abandoned, and just afterwards she burst into flames and then foundered. *Held*, that the loss was due to spontaneous combustion, caused by her cargo having been shipped unscreened, wet, and broken up; and that, considering the large quantity of coal the vessel carried and the length of the voyage, the master was blameable for neglecting to have proper thermometers to test the temperature of the cargo from day to day, and for keeping off the hatches, instead of battenning them down, and at once pouring water

into the hold. *The Maritime Union*, March 1, 1882.

237. Loss from spontaneous combustion on board a wooden ship of 928 tons net register, laden with a cargo of 1,367 tons of coal, and 53 tons of iron, cement, turpentine, paint, oil, resin, tallow, &c. The coal was raised in six different Lancashire collieries, and properly screened, picked, and dry when shipped. The ship was bound from Garston for Rangoon. She left on the 19th of July, and on the 19th of October smoke was discovered from the fore hatchway, accompanied by a gaseous smell. On digging down the heat became very perceptible and the smoke dense. The crew then worked day and night, throwing quantities of water on the cargo, and on the 23rd they got down to a quantity of red-hot coal, and also that a hole three feet square had been burnt through the ceiling. Two of the frames and the main keelson were also much burnt. The red-hot coals were thrown overboard, and the turpentine, oil and resin removed. The cargo then became cool, and the smoke disappeared. On the 27th, however, a strong smell of gas came from the after hatchway, and on commencing to dig down the smoke and gas were so overpowering that the men could not continue to work. Holes were then bored in the deck to allow the seas the vessel was shipping to get below. The fire, however, increased, and the ship was abandoned. *Held*, that the fire arose from spontaneous combustion, and that, although the coal was properly screened and dry when taken on board, yet, owing to the height from which the coal was tipped (22 to 23 feet in the fore and main holds, and about 28 feet in the after hold), a considerable amount of breakage must have been caused, and there must have been a large accumulation of small coal. *Held*, further, that if the master had been provided with a proper thermometer, he must have discovered that the cargo was gradually getting heated in time to have put into the nearest port or taken steps to prevent combustion. *The Gad's Hill*, March 18, 1882.

238. Loss from spontaneous combustion of coal on board a new vessel loaded with 2,300 tons of coal at Port Glasgow and bound from Glasgow to San Francisco. The only thermometer on board was broken. The master gave orders for the hatches and ventilators to be kept open as much as possible, and the holds

and pump-well to be frequently visited for the purpose of ascertaining any change of temperature. She sailed on the 20th of June, and on the 29th of August she encountered a heavy gale, and at 6 p.m. of the 30th smoke and gas were found coming through the deck-house air-shaft. The fore hatch was opened, when a large volume of smoke came up the hatchway, and the under sides of the hatches were found to have a thick coating on them similar to coal tar. The hatches and ventilators were ordered to be closed, and holes bored in the decks to reach the cargo through the holes by flooding the decks with water. The ship was then put about for the Falkland Islands, and the decks flooded. The cargo shifted during the gale, and the ship had a list of five or six feet to port. Signals of distress were made, and a barque bore down, and the ship was abandoned, and half an hour afterwards was a mass of flame. The coal was a "hard splint" coal containing pyrites from No. 3 Pit of the Bog Colliery in the Hamilton district, Lanarkshire, and was shipped in a very wet condition. *Held*, that the loss of the vessel was partly to be attributed to the shipment of the coal in a very wet state; but that, had a thermometer been freely used, the danger would have been discovered in sufficient time for the ship to have reached a port of refuge. *The Kilmodan*, December 8, 1881.

239. Damage from spontaneous combustion on board a ship of 787 tons register, laden with over 900 tons of best Orrell steam from the Wigan four-foot seam coal, and bound from Liverpool for Callao. Over the coal some general cargo of matches, chloride of lime, linsed oil, soda, crystals, and alum, was stowed. During the loading it rained heavily, and the coal became wet. Precautions were used to prevent breakage, but there was a good deal of small coal shipped. The vessel was fitted with two large cowl-head surface ventilators, but in the lower hold there were five wooden trunk ventilators having an opening of about five by four inches, thus establishing a system of through ventilation. There was only one thermometer on board, and this being attached to the barometer was not available for testing the temperature of the hold. The ship left on the 23rd of June. The after hatch was continually and the fore hatch frequently open, the main hatch being kept closed. On September 17th smoke

was observed coming up the fore hatchway. The cargo was dug into, and the coal found very hot. Water was then poured down the hold, and the vessel's course altered for Brazil. The hatches were battened down, and the ventilators stopped. On the 19th land was sighted. At 4.30 p.m. an explosion, and at 7.30 a.m. a second explosion, and at 5 p.m. a third more violent explosion took place, and the vessel was run aground and scuttled. The keelson was afterwards found to have been nearly burnt through; the sister keelsons and dunnage wood at the bottom of the ship were also burnt, the stanchions charred, and the coal to the extent of twelve feet partially converted into coke and cinders. *Held*, that the master was to blame for not having a thermometer for testing the temperature of the cargo; and that the system of through ventilation in the ship was unsafe and improper. *The Forest Queen*, March 17, 1880.

240. Loss from spontaneous combustion of a wooden barque of 1,000 tons net register, bound from Garston for Callao, and laden with 1,520 tons of coal and 20 tons of rock salt. The coal came from the Swan Lane Colliery, near Wigan—two-thirds being from the six-foot seam and the remainder from the four-foot seam. The weather during the loading was fine, with the exception of a few showers. The vessel was fitted with cowl-head surface ventilators. She left on June 23, and on August 24 the cargo was found on fire, dense smoke coming up from the coal. The hatches were put on, and holes bored through which water was pumped. At 7.30 p.m. both hatches were blown off, and on the 25th she was then abandoned. *Held*, that the coal was not intrinsically dangerous for shipment on long voyages, but that it ought to have been double instead of single screened; that the coal was dry when shipped; that some breakage occurred which might have been avoided; that the cargo was properly ventilated, but that the master should have provided himself with a proper thermometer for testing the temperature of the cargo, and should have visited the hold more frequently. *The Kismet*, Board of Trade Official Caution of September, 1885, p. 31.

241. Loss from spontaneous combustion of a wooden ship of 1,446 tons register, laden with a cargo of 1,954 tons of coal, and bound from Hull for San Francisco. She left port on the 11th of July, and on the 19th of November the

master noticed a strong smell of kerosine. The kerosine tank was examined and found to be all right. The same morning smoke was observed coming up the main hatch. Eight men dug down, and a considerable quantity of coal was jettisoned. Digging was continued until 5 p.m. on the 20th, when, owing to the density of the smoke, it was discontinued, and on the 22nd the vessel was abandoned. The coal was from the Middleton and Silkstone main seam of Messrs. Pope & Pearson's Yorkshire colliery, and was shipped in a damp condition. *Held*, that the heating of the cargo was due to the coal when shipped being unscreened, wet, and much broken, and to its having probably contained a quantity of pyrites; that it was possible that the spontaneous combustion which ensued was accelerated by a through current of air passing beneath the platform on which the cargo was stowed; that the removal of the hatches was calculated to feed the fire, and add to the danger; and that although it was necessary to remove the hatches to dig into the coal, the master was not justified in leaving them open when the work ceased. *Held*, further, that the master ought to have had proper thermometers for ascertaining the temperature of the cargo. The court recommended that coal-laden ships should carry an engine to be used in the event of fire for pumping water into the holds. *The Rowellana*, April 8, 1882.

242. Loss from spontaneous combustion on board a ship of 1,427 tons laden with coal, and bound from Hull to San Francisco. *Held*, that her loss was owing to the spontaneous combustion of her cargo, owing to the nature of the coal, and to its having been shipped, for the most part, in a wet state. The court recommended that tubes should be fitted in coal-laden vessels from the deck to the lower hold to enable a thermometer to be lowered from time to time, and that the readings should be entered in the log-book. *The Norval*, Board of Trade Official Caution of September, 1885, p. 24.

242a. Loss from spontaneous combustion on board a composite ship of 689 tons register, bound from Swansea for Bolivia, and laden with 910 tons of coal from the Garngoch colliery near Swansea—a very dangerous coal. The ship left on the 3rd of November, and on the 16th of January the cargo was found to be heated, and smoke issued from the top of the iron mainmast. All the ventilators

and openings, except one or two bollards, were closed, canvas was placed over the top of the mainmast, and the vessel was steered for the Falkland Islands, where the cargo was flooded, but the ship was ultimately burnt down to the water's edge. *Held*, that the loss was due to spontaneous combustion caused by this dangerous coal being shipped unscreened and in a wet state; and the master was blamed for not having made proper arrangements to ascertain from time to time the temperature of the cargo. *The Leon Crespo*, May 8, 1882.

243. Loss from spontaneous combustion on board a barque of 427 tons net register, bound from Newcastle for Bangkok, with a cargo of 557 tons of West Hartley coal. She had heavy weather in the Channel and became leaky, and put into Falmouth, where all her cargo except 90 tons was discharged and stored under cover. The vessel was repaired, and the cargo re-stowed, and she left Falmouth on September 17. On March 11 a strong smell was perceived, and on the next day smoke issued from the port side of the main hatch. Water was thrown on the coal until the smoke abated. On the 13th four tons of coal were jettisoned, and more water poured into the hold. On the 14th the decks blew up, and the vessel was afterwards abandoned. *Held*, that the loss was due to spontaneous combustion, owing to the voyage having been unusually protracted, and to the vessel not being provided with thermometers for testing the temperature of the cargo. *The Palestine*, April 3, 1883.

244. Loss from spontaneous combustion of an iron barque of 1,233 tons net register, bound from Dundee for San Francisco, and laden with 1,150 tons of coal from No. 3 pit of the Bog Colliery, Lanarkshire, and 500 tons of pig iron. The coal was dry when shipped, but contained pyrites, and there were 30 tons of small coal under the main hatchway. The ship left on the 17th of August, and on the 16th of October a strong smell of gas and smoke were noticed. The pumps were worked and water pumped into the hold, the fire being under the main hatchway. Sixty tons of coal were jettisoned, when the smoke became dense. The hatches were put on, and water pumped into the holds until 7 a.m. on the 17th, when the explosion occurred. At 2.50 p.m. the whole of the coal cargo was on fire, and on the 18th the ship was abandoned. The vessel was fitted with surface ventilators, but

her three lower masts were made of iron and served to ventilate the bottom of the lower hold and 'tween decks. Five thermometers were carried for testing the temperature of the holds, but there were no means of testing the temperature of the body of the cargo except through the pump-well. *Held*, that the loss was attributable to spontaneous combustion from the vessel having passed through the tropics with a cargo containing pyrites, and with a quantity of small coal under the main hatchway, the seat of the fire. The master was held justified in pouring water upon the coal, and was not found in default for the vessel's loss. *The Lennox*, February 23, 1883.

245. Loss from spontaneous combustion on board a ship of 1,414 tons net register, bound from North Shields for Bombay, and laden with 1,788 tons of West Hartley steam coal, very small, with a great deal of dust and fine coal shipped dry. The vessel was fitted with surface ventilators, but her fore and main masts which communicated with the hold were made of iron, and had cap ventilators. The ship left on the 15th of August, met with heavy weather, and on the 6th of November a vapour was observed from the coal in the fore hatch, due to a leakage round the coamings. The damp coal was then spread out and dried. On the 4th of January a smell came from the after hatchway, and also up the main hatchway. About 30 tons of coal were then dug out from under the main hatch and left on deck, and the thermometer was put on the coal at the bottom of the hole, registering 87°. The hatches were left open, the smell of gas passed off, and the coal when last tested was cool and dry. On the morning of the 5th smoke came up the main hatch, and as the cargo was thought to be on fire, the coal on deck was thrown back into the hold, and the hatches battened down. Just before this, a column of smoke came up the main hatch, and gas from the after hold. A little before mid-day the main hatch moved up and down, and great heat was noticed there, and on the starboard side of the deck, and the pitch oozed out of the seams. The vessel was abandoned, and she was seen to be burnt down to within two or three feet of the water's edge. *Held*, that the loss was due to the spontaneous combustion, the coal being small, and there being an accumulation of fine slack and dust at the bottom of the ship, liable to get heated, and that

the length of the voyage contributed to the combustion, the vessel having been 142 days at sea when the fire broke out. *The British Empire*, March 7, 1883.

246. Damage from spontaneous combustion on board a wooden barque of 495 tons net register, bound from Swansea for Valparaiso with a cargo of 746 tons of Garngoeh coal, a very dangerous coal for long voyages. She left on the 9th of August; the temperature of the hold was tested daily by a thermometer, and, forty-eight days after the vessel sailed, showed an increase of temperature from a previous average of 80° to 100°. The thermometer was then buried under the coals, and rose to 136°. The crew, on digging down through the coals, found them very warm. The temperature of the hold then gradually decreased until, at 8 a.m. on the 12th of October, the thermometer showed 76°; at 6 p.m. of the same day smoke was seen issuing from the fore-hatchway, accompanied by a strong sulphurous smell. The hatches were put on, and two holes cut in the deck, through which water was poured down. A hole was also bored below the water line in the fore-castle, and a force pump was procured from a passing vessel. Cargo was thrown overboard, and at noon on the 14th the crew had worked down to the main-hold beams, two of which were on fire. The ship was put about for Falkland Island, and arrived at Port Stanley, about half her cargo having been jettisoned, and the remainder was discharged, the vessel taking in stone ballast and proceeding to Valparaiso. *Held*, that the fire was due to spontaneous combustion caused by the decomposition of iron pyrites and sulphur contained in the coal, part of which was shipped in wet state, and that the arrangements for lowering the thermometer between the shifting boards was unsatisfactory. *The Eta*, June 17, 1882.

247. Loss from spontaneous combustion on board a vessel bound from Liverpool for Valparaiso, with a cargo of 752 tons of coal. She left on the 10th of January, and on May 16th steam was noticed coming up from the hold. The hatches were put on, but the fire became gradually worse, and the vessel was abandoned on June the 8th, and about an hour afterwards was seen to burst into flames. She was not fitted with tubes for testing the temperature of her cargo, the coal was wet when received on board, and there was a large quantity of

very small coal under the main hatch. *Held*, that the loss was due to the coal having been shipped in a wet condition. *The Harkness*, Board of Trade Official Caution of September, 1885, p. 32.

248. Loss from spontaneous combustion on board an iron screw steamer of 448 tons gross register, bound from Greenock for Limerick, and laden with coal. She was fitted with two bell-mouth ventilators in the fore hold, and three in the after hold, and also with a steam pipe leading into each hold for use in the event of fire breaking out. She sailed on March 8. At eight a.m. next day smoke was observed coming out of the ventilators in the fore hold. Steam was turned on to the hold, and the coal played on with water until the smoke ceased. She then proceeded on her voyage, and landed her cargo in an undamaged condition. On returning to the Clyde she was fitted with a partial bulkhead of 2½-inch boards, extending about 6½ feet on each side of the midship line, leaving a space of from 9 to 11 inches between the iron bulkhead before the boiler and the wooden bulkhead, this space being filled up with salt as a non-conductor of heat, and afterwards carried several cargoes of coal and one of grain. On the 23rd of June she loaded a cargo of coal at Glasgow for Barcelona. The cargo consisted of 70½ tons of Polkemet coal, and about 485 tons of Gilbertfield Ell coal, 20 tons of measurement goods, and about 150 tons of bunker coal. During the loading a quantity of rain fell. She left Glasgow for Barcelona on June 26. At four p.m. of July 1 smoke was observed coming up through the casing that covered the engine-room telegraph, followed by smoke which came through the deck seams. Steam was turned on to the hold, but at 7.45 p.m. the bulkhead in the engine-room was getting red hot. The steam was then shut off from the hold, and the after hatches taken off to enable the crew to trim some of the coal on to the upper deck, and to play the donkey hose on the coal at the after part of the hold; but the fire increased, and the vessel was abandoned. *Held*, that the loss was due to spontaneous combustion, and that the coal was dangerous for shipment, as containing pyrites and shipped in a wet state. *The Hazel*, *Ibid.* p. 30.

249. Loss from spontaneous combustion on board a wooden barque of 339 tons register, laden in August with a cargo of smelting coal, and bound from

Swansea for Valparaiso. The cargo was ventilated by planks each side of the stanchions, forming a trunk-way fore and aft to the bottom of the ship. The vessel had also surface ventilators. On the 25th of November she was found to be on fire, and the next day was abandoned. *Held*, that the vessel was lost owing to spontaneous combustion of her cargo, a part of which was loaded during wet weather, and was small and caked from damp. The court considered that all vessels carrying coal cargoes should be furnished with one or more force pumps and hose. *The Delaware*, Dec. 26, 1881.

250. Loss from spontaneous combustion on board an iron ship of 1,668 tons net, bound from the Tyne for Bombay, with 2,543 tons of West Hartley Main coal, shipped in fair condition, and free from water. There was an efficient system of surface ventilation; and a daily record of the temperature of the cargo was taken from a thermometer left lying on the coal. The vessel was fitted with iron masts open at the ends, and perforated more or less. The masts were stepped on to the keelson, from which they acted as perpendicular ventilators, a half-moon space being left on each side of the keelson. The mastheads were fitted with covers kept in their places by long legs which went inside the masts. The vessel left on March 30. From the 8th to the 13th June she encountered very bad weather in the Indian Ocean, during which the hatches were battened down. On the 14th vapour was seen issuing from the ventilator abaft the mainmast, but the thermometer did not show any change of temperature until the night of the 15th, when it rose 20° in the after hatchway, after four or five feet of coal had been taken out. Everything was then battened down, but during the morning of the 16th two explosions took place, and fire was seen burning strongly in the lower hold in the vicinity of the mizenmast, which at 4.45 a.m. had sunk three feet. At 6.30 a.m. flames issued from the companion and cabin skylight, and the ship was abandoned. *Held*, that the spontaneous combustion was probably caused by the hollow iron mast acting as a ventilator, but no blame was attached to any one. *The Shive More*, July 24, 1885.

251. Damage from spontaneous combustion on board a wooden barque of 398 tons register, bound from Leith for Buenos Ayres, and laden with 542 tons

of coal from the Carfin colliery in the Motherwell district of Lanarkshire. She was fitted with iron tubes, which went down to within eighteen inches of the skin, and down which a thermometer could be passed to test the temperature of the coal. She left on the 13th June. On the 2nd August, when near the equator, the temperature in the fore hatch was 90°, while that in the main and after hatches was only 84°. In the next two days, the main hatch rose to 109°, but for the next few weeks fell to 104°, the heat in the other hatchways being 84°. On the 30th the main hatchway, which with other openings had been kept securely fastened to keep air out of the hold, was opened to get anchors and cables. On the 31st, the temperature there increased to 112°, and on the 1st September to 142°, and afterwards to 150° and 180°. A hole was cut, and water poured down, decreasing it to 136°; but on the third it again increased, and the main hatchway and skylight were blown out, and flames came out of the hatchway. More water was poured in until the 4th, when, the crew being exhausted, the vessel was abandoned. She was afterwards towed to Buenos Ayres Roads and filled with water. *Held*, that the fire arose through spontaneous combustion from pyrites. *The Alpha*, Dec. 12, 1883.

252. Loss from spontaneous combustion on board a sailing ship of 1,596 tons register, bound from the Tyne for San Francisco, with a cargo of coal and general merchandize. When rounding Cape Horn she encountered very bad weather, and water got into the hold through the main-hatch. She left on the 30th of August. On the 16th of January the coal was found to be on fire. Water was pumped on it, but as the fire increased jettison of the cargo was commenced. On the 17th the smoke became very dense, and the fire continued to get worse until the 19th, when flames appeared above the hatchway coamings, and the vessel was abandoned. *Held*, that the abandonment was justifiable. *The Cowden Law*, Jan. 21, 1885.

253. Loss from spontaneous combustion on board a wooden barque of 1,027 tons, bound from Liverpool for Valparaiso with a cargo of 1,600 tons of coal. She left on May 24th, and on the 1st of August a quantity of smoke issued from the hatches. Endeavours were made to find

the seat of the fire but without success, and it increased so rapidly that the ship was abandoned. *Held*, that the abandonment was justifiable. The coal was shipped dry, but it was not stated whether it was "small" coal or screened. The vessel was not fitted with temperature test tubes, and the only means for putting out fire (except the ordinary buckets) was a small portable fire-engine out of order. *The Alfred*, March 14, 1883.

12. Unsafe or Unseaworthy Ships.

1. *Instability.*

See tit. OWNERS, Pt. III. c. 1, p. 1258, and same tit., Part, and chapter in Addenda.

2. *Insufficient Freeboard.* See tit. OWNERS, Pt. III. c. 1, s. 14, in Addenda.

3. *Overladen.* *Ibid.*

4. *Under-manned.* *Ibid.*

5. *Badly stowed.* *Ibid.*

6. *Improper Ballast.* *Ibid.*

7. *Otherwise Unseaworthy.* *Ibid.*

13. Deck and Grain Cargoes and Dangerous Goods.

See tit. OWNERS, Pt. V. p. 1323, and same tit. and Part in Addenda.

14. Place of Hearing.*

254. An investigation into a shipping casualty may be held at any place appointed by the Board of Trade, and all enactments relating to the authority holding the investigation shall, for the purpose of the investigation, have effect as if the place so appointed were a place appointed for the exercise of the ordinary jurisdiction of that authority. See M. S. Act, 1876 (c. 80), s. 33.

255. Investigations into shipping casualties shall be held in some town hall, assize or county court, public building, or other suitable place to be determined according to general rules, and unless no other suitable place is in the opinion of the Board of Trade available, shall not be held in a court ordinarily used as a police court. See the Shipping Casualties Investigations Act, 1879 (c. 72), s. 3, sub-s. 5.

* (68) As to the considerations which influence the Board of Trade in their selection

of the place of hearing, see Murton's Wreck Inquiries, 1884, p. 67.

15. Practice.

1. Generally.*

256. Every formal investigation into a shipping casualty is to be so conducted that if a charge is made against any person that person shall have an opportunity of making a defence. See M. S. Act, 1876 (c. 80), s. 30.

257. The Lord Chancellor is empowered (with the consent of the Treasury so far as relates to fees), to make, revoke, or alter general rules for carrying into effect the enactments relating to investigations into shipping casualties; such rules are to have the force of enactments in this act. *Ibid.*

258. They are to be laid before Parliament. See the Shipping Casualties Investigations Act, 1879 (c. 72), ss. 4 and 5.

259. In these rules "judge" means the wreck commissioner or other authority empowered to hold a formal investigation into a shipping casualty. See S. C. R. 1878, No. 3; and S. C. (A. & R.) R. 1880, No. 3.

260. In computing the number of days within which any act is to be done, reckon exclusive of the first and inclusive of the last day, unless the last day is a Sunday, Christmas Day, or Good Friday, or a day of public fast or thanksgiving, when reckon exclusive of that day also. See S. C. R. 1878, No. 23.

2. Notice of Investigation.†

261. When a formal investigation into a shipping casualty has been ordered, the Board of Trade may cause a notice of investigation to be served upon the owner, master, and officers of the ship, and upon any person who may appear to have in any way contributed to the casualty. For form of notice, see Appendix, No. 1. *Ibid.* No. 5.

262. A copy of the notes of a solicitor who had been instructed by the Board of

Trade to attend a coroner's inquest on the body of a person drowned in consequence of a shipping casualty had been served upon an officer. *Held*, a good notice within this rule. *Ex parte Ferguson*, L. R. 6 Q. B. 280.

263. Four days' notice *held* sufficient. *The Vesper*, December 21, 1876.

3. Statement of Case on which Investigation ordered.

264. No certificate shall be cancelled or suspended under this section unless a copy of the report or a statement of the case upon which the investigation is ordered has been furnished to the owner of the certificate before the commencement of the investigation. See M. S. Act Amendment Act, 1862 (c. 63), s. 23, sub-s. 6.

265. A short report by a receiver of wreck, a copy of which was annexed to the notice of investigation, *held*, "a sufficient statement of the case" required to be furnished to the owner of the certificate before the commencement of the investigation. See *The Dinorah* and *Dorunda*, 21 Sol. Journ. p. 31.

4. Parties to Proceedings.

266. The Board of Trade, and any certificated officer upon whom a notice of investigation has been served, are parties to the proceedings. See S. C. R. 1878, No. 6.‡

5. Additional Parties.

267. Any other person upon whom a notice of investigation has been served, and any person who shows that he has an interest in the investigation, shall have a right to appear, and shall thereupon become a party to the proceedings. *Ibid.* No. 7.

268. *Held*, by the wreck commissioner, that when owners have appeared under this rule they are before the court for all

* (69) For remarks upon the nature of the proceedings, the procuring and detention (if necessary) of witnesses for the trial by the Board of Trade, and the mode of preparing the Board's case, *Ibid.* pp. 103—105; and generally on the rules and practice, *Ibid.* pp. 106—129.

(69a) See, for the general rules for investigations into shipping casualties, 2 Pollock & Bruce (4th ed. by Maude & Pollock), No. 54, p. cccclxxx.; and for further and additional rules and rehearings, *Ibid.* pp. 193—196; and the rules may be purchased at Potter's, 31, Poultry; Knight & Co., 90, Fleet Street; and Stanford, 55, Charing Cross, London.

† (70) For the practice pursued by the Board of Trade as to service of the notice of investigation, see Murton's Wreck Inquiries, pp. 107—109.

‡ (71) It follows from the above rule that the mere service of a notice of investigation upon a certificated officer is sufficient to make him a party to the formal investigation, and together with the furnishing of the report or statement of the case upon which the investigation is ordered, to render him liable to the quasi-penal consequences defined by the M. S. Acts and the rules, in case he is reported guilty of wilful neglect or default causing a casualty or loss of life. *Ibid.*

purposes for which the court can deal with them, even though they withdraw before the conclusion of the case. See *Murton's Wreck Inquiries*, p. 111.

269. Any other person may, by permission of the judge, appear, and shall thereupon become a party to the proceedings. See S. C. R. 1878, No. 8.

270. In the absence of objection by the Board of Trade, a relative of a deceased passenger, although not the legal personal representative, allowed to appear upon filing an affidavit. See *The Princess Alice*, October, 1878, and Report of 6th November, 1878, and *Murton's Wreck Inquiries*, p. 111.

271. *Held*, that a party may appear at any time. *The Dinorah* and *Dorunda*, October 30, 1876, and *Murton's Wreck Inquiries*, p. 111.

6. Duty of Board of Trade to state Questions.*

272. On the completion of the examination of the witnesses produced by the Board of Trade, that Board shall state in open court upon what questions in reference to the causes of the casualty, and the conduct of any persons connected therewith, they desire the opinion of the court; and if any person whose conduct is in question is a certificated officer, they shall also state in open court whether in their opinion his certificate should be dealt with. See Supreme Court Rules, 1878, No. 16.

272a. It is the duty of the Board of Trade, where the circumstances require the expression of the court's opinion upon the unseaworthiness of the ship, to make a charge accordingly. *The Brightman*, February 26, 1877.

273. On an investigation into the stranding of a steamer, after an adjournment of the inquiry, counsel for the Board of Trade stated to the owners' solicitors that no charge would be preferred against the owners, because the court had no power to punish them, ex-

cept by condemning them in costs, but that the court would be asked to express an opinion as to the unseaworthiness of the ship. The owners thereupon stated they should retire from the case, and they appeared no further. The court considered that the Board of Trade ought to have charged that the vessel was unseaworthy. *Ibid*.

274. The Board of Trade should frame the questions in writing. *The Leader*, Nov. 14, 1878.

7. Who may be charged.*

275. A charge can be made by the Board of Trade against any person who has conducted in any way to a shipping casualty, whether certificated or uncertificated, and whether owner, stevedore, or whoever he may be. *The Chillianwallah*, No. 226, March 9, 1878.

8. Sufficiency of Charge.*

276. A charge was made against the master of a vessel under the repealed Rules of 1876 that he had been guilty of default by non-observance of Articles 15, 16 and 20 of the Regulations for Preventing Collisions at Sea, but without more particularly specifying the default charged. *Held*, a good charge. *The Cyma* and *Vigilant*, Nov. 17, 1876.

9. Effect of no Charge.*

277. Where no charge is made the court will not deal with the officers' certificate. *Ex parte Minto*, 35 L. T. N.S. 808; 21 W. R. 274; 25 *ibid*. 251; *Murton*, p. 122.

278. *Held*, that the court will not cancel or suspend an officer's certificate unless the Board of Trade in the questions submitted to the court first require it to be dealt with. *The Guadiana*, March 15, 1885.

279. On an inquiry held before a stipendiary magistrate at Shields, an intimation was made by the Board of Trade at the

and technical charges, but is at liberty to take a broad survey of the facts of the case, with a view to report upon them in accordance with the statutes, for the purposes which the inquiries were intended to serve. The Board of Trade enjoys a similar freedom in framing questions which raise the real issues involved in a casualty, whether those issues relate simply to the supposed cause of loss, or implicate in addition the conduct of any person connected with the casualty as constituting in itself the cause of loss, or as contributing to the casualty. See *Murton's Wreck Inquiries*, p. 120.

* (72) No. 15 of the Supreme Court Rules of 1876 required that, upon the completion of the evidence, the Board of Trade should state in writing whether they had any, and if so, what, charge to make against any, and what, person. Some difficulty was felt in formulating charges against persons (other than certificated officers), with respect to whom the court was clothed with no other jurisdiction than that of inflicting costs. Accordingly the above rule, No. 16 of 1878, was substituted for No. 15 of 1876. The effect of the rule is, that the court is not now limited to the strict consideration of formal

proper stage of the proceedings to the master's solicitor that no charge would be preferred against the master. The master thereupon retired from the court, but the magistrate, desiring further inquiry, demanded his subsequent attendance. On application to the Queen's Bench for a prohibition to restrain the magistrate from proceeding further, the court refused the application, and held, that the magistrate was independent of the Board of Trade, and that his power to proceed could not be affected by their action in not charging the master with default. The magistrate accordingly proceeded with the inquiry, and a charge was preferred against the master, and he was found in default and his certificate suspended for three months. On this order being brought up by *certiorari* before the Queen's Bench it was quashed, on the ground that the Board of Trade having formally intimated to the master that no charge would be made against him, the counsel for the Board of Trade could not charge him, even on the suggestion of the judge and under the sanction of the Board of Trade. *Ex parte Minto*, 35 L. T. N.S. 808; 21 W. R. 274; 25 *Ibid.* 251; Murton, p. 122.

See also No. 273, *supra*, and No. 280, *infra*.

10. Opportunity of Defence.

280. If no charge is made against a person he cannot be said to have had an opportunity afforded him of making his defence within the meaning of the 30th section of the M. S. Act, 1876 (c. 80) (for which see No. 256, p. 2235). *The Sardinian*, 27th June, 1878; *The Damietta*, 14th November, 1877.

11. Evidence.

(a) Generally.

281. An erasure in a log book throws grave suspicion upon it, and is calculated to destroy its authority, and should never be made. If a mistake is made and it is desired to amend it, this should be done by interlining, so as to show clearly what the original entry was. *The Caldera*, 4th March, 1879.

282. The protest of the master, although formally deposited to, cannot be received as evidence on behalf of the owner or master of the ship, but it may be used as evidence against them. *Rea v. Scriveners Co.*, 10 B. & C. 511, and *Senat v. Porter*, 7 Term Rep. 158; and see M. S. Act, 1854 (c. 104), s. 270; and Murton, p. 115;

and see as to protests generally, tit. EVIDENCE, p. 438.

283. See also as to log books, tit. EVIDENCE, p. 437; and No. 290, *infra*.

284. See as to evidence generally, *Ibid.* p. 418; and No. 291, *infra*.

(b) Affidavits.

285. Affidavits may, by permission of the judge, be used as evidence at the hearing, when sworn to in any of the following ways, viz.:—In the United Kingdom, before the judge, or before a person authorized to administer oaths in the Supreme Court of Judicature, or before a stipendiary magistrate, or before a justice of the peace for the county or place where it is sworn or made. In any place in the British dominions out of the United Kingdom, before any court, judge, or justice of the peace, or any person authorized to administer oaths in any court in that place. In any place out of the British dominions, before a British minister, consul, vice-consul, or notary public, or before a judge or magistrate, whose signature is authenticated by the official seal of the court to which such judge or magistrate is attached. See S. C. R. 1878, No. 12.

286. Upon an affidavit being tendered by the Board of Trade, to be read as evidence of contradiction, objection was made by the master that if so used an opportunity should be given him of cross-examination. The affidavit was admitted under the above rule, even though it appeared that it at least involved some contradiction. *The Vesper*, Dec. 21, 1876; and see Murton, p. 115.

287. Affidavits were accepted from masters passing the same locality to account for the probable loss of a vessel from colliding with icebergs, known to be then floating in the North Sea. *The Fernwood*, 13th June, 1885.

288. Affidavits were accepted in the case of a missing ship, as to the cargo with which she was laden, from persons who superintended the loading. *The Preston*, 23rd July, 1885.

(c) Notice to produce.

289. A party may give to any other party notice in writing to produce any documents (saving all just exceptions) relating to the matters in difference between them, and which are in the possession or under the control of such other party; and if the notice is not complied with, secondary evidence of the contents

of the documents may be given by the party who gave the notice. See S. C. R. 1878, No. 9.

290. An objection having been taken to the production of a ship's log on the ground that there was no right of discovery given by the rules, *held*, by the wreck commissioner, that under sect. 31 of the M. S. Act, 1876, he had the power given to an inspector under sect. 15 of the M. S. Act, 1854, and therefore that he could order the log to be produced. *The Dinorah* and *Dorunda*, 21 Sol. Jour. 9; and Murton's Wreck Inquiries, 1884, p. 112; and see as to the powers of inspectors, c. 2, p. 2198.

291. Statements or examinations of witnesses taken by the receiver of wreck for the purposes of the inquiry, *held* privileged documents, and not subject to production. Nor can a party to a formal investigation require the production of a document in the possession of the Board of Trade, notwithstanding that it may have influenced them in ordering the inquiry. *Ibid.*

(d) *Notice to admit.*

292. A party may give to any other party notice in writing to admit any documents (saving all just exceptions); and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving the documents, whatever may be the result, unless the court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice has, in the opinion of the officer by whom the costs are taxed, been a saving of expense. See S. C. R. 1878, No. 10.

12. *Service of Documents.*

293. Any notice, summons, or other document issuing out of the court may be served by post. *Ibid.* No. 24.

294. As to service of documents generally under the M. S. Acts, see tit. OWNERS, Pt. II. p. 1253.

13. *Proof of Service of Documents.*

295. The service of any notice, summons,

or other document may be proved by the oath or affidavit of the person by whom it was served. See S. C. R. 1878, No. 25.

14. *Subpœnas.**

296. The wreck commissioner may issue subpœnas for the attendance of witnesses either before himself or before any other judge, and such subpœnas shall be as nearly as possible in the form used in the High Court of Justice, and may be served and shall have effect in any part of the United Kingdom. *Ibid.* No. 11.

15. *Hearing.†*

(a) *Generally.*

297. At the time and place appointed for holding the investigation, the court may proceed to hear and adjudicate upon the case, whether the parties, upon whom a notice of investigation has been served, or any of them, are present or not. *Ibid.* No. 13.

(b) *Examination of Witnesses.*

298. When the whole of the evidence is concluded, the parties shall be heard in such order as the judge may direct, and the Board of Trade shall be heard in reply. *Ibid.* No. 18.

299. As to the place of hearing, see c. 11, p. 2234.

300. *Held*, by the wreck commissioner, under the Rules of 1876, that the inquiry is one continuous proceeding from beginning to end, and that the court sits for the purpose of the whole inquiry, and not merely to try the charge formulated by the Board of Trade in the midst of the proceedings. *The Dinorah* and *Dorunda*, 21 Sol. Jour. 9.

301. Two inquiries may be held together when the same officer is concerned, even if the casualties happened on different voyages. *The Amcott*, L. T. Oct. 29, 1881, and see Report of Sept. 30, 1881.

302. The Board of Trade shall first produce any witnesses whom they may wish to examine, and who can give material evidence in regard to the casualty, whether they were or were not on board the ship at the time. See S. C. R. 1878, No. 14.

303. The witnesses shall be cross-examined by the parties in such order as the judge may direct, and may be re-

* (73) In practice no difficulty has been experienced in securing the attendance of seafaring witnesses. The control over them by payment of subsistence money while de-

tained to give evidence has been found effectual. See Murton's Wreck Inquiries, p. 113.

† (74) As to the course of the proceedings, *Ibid.* pp. 117—124.

examined by the Board of Trade. *Ibid.* No. 15.

304. On the completion of their examination, the Board of Trade shall state in open court upon what questions in reference to the causes of the casualty, and the conduct of any persons connected therewith, they desire the opinion of the court; and if any person whose conduct is in question is a certificated officer, they shall also state in open court whether in their opinion his certificate should be dealt with. *Ibid.* No. 16.

305. The Board of Trade and any other party may thereupon produce further witnesses, who shall be examined, cross-examined, and re-examined in such order as the judge may direct. *Ibid.* No. 17.

306. On an inquiry into the loss of a vessel by collision, it was objected that as the Board of Trade produced the witnesses, their examination of them should be limited to such an examination as would be allowed to counsel in an examination in chief, but the wreck commissioner considered that in many cases, and in particular in inquiries where the Board of Trade and the incriminated persons are the only parties before the court, this limitation would result in the witnesses going away without being cross-examined at all, and in the whole object of the inquiry being defeated. *Held*, therefore, that the Board of Trade is at liberty to put all such questions as are calculated to elicit the truth even to the extent of cross-examining the witnesses with a view to ascertain whether their statements are or are not true. *The Dinorah and Dorunda*, 30th October, 1876; 21 Sol. Journ. p. 9.

307. The practice which has hitherto been pursued in the court of calling as a witness the master of the vessel to give his account of the facts at the commencement of the inquiry, is well founded, and should not be discontinued. *The Masonic and The Thetford*, December 22, 1881.

308. The court would never compel an officer to answer a question which would be likely to lead to a criminal prosecution against him. *Ibid.*

309. *Held*, that it is more especially in the interests of the master and the certificated officers themselves that they ought to be called to give an account of the circumstances which have led to the casualty, and not to leave it to their subordinates alone to give their view of the transactions, when they would generally know very little about them. *Ibid.*

310. On inquiries into casualties by

collisions, it has been the practice for the Board of Trade to produce the masters of both the vessels in order that they may give their own account of the circumstances. But in the present case, the master of the T. was not so called, *semble*, on the ground that his position in regard to the casualty, a life having been lost, would throw some suspicion on his evidence, and as the case might form the subject of a criminal charge against him, he ought not to be called upon to answer questions which might possibly incriminate him. But the court observed, that before the evidence has been taken, the Board of Trade should not assume that blame attaches more to the one captain than to the other, and that if the fact that the master had an interest in the result of the inquiry were to be considered as a ground for not calling him as a witness, the court would in every case be unable to examine certificated officers, for it would be impossible to say until the evidence was given that the certificates of one or other of them might not be suspended, and the court would thus be deprived of the best and most reliable evidence in the case, for it is, as a general rule, only the master and the certificated officers who can say why a particular course has or has not been taken. *Held*, further, that whether a master ought or ought not to be called upon to answer questions which might tend to subject him to a criminal prosecution is a question for the master and his legal adviser to decide, and it should be left to him to claim his right not to answer any question which might tend to criminate him. *Ibid.*

16. *Adjournment.*

311. The judge may adjourn the court from time to time and from place to place, as he may think fit. See S. C. R. 1878, No. 19.

17. *Decision.*

312. Except when the certificate of an officer is cancelled or suspended, in which case the decision shall always be given in open court, the judge may deliver the decision of the court either *vidæ voce* or in writing; and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a court merely for the purpose of giving the decision. See the M. S. Act Amendment

Act, 1862 (c. 63), s. 23, sub-s. 3, and S. C. R. 1878, No. 20.

313. Under the 20th rule of the Shipping Casualties Rules, 1878, a decision with respect to suspending certificates must be given in open court by the commissioner or other authority. The reasons given in court form no part of such decision, and different reasons may be given in the annex to the report made under the 22nd rule and the 23rd section of the M. S. Act, 1862. *The Kestrel*, 6 P. D. 182; 4 Asp. 433; 45 L. T. 111; 30 W. R. 182.

18. Report.

314. At the conclusion of the case the judge shall report to the Board of Trade: for form of report see Appendix No. 3. See S. C. R. 1878, No. 22, and M. S. Act Amendment Act, 1862 (c. 63), s. 23.

315. Each assessor, as well as the wreck commissioner, must sign the report made on the investigation, or report to the Board of Trade his reasons for his dissent therefrom. See M. S. Act, 1876 (c. 80), s. 30.

316. Where the certificate of a master, mate, or engineer has been cancelled or suspended, the Board of Trade shall, on application by any party to the proceedings, give him a copy of the report made to the Board. S. C. (A. & R.) R. 1880, No. 5.

19. Assessors.

See c. 4, p. 2199.

20. Local Marine Boards.

(a) Right of Representation by a Solicitor.

317. An inquiry before a local marine board into the conduct of a master is penal, if not criminal, and should be as public as possible; and, *semble*, the defendant is entitled to be represented there by a solicitor. *The Queen v. Collingridge*, 34 L. J. Q. B. 9; 12 W. R. 1109.

(b) Summonses for Witnesses.

318. A local marine board, appointed under the Merchant Shipping Act, 1854, to inquire into a charge of alleged misconduct against the master or mate of a vessel, has a discretionary power as to

granting summonses for witnesses for the defence. *Ibid.*

319. It is a proper course for such court before granting the summonses to inquire who the witnesses are, and what they are expected to prove; and to refuse the summons in respect of any witness who can only speak to matters clearly irrelevant. *Ibid.*

320. The witnesses summoned for the defence are witnesses of the court, and their expense is borne not by the defendant but by the public. *Ibid.*

16. Costs.

See tit. Costs, c. 41, p. 415, and same title and chapter in Addenda.

17. Rehearing.

1. Generally.*

321. Where an investigation into the conduct of a master, mate, or engineer, or into a shipping casualty, has been held under the M. S. Act, 1854 (c. 104), or any act amending the same, or under any provision for holding such investigations in a British possession, the Board of Trade may, in any case, and shall, if new and important evidence which could not be produced at the investigation has been discovered, or if for any other reason there has in their opinion been ground for suspecting a miscarriage of justice, order that the case be reheard, either generally or as to any part thereof, and either by the court or authority by whom it was heard in the first instance, or by the wreck commissioner, or in England or Ireland by a judge of her Majesty's High Court of Justice exercising jurisdiction in Admiralty cases, or in Scotland by the senior lord ordinary, or any other judge in the Court of Session whom the lord president of that court may appoint for the purpose, and the case shall be so reheard accordingly. See the Shipping Casualties Investigations Act, 1879 (c. 72), s. 2, sub-s. 1.

322. On an inquiry under sect. 241 of the M. S. Act, 1854 (c. 104), before a local marine board at Shields, into the conduct of an engineer who, the master alleged, had been drunk upon the voyage, the court found that the engineer had

* (75) For observations on the right of rehearing, and instances of cases (reported and unreported) reheard under the provisions

of the act, see Murton's Wreck Inquiries, pp. 180—185, 189—194.

been drunk, but it was not satisfied that any loss had been occasioned thereby, and the court reprimanded him and returned him his certificate. The Board of Trade ordered a rehearing before the wreck commissioner sitting at Newcastle, who, having read the evidence, *held*, that the engineer had been guilty of repeated acts of intoxication while on board, incapacitating him for the discharge of his duties, and his certificate was suspended. Upon motion in the Queen's Bench Division for a rule for a *certiorari* to bring up the order of the wreck commissioner for the purpose of quashing it, on the ground that he had no jurisdiction, no casualty having occurred, *held*, that the act gave the Board of Trade the power of rehearing either in cases of misconduct or casualty, and rule refused. *In re Mitchelson*, August 5, 1884.

323. On the rehearing of an inquiry into the loss of a steamer, further evidence on behalf of the owners received. *The Joseph Ferens*, No. 731, 20th September, 1880.

324. A rehearing directed by the Board of Trade of a case originally heard at Céara, in Brazil, by the British vice-consul and three assessors, which court had *held* that the vessel was lost owing to the misconduct of the master, and that he had been the worse for liquor during the day of the casualty, but the court had erroneously supposed that it was for the Board of Trade and not for the court to deal with the master's certificate. *The Bertioga*, Jan. 3, 1883.

325. On an inquiry before justices, *held*, that the casualty was caused by a serious error in the ship's reckoning, which may have arisen either from an extraordinary or unknown current, or from an easterly deviation in the compass not allowed for or discovered by the master, and that, as he steered by the deviation card and had no means of testing its correctness, the court did not find him in default. The Board of Trade being dissatisfied with the finding ordered a rehearing before the wreck commissioner. *The Cerwynn*, July 19, 1880.

326. On an inquiry into the loss of a steamer, the court *held* that the vessel was overloaded. The Board of Trade, on the

application of the owners, allowed a rehearing, when, further evidence having been produced, the court reversed its former decision, but made no order as to costs. *The Joseph Ferens*, No. 731, Sept. 20, 1880.

327. A refusal by the Board of Trade to grant a rehearing of an investigation into the conduct of a certificated officer is not a decision within 42 & 43 Vict. c. 72, s. 2, sub-s. 2, and therefore no appeal lies from it. *The Ida*, 11 P. D. 37; 54 L. T. 497.

328. The Board of Trade under the M. S. Act, 1876 (c. 72), s. 2, "may" in any case, and "shall" if new and important evidence is discovered, order a rehearing. These words impose on the Board of Trade a duty when new and important evidence, which could not be produced at the investigation, is discovered, to grant a rehearing, and they may be compelled by mandamus to grant it. *Ibid.* 11 P. D. 38.

2. Practice.*

329. Where the Board of Trade direct a rehearing, they shall cause such reasonable notice to be given to the parties whom they consider to be affected by the rehearing as the circumstances of the case may, in the opinion of the Board of Trade, permit. S. C. (A. & R.) R. 1880, No. 7, div. (a).

330. The following rules apply to a rehearing as if it were an appeal, and as if the court or authority before whom the rehearing takes place were the court of appeal: As to the assessors by whom the court rehearing the case is to be assisted (see No. 343, *infra*); as to the making of additional parties on the rehearing (see No. 351, *infra*); as to the right of objection to the appearance of any such parties (see No. 352, *infra*); as to the proof on the rehearing of the evidence given on the previous hearing, and of the report to the Board of Trade and the decision thereon and the mode of obtaining the same (see No. 354, *infra*); as to the further evidence which may be given on the rehearing (see No. 355, *infra*); as to the powers of the court rehearing the case over the costs of the rehearing (see *tit. Costs*, No. 160, p. 396);

* (76) Any rehearing shall be subject to and conducted in accordance with general rules made under sect. 30 of the M. S. Act,

1876. See Shipping Casualties Investigations Act, 1879 (c. 72), s. 2, sub-s. 3.

as to the mode of conducting the rehearing (see No. 347, *infra*); as to pleadings therein (see No. 353, *infra*); and as to the report to be made by the court rehearing the case to the Board of Trade (see No. 359, *infra*). See S. C. (A. & R.) R. 1880, No. 7, div. (b).

18. Appeal.

1. Generally.*

331. Any rehearing or appeal under this act is to be conducted according to the conditions and regulations prescribed by general rules. See the Shipping Casualties Investigations Act, 1879 (c. 72), s. 2, sub-s. 3.

332. A shipowner has no appeal under sect. 2 of the Shipping Casualties Investigations Act, 1879 (c. 72). *The Golden Sea*, 7 P. D. 194; 51 L. J. P. D. 64; 5 Asp. 23.†

333. Where a court of inquiry into a shipping casualty held under the eighth part of the M. S. Act, 1854 (c. 104), orders the suspension of a master's certificate, in pursuance of the powers given by the 242nd section of the same act and the 23rd section of the M. S. Act Amendment Act, 1862 (c. 63), the Court of Appeal, having jurisdiction under the Shipping Casualties Investigations Act, 1879 (c. 72), will on appeal consider the evidence on which the judgment of the court of inquiry proceeded, and will reverse the judgment if the evidence is insufficient to justify the suspension of the certificate. *The Arizona*, 5 P. D. 123; 49 L. J. P. D. & A. 54; 42 L. T. 405; 28 W. R. 704; 4 Asp. 269.

334. Where a court of inquiry ordered a master's certificate to be suspended, and the only ground on which the decision could be supported was that the serious damage to the ship had been caused by the wrongful act or default of the master within the meaning of

sect. 242 of the M. S. Act, 1854 (c. 104), sub-s. 2; and, on appeal, it appeared to the Court of Appeal that there was no evidence that the damage had been caused by the wrongful act or default of the master, the Court of Appeal reversed the decision and restored to the master his certificate. *Ibid*.

335. An error of judgment committed by a master of a ship, under circumstances of great difficulty and danger, is not such a wrongful act or default within the meaning of the M. S. Act, 1854 (c. 104), s. 242, as will justify the suspension of his certificate, even where there has been loss of life. *The Famenoth*, 7 P. D. 207; 5 Asp. 35.

336. A master who was himself directing the course of his vessel through a narrow channel left the bridge, where the first mate was at the time, to summon the second mate. Before the master's return the vessel ran aground. The master's certificate having been suspended by the decision of a Board of Trade inquiry, the court affirmed such decision, holding that the rule that the officer in charge of a vessel in such circumstances must not leave his post, unless compelled by unavoidable necessity, must not be relaxed. *Ever v. Board of Trade*, 4th Series, vol. 7, p. 835. [SCOTCH.]

337. A master who was not placed by his owners under any restriction as to price bought improper ballast, which became converted into mud and choked the pumps, which consequently failed to work, and bad weather coming on the vessel was lost. For these wrongful acts and defaults the wreck commissioner suspended the master's certificate for three months. Affirmed on appeal. *The Golden Sea*, 7 P. D. 194; 51 L. J. P. D. 64; 5 Asp. 23.

338. The court of inquiry (borough magistrates), assisted by nautical assessors, suspended the certificate of the master of the steamship K., holding the

* (77) For observations on the right of appeal and instances of cases (reported and unreported) which have been appealed under the provisions of the act, see Murton's Wreck Inquiries, pp. 185—189 and 195—203.

(78) It appears by a return of appeals from the Wreck Commissioner's Court to the Admiralty Division of the High Court of Justice from the 1st November, 1879, when the act authorizing appeals (c. 72) came into operation down to 31st December, 1884, that out of 327 inquiries held before the wreck

commissioner, in seventy-seven of which the certificate of the master or officer was dealt with, the only appeals from the wreck commissioner's decisions were four, of which one was abandoned, one affirmed, one varied, and one reversed; and see the Evidence thereon of the Wreck Commissioner before the Royal Commission on the Loss of Life at Sea, 1885 (c. 4577), p. 227.

† (79) A bill is likely to be introduced for the purpose (*inter alia*) of giving an appeal to shipowners.

master in default for not having himself taken the four point bearing of the Nora Udder light, so as to make sure of the position from which he took his departure down the coast, and for leaving the deck at a time when the safety of the vessel required his personal supervision. On appeal to the Probate, Divorce and Admiralty Division, *held*, that any one, who had such important matters as the safety of a ship confided to his charge, should use discretion as to the time he remained on deck, and take his rest at a convenient time. *Held*, also, in accordance with the opinion of the assessors in the court below and of the Trinity Brethren in this court, that the master, when about to take so important a departure as that from the Nora Udder light, should have taken the bearing himself in order to make certain of his position. *Held*, further, that the master was aware that his compasses were faulty, and should, therefore, have taken extra precautions. The court, therefore, though with considerable hesitation, dismissed the appeal. *The Katy*, Feb. 16, 1886.

2. England.

339. An appeal from a decision given in England in any investigation as to the cancelling or suspension of the certificate of a master, mate or engineer, when no application for a rehearing has been made or it has been refused, lies to the Probate, Divorce and Admiralty Division of the High Court of Justice. See the Shipping Casualties Investigations Act, 1879 (c. 72), s. 2, sub-s. 2.

3. Scotland.

340. If the decision is given in Scotland, the appeal lies to either division of the Court of Session. *Ibid*.

4. Ireland.

341. If the decision is given in Ireland, the appeal lies to the High Court of Admiralty, or the judge or division of her Majesty's High Court of Justice exercising jurisdiction in Admiralty cases. *Ibid*.

5. From Naval Courts.

342. If the decision is given by a naval court, the appeal lies to the Probate, Divorce and Admiralty Division of the High Court of Justice. *Ibid*.

6. From Colonial Courts.

342a. See No. 61, p. 2203.

7. Assessors.

343. The Court of Appeal shall be assisted by not less than two assessors, to be selected, in the discretion of the court, having regard to the nature of each case, from either or both of the following classes:—1. Elder Brethren of the Trinity House. 2. Persons approved from time to time by the secretary of state as assessors for the purpose of formal investigations into shipping casualties, under sect. 30 of the M. S. Act, 1876 (c. 80), and sub-sect. 1 of sect. 3 of the Shipping Casualties Investigations Act, 1879 (c. 72). S. C. (A. & R.) R. 1880, No. 6, div. (d).

344. See as to the lists of such assessors, c. 3, s. 4, p. 2199.

8. Practice.

(a) Generally.

345. Subject to the previous provisions of this rule, every appeal is to be conducted under and in accordance with the general rules and regulations applicable to ordinary proceedings before the Court of Appeal to which it is brought. S. C. (A. & R.) R. 1880, No. 6, div. (j).

(b) Notice of Appeal.

346. The appellant shall, within seven days after the day on which the decision appealed against is pronounced, serve on such of the other parties to the proceedings as he may consider to be directly affected by the appeal, notice of his intention to appeal. *Ibid*. No. 6, div. (a).

347. The appellant shall, within seven days after the day on which the decision appealed against is pronounced, leave with the officer for the time being appointed for that purpose by the Court of Appeal a copy of the notice of appeal. *Ibid*. No. 6, div. (c).

348. The officer shall thereupon set down the appeal by entering it in the proper list. *Ibid*.

(c) Notice of Grounds of Appeal.

349. The appellant must, within two days after the appeal is set down, serve notice of the general grounds of the appeal on the parties on whom he has served notice of appeal. *Ibid*. No. 6, div. (a).

(d) *Security for Costs.*

350. See tit. Costs, p. 369.

(e) *Additional Parties.*

351. The Court of Appeal may, if it thinks fit, order any other person or persons, body or bodies, other than the parties served with the notice of appeal, to be added as a party or parties to the proceedings for the purposes of the appeal, on such terms with respect to costs and otherwise as to the Court of Appeal seems meet. S. C. (A. & R.) R. 1880, No. 6, div. (e).

352. Any party to the proceedings may object to the appearance on the appeal of any other party to the proceedings as unnecessary. *Ibid.* No. 6, div. (f).

(f) *Pleadings.*

353. Nothing in the nature of pleadings on appeal, other than the notice of the general grounds of the appeal, will be allowed except by special permission of the Court of Appeal. *Ibid.* No. 6, div. (j).

(g) *Evidence.*

354. The evidence taken before the judge from whose decision the appeal is brought is proved before the Court of Appeal by a copy of the notes of the judge, shorthand writer, clerk, secretary, or other person authorized by him to take down the evidence, or by such other materials as the Court of Appeal thinks expedient; a copy of the evidence, of the report to the Board of Trade containing the decision from which the appeal is brought, and of the notice of the general grounds of the appeal, is to be left with the officer for the time being appointed for that purpose by the Court of Appeal before the appeal comes on for hearing.

Copies of the notes of evidence and report are to be supplied to the appellant, on request, by the person having charge thereof, on payment of the usual charge for copying. *Ibid.* No. 6, div. (g).

355. The Court of Appeal has power on questions of fact to receive further evidence, either oral, by affidavit, or by deposition taken before an examiner or commissioner. Evidence may also be given by special leave of the Court of Appeal as to matters which have occurred since the date of the decision from which the appeal is brought. *Ibid.* No. 6, div. (h).

356. In appeals under the Shipping Casualties Investigations Act, 1879 (c. 72), evidence on matters of nautical skill and knowledge is inadmissible. *The Kestrel*, 6 P. D. 182; 4 Asp. 433; 45 L. T. 111; 30 W. R. 182.

357. When it is desired to adduce further evidence on an appeal under the 2nd sect. of the Shipping Casualties Investigations Act, 1879 (c. 72), application for leave to do so should be made before the hearing. *The Famenoth*, 7 P. D. 207; 5 Asp. 35.

358. Where the certificate has been suspended upon a charge of which the officer had had no notice prior to the inquiry, he may be allowed to produce rebutting evidence on appeal. *Ibid.*

(h) *Report.*

359. On the conclusion of an appeal, the Court of Appeal shall send to the Board of Trade a report of the case, similar to that required to be sent by the judge from whose decision the appeal is brought. S. C. (A. & R.) R. 1880, No. 6, div. (k).

9. *Costs.*

See tit. Costs, c. 30, p. 397, and same title and chapter in Addenda.

TRADE, BOARD OF—

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Part I.—GENERAL FUNCTIONS.

1. Generally.*

1. "The Board of Trade" in this act means the Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations. See M. S. Act, 1854 (c. 104), s. 2.

2. The Lords of the Committee of Privy Council for matters relating to trade may be described in all acts of parliament, deeds, contracts, and other instruments, by the official title of "The Board of Trade." See the Harbours and Passing Tolls, &c. Act, 1861 (c. 47), s. 65.

3. The duties of Commissioners of Customs under ss. 23, 27, 28, 29 of M. S. Act, 1854 (c. 104), s. 14 of M. S. Act, 1855 (c. 91), and s. 4 of M. S. Act, 1871 (c. 110), relating to the measurement and re-measurement of ships and allowance of deductions for the purposes of the calculation of tonnage are now transferred to Board of Trade by M. S. Act, 1872 (c. 73), s. 3.

4. All the powers conferred and the duties imposed upon Emigration Commissioners by the provisions of the Passengers Act, 1855 (c. 119), and of the Passengers Act Amendment Act, 1863 (c. 51), are transferred to the Board of

Trade by the M. S. Act, 1872 (c. 73), s. 5; and see as to the survey and control of passenger steamers, tit. OWNERS, Pt. IV. p. 1273.

5. The Board of Trade is divided into the following departments:—the Marine Department; the Harbour Department; the Railway Department; the Financial Department; the Commercial Department; and the Bankruptcy Department. See Board of Trade Instructions to Superintendents of Mercantile Marine Offices, 1879, p. 96, and the forthcoming Second Report and Evidence of the Royal Commission on Loss of Life at Sea, 1886.

6. The Railway Department embraces the following subjects:—Railways, Telegraphs, Water Companies, Gas Companies, Joint Stock Companies, Charters, Partnerships, Copyright and Trade Marks, Registry of Designs, Art Unions, Industrial Exhibitions Act, Electric Lighting and Tramways Act. *Ibid.* p. 98.

7. The Commercial Department embraces the following subjects:—Statistics generally, Cotton Statistics Act. *Ibid.* p. 98.

7a. The Bankruptcy Department, under the Inspector-General of Bankruptcy, has the administration of the Bankruptcy Act, 1883. *Ibid.*

* (1) In the early part of the 14th century the aid of a Consultation Board in the consideration of questions relating to commerce was found requisite by the State, and in cases of sufficient urgency councils were to this end summoned to deliberate with Parliament. In 1655, Cromwell appointed a commission to inquire how the traffic and navigation of the country might be best promoted and regulated. Charles the Second, by patent of 7th Nov. 1660, instituted a Council of Trade, and by patent of 1st of December, a Council of Foreign Plantations. These two boards were afterwards amalgamated. By patent of 16th Sept. 1672, Charles the Second constituted a standing council to take charge of the welfare of the colonies and plantations, and of the trade and navigation of the kingdom. In Dec. 1675, this commission was revoked. It was, however, revived in 1695 by William the Third, under the title of the Board of Trade and Plantations. In 1782, by 22 Geo. 3, c. 82, the council or commission was abolished, and its powers were transferred to such committees as his Majesty should appoint. In 1786, a permanent committee was formed by Order in Council of 23rd August, 1786, which still regulates the constitution of the Board of Trade. See the Board of Trade, its origin, authority, and jurisdiction, issued

by the Board of Trade, Feb. 1880, and presented to the Royal Commission on Loss of Life at Sea, 1886.

(2) See as to the old and present duties of the Board of Trade, its permanent establishment and staff in 1880, and the duties of the Marine, Harbour, Railway, Financial, and Commercial Departments (the Bankruptcy Department not having been then created), *Ibid.*

(3) In correspondence with the Board of Trade in any of its departments, all answers should commence with a reference to the official letter and number of the letter from the Board, and these should also be written legibly on the outside of the envelope in the bottom left-hand corner. The letter should be on foolscap paper, and be addressed to the Assistant-Secretary, — Department, Board of Trade, London, S.W., adding in the left-hand corner the initial of the department as "M." for Marine Department; "H." for Harbour Department, &c. See Board of Trade Instructions in respect of Wrecks, Casualties and Salvage, 1886, tit. POSTAGE.

(4) The Bankruptcy Department is in Great George-street, Westminster, and letters to the Board in that department should be addressed to the Inspector-General in Bankruptcy.

2. Forms.*

8. The Board of Trade may sanction and alter forms of the various books and papers required by this act other than those required by the second part thereof (*i. e.* as to the ownership, measurement and registry of British ships); and cause every such form to be sealed or marked with a distinguishing mark, and to be supplied at the custom houses and mercantile marine offices at such prices as it may fix, or may licence any person to print and sell them; and no such book or paper, unless in such form, shall be admissible in evidence in any civil proceeding on the part of any owner or master of any ship; and every such book or paper, if purporting to be in a proper form, and so sealed or marked, shall be taken to be made in the form required, unless the contrary is proved. See M. S. Act, 1854 (c. 104), s. 8.

9. Every person forging or concerned in forging or altering the seal or distinguishing mark to any form issued by the Board of Trade, is guilty of a misdemeanour. *Ibid.* s. 10.

10. Penalty for printing, selling or using any form under the third part of this act (*i. e.* relating to masters and seamen), not so sanctioned, not exceeding £10. *Ibid.*

11. All instruments which by the fourth part of this act (*i. e.* safety and prevention of accidents) are required to be made in forms sanctioned by the Board of Trade, if made in such form, and all instruments used by or under the direction of the Board of Trade in carrying such part of this act into effect, are exempt from stamp duty. *Ibid.* s. 9.

* (5) Many new forms have accordingly been issued by the Board of Trade under this section.

(5a) See for forms generally issued by or with the approval of the Board of Trade under the M. S. Acts, 2 Poll. & Bruce (4th ed. by Maude & Poll.), pp. cccxxi—cccclxxxviii.; and as to forms in connection with wrecks, casualties, and salvage, Board of Trade Instructions thereon, 1886, tit. STATIONERY AND PRINTED FORMS.

† (6) The Albert medal, which comes under the direction of the marine department and the Home Office, is a decoration for bravery shown in saving life from perils of the sea. It has a first and second class, and is given for acts of conspicuous bravery in any part of the world, and to a person of any nation, and whether connected with shipwreck or not.

3. Evidence.

12. All documents purporting to be issued under the direction of the Board of Trade, and to be sealed with its seal, or signed by one of its secretaries or assistant secretaries, are to be received in evidence, and as issued by the Board, without further proof, unless the contrary be shown; and all certificates issued by the Board in pursuance of this act, and sealed with its seal, or signed by one of the officers of the marine department of the Board, are to be received in evidence as such certificates, unless the contrary be shown. *Ibid.* s. 7.

See also No. 8, *supra*.

4. Exemption from Tolls and Taxes.

13. The ships and boats belonging to or used by the Board of Trade may use any harbours, ports, docks or piers in the United Kingdom without payment of any dues or rates. *Ibid.* s. 431, and as amended by M. S. Act Amendment Act, 1862 (c. 63), s. 48.

14. Property belonging to the Board of Trade is exempt from all rates and taxes. See M. S. Act, 1854 (c. 104), s. 430.

Part II. MARINE DEPARTMENT.**1. Generally.†**

15. The Marine Department embraces the following subjects:—Measurement of

(7) The marine department also embraces apprenticeships to the sea service under the M. S. Acts, and the M. S. (Fishing Boats) Act, 1883, c. 41.

(8) This department also embraces boats and life-saving gear on board ship.

(9) It also includes inquiries under the Boiler Explosions Act, 1882 (chiefly land boilers). See thereon Report of Mr. Hicks' Committee, House of Commons, Sessions Paper, 1884, C. 3903, and Sessions Paper, 1886, C. 4571. It also includes the superintendence of boilers in passenger steamers.

(10) This department has also the supervision of all bye-laws for seamen's lodging-houses.

(11) It also includes the supervision of changes of ships' names, the regulation of crews of fishing vessels, the discipline of

tonnage, registration of ships, survey of passenger ships and boats, berthing of crews, lime and lemon juice and anti-scorbutics, scales of medicine for merchant ships, chain cables and anchors acts, training ships, examination of masters, mates, and engineers, mercantile marine offices and local marine boards, registrar of seamen's office, naval reserve, inquiries into misconduct, inquiries into wrecks and casualties, the wreck registers, rockets and lifeboats, the Albert medal, rewards for saving life, relief of distressed seamen (rules and principles), and claims upon owners, commercial code of signals, Admiralty Courts, international questions concerning shipping, and all other questions affecting a ship or her crew. See Board of Trade Instructions to Superintendents of Mercantile Marine Offices, 1879, p. 96, and the forthcoming Second Report of the Royal Commission on Loss of Life at Sea.

16. The Board of Trade undertakes the general superintendence of matters relating to merchant ships and seamen, and is authorized to carry into execution the provisions of the Merchant Shipping Act, 1854, and of all other acts relating to merchant ships and seamen, other than such acts as relate to the revenue. See M. S. Act, 1854 (c. 104), s. 6.

17. All consular officers, and officers of customs abroad, and all local marine boards and shipping masters, are to send to the Board of Trade such returns on any matter relating to British merchant shipping or seamen as the Board requires; and all superintendents of mercantile marine offices, whenever required by the Board of Trade, are to produce to the Board or its officers all official log-

books and other documents delivered to them. *Ibid.* s. 12; and Board of Trade Instructions to Consuls, 1883, pp. 66—69.

18. For provisions enabling the Board of Trade in any legal proceedings under the M. S. Acts, 1854—1873, to take such proceedings in the name of any of their officers, see the M. S. Act, 1873 (c. 85), s. 31.

18a. Nothing in the third section of 20 & 21 Vict. c. 43, as to summary proceedings before justices, except so much as provides for the payment of fees due to the clerk of the justices, shall apply to any proceeding under the direction of the Board of Trade, or the provisions of the principal act or this act, or any act amending the same. See M. S. Act, 1854 (c. 104), s. 65.

2. Local Marine Boards.

1. Generally.

19. Local marine boards for carrying this act into effect under the superintendence of the Board of Trade are established at those seaports of the United Kingdom at which they have been appointed, and at such other places as the Board of Trade may appoint; each board is constituted as follows:—the mayor or provost and stipendiary magistrate, or such of them as the Board of Trade appoints, are members *ex officio*; the Board of Trade appoints four members from persons residing or having places of business within seven miles of the port; and the owners of foreign-going ships and home-trade passenger ships registered at the port elect six members; such elections take place on the 25th day

merchant ships, the engagement, health, and discharge of their crews, the transmission of seamen's wages, the inspection of Atlantic and Irish cattle-ships, the regulation of the international code of signals and of private and distress signals, regulations for the prevention of crimping and for the licensing and control of shipping agents, and for the supply of seamen and substitutes.

(11a) This is partly dealt with in the Harbour Department.

(12) It also includes the regulations as to draught of water. See Board of Trade Instructions to Surveyors thereon, and *tit. OWNERS*, Pt. I. pp. 1195, 1197.

(13) It also includes the consideration of international questions concerning shipping and seamen, and the interference of foreign

authorities with British merchant seamen.

(14) It also includes instructions to and supervision of naval courts, and the regulations of the naval reserve and of training ships.

(15) For further information under the above heads, and as to the undermanning of ships, the scientific staff of the Board, and its tests of iron and steel, see the forthcoming Second Report and Evidence of the Royal Commission on Loss of Life at Sea, 1886.

(16) Tables of freeboard are no longer issued by the Board of Trade. Lloyd's Register now fixes load-lines with the concurrence of the Board. See as to same, *tit. OWNERS*, Pt. III. c. 1, s. 14 (c), in *Addenda*.

(17) Quarantine, Salvage, and Wreck are now in the Harbour Department.

of January in every third year, and such appointments take place within one month afterwards when the old board ceases and the new board takes its place; any vacancy in the interval is filled up within a month; and the person so elected or appointed continues a member until the next constitution of a new board; the mayor or provost fixes the place and mode of conducting all such elections, and gives ten days' notice thereof; and the Board of Trade has power to decide any questions concerning such elections. See M. S. Act, 1854 (c. 104), s. 110.

20. Every registered owner of such ships has one vote for each member for every 250 tons of shipping, not exceeding ten votes for any one member. If a ship is registered in the name of one person, he is deemed the owner. *Ibid.* s. 111.

21. As to the calculation and apportionment of votes among the different owners, when a ship is registered in several shares. *Ibid.*

22. As to the lists of all such voters made by the collector or comptroller of customs in each of such ports, on or before the 25th of December in every third year, and the printing and fixing up thereof on or near the doors of the custom house at such port for two weeks next after the list has been made, and the permitting the list to be perused without fee at reasonable hours during such two weeks. *Ibid.* s. 112.

23. As to the revision of such lists of voters and production of the registers, and the payment by the Board of Trade of the expenses of makings such lists. *Ibid.* ss. 113, 114, 115.

24. Every person whose name appears on such revised list and no other is qualified to vote at the election of members of the local marine board at such seaport. *Ibid.* s. 116.

25. Every male person entitled according to such revised list to a vote is qualified to be elected a member of the local marine board of such seaport, and any member who ceases to be an owner of the requisite quantity of tonnage can no longer continue a member. *Ibid.* s. 117.

26. No act of any local marine board shall be prejudiced by reason of any irregularity in the election of any of its members, or in the list of voters. *Ibid.* s. 118.

27. Every local marine board keeps minutes of its proceedings in such mode as the Board of Trade prescribes; and such minutes, and all books or documents used or kept by the Board, or by any officers or servants under its control, are open to the inspection of the Board of Trade and its officers; and every local marine board makes and sends to the Board of Trade such reports and returns as it requires; but, subject hereto, every local marine board may regulate the mode in which its meetings are to be held and its business conducted. *Ibid.* s. 119.

28. If any local marine board, by reason of any non-election or other cause fails to meet or discharge its duties, the Board of Trade may either perform these duties until the next triennial election, or direct a new appointment and election of such local marine board. *Ibid.* s. 120.

29. The Board of Trade may, upon complaint, if any appointments or arrangements of any local marine board are unsatisfactory, annul or alter the same. *Ibid.* s. 121.

30. Three members are necessary to form a quorum of every local marine board. See M. S. Act Amendment Act, 1862 (c. 63), s. 14.

31. As to the powers of local marine boards to establish and manage mercantile marine offices under the control of the Board of Trade, see c. 3.

2. Clerks or Servants.

32. Any person appointed to any office or service under any local marine board is a clerk or servant within the meaning of sect. 68 of 25 Vict. c. 96. And if any such person fraudulently applies or disposes of any property whilst so employed, he is guilty of embezzlement within the meaning of that section, and on conviction is liable to the pains and penalties thereby imposed. See M. S. Act Amendment Act, 1862 (c. 63), s. 16.

3. Mercantile Marine Offices.*

1. Generally.

33. In every seaport in the United Kingdom in which there is a local marine

* (18) As to the opening of mercantile marine offices out of office hours, the officers to be then in attendance, the fees chargeable

thereon, and the overtime allowances, see Board of Trade Instructions to Superintendents of November, 1884.

board, such board shall establish a mercantile marine office or offices, procure the requisite premises, and appoint, remove, and reappoint superintendents of such offices, with any necessary deputies, clerks and servants, and regulate the mode of conducting business at such offices, and control the same; and every act done by or before any deputy duly appointed shall have the same effect as if done by or before a superintendent. See M. S. Act, 1854 (c. 104), s. 122, as amended by M. S. Act Amendment Act, 1862 (c. 63), s. 15.

31. The sanction of the Board of Trade is necessary as to the number of persons appointed by a local marine board, and the amount of their salaries and wages and other expenses; and the Board of Trade has the control of such offices as to the receipt and payment of money thereat; and all superintendents and servants so appointed, before entering upon their duties, give such security (if any) for the due performance thereof as the Board of Trade requires; and if any one of them does not properly discharge his duties, the Board of Trade may cause the case to be investigated, and remove him from his office, and provide for the proper performance of his duties until another person is appointed. See M. S. Act, 1854 (c. 104), s. 123.

35. All or part of the business of a mercantile marine office may, with the consent of the commissioners of customs, be ordered by the Board of Trade to be transacted at the custom house at any place where no mercantile marine office is established, and the officer of customs there shall be the superintendent. *Ibid.* s. 123, as amended by the M. S. Act Amendment Act, 1862 (c. 63), s. 15.

36. London sailors' homes may be made mercantile marine offices, and persons connected therewith superintendents. See M. S. Act, 1854 (c. 104), s. 129.

37. The Board of Trade may dispense with the transaction before a superintendent, or in a mercantile marine office, of any matters required to be so transacted. *Ibid.* s. 130.

38. As to the punishment for embezzlement in mercantile marine offices, see M. S. Act Amendment Act, 1862 (c. 63), s. 16.

39. For provisions enabling the Board of Trade to constitute mercantile marine offices branch savings banks for seamen, see 19 & 20 Vict. c. 41, s. 2, and tit. SEAMEN, Pt. I. c. 8, p. 2132.

2. *Examination of Masters, Officers, and Men.*

See c. 4, p. 2252.

3. *Superintendents.*

(a) *Generally.*

40. For provisions enabling the Board of Trade to require any superintendent of a mercantile marine office to act as agent of a branch savings bank for seamen, and directing that his duties as such shall be part of his duties within the meaning of the M. S. Act, 1854 (c. 104), see 19 & 20 Vict. c. 41, s. 2. And as to seamen's savings banks generally, see tit. SEAMEN, Pt. I. c. 8, p. 2132.

41. As to the list of the changes in the crew of a foreign-going ship, before leaving the United Kingdom, to be sent by the master to the nearest superintendent, see tit. OWNERS, Pt. II. p. 1251.

(b) *Duties.*

(aa) *Generally.*

42. The general business of superintendents of mercantile marine offices is— To afford facilities for engaging seamen by keeping registries of their names and characters: To superintend and facilitate their engagement and discharge according to the act: To provide means for securing their presence on board at the proper times: To facilitate the making of sea-apprenticeships: To perform such other duties as to merchant shipping and seamen as may be committed to them. See M. S. Act, 1854 (c. 104), s. 124, as amended by M. S. Act Amendment Act, 1862 (c. 63), s. 15.

43. As to the duties of superintendents in witnessing shipping agreements with crews and explaining the same to them, see tit. SEAMEN, Pt. II. c. 1, p. 2140.

(bb) *Transmission of Documents.*

44. All superintendents of mercantile marine offices and officers of customs, shall take charge of all documents under this act, delivered, transmitted to, or retained by them, shall keep them for such time as may be necessary for any proper purpose, and, if required, produce them, and shall then transmit them to the registrar-general of shipping and seamen to be by him recorded. See M. S. Act, 1854 (c. 104), s. 277.

(cc) *Arbitration.*

45. Every superintendent shall hear and decide any question whatever between a master or owner and any of his crew which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall in any legal proceeding which may be taken in the matter before any court of justice be deemed conclusive as to the rights of the parties; and no such submission or award shall require a stamp; and any document purporting to be such submission or award shall be *prima facie* evidence thereof. See M. S. Act, 1854 (c. 104), s. 173.

46. As to the duty of superintendents to hear and decide disputes between owners and skippers of fishing vessels and fishermen under the M. S. (Fishing Boats) Act, 1863 (c. 41), see tit. SEAMEN, Pt. II. No. 58, p. 2135.

(dd) *Sea Apprentices.*

47. For provisions as to superintendents of local marine offices giving assistance in binding sea apprentices, and as to their fees in respect thereof, see M. S. Act, 1854 (c. 104), s. 141.

48. As to indentures of sea apprentices, and the production thereof to a superintendent, see tit. SEAMEN, Pt. II. c. 6, p. 2130; and as to fishing boats' apprentices, *Ibid.*

4. *Fees.**

49. Such fees, not exceeding those in table P. in the schedule as are fixed by the Board of Trade, are payable upon all engagements and discharges effected before superintendents of local marine offices, and scales of fees are to be conspicuously placed in the shipping offices. See M. S. Act, 1854 (c. 104), s. 125, as

amended by M. S. Act Amendment Act, 1862 (c. 63), s. 15.

50. Every owner or master of a ship engaging or discharging any seaman before a superintendent of a mercantile marine office is to pay the fees, and may deduct in respect thereof from the wages of all but apprentices sums not exceeding those specified in table Q. in the schedule. See M. S. Act, 1854 (c. 104), s. 126.

51. Penalty not exceeding £20 against any superintendent, deputy superintendent, clerk or servant in any mercantile marine office, who demands any remuneration except the lawful fees. *Ibid.* s. 127.

52. For provisions as to the fees of superintendents for giving assistance in binding sea apprentices, *Ibid.* s. 141.

4. Examination and Certificates of Masters, Officers and Men.

1. *Generally.†*

53. Local marine boards, under the supervision of the Board of Trade, provide for the examination at their respective ports of persons intending to become masters or mates of foreign-going ships, or of home-trade passenger ships, who wish certificates of competency, appoint examiners and regulate the examinations; and members of the local marine board may be present and assist thereat. *Ibid.* ss. 131, 132.

54. No foreign-going ship or home-trade passenger ship shall go to sea from any port in the United Kingdom unless the master, and in the case of a foreign-going ship the first and second mates, or the only mate, and in the case of a home-trade passenger ship the first or only mate, possess certificates of competency or service appropriate to their several stations in such ship, or of a higher grade;

* (19) For tables of fees payable to superintendents sanctioned by Board of Trade, see Board of Trade Instructions to Superintendents of November, 1884, pp. 391—393, 484—486.

† (20) As to the application for examination, examination and grant of certificates to masters, mates, and engineers, and the practice thereon, *Ibid.* August, 1879, p. 57.

(21) As to examinations as to colour blindness and colour tests, and the ports where they may take place, see Board of Trade Instructions to Examiners and Superintendents

of May, 1880, and January, 1886.

(22) As to service in auxiliary scrawhaling vessels being counted as service in sailing, not steam, vessels, *Ibid.* July, 1881.

(23) The superintendent of the mercantile marine office delivers the certificate to the owner, agent, or master on his applying for it at the mercantile marine office, and paying the expense (if any). If not taken up in fourteen days the fact is reported to the board. See Board of Trade Instructions as to Passenger Accommodation, &c., B. 1148 : 1 : 79, p. 7, par. 2.

and no such ship, if of one hundred tons burden or upwards shall go to sea therefrom, unless at least one officer besides the master possesses a certificate appropriate to the grade of only mate therein or a higher grade. Penalty for breach against any person so going to sea as such master or mate without possessing such certificate, and against any person so employing such master or mate, not exceeding £50. *Ibid.* s. 136.

55. Every steamer required to have a certificated master shall also have a certificated engineer or engineers. (1) Engineer's certificates are of two grades, first-class and second-class; (2) Every foreign-going steamer of 100 nominal horse-power or upwards must have as its first engineer an engineer possessing a first-class certificate, and as its second engineer an engineer possessing a first or second-class certificate; (3) Every foreign-going steamer of less than 100 nominal horse-power must have as its first or only engineer an engineer possessing a first or second-class certificate; (4) Every sea-going home-trade passenger steamer must have as its first or only engineer an engineer possessing a first or second-class certificate. Penalty against every person who, having been engaged to serve in any of the above capacities in any such steamer, goes to sea in that capacity without having the certificate required, and against every person who employs any such person in any of the above capacities in such ship without ascertaining that he has such certificate, not exceeding £50. See M. S. Act Amendment Act, 1862 (c. 63), s. 5.

56. As to the powers of the Board of Trade to make rules for the conduct of such examinations of masters, mates and engineers, and the qualifications of the applicants; and as to the qualification of

the examiners, their number, remuneration, appointment and removal, see M. S. Act, 1854 (c. 104), s. 132, as amended as to engineers by the M. S. Act Amendment Act, 1862 (c. 63), s. 6.

57. As to the powers of the Board of Trade to require and authorize the local marine boards for two or more ports to act together as one board for conducting examinations, see M. S. Act, 1854 (c. 104), s. 132.

58. The Board of Trade, where serious inconvenience exists at a port from the distance, applicants for certificates have to travel to be examined, may, with the concurrence of the local marine board, send the examiners of that board to the port where such inconvenience exists; and the examiners shall proceed and there examine the applicants in the presence of such persons (if any) as the Board of Trade may appoint; and such examinations shall be conducted as other examinations under the act. See M. S. Act Amendment Act, 1862 (c. 63), s. 17.

2. *Not under Local Marine Boards.*

59. When the business of a mercantile marine office is not conducted under a local marine board, the Board of Trade may establish a mercantile marine office, procure the requisite buildings and properly appoint the requisite superintendents, deputies, clerks and servants, and exercise all such powers as to the holding of examinations for certificates of competency as masters, mates or engineers, as exercised by a local marine board. See the M. S. Act, 1873 (c. 85), s. 10.

3. *In British Possessions Abroad.**

60. For provisions enabling her Majesty, by Order in Council, to declare

* (24) Certificates of competency of the following grades which have been granted in the following colonies since the dates specified below, and under an Order in Council issued in accordance with the provisions of sect. 8 of the M. S. (Colonial) Act, 1869 (c. 11), are now recognized by the Board of Trade as of the same validity as if granted in the United Kingdom, viz.:—VICTORIA: master, first mate, only mate, second mate, first class engineer and second class engineer; Jan. 4, 1870. DOMINION OF CANADA: master and mate (equivalent to first mate in the United Kingdom); August 19, 1871. NEW ZEALAND: master extra, master, first mate, only mate, second mate, first class engineer extra, first class engineer and second class engineer;

May 1, 1872. NEW SOUTH WALES: master, first mate, second mate, first class engineer and second class engineer; June 18, 1872. SOUTH AUSTRALIA: master, first mate, only mate, second mate, first class engineer and second class engineer; May 12, 1874. MALTA and its Dependencies: master, first mate, second mate, first class engineer and second class engineer; May 12, 1874. TASMANIA: master extra, master, first mate, only mate, second mate, first class engineer and second class engineer; April 1, 1876. BENGAL: master, first mate, only mate, second mate, first class engineer and second class engineer; June 27, 1876. NEWFOUNDLAND: master, first mate, only mate, second mate; May 14, 1877. BOMBAY: master, first mate, only

that the certificates of competency of masters, mates and engineers granted under the authority of British Colonial legislatures, after examination shall be of the same force as if granted under the Merchant Shipping Acts, see the Merchant Shipping (Colonial) Act, 1869 (c. 11), s. 8.

4. Of British Fishing Boats.

61. The Board of Trade may issue certificates under sect. 134 of the M. S. Act, 1854, that the holder thereof is competent to act as skipper, or as second hand of fishing boats, or of a particular class of fishing boats, in every case according to the report made by the local examiners with reference to the applicant for a certificate, and according as the Board of Trade may prescribe in any rules made by them under sect. 132 of the M. S. Act, 1854; but no skipper's certificate shall be granted to anyone who has not previously held a certificate as second hand for two months. See the M. S. (Fishing Boats) Act, 1883 (c. 41), s. 37.

62. Every such certificate shall only entitle the person to whom it is given to

be an officer of the class of fishing boats referred to in the certificate, and none other, and of the grade therein named, or of a lower grade. *Ibid.* s. 38.

63. The provisions in the M. S. Acts, 1854, with respect to the examination of applicants for certificates, the suspension and cancellation of certificates and inquiries into the conduct of the holders, and other provisions connected therewith, shall apply to the certificates under this act and their holders. *Ibid.* s. 39.

64. Every person who has before 1st September, 1883, served as a skipper or second hand in fishing boats to which this act applies, or is applied, or such other boats as the Board of Trade may think shall have afforded sufficient experience, shall be entitled to a certificate of service as skipper or second hand (as the case may be) of a fishing boat. *Ibid.* s. 40.

65. The Board of Trade may establish a register of skippers and second hands certificated under this act, and a copy or extract therefrom duly certified shall be evidence. *Ibid.* s. 41.

66. No fishing boat shall go to sea from any port in the United Kingdom unless the skipper thereof is holder of a

mate, second mate, first class engineer and second class engineer; July 11, 1877. QUEENSLAND: master, first mate, only mate, second mate, first class engineer and second class engineer; Oct. 1, 1877. See Board of Trade Instructions to Consuls, 1883, p. 17, par. 45.

(25) The provisions of s. 8 of the M. S. (Colonial) Act, 1869 (c. 11), have been extended to certificates of competency granted to masters, mates, and engineers by the Governor of Hong Kong. See Order in Council of December 31, 1883, in 15 Hertslet's Collection of Treaties, p. 995.

(26) As the colonial certificates of competency referred to are to have the same force as the similar certificates granted by the Board of Trade in the United Kingdom, they must be accepted as occupying in every respect the place of the latter, and as entitling their *bonâ fide* holders to act in the capacities stated on them, or any inferior (but not superior) capacity in any British ship all over the world without the possession of a Board of Trade certificate. Colonial certificates will have to be used, produced and delivered at the times and on the occasions at and on which imperial certificates of competency would have to be used, produced and delivered. See Board of Trade Instructions to Consuls, 1883, p. 17, par. 45.

(27) Consular officers are empowered by the Orders in Council under which these certificates have been recognized to demand, and, if necessary, detain, any such colonial certificate which they have reason to believe has been improperly issued, or has been forged, altered, cancelled, suspended, or to which the person using it is not justly entitled. Whenever this power is exercised a report of the facts and circumstances must be sent by the consul with the least possible delay to the Board of Trade and to the government of the possession in which the certificate was originally granted, or may purport to have been granted. As the withdrawal of a certificate would in some cases entail inconvenience, not only upon its possessor but also upon the owners of the ship and cargo, it is scarcely necessary to caution consuls that the exercise of the power should only be resorted to when the evidence is perfectly clear; and if the ship is bound to the United Kingdom and the report above mentioned has been sent to the possession, the Board of Trade shall nevertheless be informed of the facts. Every case of death of a colonial certificate-holder, which may come to the consul's knowledge, should be reported, and the certificate, if it has come into the consul's possession, forwarded to the government of the possession by which it was granted without delay. *Ibid.* p. 18, par. 46.

certificate of competency, or service under this act; penalty for breach against owner not exceeding £20, and against person acting as skipper, and anyone employing him not exceeding £20. See the M. S. (Fishing Boats) Act, 1883 (c. 41), s. 42.

5. *Certificates.*

(a) *Competency.*

67. The Board of Trade, subject to its powers to remit a case for further examination and testimonials in the cases of masters and mates, shall deliver to every applicant for a master's, mate's, or first or second-class engineer's certificate, duly reported by the examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of sobriety, experience, ability and general good conduct on board ship, a "certificate of competency," to the effect that he is competent to act as master, or as first, second or only mate of a foreign-going ship, or as master or mate of a home-trade passenger ship, or as first or second-class engineer, as the case may be. See M. S. Act, 1854 (c. 104), s. 134, as amended by the M. S. Act Amendment Act, 1862 (c. 63), s. 8.

(b) *A. B's.*

67a. As to certificates as able seamen, see tit. SEAMEN, Pt. I. c. 5, p. 2130.

(c) *Service.*

68. As to the masters and mates entitled to "certificates of service" in respect of services prior to 1st January, 1851, and as to the contents of such certificates, see M. S. Act, 1854 (c. 104), s. 135.

69. As to the engineers entitled to "certificates of service" in respect of services prior to 1st April, 1862, and as to the contents of such certificate, see M. S. Act Amendment Act, 1862 (c. 63), s. 9.

(d) *Rank.*

70. Every certificate of competency of a master or mate for a foreign-going ship is of a higher grade than that for a home-trade passenger ship, and entitles the holder to go to sea in the corresponding grade in such last ship; but the certificate for a home-trade passenger ship does not entitle the holder to go to sea as master or mate of a foreign-going ship. See M. S. Act, 1854 (c. 104), s. 137.

(e) *Record and Evidence.*

71. All certificates of competency or service shall be in duplicate, one part shall be delivered to the person entitled to it, and the other recorded by the registrar-general of shipping and seamen, or such other person as the Board of Trade appoints. The Board shall give to such officer notice of all orders for cancelling, or otherwise affecting any certificate, and the officer shall make a corresponding entry in the record of certificates; and a copy purporting to be certified by such officer of any certificate, shall be *prima facie* evidence thereof, and a similar copy of any entry so made shall be *prima facie* evidence of the truth of the contents of such entry. *Ibid.* s. 138, as amended as to engineers by M. S. Act Amendment Act, 1862 (c. 63), s. 10.

(f) *Production.*

72. The master of every foreign-going ship shall, on signing the agreement with his crew, produce to the superintendent of the mercantile marine office the certificates of competency or service which the master and his first and second or only mate are required to possess; and in the case of steamers the like certificates as to the engineers or engineer of such ship; and thereupon and on the due execution of the agreement, the superintendent shall sign and give the master a certificate to that effect. In the case of running agreements for foreign-going ships the superintendent shall, before the second and every subsequent voyage after the first commencement of the agreement, sign and give to the master, on his complying with the provisions herein contained with respect to such agreements, and producing to the superintendent the certificate of competency or service of any first, second or only mate then first engaged by him, and in the case of steamers the like certificates as to the engineers or engineer of such ships, a certificate to that effect. The master of every foreign-going ship shall, before proceeding to sea, produce the certificate so to be given to him by the superintendent to the collector or comptroller of customs, and no officer of customs shall clear any such ships outwards without such production. If any such ship attempts to go to sea without a clearance, any such officer may detain her until such certificate is produced. See M. S. Act, 1854 (c. 104), s. 161, as

amended by M. S. Act Amendment Act, 1862 (c. 63), ss. 10, 15.

73. The master or owner of every home-trade passenger ship shall, within twenty-one days after the 30th June and 31st December in every year, besides transmitting or delivering to a superintendent in the United Kingdom the agreement made within the six months preceding, shall also produce to the superintendent the certificates of competency or service of the master and his first or only mate, and in the case of steamers, of his engineers or engineer. The superintendent shall thereupon give to the master or owner a certificate of such delivery and production; and no officer of customs shall grant a clearance or transire for any such ship without the production of such certificate; and if any such ship attempts to ply or go to sea without such clearance or transire, any such officer may detain her until the certificate is produced. If the agreement for any home-trade ship is not delivered or transmitted by the master or owner to a superintendent at the time and in the manner hereby directed, such master or owner shall for every default incur a penalty not exceeding £5. See M. S. Act, 1854 (c. 104), s. 162, sub-ss. 2, 3, as amended as to engineers by M. S. Act Amendment Act, 1862 (c. 63), s. 10.

(g) *Lost.*

74. For provisions in case of lost certificate for a copy to be granted to have the effect of the original, see M. S. Act, 1854 (c. 104), s. 139, as amended as to engineers by M. S. Act Amendment Act, 1862 (c. 63), s. 10.

(h) *Fraud or Misuse.*

75. For penalties for false representations for the purpose of obtaining a certificate of competency or service, and for provisions making persons forging or altering, or fraudulently using or lending any certificate guilty of a misdemeanour. See M. S. Act, 1854 (c. 104), s. 140, as amended as to engineers by M. S. Act Amendment Act, 1862 (c. 63), s. 10.

6. *Fees.**

76. The applicants for examination are to pay such fees, not exceeding those in

tables R. and B. in the schedules, and to such persons as the Board of Trade directs. See M. S. Act, 1854 (c. 104), s. 133, as amended as to engineers by M. S. Act Amendment Act, 1862 (c. 63), s. 7.

76a. The salaries of the surveyors by whom examinations for certificates of masters, mates, and engineers are conducted, are paid out of monies provided by parliament (see M. S. Act, 1876 (c. 80), s. 39), and the fees paid by the applicants for examination are paid into the exchequer. See M. S. (Fees and Expenses) Act, 1880 (c. 22), s. 4.

5. General Register and Record Office of Seamen.

77. The "General Register and Record Office of Seamen" is at the Custom House, London. The Board of Trade has control over it. The Board of Trade may direct the business of the register office at any of the outports to be transacted at the mercantile marine office, or, with the consent of the Commissioners of Customs, at the custom house of the port, and may appoint the superintendent, or, with such consent, some officer of customs, to conduct the same, subject to the control of the Board of Trade. See M. S. Act, 1854 (c. 104), s. 271, as amended by M. S. Act Amendment Act, 1862 (c. 63), s. 15.

6. Wreck or Depositions Register.

78. There is at the Board of Trade a register called the "Wreck Register," in which all copies of depositions taken by receivers of wreck and other officers, and other documents relating to wrecks and such like casualties under the M. S. Acts are recorded. See Board of Trade Instructions as to Wrecks, Casualties, and Salvage, 1886.

7. Registrar-General of Shipping and Seamen.

79. The registrar-general of shipping and seamen, his assistants, clerks and

* (28) As to the reduction of fees for the examination of skippers and second hands for certificates of competency, see Board of

Trade Instructions to Superintendents of December, 1883.

servants are appointed by the Board of Trade, which, with the consent of the Treasury, regulates their salaries and allowances, and other necessary expenses. These are paid by the Treasury. See M. S. Act, 1854 (c. 104), s. 271, as amended by the M. S. Act, 1872 (c. 73), s. 4.

80. The registrar-general of shipping and seamen is to keep a register of all persons who serve in ships, subject to the provisions of this act. *Ibid.* s. 272; and *Ibid.* s. 4.

81. The collector or comptroller of customs at every port in the United Kingdom shall on or before the 1st February and the 1st August in every year transmit to the registrar-general of shipping and seamen a list of all ships registered in such port, and of those whose registers have been transferred or cancelled in such port since the last return. *Ibid.* s. 278; and *Ibid.* s. 4.

82. The registrar-general of shipping and seamen is to record all documents transmitted to him by superintendents of mercantile marine offices and officers of customs under this act, and, with or without payment of a fee as fixed by the Board of Trade, shall allow any person to inspect the same. In cases in which the production of the original of any such document in any court of justice or elsewhere is essential, he shall produce the same, and in other cases shall make and deliver to any person requiring it a certified copy of all or part of such document, and every copy purporting to be so made and certified shall be received in evidence, and have the effect of the original. See M. S. Act, 1854 (c. 104), s. 277.

8. Powers of Emigration Commissioners.

83. All the powers conferred and the duties imposed upon emigration commissioners by the provisions of the Passengers Act, 1855 (c. 119), and of the Passengers Act Amendment Act, 1863 (c. 51), are transferred to the Board of Trade by the M. S. Act, 1872 (c. 73), s. 5.

9. Inspectors.

84. The Board of Trade may appoint an inspector, to report to them upon the following matters:—(1) Upon the nature

and causes of any accident or damage which any ship has or is alleged to have sustained or caused. (2) Whether the provisions of this act, or any regulations under it have been complied with. (3) Whether the hull and machinery of any steamer are sufficient and in good condition. See M. S. Act, 1854 (c. 104), s. 14.

85. Every inspector (1) may go on board and inspect any ship, and any part thereof, or of the machinery, boats, equipments, or articles on board to which the provisions of this act apply, not unnecessarily detaining her; (2) may inspect any premises requisite to his report; (3) may, by summons under his hand, require the attendance of any person to be examined, and require returns to any inquiries; (4) may enforce the production of all books or documents; (5) may administer oaths, or take declarations of the truth of the statements made to him. Penalty for breach not exceeding £10. *Ibid.* s. 15.

85a. Every witness so summoned shall be allowed such expenses as would be allowed to any witness attending on subpoena to give evidence before any court of record, or if in Scotland on the court of justiciary, and in case of any dispute as to amount the same shall be referred to one of the masters of the Court of Queen's Bench in England or Ireland, or to the Queen's and Lord Treasurer's Remembrancer in Scotland, who, on request under the hand of the inspector, shall certify the proper amount. *Ibid.*

86. For provisions extending to the registrar and deputy-registrar of the High Court of Admiralty the powers conferred by this section on Masters of the Court of Queen's Bench, see the Admiralty Court Act, 1861 (c. 10), ss. 24, 25.

86a. Penalty for wilfully impeding any such inspector in the execution of his duty, not exceeding £10, and the offender may be seized and detained until he can be taken before a justice of the peace or other officer having jurisdiction. See M. S. Act, 1854 (c. 104), s. 16.

10. Medical Inspectors.

87. As to medical inspectors, their appointments by local marine boards, their duties and remuneration, see tit. SEAMEN, Pt. I. c. 12, p. 2133; and as to the inspection of medical stores, provisions, and water, see tit. OWNERS, Pt. IV. pp. 1298—1300.

11. Officers of Customs.

88. All officers of customs and superintendents of mercantile marine offices shall take charge of all documents delivered, transmitted to or retained by them under this act, shall keep them for such time as may be necessary for any proper purpose, and, if required, produce them, and shall then transmit them to the registrar-general of shipping and seamen, to be by him recorded. See M. S. Act, 1854 (c. 104), s. 277.

12. Other Officers.

89. Every officer of the Board of Trade, every commissioned officer of any of her Majesty's ships on full pay, every British consular officer, the registrar-general of seamen and his assistant, every chief officer of customs in her Majesty's dominions, and every superintendent, may, in cases where he suspects the law has not been complied with, exercise the following powers:—He may require the owner, master, or any of the crew, of any British ship to produce any official log-books or other documents relating to such crew or any member thereof in their possession or control; he may require any such master to produce a list of all persons on board his ship, and take copies of such official log-books, or documents, or of any part thereof; he may summon the crew of any such ship; he may summon the master to appear and give any explanation concerning such ship or her crew or the said official log-books or documents. Penalty for refusing or neglecting to obey any such requirements, not exceeding £20. *Ibid.* s. 13.

13. Chain Cables and Anchors Acts.

1. Generally.*

90. For provisions as to chain cables and anchors, see the Chain Cables and Anchors Acts, 1864 (c. 27), the Act of 1871 (c. 101), and the Act of 1874 (c. 51).

91. The Board of Trade may grant to public bodies or persons mentioned in the

schedule licences for the testing of chain cables. See Chain Cables and Anchors Act, 1864 (c. 27), s. 2.

92. Her Majesty, by Order in Council, may direct licences to be granted to other public bodies than those mentioned in the schedule for the testing of chain cables and anchors. *Ibid.* 1871 (c. 101), s. 3.

93. The Board of Trade may appoint inspectors of proving establishments, apparatus, and machinery under this act, and make regulations for the performance of such inspector's duties. *Ibid.* 1864 (c. 27), s. 3.

94. As to the fees on such licences, *Ibid.* s. 5.

95. As to the salaries and allowances of inspectors, *Ibid.* s. 6.

96. Whenever any ship is surveyed or detained by the Board of Trade under the M. S. Act, 1873, on the ground of alleged unseaworthiness, the Board of Trade may direct an inquiry into the conditions of the cables and the anchors, and if they have not been duly tested may make such further order as they may think fit before her release. *Ibid.* 1874 (c. 51), s. 5.

97. Licences for the testing of chain cables and anchors are to be renewed annually, after inspection of the machinery, &c., and on certificate of inspector. *Ibid.* 1864 (c. 27), s. 4.

98. As to the duties of testers of chain cables and anchors, the mode of testing same, the tests thereof to be approved by the Board of Trade, the charges for testing and affixing proof marks, the powers of testers to detain chain cables tested until the charges are paid, and the certificates to be given by testers, *Ibid.* ss. 6—10.

98a. As to the punishment for illegal stamping thereof, *Ibid.* s. 12.

99. As to the testing of every fifteen fathoms of chain, and the mode of doing so, *Ibid.* 1871 (c. 101), s. 5.

100. For the sale of proofs showing the breaking strain for chain cables, see schedule to Order in Council of May 12, 1874, approved by the Board of Trade, January 1, 1875.

101. Every contract for the sale of a chain cable implies a warranty that it has been duly tested and stamped, and the proof of its having been so is on the

* (29) See these acts set out in 2 Pollock & Bruce on Merch. Shipping (4th ed. by Maude & Poll.), pp. cclviii., cccxi. and cccxxviii.

(30) For the general conditions to be com-

plied with by owners of proving establishments in order to obtain licences under the act, see the Board of Trade Instructions as to Chain, Cables, and Anchors Acts, 1875. Office No. M. 532, 1875, p. 16.

seller. See the Chain Cables and Anchors Act, 1874 (c. 51), s. 4.

102. No maker or dealer in chain cables or anchors, or other person, is relieved from responsibility in respect of any chain cable or anchor to which, but for this act, he would have been subject. *Ibid.* 1864 (c. 27), s. 13.

103. As to the prohibition of sale of improved cables and anchors, and the penalties for using unlicensed testing machines, *Ibid.* 1871 (c. 101), ss. 7 and 10, and *Ibid.* 1874 (c. 51), s. 3.

104. This act does not extend to contracts of the Lords Commissioners of the Admiralty for the supply of chain cables or anchors for her Majesty's ships or dockyards. *Ibid.* 1864 (c. 27), s. 14.

2. Inquiry.

105. Whenever any ship is surveyed or detained by the Board of Trade under the M. S. Act, 1873 (c. 85), on the ground of alleged unseaworthiness, the Board of Trade may direct an inquiry into the conditions of the cables and anchors, and if they have not been duly tested may make such further order as they may think fit before her release. *Ibid.* 1874 (c. 51), s. 5.

3. Fees.

106. All fees paid to the Board of Trade and the Trinity House in pursuance of the Chain Cables and Anchors Acts, 1864 to 1874, are to be carried to the mercantile marine fund, and all expenses under these acts, including the salary of and allowances to inspectors are paid out of the mercantile marine fund. *Ibid.* s. 2.

14. Notice of apprehended Loss of Ship.

See tit. OWNERS, Pt. II. c. 39, p. 1252.

15. Notice of Casualty.

Ibid. c. 42, p. 1252.

16. Life-boats and Equipments, and Rewards for saving Life.

See tit. SALVAGE, c. 3, ss. 2, 3, p. 1794.

17. Measurement of Tonnage.

170. The duties imposed upon the Commissioners of Customs with respect to the

measurements of ships by sects. 23, 27, 28, 29 of the M. S. Act, 1854 (c. 104), and by sect. 14 of the M. S. Act Amendment Act, 1855 (c. 91), are transferred to the Board of Trade by the M. S. Act, 1872 (c. 73), s. 3.

171. As to measurement of ships, see tit. OWNERS, Pt. I. cc. 3 to 6, pp. 1184—1209.

18. Registration of Ships.

Ibid. cc. 3, 4, and 5, pp. 1184—1208.

19. Survey and Supervision of Passenger Ships and Boats.

Ibid. Pt. IV. cc. 11, 12, and 13, pp. 1281—1286.

20. Inquiries as to Loss of Life or Personal Injury.

See tit. SHIPPING CASUALTIES INVESTIGATIONS, p. 2195.

21. Detention and Survey of unsafe or unseaworthy Ships.

See tit. OWNERS, Pt. III. p. 1258.

22. Deck and Grain Cargoes and Dangerous Goods.

Ibid. Pt. V. p. 1323.

23. Pilots and Pilotage.

Ibid. Pt. VII. p. 1349, and tit. PILOTS, p. 1429.

24. Berthing of Crews.

See tit. OWNERS, Pt. I. c. 3, pp. 1190—1193.

25. Scales of Medicine for Merchant Ships.

Ibid. Pt. IV. c. 34, p. 1299.

26. Lime and Lemon Juice and Anti-scorbutics.

Ibid. c. 35, p. 1304.

27. Relief of Distressed Seamen and Claims upon Owners.

See tit. SEAMEN, Pt. IV. p. 2173.

28. Supervision of the Engagement, Discharging, Protection, and Discipline of Seamen, and as to Deceased Seamen.

See tit. SEAMEN, Pt. IV. p. 2124.

29. Inquiries into Shipping Casualties.

See tit. SHIPPING CASUALTIES INVESTIGATIONS, p. 2195.

30. Suspension and Cancellation of Masters' and Officers' Certificates.

Ibid. p. 2205.

Part III.—HARBOUR DEPARTMENT.

1. Generally.

172. For provisions transferring from the Admiralty to the Board of Trade their powers and duties relative to harbours and navigation under local and other acts, see the Harbours Transfer Act, 1862 (c. 69).

173. Sections 7 to 11 of the General Pier and Harbour Act, 1861 (c. 80), and all provisions relative thereto in any other act or provisional order of the Board of Trade, are to be construed as if the Board of Trade were named therein in lieu of the Admiralty. *Ibid.* s. 14.

174. As to the powers of the Lords Commissioners of the Admiralty to retain authority over piers in places where dock-yards, naval stations, and the like are situate, on giving a notice of their intention to do so to the Board of Trade, *Ibid.* s. 9.

175. For provisions for the transfer from the Commissioners of the Admiralty to the Board of Trade of the harbours of Portland, Dover (outer harbour), St. Catherine's, Jersey, and Alderney, and the works connected therewith in trust for the public service, see the Harbours Transfer Act, 1865 (c. 100).

176. The Harbour Department embraces the following subjects:—harbours, lighthouses, pilotage, protection of navigable channels, ports, &c., fisheries, local charges on shipping, registration of ships; provisional orders, piers and harbours; provisional orders; loans to harbour authorities; standards.* See the forthcoming Second Report and Evidence of Royal Commission on Loss of Life at Sea, 1886.

177. Passing tolls and differential dues were abolished from 1st January, 1862, and dues levied by charitable corporations were abolished from 1st January, 1872. See the Harbours and Passing Tolls, &c., Act, 1861 (c. 47).

178. For provisions facilitating the construction and improvement of harbours by authorizing loans to harbour authorities, *Ibid.*

178a. For provisions for the transfer of the management of the rights and interests of the crown in foreshores from the Commissioners of her Majesty's Woods and Forests to the Board of Trade, see the Crown Lands Act, 1866, c. 62.

2. Harbours, Docks and Piers.

1. Generally.†

179. As to the powers of the Board of Trade in connection with the works of the undertakers, see the General Pier and Harbour Act, 1861 (c. 80), and the Amendment Act, 1862 (c. 19), ss. 7—12, as amended by the Harbours Transfer Act, 1862 (c. 69), s. 14.

180. For provisions enabling the Board of Trade to exercise the powers relative to harbours and navigation given to the Admiralty by the Preliminary Inquiries Act, 1851 (c. 49), see the Harbours Transfer Act, 1862 (c. 69), s. 3.

181. For provisions exempting the Thames and Mersey from the operation of the act, *Ibid.* s. 10.

182. As to the meaning of the terms "harbour, dock, or pier," "harbour master," "the undertakers," and other terms in this act, see the Harbours,

* (31) Quarantine, Salvage, and Wreck have recently been transferred from the Marine Department to this Department.

† (32) The principal acts relating to the construction of harbours, docks, and piers are—46 Geo. 3, c. 153; 54 Geo. 3, c. 159;

10 Vict. c. 27; 24 & 25 Vict. cc. 45, 47, 80; The Harbours Transfer Act, 1862 (c. 69); 25 & 26 Vict. cc. 30, 51, 66, 69; 26 & 27 Vict. c. 81; The Harbours Transfer Act, 1865 (c. 100); 29 & 30 Vict. c. 30; and 38 & 39 Vict. c. 89.

Docks, and Piers Clauses Act, 1847 (c. 27), s. 2.

183. As to the powers of the Board of Trade in reference to provisional orders, and over the works of the undertakers, see the General Pier and Harbour Act, 1861, Amendment Act, 1862 (c. 19), ss. 19—27.

184. As to provisional orders of the Board of Trade and the mode of application for the same, *Ibid.* ss. 2—6.

185. For provisions for the protection of harbours, docks, and piers from fire or other injury, removal of combustible matter, guarding of the same during the night, penalties for breach of such regulations and powers to search for and extinguish fires and lights, see the Harbours, Docks, and Piers Clauses Act, 1847 (c. 27), ss. 69—72.

186. As to the providing of life-boats, mortars, rockets, and apparatus by persons authorized under this act to construct harbours, docks, or piers, *Ibid.* ss. 16, 17, as amended by the Harbours Transfer Act, 1861 (c. 69), s. 8.

187. As to the buoys to be laid down by the undertakers for the guidance of vessels within the limits of the harbour, dock, or pier, under the direction of the Trinity House, the Corporation of Dublin, or the Commissioners of Northern Lights, and prohibiting the undertakers from erecting lighthouse, beacon, or sea marks without the sanction of those authorities, see the Harbours, Docks, and Piers Clauses Act, 1847 (c. 27), ss. 77, 78.

188. For penalties against persons discharging any ballast or other matter into a harbour, dock or pier, *Ibid.* s. 73.

189. For penalties not exceeding £5 against wharfingers or other servants of the undertakers, or of their lessees, or the servants of such lessees, giving undue preference, or showing any partiality in loading or unloading goods on any of the quays, wharfs, or other works belonging to the undertakers, *Ibid.* s. 67.

190. As to tender of amends before action brought, and after action brought payment into court of money by anyone trespassing or doing any wrongful act while in the execution of this or the special act, or any act incorporated therewith, *Ibid.* s. 91.

191. For penalties not exceeding £5 for misconduct of harbour master, or any of his assistants, *Ibid.* s. 54.

192. Penalty not exceeding £5 against any person other than the harbour master wilfully cutting, breaking, or destroying

the mooring or fastening of any vessel in the harbour or dock, or at or near the pier. *Ibid.* s. 62.

193. For provisions authorizing the undertakers to make bye-laws for regulating the admission of vessels into or near the harbour, dock, or pier, and their removal therefrom, and their government therein, and for preventing injury or damage to vessels or goods therein, *Ibid.* s. 83; for the ratification, alteration, enforcement, and proof of such bye-laws, see ss. 84—90.

194. As to rates and audit of accounts, *Ibid.* ss. 25—50; and the General Pier and Harbour Act, 1861 (c. 80); and the Amendment Act, 1862 (c. 19), ss. 13—18.

195. As to damage to works of undertakers, see tit. COLLISION, Pt. VIII. c. 3, p. 282.

196. As to the jurisdiction of magistrates thereon, *Ibid.* Pt. II. c. 9, p. 199.

197. As to unavoidable damage to ditto, *Ibid.* Pt. III. c. 3, p. 204.

198. As to the powers of harbour, dock, and pier masters in reference to vessels mooring, docking or unmooring, or anchored or moored, *Ibid.* Pt. VIII. c. 3, p. 285, and in particular localities, *Ibid.* Pt. IX. p. 180.

199. As to the responsibility generally of owners and masters to harbour, dock and pier masters, see tit. OWNERS, Pt. II. c. 6, p. 1233.

200. As to the powers of harbour, dock and pier masters in regard to the removal of vessels and goods, and of wreck and other obstructions, see tit. WRECK.

200a. The powers of the Board of Trade, under the Customs Consolidation Act, 1853 (c. 107), and the Harbours Transfer Act, 1862 (c. 69), s. 17, to appoint ports and declare their limits, are not limited to revenue purposes only; nor are such powers confined to ports in their merely geographical sense. *Nicholson v. Williams*, L. R. 6 Q. B. 632; 40 L. J. M. C. 159; *Kingston-upon-Hull (Justices) v. Nicholson*. 19 W. R. 973.

2. Powers of Harbour, Dock, and Pier Masters.

(a) Generally.

201. As to the powers of harbour, dock, and pier masters in reference to vessels mooring, docking, or unmooring, or anchored or moored, see tit. COLLISION, Pt. VIII. c. 3, pp. 284—291.

202. The harbour master may give

directions for regulating the quantity of ballast or dead weight in the hold which each vessel in or at the harbour, dock, or pier shall have during the delivery of her cargo, or after having discharged the same. See the Harbours, Docks, and Piers Clauses Act, 1847 (c. 27), s. 52.

(b) *Floats of Timber.*

203. As to damage by floats of timber, and the removal thereof when causing obstruction, see tit. COLLISION, Pt. IV. p. 240, and tit. WRECK, p. 2333.

See also No. 226, p. 2264, and Nos. 260, 261, p. 2266.

(c) *Hawsers, Tow-lines and Fasts.*

204. Every vessel in the harbour or dock, or at or near the pier, shall have substantial hawsers, tow-lines, and fasts fixed to the dolphins, booms, buoys, or mooring posts, when required by the harbour master. Penalty for breach against the master, after notice from the harbour master, not exceeding £10. See the Harbours, Docks, and Piers Clauses Act, 1847 (c. 27), s. 61.

(d) *Removal of Vessels after discharging.*

205. The master of every vessel entering the harbour or dock to discharge cargo shall cause her to be so discharged as soon as convenient, and, after being so discharged, to be removed, without loss of time, into that part of the harbour or dock set apart for light vessels, and which is to be set apart accordingly. Penalty against master for breach, after twenty-four hours' notice signed by the harbour master, not exceeding £10, and the harbour master may cause such vessel to be so removed, and recover the expenses from the master. *Ibid.* s. 64.

(e) *Removal of Vessels to repair or clean Works.*

206. Whenever the undertakers deem it necessary, for repairing or cleansing the harbour, dock, or pier, that any vessel should be removed, the master shall, within three days after notice in writing, signed by the harbour master, remove his vessel accordingly. Penalty for breach, not exceeding £5. *Ibid.*

207. If the master cannot be found, or neglects or refuses to remove the vessel as required, the harbour master may remove her, and the expenses of such removal shall be paid to the undertakers by the owner or master; but previous to the repairs the harbour master shall give three days' notice of such repairs, and of the necessity for such removal to the collector and comptroller of the customs of the district, and cause a like notice to be affixed on some conspicuous part of such custom house and of the office of the undertakers. *Ibid.* s. 65.

(f) *Removal of Goods.*

208. As to the removal of goods, and powers to charge the owner with or sell the goods for the expenses of removal, *Ibid.* s. 68.

(g) *Removal of Vessels, Wrecks and other Obstructions.*

See tit. WRECK.

3. Thames Conservancy.*

209. For the principal acts of parliament relating to the Thames, see the Thames Act, 1810 (c. 204), the Thames Conservancy Act, 1857 (c. 147), the Watermen and Lightermen's Amendment Act,

* (33) The different bodies exercising jurisdiction on the banks and waters of the Thames are THE CONSERVATORS OF THE THAMES, exercising the general powers of a harbour and conservancy board over the lower river and estuary, as well as those of conservancy on the upper river as far as Cricklade; THE TRINITY HOUSE, which licences pilots for the river and its approaches, and maintains the lighthouses and buoys thereon; the Watermen's Company, the members of which have a monopoly of the navigation of craft plying between Teddington and Gravesend; the Board of Trade, which has certain powers in respect of passenger-steamboats on the Thames, in com-

mon with those over other passenger steamers, and is also the department of the Government to which under the acts relating to the Conservancy Board and the Trinity House certain questions arising under these acts are referred; and THE METROPOLITAN POLICE. See the Report of 16 June, 1879, of the Committee appointed by the Board of Trade to inquire into the Navigation of the Thames, presented to Parliament, Sess. Paper, C. 2338, p. xii.

(34) The Conservators of the Thames consists of the lord mayor, two aldermen, four common councilmen, the deputy master of the Trinity House, two conservators appointed by the Admiralty, one by the Board

1859 (c. 133, L.), the Thames Conservancy Act, 1864 (c. 113), the Thames Navigation Act, 1866 (c. 89), the Thames Conservancy Act, 1867 (c. 101, L.), the Thames Navigation Act, 1870 (c. 149, L.), the Thames Conservancy Act, 1878 (c. 216, L.), the Commissioners of Woods (Thames Piers) Act, 1879 (c. 73), the Thames Deep Water Dock Act, 1881 (c. 142, L.), the Thames Preservation Act, 1885 (c. 76).

210. This Act and the Thames Conservancy Acts, 1857 to 1880, may be cited together as the Thames Acts, 1857—1878, and shall be read as one act. See the Thames Act, 1878 (c. 216, L.), s. 1.

211. Sects. 63 and 64 of the Thames Navigation Act, 1866, are altered from three to ten miles. *Ibid.* s. 3.

212. Sect. 7 of the Thames Navigation Act, 1870, is repealed by *Ibid.*

213. For provisions appointing conservators for the management of the Thames and regulating their appointment, powers, management and duties, see the Thames Acts, 1857—1878.

214. For further provisions as to the election of conservators as to ferries, pleasure-boats, improvements of bridges, inspection of steam-boats' pier at Gravesend, tonnage-dues, bye-laws, &c., see the Thames Act, 1870 (c. 149, L.).

215. As to the powers of the conservators to make bye-laws, see tit. COLLISION, Pt. IX. p. 301.

216. The jurisdiction of the conservators

extends from Cricklade in Wiltshire to Yantlet Creek in Kent. See Bye-laws of 1872, No. 2.

217. For powers of the conservators as to public inquiries, ballastage, buoyage, beaconage, lighting, discharge of colliers, fisheries, &c., see the Thames Act, 1864 (c. 113).

217*a*. For further provisions as to ballastage and sewage pollution, *Ibid.*; and 19 Geo. 2, c. 22; 34 & 35 Hen. 8, c. 9, s. 6; and Thames Act, 1866 (c. 89); and see No. 323, p. 2270.

218. For provisions extending the powers of the Metropolitan Board of Works for the purification of the Thames and the main drainage of the metropolis, see the Metropolitan Local Management Acts, 1855 and 1858 (cc. 120 and 104).

219. As to watermen, regulations as to apprenticeship, &c., see the Thames Act, 1864 (c. 113).

220. For powers to conservators to appoint one of their officers to assist a harbour master or deputy harbour master in the execution of his duties, and with similar powers, see the Thames Act, 1878 (c. 216, L.), s. 6.

221. As to conservators in cases of emergency, of which they are the sole judges, exercising the powers conferred by sect. 8 of the Thames Act, 1857, without having given notice as therein provided, see the Thames Act, 1870 (c. 149, L.), s. 27.

of Trade, and one by the Trinity House. See the Report of Harbour Authorities, ordered by the House of Commons to be printed, 17th August, 1883, Sess. Paper, No. 313, p. xxxii.

(35) As to the powers of the conservators, *Ibid.*

(36) The Watermen's Company is an old guild dating from the 14th century. The acts relating to the company were, in 1827, repealed and consolidated by 7 & 8 Geo. 4, c. 75. The principal act now governing the company is 22 & 23 Vict. c. 133. In 1860, a code of bye-laws was made by the company under this act, and approved by the Conservators of the Thames. The 27 & 28 Vict. c. cxiii, contains provisions affecting the company. *Ibid.* p. xli.

(37) See further as to the powers and authorities and the extent of the monopoly of this company and recommendations thereon, *Ibid.* pp. xli—xlviii.

(38) As to the powers and authorities of the Trinity House in reference to pilotage in the Thames, and recommending the abolition of compulsory pilotage above Gravesend,

Ibid. p. xxxiv.

(39) As to the staff of the conservators, *Ibid.* p. xxxiii.

(40) As to passenger steamers on the river Thames, and appliances for saving life in cases of emergency, *Ibid.* p. xxix.

(41) The Thames Conservancy Bye-laws, allowed by Order in Council of Feb. 5, 1872, annul all previous bye-laws of the Conservators, excepting those of Feb. 4, 1785, and Jan. 23, 1860, as to fisheries, and those of 1869 for the regulation of the Upper Thames. Certain of the bye-laws of Feb. 5, 1872, are amended by bye-laws of March 15, 1875; July 11, 1877; and March 18, 1880.

(42) As to the annulling of certain of these bye-laws and that of Nov. 20, 1873, see tit. COLLISION, p. 300, note 475.

(43) The Conservancy Bye-laws of Nov. 28, 1874, and of May 17, 1879, relate only to tolls and ferries above Teddington Lock.

(44) By various bye-laws the portion of the river from Cricklade to the City Stone, near Staines, is called the "Upper River" or "Upper View." See L. R. Index to *London Gazette*, anno 1885, p. 1700.

222. For provisions for making a dock and works at Dagenham in Essex, with powers to the company to make bye-laws, and as to powers of dock masters, see the Thames Deep Water Docks Act, 1881 (c. 142, L.).

223. As to the upper navigation and the transfer to the conservators of the works and powers of the upper navigation commissioners, see the Thames Act, 1866 (c. 89).

224. For provisions for the navigation of the Thames and regulating the pleasure traffic therein above Teddington Lock, the making of bye-laws, &c., see the Thames Preservation Act, 1885 (c. 76).

225. As to offences in the Thames or on board vessels in the Thames and docks thereof, see 2 & 3 Vict. c. 47, ss. 26—37.

226. For provisions as to the navigation of the Thames by rafts or floats of timber, and of what dimensions, see the Thames Conservancy Bye-laws, allowed by Order in Council of February 5, 1872, No. 13.

227. As to the powers and duties of harbour master in the Thames, see tit. COLLISION, p. 305.

227*a*. As to the conservancy bye-laws connected with collision, and the cases decided thereon, *Ibid.* pp. 300—308.

228. For provisions exempting from the operation of this act (transferring the powers of the Admiralty over harbours and navigation to the Board of Trade) sect. 3 of the Thames Act, 20 & 21 Vict. c. 147, L., empowering the Admiralty to appoint two conservators, see the Harbours Transfer Act, 1862 (c. 69), s. 10.

228*a*. *Held*, that a dumb barge is not a "vessel" within the meaning of ss. 100 and 101 of the London and St. Katharine Docks Act, 1864 (c. clxxviii), notwithstanding the definition of the word "vessel" in the interpretation clause (s. 3) of the Harbours, Docks and Piers Clauses Act, 1847, incorporated in the former act, and consequently that the owner was not liable to a penalty for allowing her to remain in the docks regulated by the former act without any person on board. *Hedges v. London and St. Katharine Docks Co.*, 16 Q. B. D. 597.

4. The Mersey Docks and Harbour Board.

1. Generally.*

229. The principal acts now in force relating to the Mersey are—The Birkenhead Docks Act, 1855 (c. 171, L.); the Mersey Docks and Harbour Act, 1857 (c. 162, L.) (consolidating the Liverpool and Birkenhead Docks in one estate, and incorporating the Mersey Docks and Harbour Board); The Mersey Docks and Harbour (Works) Act, 1858 (c. 90, L.); the Mersey Docks Acts Consolidation Act, 1858 (c. 92, L.); the Mersey Docks (Money) Act, 1859 (c. 20, L.); the Mersey Docks (Ferry Accommodation) Act, 1860 (c. 150, L.); the Mersey Docks (Corporation Purchase) Act, 1861 (c. 188, L.); the Mersey Docks Act, 1864 (c. 213, L.); the Mersey Docks (Various Powers) Act, 1867 (c. 200, L.); the Mersey Docks Act, 1874 (c. 30, L.); the 37 & 38 Vict. c. 52, for preventing collisions in and near the

* (45) The acts relating to the Mersey prior to 1857 are repealed by the Mersey Docks Consolidation Act, 1858 (c. 92, L.), excepting sects. 31 to 39, and 56 and 57 of the Birkenhead Docks Act, 1855 (c. 171, L.).

(46) This Act of 1858 also repeals part of sects. 22 and 57, and the whole of sects. 6, 14, and 15 of the Mersey Docks and Harbour Act, 1857 (c. 162, L.).

(47) The Act of 1861 repeals sects. 38 and 39 of the Act of 1858 (c. 92, L.).

(48) The Mersey Docks Act, 1874 (c. 30, L.), s. 7, repeals sects. 239, 242, 243, and 244 of the Mersey Docks Acts Consolidation Act, 1858 (c. 92, L.), and Sched. D. thereto.

(49) The Act of 1881 amends sects. 21 and 22 of the Act of 1857 (c. 162, L.), and sects. 3, 21, 140, 247, and 254 of the Act of 1858 (c. 92, L.), and repeals sub-sects. 1 and 2 of sect. 21 and sects. 27 and 28, 150 to 158, and part of sect. 163 of the Act of 1858 (c. 92, L.).

(50) The Mersey Docks and Harbour Board consists of twenty-eight members, of whom twenty-four are elected by parties paying rates and dues on vessels and goods, one by the Mersey Conservancy Commissioners, one by the First Lord of the Admiralty, one by the President of the Board of Trade, and one by the Chancellor of the Duchy of Lancaster. See Return of Harbour Authorities, ordered by House of Commons to be printed, August 17, 1883, Sess. Paper, No. 313, p. 198.

(51) As to the anchorage dues, dues on ships, rates of dock warehouses and transit sheds, gridiron rates, miscellaneous rates, charges at the foreign animals' wharves and slaughter-houses, regulations and rates for the use of cranes and masting sheers for the Port of Liverpool, including Birkenhead, *Ibid.* pp. 191—274.

Mersey; the Mersey Docks Act, 1880 (c. 14, L.); and the Mersey Docks Act, 1881 (c. 49, L.)

230. For powers as to the making of bye-laws, see the Act of 1858 (c. 92, L.), ss. 221—229; the Act of 1860 (c. 150, L.), s. 12; and the Act of 1861 (c. 188, L.), s. 37.

231. Penalty not exceeding £10 against any person assaulting, resisting, or impeding any dock officer in the execution of his duty, disobeying his lawful orders, or using offensive language or inciting others to do so. See the Mersey Docks Acts Consolidation Act, 1858 (c. 92, L.), s. 97.

232. Penalty £100 against any person opening or attempting to open or shut any dock gate, sluice or clow without the harbour, dock or pier master's consent; and of £20 for opening any swing-bridge. *Ibid.* s. 51.

233. For rates and regulations in connexion with the high level coal trade at the Bramley Moor and Wellington Docks, and rates for the shipment of coal at the High Level Railway, Liverpool, see rates and regulations thereon of the Mersey Docks and Harbour Board of November, 1884.

234. For rules as to the weighing materials department and the duties of the superintendent and staff, *Ibid.* April 6, 1881.

235. For rules and charges as to the stages, wharves, and landing places at which foreign animals may be landed, see Bye-laws of the Mersey Docks and Harbour Board thereon of August, 1885.

236. For provisions for the working of appropriated berths, see Bye-laws of the Mersey Docks and Harbour Board, sanctioned by the Board of Trade, Aug. 25, 1880.

237. For provisions for the working of the Wallasey landing-stage, see Regulations of the Mersey Docks and Harbour Board of June 6 and July 4, 1878.

238. For provisions as to Birkenhead Dock Railways, see Bye-laws of the Mersey Docks and Harbour Board, sanctioned by the Board of Trade for seven years, December, 1885.

239. For provisions for the regulation and good government of master porters, with a schedule of their charges, *Ibid.* February, 1884.

240. For provisions for the regulation and government of the docks, basins, quays and other property of the board, *Ibid.* January, 1882.

241. For regulations and rates for the use of cranes, masting, sheers, and hoists on the dock quays, *Ibid.* February, 1886.

242. For provisions in regard to riggers and their charges for assisting vessels, *Ibid.* Dec. 2, 1882.

243. For provisions enabling the Board to run dry any dock, or lower the water therein for repair or cleaning it, and remove any vessel therefrom after notice to the master, without responsibility for any damage thereby caused to any such vessel or cargo, and for the recovery of the expenses of such removal, see the Mersey Docks Acts Consolidation Act, 1858 (c. 92, L. & P.), s. 56.

244. For provisions as to fires and lights, and smoking and combustible matters, and penalties for breach, *Ibid.* ss. 208—214; and Bye-laws of the Mersey Docks and Harbour Board, approved by the Board of Trade, Dec. 3, 1878, and Feb. 6, 1883; and Resolution of the Board of April 29, 1881.

244a. For provisions exempting from the operation of this act (transferring the powers of the Admiralty over harbours and navigation to the Board of Trade) the act of 5 & 6 Vict. (c. 110, L.), for better preserving the navigation of the Mersey, see the Harbours Transfer Act, 1862 (c. 69), s. 10.

2. Loading, Discharging, and Warehousing.

245. For provisions as to the loading and discharge of cargoes in the Mersey Docks, and the employment of master stevedores, master surveyors, and master pilots, see the Mersey Docks (Corporation Purchase) Act, 1861 (c. 188, L.), ss. 10—32.

245a. And as to transit, sheds, and warehouses, and the landing and warehousing of goods in the Mersey Docks, see the Mersey Docks Acts Consolidation Act, 1858 (c. 92, L.), ss. 65—192.

246. When any delay, which one of the harbour masters may consider unnecessary or inconvenient, takes place in loading or discharging any vessel the Board may employ persons to do so, or assist in doing so, and charge the owners with the expenses. Penalty against the master of any such vessel for not clearing deck of articles impeding the loading or discharging not exceeding £5. *Ibid.* s. 44.

247. For provisions as to quay rent of goods, or timber remaining on any quay or pier beyond the time therein men-

tioned, for penalty for the delay not exceeding £5 against the consignee, and for powers to the Board or their officers to warehouse and sell the goods and pay their rates and expenses out of the proceeds, see the Mersey Docks (Corporation Purchase) Act, 1861 (c. 188, L.), ss. 27—29, 32, 35.

3. Rates and Dues.

248. For provisions as to dock, harbour, wharf, and tonnage rates, and town dues, and the vessels liable thereto, in the Mersey, see the Mersey Docks Acts Consolidation Act, 1858 (c. 92, L.), ss. 230—274, and Return of Harbour Authorities, ordered by House of Commons to be printed, August 17, 1883, Sess. Paper, 313, pp. 199—274.

249. As to rates and differential rates, see the Mersey Docks (Various Powers) Act, 1867 (c. 206, L.), ss. 10—12, and Return of Harbour Authorities, *Ibid.*

250. As to rates generally, the scale of rates to be taken, and the powers to the Board to alter them, see the Mersey Docks Act, 1874 (c. 30, L.), ss. 3—12.

251. And as to powers of the Board to make agreements with owners of vessels trading and cargoes carried coastwise to or from the port of Liverpool, as to the town dues on such cargoes, *Ibid.* s. 12.

4. Graving Docks.

252. For provisions as to the Mersey graving docks and their rates, see the Mersey Docks Acts Consolidation Act, 1858 (c. 92, L.), ss. 275—280, and the Mersey Docks Act, 1864 (c. 213, L.), s. 6, and Return of Harbour Authorities, 1883, Sess. Paper, 313, p. 230.

253. For provisions as to graving docks, see Bye-laws thereon of the Mersey Docks and Harbour Board, approved by the Board of Trade, June 14, 1880.

5. Liverpool Landing Stages.

254. For regulations as to the Liverpool landing stages, see Bye-laws of the Mersey Docks and Harbour Board thereon, approved by the Board of Trade, July 29, 1876.

255. For further regulations of the Mersey Docks and Harbour Board in pursuance of the bye-laws for regulating the use of the landing stages, see Resolutions of the Board of 28th October, 1884, and 19th February, 1885.

6. Ballast, Rubbish, &c.

256. For provisions against ballast or rubbish being thrown into the river or any dock, or laid near the margin of any dock, and penalties for breach, see the Mersey Docks Acts Consolidation Act, 1858 (c. 92, L.), ss. 85, 86, 87, 101, 102.

257. As to the rates and regulations for the shipment of coal and salt and discharge of ballast at Birkenhead, see Rules of the Mersey Docks and Harbour Board of 17th January, 1884, and Return of Harbour Authorities, 1883, Sess. Paper, 313, p. 272.

258. As to the duties of the keepers and assistant keepers of the coal tips, ballast, weighing machines, &c. at Birkenhead, *Ibid.* February 10, 1881.

7. False Reports of Draught of Water.

259. Penalty on master for giving to dock officers false report as to draught of water, not exceeding £100. See Mersey Docks Acts Consolidation Act, 1858 (c. 92, L. & P.), s. 62.

8. Timber.

260. For provisions as to timber, and as to the discharge and removal thereof, *Ibid.* ss. 201—207, and the Act of 1861 (c. 188, L.), s. 23.

261. For provisions with regard to the discharge of timber in the docks appropriated for that purpose, and penalties for breach, see Bye-laws of the Mersey Docks and Harbour Board of April 27, 1866, Nos. 85 to 98.

9. Boats and Small Craft.

262. For provisions for the general government of owners and boatmen of boats and small craft, not being steam ferryboats plying for hire within the port, see Bye-laws of the Mersey Docks and Harbour Board, approved by the Board of Trade, July 11, 1878, and Resolutions of the Mersey Board of June 6, 1878.

10. Collision.

263. As to provisions relating to collision in the Mersey, see tit. COLLISION, Pt. I. p. 295.

11. Dangerous Goods.

See tit. OWNERS, Pt. V. c. 4, p. 1329.

12. *Pilots and Pilotage.*

See tit. OWNERS, Pt. VII. p. 1178; and tit. PILOTS, p. 1429.

13. *Penalties and their Recovery.*

264. When the importer or consignee of any goods, or the master of any vessel or other person is compelled under this act to pay any penalty or damages by reason of the act or default of the servant or of the owner of any goods, every person so in default shall be liable to pay such importer or other person the amount and the costs paid by him, and the amount may be recovered by distress of the goods of the person in default. See the Mersey Docks Acts Consolidation Act, 1858 (c. 92, L. & P.), s. 325.

See also tit. COLLISION, Pt. II. c. 9, p. 199.

5. The Humber.

1. *Generally.**

265. For provisions as to lights and steps to be taken to avoid collision in the Humber, see tit. COLLISION, Pt. IX. p. 295.

266. For provisions requiring Humber pilots in charge of any vessel lying in, or navigating any of the basins or docks, or the old haven or harbour of the port of Kingston-upon-Hull, or the entrances, or roadsteads near to such entrances, to obey the orders of the dock and haven master, or his assistants, relating to the mooring, or navigating of any such vessels (penalty for breach, £5), see 2 & 3 Will. 4, c. 105, s. 50.

267. For similar provisions requiring persons holding pilotage certificates from the Trinity House, Hull, similarly to conform themselves to all such directions, see Bye-laws of Trinity House, Hull, No. 13; confirmed by Order in Council of July 31, 1858.

268. For further provisions as to pilots in the Humber, see tit. OWNERS, Pt. VII. p. 1372; and tit. PILOTS, p. 1439.

269. As to Admiralty prohibition under 54 Geo. 3, c. 159, ss. 14, 16, of the removal of ballast from Spurn Point, see Notice of Lords' Commissioners of the Admiralty in London Gazettes of March

26, 1850, p. 907, and November 24, 1854, p. 3701.

269a. For further prohibition of removal of ballast between Hornsea and Spurn Point, or from Humber Haven and Hull Port, see Board of Trade Notices of August 13, 1869, p. 4570, and Sept. 10, 1869, p. 4992.

270. As a customs port, the river Humber is included in the ports of Grimsby and Hull. See Notice of Lords' Commissioners of the Admiralty in London Gazette of March 17, 1848, p. 1086.

2. *Hull Docks Bye-laws.*

271. For regulations as to the Hull docks, see the Bye-laws made under the authority of the Hull Docks Act, 1861, and the acts therein recited, allowed Oct. 23, 1861.

272. For the regulations as to Hull docks under the Petroleum Act, 1871 (c. 105), see Bye-laws of the Dock Company, confirmed by Board of Trade, Jan. 1, 1875.

273. For regulations in the Hull docks as to gunpowder and other explosives under the Explosives Act, 1875, *Ibid.* Oct. 25, 1876.

274. The bye-laws for the Hull docks, excepting those in force June 28, 1861, as to the time during which the dock bridges are to be opened and remain open, are repealed by the Bye-laws of the Company, confirmed Oct. 23, 1861, No. 1.

275. As to the limitations in regard to the heating of tar, pitch, and other combustible matter, see Bye-laws of the Hull Dock Company, confirmed Oct. 23, 1861, No. 2.

276. For regulations as to fires and lights, *Ibid.* Nos. 3—6.

277. For regulations as to ballast, *Ibid.* Nos. 8—10.

278. For regulations as to making fast to quay fenders, chain posts, or pillars, and as to mooring chains, *Ibid.* No. 13.

279. As to the times of using the southern entrance gates to the Humber dock and the other works of the company, *Ibid.* Nos. 15 and 16.

280. As to the removal of vessels from quay berths when work is suspended, *Ibid.* No. 19.

281. As to the gangway between and over vessels quay berthed, see Bye-laws

* (52) There are no bye-laws in force for the Humber beyond those relating to collision and lights, the Hull Docks Bye-laws,

and the Hull, Barnsley and West Riding Junction Railway and Dock Company's Bye-laws for Alexandra Docks.

of the Hull Dock Company, confirmed Oct. 23, 1861, Nos. 20 and 21.

282. As to removal of vessels after discharging cargo, *Ibid.* No. 23.

283. As to the owner or master of every vessel other than a barge or lighter being required to keep a watchman permanently on board, *Ibid.* No. 24.

284. As to the removal of fishing smacks, *Ibid.* No. 25.

285. As to the powers of the dock master and the duties of dock gatemen, *Ibid.* Nos. 26 and 27.

286. As to the deposit of goods on quays, *Ibid.* Nos. 28 and 29.

286a. As to penalties for infraction of bye-laws, *Ibid.* No. 30.

3. *Alexandra Docks.*

287. For regulations as to these docks, see Bye-laws of the Hull, Barnsley and West Riding Junction Railway Company, and their Dock Act of 1880.

6. The Tees.

288. The principal acts of parliament relating to the Tees are the Tees Conservancy Act, 1852 (c. 162, L.); *Ibid.* 1854 (c. 195, L.); *Ibid.* 1858 (c. 141, L.); *Ibid.* 1863 (c. 144, L.); *Ibid.* 1867 (c. 50, L.); *Ibid.* 1874 (c. 185, L.); *Ibid.* 1875 (c. 86, L.); *Ibid.* 1878 (c. 86, L.).*

288a. The Tees Conservancy Commissioners are the harbour authority for the regulation of the river Tees, including Stockton and Middlesborough, and were so constituted by the Tees Conservancy and Stockton Dock Act, 1852 (c. 162, L.), as amended by The Tees Conservancy Act, 1875 (c. 86, L.).

289. For provisions for making bye-laws, see the Tees Conservancy Act, 1867 (c. 50, L.), ss. 4, 55, 56.

290. The harbour master for the port of Stockton or Middlesboro' may, for the purpose of the power given him by s. 52 of the Harbours, Docks and Piers Clauses Act, 1847, give the direction therein authorized, verbally or in writing, as circumstances may require. Penalty, against master for breach, not exceeding £20.

See Tees Conservancy Act, 1867 (c. 50), s. 49.

291. For provisions relating to collisions in the Tees, see tit. COLLISION, Pt. IX. c. 6, p. 300.

7. The Tyne.

292. The principal acts relating to the Tyne are—The River Tyne Improvement Act, 1850 (c. 63, L.); the Tyne Improvement Acts, 1852 (c. 110, L.), 1857 (c. 164, L.), 1859 (c. 7, L.), 1861 (c. 91, L.), 1865 (c. 274, L.), 1866 (c. 91, L.), 1867 (c. 135, L.), 1870 (c. 90, L.), 1872 (cc. 13 and 131, L.), 1875 (c. 63, L.), 1877 (c. 93, L.), and 1881 (c. 52, L.).

293. The Tyne Improvement Commissioners are the harbour authority for the regulation of the river Tyne within the limits therein mentioned. See the River Tyne Improvement Act, 1850 (c. 63, L.), and the Tyne Improvement Act, 1861 (c. 91, L.).

294. The limits of the port of Newcastle-on-Tyne are defined by section 3 of the Tyne Improvement Act, 1850 (c. 63, L.).

295. As to the rights, duties and responsibilities of the commissioners, and their powers of making bye-laws, *Ibid.* s. 27.

296. For the bye-laws of August 14, 1884, allowed November 14, 1884, of the commissioners relating to collision in the Tyne and in Northumberland Dock, and cases thereon, see tit. COLLISION, Pt. IX. c. 8, in Addenda.

297. For provisions as to the taking in and discharging of ballast, rubbish, &c., see the River Tyne Improvement Act, 1850 (c. 63, L.), ss. 35, 37—44; the Act of 1857 (c. 164, L.), ss. 31—36; the Act of 1859 (c. 7, L.), s. 24; the Act of 1861 (c. 91, L.), s. 52; the Act of 1865 (c. 274, L.), ss. 42, 47; and the Bye-laws of the Tyne Improvement Commissioners of 1884, Nos. 48, 49, 58—72; and in the docks, *Ibid.* Nos. 121, 122, 130.

298. For provisions as to passengers, and for their benefit, *Ibid.* Nos. 50—56, 94, 95, 136.

299. For provisions generally as to the

p. 319.

(55) As to the Tyne Piers' Works, Northumberland, Coble Dean, and Tyne Docks, the Tyne rates and dues, tonnage rates, tolls on goods, and tariff of goods chargeable to package duty for the boroughs of Newcastle-upon-Tyne and Gateshead orange, quay dues, &c. *Ibid.*

* (53) The previous acts of 48 Geo. 3, c. 48, L., and 9 Geo. 4, c. 97, L., are repealed by the Act of 1852, c. 162, L.

(54) As to the rates, tolls, and dues, including anchorage and plankage dues for the Tees, see Return of Harbour Authorities, ordered by House of Commons to be printed, August 17, 1883, Sess. Paper, No. 313,

painting up of vessels and boats in the Tyne, *Ibid.* Nos. 76, 124, 131.

299a. As to their loading and unloading, *Ibid.* No. 77; as to smoking, *Ibid.* No. 81; as to explosives, *Ibid.* Nos. 82—85, 129; as to vessels in an unsafe or dangerous condition, *Ibid.* No. 189; as to riverside property, *Ibid.* No. 92; as to timber, *Ibid.* No. 99, 132, 135; as to registry of steam-tugs and notice of transfer, *Ibid.* Nos. 100, 101; as to steamers' hose and pipes for extinguishing fire, *Ibid.* No. 80; as to vessels at landing stages, *Ibid.* No. 93; as to injury to property of commissioners, *Ibid.* No. 98; and as to obstructing commissioners' servants or use of bad language, *Ibid.* No. 97.

300. As to pilots and pilotage in the Tyne, see tit. OWNERS, Pt. VII. p. 1387, and tit. PLOTS, p. 1441.

8. Acts of Parliament, and Provisional Orders, and Particulars as to other Localities.*

301. As to the powers of commissioners and other port and harbour authorities under the Board of Trade for the different ports and harbours of England, the limits of such ports and harbours, and the statutory provisions regulating the same, see the list of the several public and local acts relating to rivers, harbours, docks, ports, piers, quays, &c., in the United Kingdom, from 1801 to 1865, in Index to the Statutes, public and private, for that period, compiled by order of the Select Committee on the Library of the House of Lords, House of Lords Sessions Paper, No. 353, of 1867, Part II. classes 2 and 10. For further index thereof to end of 1877, see House of Lords Sessions Paper, No. 107, of 1878, classes 2 and 10.

302. For further indexes thereof to the present time, see indexes to the Annual Law Reports (Statutes), classes 2 and 10. See also for acts relating to harbours and lighthouses printed among public acts, the Chronological Table and Index of Statutes, 9th ed. anno 1884, App. VI. p. 1260.

9. Fisheries.

1. Fishing Vessels.

303. As to sea-going fishing vessels

generally, see tit. OWNERS, Pt. II. c. 11, p. 1235—same Title, Part and Chapter in Addenda; and tit. SEAMEN, Pt. I. p. 2134; and as to the engagement of their crew, *Ibid.* Pt. II. p. 2144.

304. As to the duties of fishing vessels generally with a view to avoid collision, see tit. COLLISION, Pt. IV. c. 11, p. 239.

305. As to the lights to be carried by such vessels, *Ibid.* Pt. V. c. 1, p. 247, and same Title, Part and Chapter in Addenda.

305a. As to the powers of Board of Trade Inspectors under the Sea Fisheries Acts, see the Sea Fisheries Act, 1875 (c. 15), s. 2.

2. Seal Fisheries.

306. For provisions enabling her Majesty in Council, when foreign states agree to similar provisions with regard to their ships and subjects, to direct that this act shall apply to the seal fishery within the area specified, or part thereof, see the Seal Fishing Act, 1875 (c. 18), s. 1.

307. For provisions for a close time for seal fishing, and penalty for breach not exceeding £500, *Ibid.* s. 2.

308. As to the recovery of penalties in England or Ireland before two justices, or by action in the Superior Courts, and in Scotland before the Sheriff Court or Court of Session (but two justices are not to award a penalty exceeding £100 and costs), and as to criminal proceedings under the act, *Ibid.* s. 1.

309. If the offence is committed with the fault or connivance of the master, that master, and if with the fault or connivance of the owner, that owner, is liable to the same penalty as the person committing the offence. *Ibid.* s. 4.

310. When the owner or master is adjudged to pay a penalty the court may, in addition to other powers, direct the penalty to be paid by distress or sale of the ship and her tackle. *Ibid.* s. 5.

311. As to what are seals within the act, *Ibid.* s. 6.

312. The Sea Fisheries Act, 1868, is amended, to the extent of providing that nothing in the former act shall limit the operation of the regulations for prevent-

* (56) For particulars in regard to harbours, docks, piers, dredging, lighting, buoying and other works in the United Kingdom, erected since 1863, the number, tonnage, and de-

scription of vessels using them, their income from tolls, dues and rates, and their scales of rates or charges, *Ibid.*

ing collisions at sea by the Sea Fisheries Act, 1875 (c. 15).

3. *Oyster and Mussel Fisheries.*

313. For provisions in reference to these fisheries, see the Sea Fisheries Act, 1875 (c. 15), s. 1, and Order in Council, in Law Reports, Index to London Gazette, anno 1885, p. 634.

4. *British and French Fishing Vessels.*

314. For the convention of August, 1839, between Great Britain and France as to the fisheries in the seas between those kingdoms, the act of 6 & 7 Vict. c. 79, for giving effect thereto, amended by 18 & 19 Vict. c. 101, the further convention of November 11, 1867, and the Sea Fisheries Act, 1868 (c. 45), giving effect thereto, and the North Sea Convention of 1882, and the Sea Fisheries Act, 1883 (c. 22), giving effect thereto, see tit. OWNERS, Pt. II. p. 1238.*

10. Lighthouses.

1. *General Lighthouse Authorities.*†

317. Subject to existing rights of local authorities and others the superintendence and management of all lighthouses, buoys and beacons is vested, in England, Wales, the Islands of Jersey, Guernsey, Sark and Alderney, the adjacent seas and islands, and in Heligoland and Gibraltar, in the Trinity House. In Scotland, and the adjacent seas and islands, and in the Isle of Man, in the Commissioners of Northern Lighthouses. In Ireland, and the adjacent seas and islands, in the Port of Dublin Corporation. The Trinity House, these commissioners, and this corporation are termed "general lighthouse authorities." See M. S. Act, 1854 (c. 104), s. 389.

318. The Commissioners of Northern Lighthouses are defined and made a corporate body, with power to elect certain new members. *Ibid.* ss. 390 and 391.

319. Each of the general lighthouse authorities, after notice, shall have power, with the sanction of the Board of Trade, to compel any local authority over lighthouses, buoys or beacons within the jurisdiction of such general lighthouse authority, to lay down buoys, or to remove or discontinue or alter any existing lighthouse or beacon; and no such local authority shall erect any new lighthouse, or remove, discontinue, or vary the character of any lighthouse or the mode of exhibiting lights therein, without the sanction of the general lighthouse authority. *Ibid.* s. 394.

320. The powers of the above s. 394, extend to local buoys and beacons other than those erected for temporary purposes, as well as to local lighthouses. See M. S. Act Amendment Act, 1862 (c. 63), s. 43, sub-s. 5.

321. If any such local authority fails to obey any direction given by such general lighthouse authority, her Majesty may, by Order in Council, direct such power to be transferred to such general lighthouse authority. See M. S. Act, 1854 (c. 104), s. 395.

322. Every local authority holding any lighthouse, buoy or beacon within the jurisdiction of any of the general lighthouse authorities may surrender the same to such general lighthouse authority, with the consent of the Board of Trade. *Ibid.* s. 413.

323. Her Majesty in Council may fix the establishments to be maintained by each of the general lighthouse authorities for lighthouses, buoys and beacons, and by the Trinity House for lastage and ballastage in the Thames. No increase of any establishment so fixed shall be made without the consent of the Board of Trade. *Ibid.* s. 420.

* The provisions of this last convention and act have, however, practically superseded the previous conventions and acts.

† (57) Besides these three public bodies there are numerous local authorities who deal with local lights. See, as to same, a description and list of Lighthouses of the World, 1884-5, 24th ed., by Alexander George Findlay, London, published by Laurie, p. 30.

(58) As to the lighthouse services in Austria, Belgium, Denmark, France, Holland, Norway, Russia, Spain, Sweden, Turkey, and the United States of America, *Ibid.*

(59) For a general description of lighthouse illumination and the different systems of the catoptric or reflector system, the dioptric or lens system, and the holophotal system, *Ibid.* pp. 8—26.

(60) For a complete list of the lighthouses of the world, the name and character of the various lights, their exact situation ascertained by bearings of the compass from the light, their height above, visibility in distance, and date of establishment, *Ibid.* pp. 32—201.

324. The general lighthouse authorities may, with the sanction of the Board of Trade, grant to persons who are discharged or retire, superannuations or compensations not exceeding the proportion of salary, under 4 & 5 Will. 4, c. 24, or under any other act for regulating the same. *Ibid.* s. 421.

325. Each of the general lighthouse authorities is to submit to the Board of Trade estimates of all expenses to be incurred by them, other than those allowed by Order in Council, and the Board of Trade may approve such estimates and accounts, with or without modification. *Ibid.* s. 422.

326. No other expenses than those so allowed of the general lighthouse authorities shall be paid out of the mercantile marine fund. *Ibid.* s. 423.

327. The ships and boats of any of the general lighthouse authorities, or the Board of Trade, are privileged to enter, and use any harbours, ports, docks or piers in the United Kingdom, without payment of any tolls, dues or rates of any kind. *Ibid.* s. 431, as amended by M. S. Act Amendment Act, 1862 (c. 63), s. 48.

328. Property belonging to any of the general lighthouse authorities or the Board of Trade, is exempt from all rates and taxes. See M. S. Act, 1854 (c. 104), s. 430.

329. "Lighthouses" in this act, in addition to the ordinary meaning of the word, includes floating and other lights exhibited for the guidance of ships, and "buoys and beacons" include all other marks and signs of the sea. *Ibid.* s. 2.

2. Erection, Continuation or Alteration.

(a) Generally.

330. Each of the general lighthouse authorities has power within its jurisdiction: (1) To erect new lighthouses, or alter or remove existing lighthouses. (2) To erect new, or alter or remove existing buoys or beacons. (3) To purchase land necessary for the above purposes, or for maintenance of the works, or residence of the light-keepers. (4) To vary the character of any lighthouse, or the mode of exhibiting lights therein. (5) To sell any land belonging to it. See M. S. Act, 1854 (c. 104), s. 404.

331. This power in the case of the commissioners or corporation is subject to the approval of the Trinity House,

and the sanction of the Board of Trade. *Ibid.* s. 405.

332. As to the mode of obtaining the sanction of the Board of Trade, *Ibid.* s. 406.

333. As to the communication by the Trinity House of the directions of the Board of Trade thereon to the commissioners or corporation, and their being bound to act in conformity therewith, *Ibid.* s. 407.

334. As to the power of the Trinity House to direct the commissioners or corporation: (1) To continue any existing lighthouses, buoys or beacons. (2) To erect new lighthouses, buoys or beacons, or alter or remove those already existing. (3) To vary the character of any lighthouse, or the mode of exhibiting lights therein, subject to the sanction of the Board of Trade, *Ibid.* s. 408.

335. As to the mode of obtaining such sanction of the Board of Trade, *Ibid.* s. 409.

336. The Lands Clauses Consolidation Act, 1845, and The Lands Clauses Consolidation Act (Scotland), 1845, are incorporated in this act and apply to all lighthouses to be constructed, and land purchased under the powers thereof. *Ibid.* s. 412.

(b) In the Channel Islands.

337. No powers given to the Trinity House in respect of any lighthouse, buoy or beacon to the islands of Guernsey or Jersey are to be exercised without the consent of her Majesty in Council. See M. S. Act, 1854 (c. 104), s. 411.

(c) Inspection.

338. The Board of Trade may, upon complaint, authorize persons to inspect any lighthouse, buoy or beacon under the management of the general lighthouse authorities; and all officers and others having the care, or concerned in the management thereof, shall furnish all such information and explanations required in relation thereto; and the general lighthouse authorities and their officers shall at all times give to the Board of Trade all such returns, or information in relation to the lighthouses, buoys or beacons within their jurisdiction, as the Board may require. See M. S. Act, 1854 (c. 104), s. 393.

339. The Trinity House and their servants may at all times inspect any lighthouses within the jurisdiction of the commissioners or corporation. See M. S. Act, 1854 (c. 104), s. 392.

340. Each of the general lighthouse authorities, or such persons as may be authorized by them, are to inspect all lights, buoys and beacons within their jurisdiction, but under any local authorities, and make such inquiries in respect thereof as they think fit; and all officers and others having the care thereof, or concerned therein, are to furnish all such information and explanations, and give all such returns, explanations, or information as may be required of them, and the results of such inspection shall be communicated to the local authority and to the Board of Trade; and such reports shall be laid before parliament. See M. S. Act Amendment Act, 1862 (c. 63), s. 43.

3. Damage to Lights, Buoys or Beacons.

341. Any person who injures any lighthouse or the lights exhibited therein, or any buoy or beacon; or removes, alters or destroys any light ship, buoy or beacon; or rides by, makes fast to, or runs foul of any light ship or buoy; penalty, in addition to the expenses of making good any damage so occasioned, not exceeding £50. See M. S. Act, 1854 (c. 104), s. 414.

4. False Lights.

342. General lighthouse authorities may prohibit false lights, and if not obeyed may extinguish such lights. *Ibid.* ss. 415, 416.

5. Forms and Instruments exempted from Duty.

343. All instruments by the sixth part of this act (*i.e.* as to lighthouses) required to be in forms sanctioned by the Board of Trade, if made in such form and used by or under the direction of that Board, or by the general lighthouse authorities, in carrying that part of this act into effect are exempt from stamp duty. *Ibid.* ss. 9, 430.

11. Light Dues.

1. Generally.

344. The light dues in force when this act came into operation are to be con-

tinued until altered. See M. S. Act, 1854 (c. 104), s. 396.

345. Light dues are payable by all ships except Queen's ships, and ships specially exempted from payment. *Ibid.*

346. They are made subject to revision by her Majesty in Council. *Ibid.* s. 397.

347. Each of the general lighthouse authorities has power, with the consent of her Majesty in Council: to exempt any ship or classes of ships from payment of light dues receivable by them, and annex any conditions thereto; to alter the times and modes of payment of light dues receivable by such authority, and to substitute other dues or classes of dues. *Ibid.* s. 398.

348. Tables of all light dues, and a copy of the regulations in force in respect thereof, shall be posted up at all custom houses in the United Kingdom; and each general lighthouse authority shall furnish copies thereof to the Commissioners of Customs in London, and to the principal officers of customs at all places where light dues are collected on account of such authority; and such copies shall be posted up by the commissioners at the Custom House in London, and by such officers at the custom houses where they reside. *Ibid.* s. 399.

349. A receipt for light dues shall be given by the person appointed to collect them, and no officer of customs at any port where light dues are payable shall grant a clearance or transire for any ship unless this receipt is produced to him. *Ibid.* s. 400.

350. If the owner or master of any ship fails on demand of the authorized collector to pay the light dues in respect thereof, the collector, in addition to any other remedy which he or the authority is entitled to, may enter such ship and distrain the goods, tackle or other things on board, and detain them until the light dues are paid; if payment is not made within three days next ensuing, he may cause them to be appraised and sold, and apply the proceeds in payment of the light dues and expenses, paying the surplus (if any) on demand to the owner or master. *Ibid.* s. 401.

351. Every person appointed to collect light dues by any general lighthouse authority shall collect all light dues payable at that port, and pay over to the general lighthouse authority by whom he was appointed, or as it directs, the whole light dues received by him; and the authority receiving them shall keep

accounts thereof, and cause them to be remitted to her Majesty's paymaster-general in such manner as the Board of Trade directs. *Ibid.* s. 402.

352. All light dues coming to the hands of any of the general lighthouse authorities under this act, shall be carried to the account of the mercantile marine fund. *Ibid.* s. 403.

353. Upon the completion of any new lighthouse, buoy or beacon, her Majesty may, by Order in Council, fix dues in respect thereof to be paid by the master or owner of every ship which passes the same or derives benefit therefrom, and from time to time alter them; and they shall be paid and collected like light dues authorized by this act. *Ibid.* s. 410.

354. All light dues and other sums received by the Trinity House, the Commissioners of Northern Lighthouses, and the Port of Dublin Corporation under the sixth part of this act (lighthouses), are to be carried to the mercantile marine fund. *Ibid.* s. 417.

355. Light dues are exempted from all rates and taxes. *Ibid.* s. 430.

2. By Local Authorities.

356. If any lighthouse, buoy, or beacon is erected, reconstructed or repaired by any local authority having such jurisdiction, her Majesty may, on the application of that authority, by Order in Council, fix dues to be paid to it by every ship which enters the port, harbour or estuary, and passes the lighthouse, buoy or beacon, and derives benefit therefrom. The dues so fixed shall be paid by the master or other person by whom light dues, if levied by one of the general lighthouse authorities, would be payable, and be recoverable in the same manner. See M. S. Act Amendment Act, 1862 (c. 63), s. 46.

357. All light dues leviable by any local authority under this act are to be applied solely for the construction, maintenance, construction or improvement of the lighthouses, buoys and beacons in respect of which they are levied, and the local authority is to keep an account of the receipt and expenditure of such dues, and furnish yearly to the Board of Trade a copy thereof in such form and with such particulars as that Board may require. Her Majesty may, by Order in Council, alter all such dues, so that they may be sufficient and only sufficient for payment of the expenses for which they are levied. *Ibid.* s. 47.

358. Any local authority not otherwise empowered is authorized, with the consent of her Majesty in Council, to reduce all or any dues receivable by such authority in respect of lighthouses, buoys or beacons, and the term "local authority" is defined. See the Local Light Dues Reduction Act, 1876 (c. 27), s. 2.

3. In the Channel Islands.

359. No dues for any lighthouse, buoy or beacon to be erected in or near the islands of Guernsey, Jersey, Sark or Alderney shall be taken without the consent of the states of the islands. See M. S. Act, 1854 (c. 104), s. 411.

4. In the Colonies.

360. As to any lighthouse, buoy, or beacon erected on or near the coasts of any British possession, with the consent of the legislative authority thereof, her Majesty may, by Order in Council, fix and alter dues in respect thereof, to be paid by the owner or master of every ship which passes the same or derives benefit therefrom, and the same shall be leviable throughout her Majesty's dominions.* See M. S. Act Amendment Act, 1855 (c. 91), s. 2.

361. No such dues are to be levied in any colony without the consent of the colonial legislature. *Ibid.* s. 3.

362. The dues in respect of colonial lighthouses, buoys, and beacons shall in the United Kingdom be collected like light dues leviable under the M. S. Act, 1854 (c. 104), and abroad shall be collected by such persons as the governor of such possession may appoint, and, so far as circumstances permit, like light dues leviable under the M. S. Act, 1854 (c. 104), or as the legislative authority in such possession may direct. *Ibid.* s. 4.

363. All dues levied under this act shall be paid over to her Majesty's paymaster-general as the Board of Trade may direct, and be applied by him as such Board may direct. *Ibid.* s. 5.

364. Such dues shall, after deducting expenses of collection, be applied in paying the expenses incurred in erecting and maintaining such lighthouse, buoy, or beacon. *Ibid.* s. 6.

365. For the purpose of constructing or repairing any such lighthouse, buoy, or beacon, the Board of Trade may raise money upon the security of the dues; and the Commissioners of her Majesty's Treas-

sury, out of moneys provided by Parliament, the Public Works Loan Commissioners, or other persons, may advance the same accordingly, such advances to be made, so far as circumstances permit, like advances under the M. S. Act, 1854 (c. 104), upon the security of the mercantile marine fund. See M. S. Act Amendment Act, 1855 (c. 91), s. 7.

366. Accounts are to be kept of all sums expended in the construction, repair, or maintenance of every lighthouse, buoy, or beacon in the British possessions abroad for which dues are levied under this act, and of the dues received, as the Board of Trade may direct, and are to be laid before parliament annually, and audited as her Majesty may, by Order in Council, direct. *Ibid.* s. 8.

5. Payment by Consignees or Agents.

367. The owner or master, or such consignees or agents thereof as have paid or made themselves liable to pay any other charge on account of the ship in the port of her arrival or discharge, are liable for light dues. *Ibid.* 1862 (c. 63), s. 44.

368. In default of payment, light dues may be recovered like penalties under M. S. Act, 1854 (c. 104). *Ibid.* See as to penalties, tit. OWNERS, Pt. II. p. 1254.

368a. Every such consignee and agent (not being the owner or master) liable for light dues may, out of any moneys received by him on account of such ship, or belonging to the owner, retain the amount of dues so paid by him, and any reasonable expenses he may have incurred by reason of such payment or liability. See M. S. Act, 1854 (c. 104), s. 45.

12. Pilotage.

See tit. OWNERS, Pt. VII. p. 1349, and tit. PILOTS, p. 1429.

13. Quarantine.

See tit. OWNERS, Pt. IV. p. 1306.

14. Salvage of Life and Property.

See tit. SALVAGE, p. 1778.

15. Wreck.

See tit. WRECK, p. 2315.

16. Foreshores.

369. For the powers of the Board of Trade in reference to the foreshores of the United Kingdom, see 10 Geo. 4, c. 50; 3 & 4 Will. 4, c. 69; and 15 & 16 Vict. c. 62. For the transfer of the Crown's rights and interests therein to the Board of Trade, see the Crown Lands Act, 1866 (c. 62).

Part IV. FINANCIAL DEPARTMENT.

1. Generally.

370. The financial department embraces the following subjects:—Estimates and accounts of all the other departments of the Board of Trade, accounts of lighthouse boards, accounts of mercantile marine officers, accounts of consuls and colonial shipping masters (including accounts of relief of distressed seamen), wages and effects of deceased seamen, money orders, seamen's savings banks, seamen's temporary deposit bank (Liverpool), pensions, merchant seamen's fund. See Board of Trade Instructions as to Wreck, Casualties, and Salvage, 1872, p. 35.

371. Provision is made respecting the superannuation allowances of officers whose salaries were formerly paid out of the mercantile marine fund, and as to grants of pensions to existing officers, by the Superannuation (Mercantile Marine Fund Officers) Act, 1877 (c. 44).

2. Mercantile Marine Fund.

1. Generally.*

372. There is carried to a common fund, entitled the "Mercantile Marine

* (61) For provisions as to the merchant seamen's fund, the winding-up thereof, and its better management in the meantime, see 14 & 15 Vict. c. 102.

(62) Sect. 3, part of sect. 4, all sect. 15, part of sect. 20, all sects. 23, 39, and 40, and parts of sects. 45, 50, and 59, are repealed by Statute Law Rev. Act, 1875 (c. 66). Sects. 27, 28, 36, 51, and 55 are repealed by 16 &

17 Vict. c. 131, s. 25. And sects. 29 to 38 and sect. 61 are repealed by the M. S. Repeal Act, 1854 (c. 120). See the parts unrepealed in 2 Pollock & Bruce, p. 17.

(63) For provisions enabling the Board of Trade to remit a forfeiture under sect. 43 of the Seamen's Fund Winding-up Act, 1851 (c. 102), under the circumstances therein mentioned, and applying such amendment to

Fund"—(1) all fees and other sums (other than fines and forfeitures) received by the Board of Trade under the provisions of the third and fourth parts of this act (*i. e.*, masters and seamen, and safety and prevention of accidents); (2) all light dues or other sums received by the Trinity House, the Commissioners of Northern Lighthouses, and the Port of Dublin Corporation, under the sixth part of this act (*i. e.*, as to lighthouses); (3) all rates and moneys received by the Trinity House under the local act, 7 Vict. c. 57, for the regulation of lastage and ballastage in the river Thames; (4) all fees and other sums mentioned in the table V. in the schedule, and received by receivers under the eighth part of this act (*i. e.*, wrecks and casualties). An account of this fund, intitled "The Mercantile Marine Fund Account," is kept with her Majesty's paymaster-general. See M. S. Act, 1854 (c. 104), s. 417.

373. Subject to other provisions, all fees and payments to the Board of Trade under the third and fourth parts of this act (*i. e.*, as to masters and seamen, and as to safety and prevention of accidents), are to be carried to the mercantile marine fund; and all fines to the Board of Trade under this act are to be paid into the Exchequer, and carried to the consolidated fund. *Ibid.* s. 11.

374. Subject to any prior charges subsisting thereon, this fund is chargeable with the following expenses—(1) the salaries and other expenses connected with the local marine boards, the examinations, and the shipping offices, provided for by the third part of this act; (2) expenses of the general lighthouse authorities in the works and services of lighthouses, buoys and beacons under the sixth part of this act, or in the execution of works for permanently reducing the expense thereof; (3) all expenses of the Trinity House in respect of lastage and ballastage in the Thames; (4) such expenses for establishing and maintaining on the coasts of the United Kingdom proper life-boats, with the necessary crews and equipments, and for affording assist-

ance towards the preservation of life and property in cases of shipwreck and distress at sea, and for rewarding the preservation of life in such cases, as the Board of Trade directs; (5) expenses of provisions as to receivers and the performance of their duties contained in the eighth part of this act; (6) expenses specially charged thereon by act of parliament. *Ibid.* s. 418.

375. As to certain expenses connected with lighthouses, wreck being paid out of the mercantile marine fund, see M. S. (Fees and Expenses) Act, 1880 (c. 22), ss. 2, 5, 6.

376. As to the charges on and payments to the mercantile marine fund, the audit of accounts thereof, the grant thereof of pensions and costs of prosecutions for offences at sea, see the M. S. (Expenses) Act, 1882 (c. 55).

377. The Treasury may, on the application of the Board of Trade, advance out of the consolidated fund such sums, upon such terms as they think fit, to the mercantile marine fund account, not exceeding £200,000; and the Board of Trade shall make such provision for the repayment thereof out of the fund as the Treasury may require. See the M. S. Act, 1854 (c. 104), s. 424.

378. The Board of Trade may raise money by mortgaging the mercantile marine fund in such form as the President of the Board may direct. *Ibid.* s. 425.

379. The Public Works Loan Commissioners may advance money upon mortgage of the mercantile marine fund, but every such mortgage shall be made according to the acts of parliament regulating the proceedings of those commissioners. *Ibid.* s. 426.

380. All expenses incurred by the Commissioners of Customs in the conduct of suits or prosecutions, or in otherwise carrying into effect the provisions of this act, are to be considered as expenses having reference to the revenue of customs, and paid out of the consolidated customs; but the Board of Trade may, with the consent of the Treasury, repay out of the mercantile marine fund any

masters, see the M. S. (Fees and Expenses) Act (c. 22), s. 3.

(64) Further information in reference to the control and management of the mercantile marine fund will be found in the forthcoming Second Report and Evidence of the Royal Commission on Saving Life at Sea.

(65) See also as to the contributions to be paid to the merchant seamen fund (*semble*, mercantile marine fund), and the provisions granted thereon, Board of Trade Instructions to Superintendents, of August, 1879, pp. 77—86.

such expenses as are by this act chargeable on that fund. See M. S. Act, 1854 (c. 104), s. 548.

381. The Board of Trade is to render to the commissioners for auditing the public accounts periodical accounts of the receipts and expenditure of the mercantile marine fund, and to lay them before parliament every year. *Ibid.* ss. 428 and 429.

382. For provisions that all fees received under the Chain Cables and Anchors Acts, 1864 to 1874, are to be carried to the mercantile marine fund, and all expenses under these acts to be paid out of that fund, see the Chain Cables and Anchors Act, 1874 (c. 51), s. 2.

383. For further provisions in reference to this fund, see the Merchant Shipping (Fees and Expenses) Act, 1880 (c. 22), s. 6.

2. *Light Dues.*

384. All light dues coming to the hands of any of the general lighthouse authorities under this act shall be carried to the account of the mercantile marine fund. See M. S. Act, 1854 (c. 104), s. 403.

385. Each of the general lighthouse authorities is to account to the Board of Trade for their receipts from the light dues and ballastage rates, and for their expenditure out of the fund, in such form as the Board of Trade requires, and permit all books of accounts to be examined by the appointees of the Board. *Ibid.* s. 427.

386. All lighthouses, buoys, beacons and light dues, and other rates, forming part of the fund, and all property belonging to any of the general lighthouse authorities or the Board of Trade, used for any of the services for which such dues and rates are received, are exempt from all taxes and rates. *Ibid.* s. 430.

3. *Trinity House Ballastage Rates in the Thames.*

387. The rates and moneys received by the Trinity House under the local act of 6 & 7 Vict. c. 57, subject to the payment of prior charges on the mercantile marine fund in the discretion of the Board of Trade, and to the powers of raising money upon the credit of the fund, are applicable only to services for supplying ballast to or providing for the safety or convenience of ships navigating the Thames, and the seas and channels lead-

ing thereto between Orfordness and Dun-
geness: but if, in addition to these duties, the Trinity House, with the consent of the owners, masters or agents, load or unload ballast, they are entitled to such additional duties for such ballast as her Majesty in Council approves. *Ibid.* s. 419.

4. *Life Boats and Equipments, and Rewards for saving Life.*

388. For provisions enabling the Board of Trade to direct payment out of the mercantile marine fund of expenses of establishing and maintaining on the British coasts lifeboats, with their crews and equipments, and for affording assistance for the preservation of life and property in case of shipwreck or distress at sea, and for granting rewards for the preservation of life in such cases, see tit. SALVAGE, Pt. I. p. 1847.

5. *Exemption of Documents from Duty.*

389. All instruments which by the seventh part of this act (*i. e.* the mercantile marine fund) are required to be made in forms sanctioned by the Board of Trade, if made in such form, and all instruments used by or under the direction of the Board of Trade in carrying such part of this act into effect, are exempt from stamp duty. See M. S. Act, 1854 (c. 104), s. 9.

390. All instruments of any of the general lighthouse authorities or the Board of Trade in carrying on any of the services for which dues or rates forming part of the mercantile marine fund are received, are exempted from all duties. *Ibid.* s. 430.

3. **Accounts of Mercantile Marine Offices.***

4. **Accounts of Consuls and Colonial Superintendents, including Accounts of Relief of Deceased Seamen.†**

5. **Seamen's Savings Banks.**

See tit. SEAMEN, Pt. I. c. 8, p. 2132.

6. **Wages and Effects of Deceased Seamen.**

See tit. WAGES, p. 2314.

* See Board of Trade Instructions to Superintendents of Mercantile Marine Offices, 1879.

† See Board of Trade Instructions to Consuls, &c., 1833, pp. 26—43, 74.

WAGES.

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27. Masters' Accounts. *Ibid.* p. 1123.

28. French Law. See this Title and Chapter in Addenda.

1. Generally.*

1. Mariners are the favourites of the law, and placed particularly under its protection. The court is anxious to protect them against circumvention, and even misapprehension and error. *The Hoghton*, 3 Hagg. 112; *The Minerva*, 1 Hagg. 358; *The Elizabeth*, 2 Dodson, 407; *The Jupiter*, 2 Hagg. 221; *The Madonna D'Idra*, 1 Dodson, 39; *The Juliana*, *ibid.* 463. See also tit. SEAMEN, Pt. II. p. 2137.

2. Officers are justly the objects of equal attention from the court with common mariners. An injury done to their character is of wider extent, and is attended with consequences of a more serious nature. *The Robinett v. The Exeter*, 2 C. Rob. 261.

3. In suits for wages the court is anxious that seamen should not be harassed with litigation. It is desirable that questions of wages should be speedily settled. *The Prince George*, 3 Hagg. 377.

4. In a suit for wages, service and good conduct are to be presumed unless disproved. *The Malta*, 2 *ibid.* 166.

5. A ship's carpenter, performing certain services on land, with the permission of the master, and for which he received remuneration, *held*, entitled to his wages also during such time, though not employed in the service of the ship. *The Bulmer*, 1 Hagg. 167.

6. Negotiations with seamen, even before action brought, are conducted more

to the satisfaction of the court when entrusted to their proctors. *The Frederick*, 1 Hagg. 220.

7. For the construction of the following terms—her Majesty's dominions, the United Kingdom, British possessions, master, seaman, ship, foreign-going ship, home-trade ship, home-trade passenger ship, see the M. S. Act, 1854 (c. 104), s. 2.

8. The officer heretofore denominated the Registrar General of Seamen is now the Registrar General of Shipping and Seamen, see the M. S. Act, 1872 (c. 73), s. 4.†

9. So much of the third part of this act as relates to rights to wages and remedies for their recovery, applies to all ships registered in any of her Majesty's dominions abroad when they are out of the jurisdiction of their respective governments, and to their owners, masters, and crews. See M. S. Act, 1854 (c. 104), s. 109.

2. Jurisdiction.

1. Superior Courts.

(a) Generally.‡

10. No proceeding for wages under £50 shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-admiralty, or in the Court of Session in Scotland, or in any superior court of record in her Majesty's

* (1) The acts relating to merchant seamen are—2 Geo. 3, c. 13; 31 Geo. 3, c. 39; 2 Geo. 4, c. 36; 5 & 6 Will. 4, c. 19; 7 & 8 Vict. c. 112; 8 & 9 Vict. c. 116; and 16 & 17 Vict. c. 131. They are all repealed, except ss. 12—14, 24, 28 and 29 of the last-named act, by the M. S. Acts, 1854 (cc. 104 and 120). The acts now in force, except as above, are—The M. S. Acts, 1854—1883, and Admiralty Court Act, 1861 (c. 10).

(2) Application for an attachment for a contempt against a magistrate first seized of a seaman's suit, for having issued a warrant and arrested a seaman whilst attending his proctor for the purpose of bringing a suit, rejected. *The Isabella*, Stuart's Vice-Adm. Rep. 134. [LOWER CANADA.]

(3) See also *The Jane*, Stuart's Vice-Adm. Rep. 258 [LOWER CANADA]; *Harden v. Gordon*, 2 Mason, 561; *The David Pratt*, 2 Ware, 495. [AMERICAN.]

† (4) A seaman is bound to work on Sunday. *Ularly v. The Washington*, Crabbe, 204. [AMERICAN.]

(5) To a suit by a seaman for the balance of his wages, it is a good answer that he could neither steer, furl, nor reef. *The Venus*, Stuart's Vice-Adm. Rep. 92. [LOWER CANADA.] See also *Batten v. Butler*, 4 East, 479.

‡ (6) The words in the repealed act, 7 & 8 Vict. c. 112, s. 16, were "unless the owner shall be bankrupt or insolvent," and the amount in dispute to which the justices' jurisdiction was limited was £20. As to the meaning of the words "bankrupt or insolvent" in that act, see *The Princess Royal*, 2 W. Rob. 373; 9 Jur. 433; 4 Notes of Cases, 70; *The Great Northern*, 2 W. Rob. 509; 5 Notes of Cases, 71; 10 Jur. 104; *The Repulse*, 9 Jur. 739; 2 W. Rob. 399; 4 Notes of Cases, 165; *The Simlah*, 15 Jur. 865; *The Tecumseh*, 6 Notes of Cases, 533; 3 W. Rob. 109.

(7) Only in the Admiralty Division can that principle of the maritime law, which holds the ship in specie to be subject to the claim of wages earned in its service, be carried into effect. See Abbott on Shipping, 12th ed., p. 489.

dominions, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest, or is sold by the authority of any such court, or unless any justices acting under the authority of this act refer the case to be adjudged by such court, or unless neither the owner nor master is or resides within twenty miles of the place where the seamen or apprentice is discharged or put ashore. The M. S. Act, 1854 (c. 104), s. 189. See also *The Harriet*, 5 L. T. N.S. 210; 1 Lushington, 285.

11. A place of occasional business is not a residence within the meaning of sect. 189. *The Blakeney*, Swabey, 428; 5 Jur. N.S. 418.

12. The owner's usual place of residence was Blakeney in Norfolk, but he regularly attended the corn-market in London, and on those occasions frequented a house of business in Mark Lane. It did not otherwise appear that he had a residence in London. The port of discharge was London. *Held*, that the owner did not reside within twenty miles of that port, so as to prevent the master from suing for his wages in the Court of Admiralty. *Ibid*.

13. The provisions in the 5 & 6 Will. 4, c. 19, s. 16, giving the summary proceeding for wages under £20 before justices, in all cases where the plaintiff might have had "as effectual a remedy," and giving the court power to certify to deprive the plaintiff of his costs, *held*, not to apply to a case where the construction of the articles as to the termination of the voyage was doubtful, and the justice had decided in favour of the mariners, but made no direction as to wages, and the master still withheld them, under the impression that he was legally justified. *The King William*, 2 W. Rob. 231.

14. Under 7 & 8 Vict. c. 112, s. 16, *held*, that when the aggregate amount of the claims of a crew for wages exceeded £20, but the claim of each individual was less than £20, the action of the seamen would be dismissed. *The Fairy Queen*, 3 (IRISH) Jur. 283 (Adm.)

15. A suit by a mariner being entered at above £50, the Court of Admiralty cannot (on a question as to the admissibility of pleadings) enter into a pre-

liminary investigation as to such amount, so as to bring it below £50, and oust the jurisdiction of the court. *The Nymph*, Swabey, 86.

16. The plaintiff having brought an action for wages as a seaman for an amount less than £50, together with a claim for damages for an assault, the court allowed the defendant (upon terms) to plead a plea founded upon sects. 188 and 189 of the 17 & 18 Vict. c. 104. *Rossi v. Grant*, 5 C. B. N.S. 699; 5 Jur. N.S. 895.

17. *Quere*, whether section 189 of the M. S. Act, 1854 (c. 104), applies to a claim for wages earned on board an American ship. *Burns v. Chapman*, 5 C. B. N.S. 481.

18. *Held*, under 7 & 8 Vict. c. 112, s. 16, that an action for wages by the master of a vessel against the owner, who had become a bankrupt, might be maintained, although the wages commenced to be earned before the commission of an act of bankruptcy. *The Simon Glover*, 3 (IRISH) Jur. 284 (Adm.).

19. Seamen may sue in the Admiralty Court for the wages of a coasting voyage, as for navigating a vessel from one port of England to another. *Anon.* (1678), 1 Vent. 343.

20. Or for wages earned in fitting out a ship for a voyage, though she do not actually proceed on the voyage. *Wells v. Osmond* (1703), 6 Mod. 238; 2 Ld. Raym. 1044; *S. P. Mills and another v. Gregory*, Sayer, 127. See also *The City of London*, 1 W. Rob. 88.

21. The jurisdiction conferred by this act on the High Court of Admiralty may be exercised either by proceedings *in rem* or by proceedings *in personam*. The Admiralty Court Act, 1861 (c. 10), s. 35.

22. Any question of forfeiture of or deductions from wages of any seaman or apprentice may be determined in any proceeding lawfully instituted with respect to such wages, although the offence is hereby made punishable by imprisonment as well as forfeiture, and has not been made the subject of criminal proceedings. See M. S. Act, 1854 (c. 104), s. 254.

23. See also, as to the court's jurisdiction in cases of wrongful discharge, *The Great Eastern*, L. R. 1 A. & E. 384, No. 162, p. 2296.*

* (8) As to the ancient jurisdiction of the Court of Admiralty in actions for wages as affected by the statutes of Richard II. now substantially repealed, and other considerations,

but ultimately fully recognized by the common law, see *Coke v. Cratchett* (1681), 3 Lev. 60; *Smith v. Crosby*, Fort. 230; *Anon.* (1670), 1 Vent. 146; *S. P. Anon.* (1679), 2 Show. 86; *Opy*

(b) *Special Contracts.**

24. The Court of Admiralty has jurisdiction *in rem* or *in personam* over any claim by a seaman of any ship for wages earned by him, whether under a special contract or otherwise, but if the plaintiff does not recover fifty pounds, he is not entitled to costs, unless the judge certifies that the cause was a fit one to be tried in that court. See the Admiralty Court Act, 1861 (c. 10), ss. 10 and 35.

25. An apprentice is not entitled to sue in the Admiralty for the penalty contained in the indenture for breach of the agreement. *The Albert Crosby*, 1 Lushington, 44.

2. *Admiralty County Courts.*

26. As to the jurisdiction of Admiralty County Courts in actions of wages, see tit. JURISDICTION, Pt. I. p. 630.

v. Child (1693), 1 Salk. 31; *Bayly v. Grant* (1699), 1 Salk. 33; *Harling v. Brook* (1693) Comb. 255; and see Com. Dig. Admiralty (E.), 15; *Ross v. Walker* (1765), 2 Wils. 264; *The Peggy*, 2 Brown's Civ. & Adm. Law, App. 533; *Hook v. Moreton* (1697), Ld. Raym. 398; *Brown v. Benn and another* (1705), 2 Ld. Raym. 1247; *The Ship Anne*, 2 Brown's Civ. & Adm. Law App. 544; *The Prince George*, 3 Hagg. 379; *De Lovio v. Boit*, 2 Gall. 454, 455. [AMERICAN.]

(9) The Admiralty has jurisdiction over contracts for the hire of seamen where the service is substantially performed on the sea, or on waters within the flow and reflow of the tide. *The Jefferson*, 10 Wheat. 428; *Peyroux v. Howard*, 7 Pet. 324; *Thackarey v. The Farmer*, Gilpin, 529; *L'Arina v. Manwaring*, Bee, 199; *The D. C. Salisbury*, Olcott, Adm. 71; *Abbott v. Baltimore and Rappahannock Steam Packet Co.*, 1 Maryland, Ch. Decis. 542. [AMERICAN.]

(10) The district courts of the United States have not jurisdiction of an action to recover wages for services in a voyage upon a canal not connecting navigable lakes or different states or territories. *McCormick v. Ives*, 1 Abb. Adm. 418. [AMERICAN.]

(11) As to the various American courts with jurisdiction as to wages, see Dunlap's American Admiralty Practice, p. 113.

(12) Seamen may proceed in the Admiralty against letters of marque for their wages. Dunlap's Adm. Prac. 79. [AMERICAN.]

(13) Services rendered on board a ship while at the dock at Liverpool do not give to the demand for wages a maritime character of which an Admiralty Court can take cognizance. *Graham v. Hoskins*, Olcott, Adm. 224. [AMERICAN.]

(14) A seaman whose wages have been

3. *Justices.*(a) *Generally.†*

27. Any seaman or apprentice, or any person duly authorized on his behalf, may sue in a summary manner before any two justices of the peace acting in or near the place where the service terminated, or he was discharged, or at which the defendant resides, or in Scotland either before any such justices or the sheriff of the county in which any such place is situated, for any amount of wages due not exceeding £50 and costs as soon as payable; and every order made by such justices or sheriff in the matter shall be final. See the M. S. Act, 1854 (c. 104), s. 188.

28. Any stipendiary magistrate has power to do alone what two justices of the peace are authorized to do. *Ibid.* s. 519.

29. The 7 & 8 Vict. c. 112, s. 15 (similar

paid up to the termination of a voyage, but who afterwards remains on board of the vessel moored at the wharf, has no claim for services which a Court of Admiralty will enforce. *Phillips v. The Scattergood*, Gilpin, 1; *Snell v. The Independence*, *ibid.* [AMERICAN.]

* (15) Before the Admiralty Court Act, 1861 (c. 10), s. 10, the Court of Admiralty had no jurisdiction over a claim for wages founded on customary right. *The Tecumseh*, 3 W. Rob. 144; 12 Jur. 985; 6 Notes of Cases, 533; *The Harriet*, 5 L. T. N.S. 210; 1 Lush. 285; *The Enterprise*, 1 Asp. 133; 6 (Irish) Jur. N.S. 324; 5 L. T. N.S. 29; *The Minerva*, 1 Hagg. 357; *The Mona*, 1 W. Rob. 137; *The Riby Grove*, 2 W. Rob. 52; *The Debreasia*, 3 W. Rob. 33; 12 Jur. 143; 6 Notes of Cases, 31.

(16) Or over any contract for wages different from the ordinary mariner's contract. *Ibid.*

(17) Or if the agreement were special or under seal. *Howe v. Napier* (1779), 4 Burr. 1944; *Campion v. Nicholas* (1720), 2 Stra. 405; *Opy v. Child* (1693), 1 Salk. 31; *Opy v. Addison*, 12 Mod. 38; *Day v. Serle* (1733), 2 Barnard. 419; 2 Stra. 969; *The Mariners' case* (1724), 8 Mod. 379. See also 2 Mod. 379; *Anon.* (1678), 1 Vent. 343; *Benns v. Parre* (1705), 2 Ld. Raym. 1206; *The Harriet*, 1 Asp. 152.

(18) Or in the nature of a partnership transaction. *The Sydney Cove*, 2 Dodson, 11.

(19) Fishermen on shares have a lien on the Admiralty for their shares. See 2 Parsons on American Admiralty Law, 582, and Dunlap's American Admiralty Practice, 76.

† (20) But see the 189th section, No. 23, and the words by "or on behalf of" in that section.

to s. 188 of the M. S. Act, 1854 (c. 104)), did not give any jurisdiction to a justice of the peace to adjudicate upon a claim for wages by the administrator of a deceased seaman, and such administrator was not deprived of his right of action by s. 16. *Hollingsworth v. Palmer*, 4 Exch. 267; 18 L. J. Exch. 409.

30. While the ship is under arrest by warrant from the High Court of Admiralty, magistrates have no right to levy a distress at the suit of seamen for their wages. *The Westmoreland*, 4 Notes of Cases, 173.

31. Where any court, justice or magistrate, has power to order payment of any seaman's wages, penalties, or other sums of money, if the party directed to pay is the master or owner, and it is not paid as prescribed in the order, the functionary making the order may, in addition to any other powers of compelling payment, direct the amount unpaid to be levied by distress or pouding and sale of the ship, her tackle, furniture and apparel. See M. S. Act, 1854 (c. 104), s. 523.

(b) *Allotment Notes.*

See tit. SEAMEN, Pt. II. c. 6, p. 2149.

4. *Superintendent of Mercantile Marine Offices.*

32. Every superintendent of a mercantile marine office shall hear and decide any question between a master or owner and any of his crew which both parties agree in writing to submit to him. See the M. S. Act, 1854 (c. 104), s. 173, and M. S. Act Amendment Act, 1862 (c. 63), s. 15.

33. Every award so made is binding on both parties, and in any legal proceeding in the matter before any court is conclusive as to the rights of the parties. See the M. S. Act, 1854 (c. 104), s. 173.

34. No such submission or award shall require a stamp; and any document purporting to be such submission or award shall be *prima facie* evidence thereof. *Ibid.*

35. In any such proceeding before a superintendent relating to the wages, claims, or discharge of any seaman, the superintendent may call on the owner or his agent, or the master, mate or

member of the crew, to produce any log-books, papers, or other documents in their respective possession or power relating to any matter in question in such proceeding, and may call before him and examine any of such persons being then at or near the place on any such matter. Penalty against any such person not producing any such document in his possession or power, or not giving evidence without showing reasonable excuse for default, not exceeding £5. *Ibid.* s. 174.

35a. For provisions for the settlement by a superintendent of a mercantile marine office of any dispute between a skipper or owner, and a seaman, as to wages or share of profits, and in relation to the inspection by seamen of owner's books and accounts, see M. S. (Fishing Boats) Act, 1883 (c. 41), ss. 46, 47.

5. *Courts Abroad.*

(a) *Generally.*

36. No seaman engaged for a voyage or engagement to terminate in the United Kingdom is entitled to sue in any court abroad for wages, unless discharged with such sanction as therein required, and with the written consent of the master, or proves such ill-usage on the part of the master, or by his authority, as to warrant reasonable apprehension of danger to his life if he remained on board. See the M. S. Act, 1854 (c. 104), s. 190.

(b) *Naval Courts.*

37. Every naval court may decide any question as to wages, fines, or forfeitures between the parties before it; all such orders are conclusive in any subsequent legal proceedings. *Ibid.* s. 263, sub-s. 4.

38. As to naval courts generally, see tit. JURISDICTION, Pt. II. c. 2, p. 690, and *Ibid.* in Addenda.

38a. As to their mode of enforcing payment, see No. 31, *supra*.

6. *To rescind Shipping Agreements.*

See tit. SEAMEN, Pt. II. c. 2, p. 2148.

7. *Masters.**

39. Every master of a ship, so far as the case permits, has the same rights, liens, and remedies for the recovery of

* (21) Before 7 & 8 Vict. c. 112, now repealed, a master could not sue in the Admi-

nistrality Court for his wages, his contract being with the owners, and founded on their credit,

his wages as any seaman. See M. S. Act, 1854 (c. 104), s. 191.

40. The Court of Admiralty has jurisdiction *in rem* or *in personam* over any claim by the master of any ship for wages, but if the plaintiff does not recover £50 he is not entitled to costs unless the judge certifies that the cause was a fit one to be tried in that court. See the Admiralty Court Act, 1861 (c. 10), ss. 10, 35.

41. In a suit for his wages, a master has under the M. S. Act, 1854 (c. 104), the same rights and privileges as ordinary seamen. *The Olive*, Swabey, 292; *The Blakeney*, Swabey, 428; 5 Jur. N.S. 418. But see *Burns v. Chapman*, 5 C. B. N.S. 481; 5 Jur. N.S. 19; *The Hemisphere Borealis*, 5 (Irish) Jur. N.S. 180.

42. The M. S. Act, 1854 (c. 104), applies to the colonies; and by s. 191 a master has a lien for his wages in the Vice-Admiralty Court, whatever may be the municipal law of the colony. *The Rajah of Cochin*, Swabey, 472.

43. The Court of Admiralty had no jurisdiction to entertain a claim by the master in consequence of his liability for wages due to the crew. *The Chieftain*, 11 W. R. 537; 8 L. T. N.S. 120; 9 Jur. N.S. 388; 32 L. J. Adm. 106.

44. A master is entitled to sue for his wages within the 10th section of the Admiralty Court Act, 1861, if he has been engaged and acted as master, although during his service he lived on shore, and the vessel never sailed. *Ibid.* 2 N. R. 528; *The Wilful*, Swabey, 362.

8. Seamen.

See tit. SEAMEN, Parts I., II. and III. p. 2124.

and not on that of the ship. *Woodward v. Bontham* (1659), 1 Ld. Raym. 3; *Clay v. Snelgrave* (1699), 12 Mod. 405; Com. 74; 1 Ld. Raym. 576; 1 Salk. 33; Carth. 518; *Neclanham v. Foljumb and another* (1713), 6 Vin. Abr. 439; *Ragg v. King* (1729), 2 Stra. 858; Barnard. 297; and *King v. Player*, there cited, 2 Sho. 86; Sir L. Jenkins, 81; *The Lord Hobart*, 2 Dodson, 104; *The Favourite*, 2 C. Rob. 232; *Bead v. Chapman*, 2 Stra. 937; *The Batavia* (heretofore *The Unity*), 2 Dodson, 503; *The Adventure*, 3 Hagg. 153; *Barber v. Wharton* (1727), Ld. Raym. 1452; 1 Com. Dig. 274.

(22) And had no lien either on the vessel or freight for his wages. *Hussey v. Christie*, 9 East, 426; 13 Ves. 594; *Smith v. Plummer*, 1 B. & C. 575; *Atkinson v. Cotesworth*, 3 B. & C. 647.

(23) The rule was less stringent in America. See *Drinkwater v. The Freight, &c.*, of

9. Foreign Masters.

45. Action for wages by a foreign master against the ship, lying in a port of this country. The consul appeared and objected to the case being adjudicated on in this country. Action dismissed without costs. *The Herzogin Marie*, 1 Lushington, 292; 5 L. T. N.S. 88; *The Octavie*, 3 N. R. 252.

46. *Semble*, the protest of the Belgian vice-consul at the port where the vessel was lying, would not have been attended to by the court, he being also the agent of the owner of the ship. *Ibid.*

47. An American mate on board a vessel became by the death of the master, in the course of the voyage to England, master of the vessel. In a wages suit by him against the freight, *held*, that the *lex fori* should prevail, and that he was entitled under the M. S. Act, 1854 (c. 104), s. 191, to sue for his wages. *The Milford*, Swabey, 362; 4 Jur. N.S. 418; 31 L. T. 42.

48. In an action for wages by the captain of a colonial ship it is the duty of the Court of Admiralty to exercise a jealous and scrutinizing caution in the consideration of the case, and if it appears that the owners are not represented, that the claim can only be liquidated by the sale of the vessel, and that the ship is under engagement by her charter-party and articles to return to her home port, the suit will be dismissed. *The Hemisphere Borealis*, 5 (Irish) Jur. N.S. 180.

49. In actions of wages whoever engages voluntarily to serve on board a foreign ship necessarily undertakes to be

the Spartan, 3 Jur. 26; *The Packet*, 8 Mason, 255; *Hammond v. Essex F. & M. Ins. Co.*, 4 Mason, 198; *Willard v. Dorr*, 3 Mason, 91; *The Grand Turk*, Paine, 73; *Van Bokkelen v. Ingersoll*, 5 Wend. 315; *Fisher v. Willing*, 8 S. & R. 118; *The Superior v. The Troy*, 1 Newb. Adm. 176; *The Brig George*, 1 Sumner, 151; *The Leonidas*, Olcott, Adm. 12. [AMERICAN.]

(24) A suit for services by a master of a vessel as factor, or in any capacity except that of master, is not cognizable in the Admiralty. *Willard v. Dorr*, 3 Mason, 161. [AMERICAN.]

(25) A person was hired to go on a voyage as nominal master, but was never master in fact: *held*, that his contract for wages with the real master was cognizable in the Admiralty, and binding on the vessel and owners. *L'Arina v. The Exchange*, Bee's Rep. 198. [AMERICAN.]

bound by the law of the country to which the ship belongs, and the legality of his claim must be tried by that law. *The Union*, 30 L. J. Adm. 19; 1 Lushington, 128; *The Johann Friederich*, 1 W. R. 35.

50. A foreign master sued in Admiralty foreign owners for wages, they appeared under protest, on the ground that the consul's consent had not been obtained to the institution of the suit. *Semble*, appearance under protest invalid, as the court in such cases possessed jurisdiction, if it thought proper to exercise it. *The Franz and Elise*, 5 L. T. N.S. 290.

51. As to notice to consul, see No. 66, *infra*.

51a. And as to jurisdiction over foreigners generally, see tit. JURISDICTION, Pt. I. p. 671.

10. Foreign Seamen.

(a) Generally.*

52. The Court of Admiralty has jurisdiction in actions for wages by foreign seamen against foreign vessels, as questions of general maritime law. The exercise of such jurisdiction is, however, discretionary in the court, and to be permitted or withheld according to the circumstances of the case. The consent of the foreign minister or consul is not essential to found such jurisdiction. It is necessary, however, that notice of intended proceedings should be given in the first instance to the representative of the government to which the vessel proceeded against belongs. In an action for wages brought by foreign seamen, an appearance for the master, a foreigner, under protest to the jurisdiction of the court, overruled, but without costs, as being a case *prima impressionis*. *The Golubchick*, 1 W. Rob. 143, 148, 153, 154; *The Mil-*

ford, Swabey, 362; 4 Jur. N.S. 418; 31 L. T. 42; *The Vrow Mina*, 1 Dodson, 234; *The Alexandre*, 5 (Irish) Jur. 379.

53. With regard to foreign seamen the court is in the habit of giving them the benefit of their own laws. The importation of foreign law is not, however, a matter of course. The court should not adopt it if the effect would be to work injustice on others. The proceeds of sale of a foreign ship being insufficient to pay the preferable claims, motion to bring in freight to answer master's wages refused. *The Johannes Christoph*, 2 Spinks' Eccl. and Adm. Rep. 100.

54. The Court of Admiralty will, without the consent of the representative of the nation to which the seamen belong, entertain an action for wages against a foreign ship belonging to an alien enemy, and coming to the ports of this country under a British licence. *The Vrow Mina*, 1 Dodson, 234. See also *The Franz and Elise*, 5 L. T. N.S. 290.

55. *Quere*, whether section 189 of the M. S. Act, 1854 (c. 104), (which, under certain circumstances, excluded the jurisdiction of the High Court of Admiralty in wages suits under £50), applies to a claim for wages earned on board an American ship. *Burns v. Chapman*, 5 C. B. N.S. 481.

56. The crown, on being memorialized by certain Greek mariners of a foreign ship sold under the authority of the Court of Admiralty, directed the King's proctor to take proceedings to recover their wages. 1 Dodson, 37; and *The Alexandre*, 5 (Irish) Jur. 379.

57. A claim for wages at the instance of foreign mariners against a foreign ship pronounced for, with costs, on the ground that the vessel had become a British ship, having been assigned over by her foreign

* (26) The exercise of Admiralty jurisdiction in suits by foreign seamen for wages is matter of comity rather than of duty, and, generally speaking, is exercised only under such circumstances as might infer the presumption of a request from the foreign state, as, for example, where a voyage is ended or broken up and the seamen discharged, or where there is strong reason to believe that there would be a failure of remedy in case the mariners were compelled to await an opportunity of obtaining redress in their own courts. *Gonzales v. Minor*, 2 Wallace, Jr. 348; *Thompson v. Nancy*, Bee, 217; *Willendson v. The Forsoket*, 1 Fet. Adm. 197; *Pugh v. Gillan*, 1 Cal. 485; *Graham v. Hoskins*, Olcott, Adm. 224; *The Infanta*, 1 Abb. Adm.

263; *The Napoleon*, Olcott, Adm. 208. [AMERICAN.]

(27) Seamen on board ships having letters of marque may sue for their wages in a neutral port. *Elison v. The Ship Bellona*, Bee, 116.

(28) The district courts will not interfere in disputes between the master and seamen of a foreign vessel when they are bound by the articles to submit all disputes to a home tribunal. *Aertson v. Ship Aurora*, Bee, 161. [AMERICAN.]

(29) See also 2 Parsons on American Maritime Law, 524 *et seq.*

(30) So also in the United States courts. *The Becherdass Ambaidors*, 1 Low. 569.

owners to British creditors, and that an agreement between the owners and the seamen not to bring any suit for wages was disclaimed by the assignment. *The Wilhelm Frederick*, 1 Hagg. 138.

58. In an action before the water baillie of Clyde against the master of an American ship, by American seamen, engaged in America for wages, and for damages on account of maltreatment on a voyage from America to Ireland, during which the vessel had been driven into a Scotch port and was arrested by the seamen, *held*, that the courts of this country had jurisdiction to do justice between the parties. *Bernard v. Connar*, June 11th, 1811; 16 F. C. 275; Ivory, 68. [SCOTCH.]

59. A Portuguese vessel was arrested, and a cause of wages was instituted by the mate, an English subject, who had signed an agreement to submit himself to the provisions of the Commercial Code of Portugal, which code requires that any dispute between the masters and seamen of a Portuguese ship shall be submitted to the arbitration of the Portuguese consul residing in the country where the vessel may chance to be. Notice of the suit was given to the Portuguese consul in London, who entered a protest against the proceedings. *Held*, by the Privy Council (affirming the decision of the Admiralty Court), that under the circumstances the suit ought not to be proceeded with. *The Nina*, L. R. 2 P. C. 38; L. R. 2 A. & E. 44; 37 L. J. Adm. 17; 3 Asp. 10, 47; 5 Moore, P. C. N.S. 51.

60. But condemnation of the plaintiff by the Admiralty Court in costs and damages, reversed. *Ibid*.

61. The 10th section of the Admiralty Court Act, 1861, gives jurisdiction in the case of foreign ships as well as in the case of British ships, but does not alter the practice of giving notice to the consul of the country to which the foreign ship belongs. *Ibid*.

62. In a suit for wages by seamen (whether British subjects or otherwise) for service on board a foreign vessel, the Court of Admiralty will not exercise its jurisdiction without first giving notice to the consul of the nation to which the foreign vessel belongs, and if the foreign consul by protest objects to the prosecution of the suit, the court will, in its discretion, decide whether the suit shall proceed. *Ibid*.

63. In an action by seamen (English subjects domiciled in England) for wages and damages for wrongful dismissal, it appeared that the vessel was Spanish, and that the articles were signed in Spain. The articles did not contain any submission by the plaintiff to Spanish law. The Spanish consul having protested against jurisdiction on the ground that by Spanish law the matters in dispute should be submitted to Spanish tribunals or Spanish consuls; *held*, on application by the shipowners, that the action must be dismissed. *The Leon XIII.*, 8 P. D. (C. A.) 121; 47 L. T. N.S. 659; 5 Asp. 73.

64. Under ordinary circumstances, if the consul of a foreign country objects to the continuance of a suit for wages by a seaman of the country which he represents, the court will dismiss the action; but in this respect there is a great distinction between proceedings against the ship and against the proceeds of a ship sold. *The Octavie*, 9 L. T. N.S. 695; B. & L. 315.

65. The 2 Geo. 2, c. 36,* *held*, to be confined to voyages on board British ships, and not to apply to the case of a British seaman acting on board a foreign ship in a foreign port. *Dickman v. Benson*, 3 Camp. 290; 1 Holt, 464.

(b) Notice to Consul.

66. In an action of wages the affidavit to lead the warrant of arrest shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the commencement of the action has been given to the consul of the state to which the vessel belongs, if there be one resident in London, and a copy of the notice shall be annexed to the affidavit. See Ord. V. r. 16, sub-r. (b) No. 38.

See also Nos. 52, 59, 61—64, *supra*.

11. Crown and Government Ships.

67. This act, except as specially provided, does not apply to her Majesty's ships. See M. S. Act, 1854 (c. 104), s. 4.

68. A post-office packet may be arrested in a suit for wages. *The Lord Hobart*, 2 Dodson, 103.

* (31) One of the early statutes, with reference to merchant seamen, now repealed.

3. Who may sue.

1. Generally.*

69. Every person employed on board a ship is entitled to sue in the Court of Admiralty for his wages. *The Prince George*, 3 Hagg. 379.

70. The surgeon of a ship may do so. *Maddox v. —* (1700), 12 Mod. 526; *Ross v. Walker* (1765), 2 Wils. 264; *The Prince George*, 3 Hagg. 379; *Mills v. Long*, 1 Sayer's Rep. 136.

71. But *semble*, not for medicines furnished by him for the use of the crew. *The Lord Hobart*, 2 Dodson, 105; *The Wharton*, 3 Hagg. 148, n.

72. A purser may sue. *Alleson v. March* (1689), 2 Vent. 181; *The Prince George*, 3 Hagg. 376.

73. A pilot may sue there, unless the contract be made and the work done *infra corpus comitatús*. *Ross v. Walker* (1765), 2 Wils. 264.

74. A boatswain may sue there. *Alleson v. March* (1689), 2 Vent. 181; *Ragg v. King* (1729), 2 Stra. 858.

75. A ship's carpenter may sue there. *Wheeler v. Thompson* (1738), Stra. 707; *S. P. Creed v. Mallet* (1741), Fort. 231; *The Lord Hobart*, 2 Dodson, 104.

76. And though performing certain services on land, with the permission of the master, for which he received remuneration, *held*, he was entitled to his wages also during such time, though not employed in the service of the ship. *The Bulmer*, 1 Hagg. 167.

77. A female cook and steward may sue there. *The Jane and Matilda*, 1 Hagg. 187.

78. An apprentice may sue there. *The Albert Crosby*, 1 Lushington, 44.

2. Masters.

(a) Generally.†

79. Every master of a ship shall, as far as the case permits, have the same rights, liens, and remedies for the recovery of his wages as by this act or any law or custom any seaman has; and if in any proceeding in any Court of Admiralty or Vice-Admiralty touching the claim of a master to wages any right of set-off or counter-claim is set up, such court may inquire into and adjudicate upon all questions and settle all accounts arising or outstanding between the parties, and direct payment of any balance due. See M. S. Act, 1854 (c. 104), s. 191.

80. A master suing for wages and disbursements is bound to furnish accounts before bringing his suit; if he do not, he will not be entitled to his costs. *The Fleur-de-lis*, L. R. 1 A. & E. 49.

(b) Also Part-Owners.

81. The maritime lien possessed by a master under sect. 10 of the Admiralty Court Act, 1861, for his wages and disbursements, is not impaired by the mere fact that he is also a part-owner. *The Feronia*, L. R. 2 A. & E. 65; 37 L. J. Adm. 60; 3 Asp. 54. See also *The Darling*, L. R. 2 A. & E. 260; 37 L. J. Adm. 29, 94.

82. A master *held* entitled to sue for wages earned on board a vessel, although he claimed to be owner of a moiety of such vessel; half the wages to be paid

* (32) In order to entitle persons to sue in the Admiralty for wages, the services rendered must be necessary, or at least contributory, to the navigation of the vessel or preservation of her, or of those who are employed in the navigation. *Trainer v. The Superior*, Gilpin's Rep. 514. [AMERICAN.]

(33) Musicians, hired on board a vessel as such, refused the jurisdiction of the Court of Admiralty. *Ibid.*

(34) The pilot deck-hands, engineer, and firemen on board of a steamer, are mariners to the extent of being entitled to sue for their wages in the Admiralty. *Wilson v. The Steamer Ohio*, *ibid.* 505.

(35) The clerk of a steamer has the same lien on the boat as the crew for his wages. *Abbott v. Steamboat Co.*, 4 Md. Ch. Decis. 110. [AMERICAN.]

(35a) And a female cook on board a vessel is a mariner, and may sue as such. *The Brandywine*, 1 Newb. Adm. 5. [AMERICAN.]

(36) No lien exists in the Admiralty for services performed by a stovedore in loading and storing the ship's cargo. *M'Dermott v. The S. G. Owens*, Wallace, jun., 370. [AMERICAN.]

(37) Persons shipped on board a vessel sailing on a seal-catching voyage, to serve as sealers (*i. e.* to kill and dress the seal and not in navigating the ship) are entitled to a lien for wages. *The Ocean Spray*, 4 Sawyer, 105. [AMERICAN.]

† (38) A master of a ship has no valid claim for wages, until he has rendered a full and satisfactory account of the moneys received, and of the disbursements and expenditure of the ship during the voyage. *Robinson v. Hinckley*, 2 Paine, C. C. 457. [AMERICAN.]

by the owner of the other moiety. *The Joseph Dexter*, 3 Asp. 248. [IRISH.]

82a. In an action for wages the court cannot take cognizance of a claim by the master to an equitable share in the vessel. *The D. Jer*, 13 L. T. 22.

3. Seamen being Part-Owners.*

4. Stowaways.†

83. As to the responsibilities of stowaways, see tit. SEAMEN, Pt. V. p. 2186.

4. Insurance.‡

84. A mariner cannot insure his wages. *The Juliana*, 2 Dodson, 509; *The Neptune*, 1 Hagg. 239; *The Lady Durham*, 3 *ibid.* 201.

85. Or perquisites in the nature of wages. *Webster v. De Tastet*, 7 T. R. 157; 1 Park on Ins. 11.

86. But a different rule holds as to the captain who may insure his commission, privileges, wages, &c. *King v. Glover* (1806), 2 N. R. 206.

5. Property liable.

87. The ship is the primary security to the seaman for his wages as long as a plank remains. *The Golubchick*, 1 W. Rob. 143; *The Neptune*, 1 Hagg. 238; and see c. 15, s. 1, p. 2298.

88. The fact that the master has been hired by one who has fraudulently obtained possession of a ship will not prevent the master having a lien upon the ship for his wages and disbursements, if he has discharged his duties in ignorance of the fraud. *The Edwin*, 4 N. R. 382.

88a. As to the liability of freight, see c. 15, s. 2, p. 2299.

6. Parties liable.

1. Generally.§

89. The master, the ship, and the owner, are severally liable to a mariner

for his wages, and the mariner is entitled to his option as to which he will proceed against. In some respects a proceeding against the master is more convenient. *The Jack Park*, 4 C. Rob. 311.

90. In an action by a purser's steward against the purser of a king's ship to recover wages from him beyond his pay as an able seaman, on an implied contract with him (the purser) for his services as purser's steward: *held*, that as a person receiving a specific salary from the Crown in respect of his situation could not recover upon an implied contract for a remuneration for his services from the officer under whose immediate authority he acted, and as the purser had no funds allowed him out of which such services were to be paid, the action could not be supported. *Carter v. Hall*, 2 Stark. 861.

91. The captain of a ship-of-war detaining an impressed apprentice after notice, is liable to the master for wages for the service of the apprentice. *Eades v. Vandeput*, 5 East, 39, n.; 4 Dougl. 1; and see *Foster v. Stewart*, 3 M. & S. 191.

92. Even if the captain have knowledge of the fact from the apprentice's assertion merely. *Ibid.*

93. A shipowner assigned 15-16ths of a ship to his creditor, in trust to sell and retain his debts, and afterwards became bankrupt; the ship was afterwards sold. *Held*, that the creditor must bear his proportion of the seamen's wages, and other expenses on account of the ship. *Douglas v. Russell* (1831), 4 Sim. 533.

94. The principle of equity, that he who takes a benefit should bear his share of the burthen attaching to it; *held*, to apply in the case of demands for pilotage and wages against ship and freight, where the property in these was vested in different owners, as the exertions of the pilot and seamen contribute equally to the preservation of ship and freight: but *quere*, as to the application of that principle in all cases. *The Dowthorpe*, 2 W. Rob. 85.

* (39) A mariner, though a part-owner of the vessel, may sue the ship for his wages. *The Pilot* (No. 2), 1 Newb. Adm. 215. [AMERICAN.]

† (40) One who secretes himself on board a vessel before sailing, and discovers himself after the vessel is at sea, is not one of the crew, though the master requires him to work, as a condition of his having food, and he does work. *United States v. Small*, 2 Cur-

tis, C. C. 241.

‡ (41) Seamen cannot insure their wages. *M'Quirk v. Ship Penelope*, 2 Pet. Ad. 276. [AMERICAN.]

§ (42) Seamen have a triple security for their wages; the vessel, the owner, and the master. *Bunde v. Haven*, Gilpin, 592; *Carey v. Schooner Kitty*, Bee, 254. [AMERICAN.]

2. Owners.*

95. Ship totally lost. Action for seaman's wages against the owners personally allowed. *The Stephen Wright*, 12 Jur. 732.

96. The owners of a ship let it out to freight, and by the charter-party it was agreed that no freight should be paid to the owners until six days after the ship should return to the port of London and make a full delivery of her lading, but the master might detain the imprest money, and if the ship should be lost in her voyage, the master and owners should not expect any other satisfaction than the imprest money for the freight and demurrage of the ship. The ship was lost, and upon a question who was liable to pay the seamen's wages, it was held, that the master was liable in the first instance, as having hired them, but that he had his remedy against the owners. *Buck v. Rawlinson*, 1 Bro. P. C. 137.

96a. In a suit for wages by the master of a vessel against her owners, who had chartered her to a third party, the master will be decreed the amount of his demand, though the services were rendered while she was in the possession of the charterer, and the court will not, when dealing with the case, take an account as between the owners and charterer, who is no party to the proceeding, as against the claim of the master, which it would do, if the account was between the owners and masters, in pursuance of its statutory jurisdiction. *The Shamrock*, 5 (IRISH) Jur. N.S. 159.

* (43) The owner of a vessel, although his name is not stated in the shipping articles, is liable for the wages of a seaman. *Bunde v. Haven*, Gilpin, 592. [AMERICAN.]

(44) When a vessel is let to the master to be employed by him, and he to pay to the owners a certain portion of her earnings, the owners will be liable to the seamen for their wages, though by agreement the master is to have entire control of the vessel to victual and man her, and furnish supplies at his own expense, unless at the time of shipping this contract is made known to them, and they are informed that they are to look to the master as the only owner. *Scholfield v. Potter, Daveis*, 392. [AMERICAN.]

(45) A sailor cannot sustain an action for wages against the general owner of a vessel which he has let to another on a contract that the latter shall have the use and control of her, and shall man her at his own expense, and who made the contract with the sailor. *Giles v. Vigoreux*, 35 Maine (5 Red.), 300.

97. Part-owners may be sued in the Admiralty by the mariners of their vessels for their wages. *Alleson v. March* (1689), 2 Vent. 181; *Wheeler v. Thompson* (1738), 1 Stra. 707; *Ragg v. King* (1729), 2 Stra. 858.

98. In a suit for wages, a protest on the ground of non-liability, pending a question in the Court of Chancery as to the ownership of the vessel under an assignment, overruled, and the parties directed to appear absolutely, they having in their answer to a bill in Chancery sworn that they were the owners. *The St. Johan*, 1 Hagg. 334.

3. Mortgagees.

99. A master may enforce his lien for wages even against persons who as mortgagees have in the interim become interested in the ship, without notice of the lien. *The Chieftain*, 3 N. R. 251.

4. Masters.†

100. It is an established rule, so ancient that its origin is unknown, that the seamen may recover their wages by action against the master. *The Salacia*, 7 L. T. N.S. 440; 11 W. R. 189; *Bayly v. Grant*, 1 Salk. 33; 12 Mod. 444; 1 Ld. Raym. 632; Holt, 48; *Anon.*, 2 Show. 86; *Hook v. Moreton*, 1 Ld. Raym. 397; *Armstrong v. Smith*, 1 N. R. 299.

5. Underwriters on Abandonment.‡

(46) The charterers, and not the general owners of a vessel, are liable for seamen's wages on the voyage for which she is chartered. *Goodridge v. Lord*, 10 Mass. 483. [AMERICAN.]

(47) Trustees holding the title to a vessel, and controlling and managing her for the benefit of others, are liable for the wages of the master. *Winsor v. Sampson*, Sprague, 548. [AMERICAN.]

† (48) The master is liable for the wages of mariners, if he admit them to serve on board the vessel, although they were originally shipped by the owner. *Farrel v. M'Clea*, 1 Dall. 392. [AMERICAN.]

(49) A person was hired to go on a voyage as nominal master, but was never master in fact. Held, that his contract for wages with the real master was binding on the vessel and owners. *L'Arina v. The Exchange*, Bee, 198. [AMERICAN.]

‡ (50) After abandonment the assurer is liable for the subsequent wages of the crew

7. Actions by Seamen of Foreign Ships.

1. Generally.*

101. If foreign sailors stipulate in their own country, before the commencement of a voyage, that they will not sue the captain for any money abroad, but be satisfied with what he may advance them in deduction of their wages till they return home, they cannot maintain an action against him for wages in the courts of this country. *Johnson v. Machielene*, 3 Camp. 44.

102. Even though the ship and cargo be confiscated in an English port, and the voyage thereby ended. *Geinar v. Meyer*, 2 H. Black. 603.

103. Action by American seamen, discharged in England, for their wages. The court, after remarking on the jurisdiction in favour of British seamen, stated that there were cases in which, to prevent a total failure of justice, the court had gone a step farther, and as wages are due by the general maritime law, however modified by the particular regulations of different countries, had, with the consent of the accredited agent of their own government, entertained proceedings for wages at the suit of foreign seamen against their vessels lying in England, and would do so in this case. *The Courtney*, Edwards, 239.

103a. As to the jurisdiction of British courts in reference to foreign masters and seamen, see c. 2, ss. 9, 10, pp. 2283, 2284.

2. Ships of War.†

104. As to proceedings generally against British and foreign ships of war, see tit. JURISDICTION, p. 668.

3. Compensation for Wrongful Discharge.

See c. 14, s. 1, p. 2296.

8. Proceedings by Board of Trade.

1. On behalf of Seamen lost with Ship.

(a) Generally.

105. The wages of seamen or apprentices who are lost with the ship to which they belong, may be recovered by the Board of Trade from the owner like other wages are recoverable. See M. S. Act Amendment Act, 1862 (c. 63), s. 21, sub-s. 1.

106. The Board of Trade deals with such wages like wages of other deceased seamen and apprentices under the M. S. Act, 1854 (c. 104). *Ibid.* sub-s. 4; and see as to same, tit. SEAMEN, Pt. VI. p. 2192.

as owner, but not as insurer. *M'Bride v. Marine Ins. Co.*, 7 Johns. 431. [AMERICAN.]

(51) After an abandonment of a vessel is accepted by the underwriters, they become owners for the voyage, and are liable for seamen's wages from the time they become owners. *Hammond v. Essex F. & M. Ins. Co.*, 4 Mason, 196. [AMERICAN.]

(52) See also Dunlap's American Admiralty Practice, 240.

* (53) A seaman may sue for wages in a foreign port, though he has signed articles agreeing not to commence such suit, if the master changes the voyage after such articles are signed, and promises to pay. *Vibus v. Wirting*, 2 Yeates, 350. [AMERICAN.]

(54) A claim for wages and his discharge by a Swedish seaman in consequence of the cruelty of the master, was sustained in the Admiralty, although it appeared that Swedish mariners are not permitted, by the law of Sweden, to sue in the courts of foreign nations. *Weiberg v. The St. Oloff*, 2 Pet. Adm. 428. [AMERICAN.]

(55) The court will not interfere in disputes between the master and seamen of a foreign vessel when they are bound by the articles to submit all disputes to a home

tribunal. *Aertson v. The Ship Aurora*, Bee, 161. [AMERICAN.]

(56) It seems that a deviation from the voyage for which foreign seamen shipped is not a ground upon which our courts should entertain jurisdiction of a suit for wages, where by the articles the libellants have stipulated to sue in their own country only. *The Infanta*, 1 Abb. Adm. 263; *Graham v. Hoskins*, Olcott, Adm. 254.

(57) But where the interests of justice require it to be disregarded, e. g., where the voyage is broken up in an American port by some other cause than the wreck of the vessel, or where the man is discharged or becomes entitled to a discharge by reason of improper treatment, the American courts will entertain a suit by a foreign seaman for his wages, notwithstanding his stipulation in the articles not to sue until his return home. *Ibid.*

(58) See also Dunlap's American Admiralty Practice, 102, 107.

† (59) Mariners enlisting on board a ship of war, or vessel belonging to a sovereign state, cannot libel against the ship for wages due. *Moitez v. The South Carolina*, Bee, 422. [AMERICAN.]

(b) *Evidence.*

See tit. EVIDENCE, p. 463.

9. Shipping Agreements.*

107. As to shipping agreements, running agreements on the hire of seamen, and the execution thereof, see tit. SEAMEN, Pt. II. pp. 2136—2145.

108. As to the construction thereof in regard to rate of wages, *Ibid.*

10. Commencement of Earning.

109. A seaman's right to wages commences at the time he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens. See the M. S. Act, 1854 (c. 104), s. 181.

110. As to the compensation to seamen discharged after signing agreement and before commencement of voyage, or before one month's wages are earned, and as to the recovery of such compensation like wages, see c. 14, s. 1, p. 2296.

11. Commencement of Right of Action.†

111. So much of the third part of this act as relates to the shipping and discharge of seamen in foreign ports, applies to all ships registered in any of her Majesty's dominions abroad, when out of the jurisdiction of their respective governments, and to their owners, masters, and crews. See the M. S. Act, 1854 (c. 104), s. 109.

112. The master or owner of every ship

shall pay to every seaman his wages in the case of a home-trade ship within two days after the termination of the agreement or when such seaman is discharged, whichever first happens; and in the case of all other ships (except ships employed in the southern whale fishery or on other voyages for which by the terms of their agreement they are compensated by shares in the profits of the adventure) within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman at the time of his discharge is entitled to be paid on account a sum equal to one-fourth part of the balance due. *Ibid.* s. 187.

113. In the case of foreign-going ships—The owner or master shall pay to each seaman on account, when he lawfully leaves the ship at the end of his engagement, two pounds, or one-fourth of the balance due to him, whichever is least; and the remainder of his wages within two clear days (exclusive of any Sunday, Fast Day in Scotland, or Bank Holiday) after he so leaves the ship. See the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 4.

114. No seaman engaged for a voyage or an engagement to terminate in the United Kingdom is entitled to sue in any court abroad for wages, unless discharged with such sanction as therein required and with the written consent of the master, or proves such ill-usage on the part of the master or by his authority as to warrant reasonable apprehension of danger to his life if he remained on board. See M. S. Act, 1854 (c. 104), s. 190.

115. A master compelled by pressing necessity of ill-health to leave his ship at a port in one of the British colonies,

* (60) As to the power now given by statute to the court or functionary having jurisdiction in the matter to rescind an inequitable shipping agreement, see tit. SEAMEN, Pt. II. c. 2, p. 2148.

† (60a) For old cases on this head, see *Edwards v. Child*, 2 Ver. 728; *Sigard v. Roberts*, 3 Esp. 72; *White v. Mattison*, 2 Stark. 325.

(61) A mariner is entitled to his wages as soon as he is voluntarily discharged from the vessel; and if not paid within ten days after his discharge, he may have process from a Court of Admiralty against the vessel to enforce the payment. *The Mary, Ware*, 456. [AMERICAN.]

(62) Where seamen are discharged by the master before the expiration of the time mentioned in the articles, an action accrues for

their wages immediately. *The Cadmus v. Matthews*, 2 Paine, C. C. 229. See also 2 Parsons on Admiralty Law, 665 *et seq.* [AMERICAN.]

(63) A master of a ship has no valid claim for wages until he shall have rendered a full and satisfactory account of the moneys received, and of the disbursements and expenditure of the ship during the voyage. *Robinson v. Hinckley*, 2 Paine, C. C. 457.

(64) An agreement not to sue in a foreign port in shipping articles does not deprive a seaman of that right when the voyage, as respects him, is ended, and that by the act of the master, as a deviation, or cruel treatment. *Shulenburg v. Wessells*, 2 E. D. Smith (N. Y.), 70. [AMERICAN.]

held, entitled to sue immediately for his wages. *The Rajah of Cochin*, Swabey, 473.

116. The master of a vessel is not entitled to recover in an action for wages until "the service has terminated" or he has been discharged. *The Hemisphere Borealis*, 5 (Irish) Jur. N.S. 180.

117. The court will not pay much attention to the objection that the action for wages was brought before the legal time for the payment of the wages under the articles had elapsed. *The Test*, 3 Hagg. 313, 316.

See also No. 80, p. 2286.

12. Right to—

1. Freight not earned.*

118. No right to wages is dependent on the earning of freight, and every seaman and apprentice who would be entitled to recover wages, if the ship in which he has served had earned freight, is now, subject to all other rules of law and conditions applicable, entitled to recover them notwithstanding that freight has not been earned: but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores shall bar his claim. See M. S. Act, 1854 (c. 104), s. 183.

119. If any seaman or apprentice so entitled to wages dies before they are paid they shall be paid and applied in the manner therein specified, with regard to the wages of seamen who die during a voyage. *Ibid.* s. 184.

120. See further, tit. GOODS, CARRIAGE OF—, Nos. 1058—1066, p. 595.

2. Embargo.†

121. Wages are due to a seaman during the period of the vessel's detention by an embargo in a foreign port, freight having been earned. *Thompson v. Millie*, May 28, 1806; 13 F. C. 560.

122. And this without the seaman's producing the order by which the embargo was taken off, on proof that the crew were restored to the ship, and that she completed her voyage and earned freight. *Delamainer v. Winteringham*, 4 Camp. 186; *Pratt v. Cuff*, 4 East, 43, n.

123. The Russian Government laid an embargo on British ships in Russian ports, until an alleged convention between the Russian and British Government should be fulfilled by the latter. The crews were taken out of the ships, marched up the country, and there detained for six months, and treated as prisoners of war, and at the end of that time they were marched back to their ships, and the vessels with their cargoes restored. Held, that this was an embargo, and not a hostile capture, and that the seamen were entitled to wages during the time of the detention. *Beale v. Thompson* (1805), 1 Dow. 299; 4 East, 546; 1 Smith, 144; reversing the judgment in 8 B. & P. 405.

124. It was so held where the plaintiff was a foreign seaman. *Johnson v. Broderick*, 4 East, 566; 1 Smith, 153.

3. In cases of Wreck or Loss of Ship.

See tit. SEAMEN, Pt. III. c. 19, p. 2157.

4. When injured in Service of Ship.

See tit. SEAMEN, Pt. IV. c. 2, p. 2163.

* (65) As to the previous state of the law by which the right to wages was made, in certain cases, dependent upon the earning of freight, see *Anon.*, 2 Show. 283; *Saunders v. Drew*, 3 B. & A. 455; *The Juliana*, 2 Dodson, 510; *The Sydney Cove*, 2 Dodson, 13; *The Neptune*, 1 Hagg. 232; *The Lady Durham*, 3 Hagg. 202; *Campion v. Nicholas*, Str. 405; *Harris v. Ive*, 1 Har. & W. 238; *Brown v. Milner*, 7 Taunt. 319; 1 Moore, 65; *Appleby v. Dodds*, 8 East, 300; *Cutter v. Powell*, 6 T. R. 320; *Hernandez v. Bowden*, 3 Burr. 1844; *The Reliance*, 2 W. Rob. 119; and 7 & 8 Vict. c. 111, s. 17, now repealed. *The Saratoga*, 2 Gallison's American Rep. 175; *The Two Catherine's*, 2 Mason, 319; *Brown v. Lull*, 2 Sumner's Rep. 443; *The Massachusetts*, 7 L. R. 526; *Dennett v. Tomhagan*, 3 Johns. 156; *The Catharina Maria*, 2 Pet. Adm. 424; *The Cynthia*, 1 Pet. Adm. 205;

The Cato, *ibid.* 54; *The Sophia*, Gilpin, 77; *The Hercules*, *ibid.* 184; *Pitman v. Hooper*, 3 Sumner, 60; *The Elizabeth and Jane*, Ware, 41; *The Dawn*, 26 Jur. 226. See also 1 Conkling's Admiralty Law, 141 *et seq.* [AMERICAN.] And Pardessus' *Lois Maritimes*.

† (66) The wages of the crew during the detention by an embargo are not chargeable to the ship, nor are they general average, but fall exclusively on the freight. *M'Bride v. Marine Ins. Co.*, 7 Johns. 431. [AMERICAN.]

(67) In such a case they are not to attempt to get extraordinary wages, and if they do they are to forfeit half what they have had. See *Browne's Civ. and Adm. Law*, 179.

(68) If a ship is forced to winter in a strange country the sailors get no extra wages. *Ibid.* 181.

5. *When Seaman left Abroad through Illness.**

125. Where the service of a seaman terminates before the period contemplated in the agreement by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the voyage, granted as there-in mentioned, the seaman is entitled to wages for the time of service prior to such termination, but not further. See M. S. Act, 1854 (c. 104), s. 185.

126. As to the procedure on a seaman being left abroad under such circumstances, see tit. SEAMEN, Pt. IV. c. 6, p. 2165.

127. But as to illness of a seaman wilfully caused by him, see c. 17, s. 15, p. 2312.

6. *Extra Pay.*

128. A contract for reward beyond the wages stipulated for in the mariner's contract is illegal and void. *The Isabella*, 2 C. Rob. 241; *The Araminta*, 1 Spinks' Eccl. and Adm. Rep. 224; 24 L. T. 43; 18 Jur. 793; *White v. Wilson*, 2 B. & P. 116; *Dafter v. Cresswell*, 7 D. & R. 650; *Harris v. Watson*, Peake, N. P. C. 72; *Still v. Myrick*, 2 Camp. 317; *Thompson v. Havelock*, 1 Camp. 527; *Elsworth v. Woolmore*, 5 Esp. 84; *Rogers v. Lacy*, 2 B. & P. 57; 3 Esp. 43; *Harris v. Carter*, 3 El. & Bl. 559; 18 Jur. 1014; 23 L. T. 66; 23 L. J. Q. B. 295; *Fraser v. Hatton*, 2 C. B. N.S. 512; 3 Jur. N.S. 694; 26 L. J. C. P. 226; *The Prince Edward*, 5 (Irish) Jur. N.S. 110; *The Lockwoods*, Stuart's Vice-Adm. Rep. 123 (Lower Canada).

129. The contract signed when the seaman undertook the voyage regulates the payment due to them on its termination. Claim for extra wages for having remained by the ship when the other seamen deserted, disallowed. *The Prince Edward*, 2 L. T. N.S. 139; 5 (Irish) Jur. N.S. 110.

130. A mariner, who has signed articles for a voyage at a certain pay per month,

cannot claim any further wages or gratuity by usage or custom. *Elsworth v. Woolmore*, 5 Esp. 84.

131. A vessel at Geelong, half of the crew of which had gone to the diggings, being about to start on the return voyage *vid* Bombay, the master proposed to the remaining crew to divide amongst them the wages due to the deserters on the condition of their working the ship short-handed to Bombay. The proposal was accepted by the crew, the forfeited wages were divided amongst them, and the ship was taken so short-handed in safety to Bombay. On arriving at Liverpool the owners deducted as wages advanced the sum paid to each of the crew out of such forfeited wages. *Held*, first, that whether a contract for reward beyond the wages stipulated for in the mariner's contract be compulsory or not it is illegal. *The Araminta*, 1 Spinks' Eccl. and Adm. Rep. 224; 18 Jur. 793; 24 L. T. 43. See also note (75) *infra*.

132. Secondly, that a payment made by the master under such contract might be recovered at law by the owner. *Ibid*.

132a. Thirdly, that instead of driving the owner to law for his remedy the Court of Admiralty should give it him by allowing the deductions. *Ibid*.

133. *Semble*, a crew is not compellable to proceed on the return voyage so short-handed as to risk life. *Ibid*. See also *Still v. Myrick*, 6 Esp. 129; 2 Camp. 317; *Thompson v. Havelock*, 1 *ibid*. 527.

134. A seaman, who had engaged to serve on board a ship, was promised by the master, when the ship was in distress, an extra sum, in consideration of extraordinary exertion on his part. Such a contract *held* to be wholly void. *Harris v. Watson*, Peake, N. P. C. 102.

135. The plaintiff and other seamen had entered into articles of agreement to serve for a voyage from Liverpool to Melbourne and home. At Melbourne several of the crew deserted, and one of the crew was discharged by the captain. Whilst the desertion was going on, the captain entered

* (69) When a seaman, being sick, is left in a foreign hospital, and being cured rejoins his vessel, he is entitled to full wages, no new contract being shown. *Shakerly v. The Latona*, Crabbe, 63. [AMERICAN.]

(70) A seaman, having gone into hospital for a small hurt not received in performance of his duty, *held*, not entitled to wages after leaving the ship. *The Captain Ross*, Stuart's Vice-Adm. Rep. 216. See also *Chandler v.*

Grieves, 2 Hen. Black. 606, note (a); 2 Boulay Paty, 232; Poth. Louage des Matelots, No. 189, Orde 1681, liv. iii. tit. 4, art. 11; 1 Valin, 721; *The Atlantic*, S. V. A. Rep. 125.

(71) A seaman left sick at a foreign port, might have rejoined the ship but would not. His claim for wages was allowed only until the time he might have rejoined the ship. *Williams v. Brig Hope*, 1 Pet. Ad. 138. [AMERICAN.]

into a fresh agreement with the plaintiff and the other remaining seamen, to raise their wages for the remainder of the voyage. *Held*, that the plaintiff never was, under the circumstances, released from the obligation of the original articles, and could not, therefore, maintain an action to recover the increased rate of wages for the voyage home. *Harris v. Carter*, 3 El. & Bl. 559; 2 C. L. R. 1582; 18 Jur. 1014; 23 L. J. Q. B. 295; 23 L. T. 66.*

136. Seamen had engaged by the run from Liverpool to Dublin, and the vessel was driven into Milford Haven, and owing to the weather detained sixteen days. *Held*, that the seamen were not entitled to any extra wages on that account, the chance of such accidents being provided for by the extra remuneration included in the run money. *The James*, 2 Browne's Civ. and Adm. Law, App. 533.

137. The crew of a vessel having signed ship's articles, are bound to perform their usual duties, and are not to be held entitled during the performance of them to any increase of wages on account of an increase of peril, unless it appears clearly that they have been released from those articles. *The Christiana*, 5 Ir. Jur. N.S. 63.

138. A man, rated on board an East India ship as a seaman, and who signed the ship's articles, and received pay as such, *held*, not entitled to maintain any action upon a parol agreement subsequently made for wages as cuddy servant during the voyage. *Dofter v. Cresswell*, 7 D. & R. 650; 2 Car. & P. 161.

139. A mariner, who has signed articles for a voyage at a certain pay per month, cannot claim any further wages or gratuity by usage or custom. *Elsworth v. Woolmore*, 5 Esp. 84.

140. If it appear that the seamen were released from the articles, the owners of a vessel are bound by the special agreement of the captain to give extra wages to the crew who had signed ship's articles for navigating a vessel home in a leaky or unseaworthy condition. *The Christiana*, 5 Ir. Jur. N.S. 63.

141. A promise by a captain on behalf

of his owners to pay monthly wages to one of the sailors, in order to induce him to become a hostage, is binding on the owners, although they abandon the ship and cargo. *Yeates v. Hall*, 1 T. R. 73; and see *Helly v. Grant*, 1 T. R. 76.

142. In an action by a purser's steward against the purser of a king's ship to recover wages from him beyond his pay as an able seaman, on an implied contract with him (the purser) for his services as purser's steward, *held*, that as a person receiving a specific salary from the Crown in respect of his situation could not recover upon an implied contract for a remuneration for his services from the officer under whose immediate authority he acted, and as the purser had no funds allowed him out of which such services were to be paid, the action could not be supported. *Carter v. Hall*, 2 Stark. 861.

143. Evidence was offered on the part of a mate to show that, besides the stipulated wages, it was the custom to allow the mate a privilege of carrying one slave, and he libelled for the value of that privilege, according to average price at the port of delivery. *Held*, that the claim and evidence were inadmissible. *The Isabella*, 2 C. Rob. 241; *White v. Wilson*, 2 B. & P. 116.

144. When seamen sign articles for a specified service, and before the voyage is concluded the master agrees to give one or more of them increased wages, the court will not bind the owners to such an agreement. *The Patriotto*, 11 L. T. N.S. 149; 8 Ir. Jur. N.S. 317; 2 Asp. 129.

145. The plaintiff, at the request of the defendant, a captain in the royal navy, agreed to enter on board his ship as captain's cook, the defendant undertaking to pay the plaintiff wages over and above the government pay to which his rating would entitle him. The plaintiff having performed the service, *held*, that there was a sufficient consideration to enable the plaintiff to maintain an action for such wages. *Clutterbuck v. Coffin*, 4 Scott, N. R. 509; 1 D. N.S. 479; Car. & M. 273; 3 M. & G. 842; 6 Jur. 131; 11 L. J. C. P.

* (72) The principle which pervades all the above cases seems to be, that if in the course of a voyage circumstances not contemplated by the articles arise which render the original contract with a seaman void, he is at liberty to enter into a new engagement for the remainder of the voyage at a greater

remuneration. This doctrine is carefully affirmed by the learned judge in the case of *The Araminta*, *supra*, but applied by him with a different result to that of *Hartley v. Ponsoby*, *supra*, in which latter case the question of fact was decided by a jury.

65;* and see *England v. Davidson*, 11 A. & E. 856.

146. When a seaman signs articles at a foreign port there is an implied warranty of seamanship, and if the ship is unseaworthy, there is consideration for a new contract for extra reward to induce him to sail in her. *Turner v. Owen*, 3 F. & F. 176.

147. A vessel, in consequence of the desertion of some of the seamen, was left short-handed in harbour, before the voyage was completed. The master, to induce the remaining seamen to perform the rest of the voyage, promised to pay them a sum of money in addition to their wages. They accordingly performed the rest of the voyage with the diminished number of hands. On an action by one of the seamen against the master for the sum promised, the jury found that the master made the agreement without coercion, for the best interests of the owners, that he could not have obtained additional hands at a reasonable price, and that it was unreasonable for so large a ship to proceed on the completion of the voyage with the diminished number of hands. *Held*, that on this finding, which the court understood to mean that it was unsafe so to proceed, the plaintiff was entitled to recover, as the seamen were not bound, by their original contract of service, to proceed with the

diminished number of hands, and their undertaking to do so was therefore a good consideration for the master's promise. *Hartley v. Ponsonby*, 7 El. & Bl. 872; 3 Jur. N.S. 746; 26 L. J. Q. B. 322.†

148. Special agreements with the owners by the master of a tug steamer, as to a per centage on the earnings of the tug, and by seamen as to increased wages, for foregoing all claims for salvage, will not be upheld by the Court of Admiralty, as being repugnant to general principle and prejudicial to the public interest, as the effect of such agreements would be to take away from the actual salvors the motives for enterprise and energy. *The Mary Anne*, 11 L. T. N.S. 85; 9 Ir. Jur. N.S. 60.‡

149. See also, as to such agreements, tit. SALVAGE, Pt. I. c. 16, pp. 1891, 1892.

7. Subsistence Money. §

150. See Nos. 166, 169, 173, *infra*; and as to witnesses, tit. Costs, pp. 388, 389.

13. Rate of—

1. Generally. ||

151. As to the shipping agreements setting forth the rate of wages and the

* (73) This case differs from those cases (see *Harris v. Watson*, *Still v. Myrick* and *Thompson v. Havelock*), in which contracts for extra remuneration were made by persons not at the time competent to contract, having already bound themselves to give their entire services under a prior existing contract, as in this case the agreement for services was entered into while the plaintiff was in another employment and perfectly free to contract in the manner he did. There being no plea but *non assumpti*, the objection to the contract on the ground of illegality was not open to the defendant. Abb. Sh. (12th ed.), p. 461.

† (74) A promise made by the master at an intermediate port on the voyage to give an additional sum over and above the wages stipulated in the articles is void for want of consideration. *The Lockwoods*, Stuart's Vice-Adm. Rep. 123. [LOWER CANADA.]

(75) On the principles of the common law applicable to the contract of hiring of labour and service, a party cannot ordinarily claim an extra compensation on the ground that by some unexpected event the service which he has agreed to perform becomes more

laborious and dangerous than was anticipated at the time of the contract. *The Dawn*, Daveis, 121. [AMERICAN.]

(76) A master has no power to bind his owners and their vessel to the payment of mariners' wages for three months after their discharge, and after all services at sea and elsewhere had ceased. *Canizares v. Santissima Trinidad*, Bee, 353. [AMERICAN.]

‡ (77) From the above case it would seem that not only no stipulation barring a seaman's right to a share of salvage will be allowed, but also that any stipulation for increased wages, if the consideration for the increase be an abandonment of a right to salvage, would also be inoperative.

§ (78) A seaman who is injured in the service of the ship, without fault on his part, is entitled to his wages for the whole voyage or other period of his engagement, and to be taken care of at the expense of the ship. *The Steamboat Springer*, XXIII. Alb. Law Jour. 197. [AMERICAN.]

|| (79) Shipping articles having been signed by a seaman and delivered to the master, and the amount of wages omitted by mistake or accident, without fraud, it is competent to

construction thereof, see tit. SEAMEN, Pt. II. p. 2136.

152. The law will presume that the terms of a master's engagement for one voyage extend to a succeeding voyage, performed without any express or clearly implied new agreement. *The Gananoque*, 1 Lushington, 448.

2. *Quantum meruit*.*

153. As to claims for wages on a *quantum meruit*, see *Eaken v. Thom*, 5 Esp. 6; *Hillyard v. Mount*, 3 C. & P. 93; *White v. Mattison*, 2 Stark. 325; *Jesse v. Roy*, 1 C. M. & R. 316; 4 Tyrw. 626.

154. In fixing a rate of wages at a *quantum meruit*, there having been no specific agreement as to the amount, the court will be influenced by the conduct of the owner and the length of time during which the seaman may have been kept out of his money. *The Providence*, 1 Hagg. 393, 394.

3. *Promotion during the Voyage*.†

155. When the master of a vessel dies, or any particular circumstance occurs, such as insanity, that renders the master utterly incompetent to the discharge of his duties, the first mate, as a matter of course, succeeds to the command of the ship, but not necessarily to the whole of the original contract subsisting between

the former master and the owner. *The Tecumseh*, 3 W. Rob. 146.

156. A claim for a gradation of wages, first as mariner, afterwards as second mate, and then as chief mate, preferred by a person originally taken on board as supernumerary, and without any fixed rate of wages, pronounced for, with costs. *The Porcupine*, 1 Hagg. 381.

157. The court would not support, as against a second mate appointed chief mate, and suing for wages as such chief officer, on a *quantum meruit*, an agreement with him on such appointment, that his amount of pay was to depend on the discretion of the owner on the return of the ship to Great Britain. *The Providence*, *Ibid.* 391.

158. Claim of a second mate, who succeeded to the office of chief mate, to the rate of wages given to chief mates on similar voyages, pronounced for, with costs. An alteration in the ship's articles, held, not necessary to support his title. Wages as chief mate, at a *quantum meruit*, estimated according to the common usage of such voyages, decreed. *Ibid.* 391, 393.

159. A seaman who entered as second mate, but afterwards, and without any new agreement, did the duty and acted as first mate (the first mate having deserted), held, entitled during such period to wages after the same rate as those paid to the former chief mate. Wages after that

either party to show by parol testimony what the contract was in relation to wages. *Wickham v. Blight*, Gilpin, 452. [AMERICAN.]

(79a) A seaman had served one season in the capacity of engineer, and shipped again without any agreement as to wages: held, that his last year's wages were to be received as the measure of wages for his subsequent work. *The B. F. Bruce*, 1 Newb. Adm. 539. [AMERICAN.]

(80) If a seaman is, by a verbal agreement, shipped on a general trading or freighting voyage without any limitation of time or any fixed determination of the voyage, he is entitled, under the statute, to the highest rate of wages paid at the port where he shipped, and parol evidence is inadmissible to prove that a lower rate of wages, or a different mode of compensation, was agreed upon. *The Crusader*, Ware, 437.

* (81) In fixing a *quantum meruit* for wages on a whaling voyage, it is competent for the court to take into view the unusual protraction of the voyage, and the condition of the vessel and the crew, though not specially alleged or relied on in the libel. *Allen v. Hitch*, 2 Curtis, C. C. 147. [AMERICAN.]

† (82) A second mate raised to the rank of chief mate by the master during the voyage may be reduced to his old rank by the master for incompetency, and thereupon the original contract will revive. *The Lydia*, Stuart's Vice-Adm. Rep. 136. [LOWER CANADA.] See also *The Nimrod*, Gilpin, 88. (District Court for the Eastern Div. of Pennsylvania). [AMERICAN.]

(83) When a seaman is appointed to act as mate of a vessel by the master during a voyage, he may be removed by the master for incompetency, and is not entitled to any other wages than those originally contracted for. *Wood v. The Nimrod*, Gilpin, 83. [AMERICAN.]

(84) In the absence of the master, the next highest officer on board succeeds to his rights and authority *pro tempore*, so far as they are necessary for the performance of the ship's duties. *U. States v. Taylor*, 2 Sumner, 584. [AMERICAN.]

(85) When, in the course of a voyage, the master becomes incompetent to continue in command of the vessel, it is the duty of the mate to take command. *Copeland v. New England Ins. Co.*, 2 Met. 432. [AMERICAN.]

rate pronounced for, with full costs. *The Gondolier*, 3 Hagg. 190.

160. On the death of a master, the chief mate succeeded him, and appointed as second the plaintiff, who had shipped as an able seaman. *Held*, that the plaintiff was entitled to the pay of a mate. *Hanson v. Royden*, L. R. 3 C. P. 47; 37 L. J. C. P. 66; 3 Asp. 8.

4. Construction of Shipping Agreements.

161. See tit. SEAMEN, Pt. II. p. 2137.

14. Claims in the Nature of—

1. Compensation for wrongful Discharge.

(a) Generally.

162. In a cause of wages, the court has jurisdiction to entertain a claim for compensation for wrongful discharge of a seaman during the term of his engagement. *The Great Eastern*, L. R. 1 A. & E. 384; 36 L. J. Adm. 15; 2 Asp. 553. See also *The Northumbria*, 3 Asp. 562, note; *The Blessing*, L. R. 3 P. D. 35; 3 Asp. N.S. 561.

(b) Before Sailing.

163. As to the right of a seaman improperly discharged before the commencement of the voyage, or one month's wages earned, to compensation in respect of such discharge, see tit. SEAMEN, Pt. III. p. 2152.

(c) Masters.

164. The plaintiff, a master mariner, was engaged on a voyage from England to South American ports and back. It would have lasted about six months. He was discharged about a fortnight after the engagement, and when the vessel had put back into a port of distress. The dismissal having been held to be wrongful, the amount of the wages he would have earned had he completed the voyage was awarded him as damages. *The Northumbria*, 3 Asp. 562, n.

165. A wrongful discharge enures to a reimbursement of necessary expenses con-

sequent thereon. *The Frederick*, 1 Hagg. 218.

166. A master engaged for a voyage out and home if wrongfully dismissed abroad is entitled to wages until he can obtain other employment, or *semble*, until the termination of the voyage. *The Camilla*, Swabey, 312; 6 W. R. 840; 31 L. T. 282.

167. *Semble*, a master, if discharged abroad in consequence of his misconduct, is entitled to his wages so long as he continued in actual command. *Ibid*.

2. Compensation for wrongful Discharge in this Country of Crews of Foreign Ships.*

168. Foreign seamen engaged for a voyage out and home are entitled, upon being discharged in this country against their own consent, to receive out of the proceeds of the ship passage-money for their return home; but not so seamen engaged during the course of a voyage. *The San Jose Primeiro*, 3 L. T. N.S. 513.

169. Greek mariners of a Greek vessel sold by the authority of the court, *held* to be entitled, according to the law of their country, to the means of subsistence and return to their country. *The Madonna d'Idra*, 1 Dodson, 37; *The Alexandre*, 5 (Irish) Jur. N.S. 379. See also *The Hendrica Gazina*, *Ibid*. 110.

170. When foreign seamen discharged in Great Britain recovered their wages against the foreign ship, the court refused to grant them their passage-money home, except on the production of a certificate from their consul that they had gone or were going home. *The Raffaeluccia*, 3 Asp. N.S. 505.

171. The seamen also claimed for three months' pay, directed to be paid to their consul by the act of the United States of Feb. 28, 1803; but this was printed on the back of the contract, but not referred to in it. As this part of the claim did not arise out of the general maritime law, but called for an enforcement of a municipal regulation of the United States, the court declined to entertain it. *The Courtney*, Edwards, 239.

* (86) The master is not at liberty to discharge the crew in a foreign port without their consent, and if he does so the maritime law gives them entire wages for the voyage with the expenses of return. Circumstances, as a semi-naufragium, may vest in him the au-

thority to discharge the crew, but he must then provide them with a return passage and pay their wages up to the time of their arrival at home. *The Jane*, Stuart's Vice-Adm. Rep. 256. [LOWER CANADA.] See also Dunlap's American Adm. Prac. 45.

172. It intimated, however, that if the statute regulation had been embodied in the contract, so as to compose a part of it, the whole might have been carried into effect as an article of contract between the parties. *Ibid.**

173. Application on behalf of the mate and crew of a foreign ship deserted by the master, and sold under a decree of the court in a cause of bottomry, for an order for the payment of their wages, and board as part of their wages, the men being left entirely destitute, granted. *The Tremont* (1841), 10 Monthly Law Mag. (Notes of Cases), 137.

3. Compensation when left behind Abroad.

See tit. SEAMEN, Pt. IV. c. 6, p. 2165.

4. Compensation for Deprivation of Right to sue Abroad.

174. If any seaman (engaged for a voyage to terminate in the United Kingdom) on his return to the United Kingdom proves that the master or owner has been guilty of any conduct or default which (but for the provisions in this

section disentitling him to sue except as therein mentioned in any court abroad for wages) would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he is entitled to recover in addition to his wages such compensation not exceeding £20 as the court thinks reasonable. See *M. S. Act, 1854* (c. 104), s. 190.

5. Compensation for Delay in Payment.

(a) Ten Days' Double Pay.

(aa) Masters.†

175. For the statutory provisions as to the allowance of ten days' double pay in certain cases, see No. 181, *infra*.

176. Every master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his wages which by this act or by any law or custom any seaman, not being a master, has for the recovery of his wages. See *M. S. Act, 1854* (c. 104), s. 191.

177. A master is entitled under sections 187 and 191 of the *M. S. Act, 1854* (c. 104), to double pay for the number of days (not exceeding ten) during which the payment of his wages is improperly withheld; but

* (87) If an American seaman is discharged abroad three months' pay must be given to the consul to be applied by him according to the directions of the act of Congress. See *Parsons on Maritime Law*, vol. i. p. 460, n. 1; p. 461, n. 1.

(88) If a seaman be discharged abroad without justifiable cause, and without his own consent, the measure of damages is the full amount of wages till the return of the vessel, and the expenses of his own return; *Hutchinson v. Coombs*, 7 Jur. 37; Ware, 65; *Sullivan v. Morgan*, 11 Johns. 66: or three months' extra pay. See *Orne v. Townsend*, 4 Mason, 541; *The Saratoga*, 2 Gallis. 18; and 1 Conkling's Admiralty Law, 128. [AMERICAN.]

(89) The intermediate earnings of the seaman may be deducted from the expenses of his return, but not from the wages due. *Ibid.*

(90) An analogous provision will be found in the French Code de Commerce, Art. 252 to 256. See also 3 Kent, Com. 189, note (b).

(91) Where a person is employed on board a steamboat for one trip and is wrongfully discharged before its completion, he has by the statute of this State a lien on the boat and may recover wages up to the completion of the trip, deducting any wages he may in the meantime have earned on any other boat. *Grant v. Steamboat Maria Denning*, 28 Mis. (7 Jones), 280.

(92) But he can only recover full wages for a successful trip of the ordinary length, and not for the actual length of the trip, which was extended beyond the usual period by an accident. *Cunningham v. Steamboat Low Water*, *Ibid.* 338. [AMERICAN.]

† (93) A tender having been paid into court in full of master's claim for wages and balance of account, and the registrar and merchants having allowed more than the tender, they allowed the master ten days' double pay under the statute. *William and Jane*, Sept. 1858. R. & M.

(93a) The master, besides double pay, claimed £320 on a balance of £4,845. The owner filed a counter-claim of £500, of which the registrar allowed £200. *Held*, that the wages had not been withheld without sufficient cause, and that the owner was entitled to have the accounts between the master and himself allowed. Claim for double pay disallowed accordingly. *The Strathallan*, No. 349, March 12, 1861. R. & M.

(94) The master claimed £52, besides the ten days' double pay. The owner filed a counter-claim of £12, of which the registrar allowed £2. It was disputed whether the master rendered proper accounts before action, but the registrar was of opinion he had done so. Claim for double pay allowed. *The James Hay*, No. 1981, May 7, 1864. R. & M.

he is not so entitled if he himself causes the delay by improperly keeping back the accounts of the ship. *The Princess Helena*, 1 Lushington, 190; 30 L. J. Adm. 137; 4 L. T. N.S. 869; 1 Asp. 108.

178. An owner of a ship refused to pay wages to a master for a voyage, unless credited with salvage money received by the master under an award, and kept by him for his own share, the master refusing to account for a subsequent voyage, except on a condition of a settlement for the former voyage without reference to the salvage money. *Held*, that the payment of wages was improperly withheld, and that the master was entitled to ten days' double pay. *Ibid*.

179. In a cause of master's wages and accounts the master claimed £72, besides the statutory ten days' double pay for non-payment of his wages. The owner filed a counter-claim against the master amounting to £150, of which the registrar allowed £23, but which the court reduced to £11. *Held*, that the master was not entitled, under the circumstances, to the statutory ten days' double pay. *The Agnes*, No. 948, April 16, 1862.

180. The master, besides ten days' double pay, claimed £290 on a balance of £830. The owners filed a counter-claim of £2,700, of which the registrar and merchants allowed £25 only. *Held*, that the master was entitled to the statutory ten days' double pay. *The British Empire*, 1 Aug. 1859.

(bb) *Seamen*.*

181. Every master or owner who neg-

lects or refuses to make payment of wages (at the periods therein mentioned, as to which see No. 307, p. 2313) without sufficient cause, must pay to the seaman a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed, and such sum is recoverable as wages. See M. S. Act, 1854 (c. 104), s. 187.

182. In a suit for seaman's wages the court decreed, under similar provisions in 5 & 6 Will. 4, c. 19, s. 11 (now repealed), in addition to the wages ordinarily due, two days' pay for each day not exceeding ten since his dismissal. *The Elizabeth*, 6 Jur. 156.

182a. *The City of Mobile*, L. R. 4 A. & E. 191.

6. *Allotment Notes*.

See tit. SEAMEN, Pt. II. c. 6, p. 2149.

7. *Deceased Seamen's Wages and Effects*.

183. All money, wages, and effects of any seamen or apprentice dying during a voyage are recoverable in the same courts and by the same modes of proceeding by which seamen can recover wages. See M. S. Act, 1854 (c. 104), s. 196.

15. *Lien*.

1. *Generally*.†

184. So much of the third part of this act as relates to rights to wages, and remedies for their recovery, applies also to all

* (95) The ten days' double pay is allowed almost as of course to a seaman suing and recovering his wages, unless any important deduction from his wages is made.

(96) For similar provisions in the American law, see Dunlap's American Admiralty Practice, 102, 107.

(97) In suits for wages interest is allowed from the time of demand, and if no demand is proved, from the commencement of the suit. *Gammel v. Skinner*, 2 Gallis. 45. [AMERICAN.]

† (98) The lien of mariners for their wages is not like a common law lien, and does not require possession of the vessel. *The Mary*, 1 Paine's Rep. 180. [AMERICAN.]

(99) Every service rendered by a mariner and contributing in contemplation of law, to the management, safety, or benefit of the vessel is so far maritime as to carry a privilege against the vessel. *The D. C. Salisbury*, Olcott, Adm. 71. [AMERICAN.]

(100) The seaman's claim for wages follows the ship, and its proceeds, into whose hands soever they come, is preferred to all other demands, and constitutes a lien which continues as long as a plank of the ship remains, and extends to the whole amount of compensation due to the seaman. *Abbott v. Baltimore and Rappahannock Steam Packet Co.*, 1 Maryland, Ch. Decis. 542; *The Dawn*, Davcis, 121. [AMERICAN.]

(101) In regard to the lien for wages, where the ship has been condemned in a foreign country, there is no difference between the case of a restitution in specie of the ship itself, and restitution in value. The lien attaches to the thing, and to whatever is substituted for it. The lien holder, whose claims have been wrongfully displaced, may follow the proceeds wherever he can distinctly trace them. *Sheppard et al. v. Taylor et al.*, 5 Peters' Rep. 675. [AMERICAN.]

ships registered in any of her Majesty's dominions abroad, when out of the jurisdiction of their respective governments, and to their owners, masters, and crews. *Ibid.* s. 109.

185. By the general maritime law the ship is the primary security to the mariner for his wages. *The Golubchick*, 1 W. Rob. 143; *Edmonson v. Walker* (1690), 1 Show. 177.

186. The mariner's lien for wages extends over the whole ship, one part as well as another, and no one part more than another. A part separated by a storm is not disengaged by that accident from that lien. If it be recovered, it is recovered as a part of the primitive pledge mortgaged to the mariner. *The Neptune*, 1 Hagg. 238.

187. As long as a plank remains the sailor is entitled to the proceeds as a security for his wages. *The Madonna d'Idra*, 1 Dodson, 40; *The Sydney Cove*, 2 *Ibid.* 13.

188. The Court of Admiralty has no authority to restrain seamen from proceeding against the ship for their wages, and to drive them to a different remedy in another court,—to a personal action against the owners, even though the court may be satisfied that the owners are solvent. *The Arab*, 5 Jur. N.S. 417.

189. Ship totally lost. In a suit for seaman's wages motion against the owners personally granted. *The Stephen Wright*, 12 Jur. 732.

190. The Court of Admiralty had in an action for wages pronounced them due. The parties liable for their payment paid them before a shipping master. *Held*, that the proctor for the seamen had a lien upon the wages for his costs, and that therefore the wages could be paid only to the proctor of the parties entitled to receive them. *The Araminta*, Swabey, 81; 2 Jur. N.S. 310; 26 L. T. 317; 4 W. R. 396.

191. As to the priority of wages over other liens, see tit. LIENS, pp. 831, 832.

191a. As to liens generally, *Ibid.* p. 807.

2. On Freight.*

192. Seamen may arrest the ship and the freight for wages. *Neelanham v. Foljamb and Another* (12 Ann.), 6 Vin. Abr. 439.

193. If the ship only be in the first instance arrested by them, and it appears there are bottomry claims thereon, they may afterwards apply to have the freight arrested, and the court would be bound, *ex debito justitiæ*, to grant such a motion. *The Mary Ann*, 9 Jur. 94. See also *The Juliana*, 2 Dodson, 510, 516.

194. By the law of Scotland seamen have over the freight a hypothec or maritime lien for their wages, even after the cargo has been removed from the ship. *Ersk.* 3, 2, 34; 2nd Rep. Merc. L. Comm. 75.

3. On Cargo.†

195. A mariner has no lien for wages on the cargo as cargo; his lien is upon the ship to the last plank, and upon the freight as appurtenant thereto; and so far as the cargo is subject to freight, he may attach it as security for the freight that may be due. *The Lady Durham*, 3 Hagg. 200, 201; *The Riby Grove*, 2 W. Rob. 59.

195a. *Quære*, whether on the loss of a ship, if any cargo were saved, it could be held to represent the freight? *The Lady Durham*, 3 Hagg. 201.

196. *Quære*, as to a seaman's claim against cargo, where freight has been earned, though not paid, and where the owner of the ship is the owner of the cargo, and the ship is lost, but the cargo saved. *The Riby Grove*, 2 Rob. 59.

4. Insurance Money.

197. An insured ship was lost, and the insurance recovered by the assignees of the owner, who had become bankrupt. *Held*, that the seamen were entitled to be paid in full out of the insurance money. *Dawson (In re)*, 1 Fonb. N. R. 229; 17 L. T. 100.

* (102) The freight is hypothecated for the wages, and every part of the freight is liable for the whole wages. The owners who have received freight under such a contract with the master are liable for wages to the full amount of the freight in their hands, and not merely *pro rata* in proportion to what they have received. *Poland v. The Spartan*, Ware, 124, 134; *The Skolfield v. Potter*, Daves, 392; *The Dawn*, Daves, 121; *Shep-*

pard v. Taylor, 5 Peters, 655; 9 Curtis, 531; *Brown v. Lull*, 2 Sumner, 443; *Pitman v. Hooper*, 3 *Ibid.* 50. See also 1 Conkling's Admiralty Law, 109 *et seq.* [AMERICAN.]

† (103) When the owners of the ship are also the owners of the cargo, the cargo owes freight to the ship, and this freight is pledged for the wages. *The Skolfield v. Potter*, Daves, 392. See also 1 Conkling's Admiralty Law, 140 *et seq.* [AMERICAN.]

5. *Masters.**

198. A master has no lien upon one ship for services rendered in another belonging to the same owner. *The Julundur*, 1 Spinks' Ecl. and Adm. Rep. 71.

199. *Semble*, he might sue in respect of services rendered in the same ship on a previous voyage. *Ibid.* 76.

200. The release by the master of his claim against the shipowner for wages does not operate as a release of the ship. *The Chieftain*, 3 N. R. 251.

200a. A master is not deprived of his lien for wages and disbursements by having taken a mortgage on the ship for the balance thereof, more especially if the shipowner has concealed from him the fact of a prior mortgage. *The Albion*, 27 L. T. N.S. 723.

201. A master appointed by a person fraudulently in possession of the ship, has, nevertheless, if innocent of the fraud, a claim against the ship for his wages and disbursements. *The Edwin*, B. & L. 281; 10 L. T. N.S. 658; 33 L. J. Adm. 197; 12 W. R. 992.

202. A master may sue for wages earned on several voyages within six years. *The Olive*, Feb. 27, 1858.

203. Giving up possession of the ship is not ceding a demand against it, and the master can still sue for his wages. *The Nymph*, Swabey, 88.

204. As to how far the wreck or loss of the ship discharges the master's lien, see tit. SEAMEN, Pt. III. c. 19, p. 2157.

6. *Attachment, Assignment, or Incumbrance.†*

205. No wages due or accruing to any

seaman or apprentice is subject to attachment or arrestment from any court, and every payment of wages is valid, notwithstanding any previous sale, assignment, attachment, incumbrance, or arrestment, and no assignment or sale of such wages made prior to the accruing thereof is binding; and no power of attorney or authority for the receipt of any such wages is irrevocable. See M. S. Act, 1854 (c. 104), s. 233.

7. *Transfer.*

206. Other parties having claims against the ship or the proceeds of its sale, may apply to the court for permission to pay the wages due and to have a lien to that extent on the property, ranking accordingly. See tit. LIENS, p. 811.

206a. As to the effect by payment without such leave, *Ibid.*

8. *Waiver.‡*

207. A master who after receiving a portion of his wages from the managing owners, elects to allow the balance to remain in their hands at interest, by so doing loses his lien and cannot recover the balance *in rem*, but if he has had no opportunity of receiving his wages, or has been refused payment of them on demand, the mere fact of his allowing them to remain in the managing owner's hands will not deprive him of his remedy. *The Rainbow*, 53 L. T. 91.

See also the next section, and No. 200, *supra*.

* (104) The lien given by British law to the master of a British ship for his wages, by the M. S. Act, 1854 (c. 104), may be enforced in the Admiralty Courts of the United States. *Sturgis v. Boyer*, 24 How. (U. S.) 110. [AMERICAN.]

(104a) And this although the master has not, by the American law, any lien against the ship for his wages. *The Grand Turk*, Paine, 73; *Van Bokkelen v. Ingersoll*, 5 Wend. 315; *Fisher v. Willing*, 8 S. & R. 118; *Willard v. Dorr*, 3 Mason, 91; *The Superior v. The Troy*, 1 Newb. Adm. 176. See also 1 Conkling's Adm. Law, 109 *et seq.* [AMERICAN.]

† (105) An assignee of the wages of a seaman cannot maintain an action in the Admiralty for the wages. *Patchin v. The A. D. Patchin*, U. S. D. C. 12 Law Reporter, 21. See also Dunlap's Admiralty Practice, p. 74; 1 Conkling's Admiralty Law, 107 *et seq.*; 2 Parsons on Admiralty Law, 582. [AMERICAN.]

‡ (106) A vessel sailed with a cargo on a

voyage from New York to New Orleans and back. She remained at New Orleans more than a year after her arrival, waiting for freight, when the master discharged the seamen, and persuaded them to return with him in another vessel to New York, and get their wages. Afterwards the vessel was sold while at New Orleans, and went a voyage to Liverpool, and thence to New York. Upon her arrival in New York, she was libelled by the seamen for their wages. *Held*, that the forbearance of the seamen to libel the vessel in the port of their discharge was no waiver of their lien, and that they were entitled to full wages to the time of their return to New York. *The Mary*, Paine, 180. [AMERICAN.]

(107) A vessel was sold under a decree of the Admiralty at Providence, R. I., at the suit of others of the crew. The libellants had notice of the proceedings, but did not apply for their wages. *Held*, that their lien on their vessel was at an end. *Trump et al. v. The Ship Thomas*, Bee, 86. [AMERICAN.]

9. Release.

(a) Generally.*

208. No seaman by any agreement forfeits his lien upon the ship, or is deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship, is wholly inoperative. See M. S. Act, 1854 (c. 104), s. 182.

209. An award by magistrates of a balance of wages, notwithstanding the production of a receipt for the same, fraudulently obtained, affirmed with costs. *The Minerva*, 1 Hagg. 54.

210. In a suit for wages a protest by the master, alleging that the seaman had elected the jurisdiction of a magistrate, who had dismissed the claim on the ground of forfeiture by desertion, overruled, the court holding that the object of the statute was to give to magistrates a summary jurisdiction in cases of mere *quantum* only, involving no legal question. *The Edwin*, 3 Hagg. 364.

(b) Bankruptcy.

211. Though a bankrupt owner may have received his discharge, the master of the vessel still retains a lien on the ship and a right to enforce payment of his wages in the Admiralty Court. *The Tecumseh*, 3 W. Rob. 111; 12 Jur. 985; 6 Notes of Cases, 533.

211a. A master arrested in the Admiralty Court, for his wages and disbursements, a vessel the property of an insol-

vent. The Bankruptcy Court refused to restrain the action except on the terms of lodging in court the sum in question, and undertaking to answer costs. *In re J. C.*, L. R. 11 Eq. 151.

212. A master had recovered judgment in an action at common law for his wages, which judgment remained unsatisfied in consequence of the defendant's bankruptcy. He had also proved his debt under the defendant's bankruptcy. *Held*, entitled to sue the ship in the Admiralty Court, notwithstanding the ship had been sold. *The Bengal*, Swabey, 468.

(c) Laches.

See tit. LACHES, p. 805.

(d) Bill of Exchange.†

213. A seaman took at Calcutta a bill of exchange on the owners instead of cash in payment of wages. *Held*, that he could not sue the ship on payment of such bill being refused, the owners having become bankrupt. *The William*, 2 Hagg. 136.

214. The master took a bill of exchange from the owner of a ship in payment of the balance of a debtor and creditor account which included his wages as master as well as other disbursements on account of the ship. *Held*, that he was entitled to sue for his wages. *The Simlah*, 15 Jur. 866.

16. Forfeiture.

1. Generally.‡

215. The whole of the third part of this act applies to all sea-going ships registered in the United Kingdom (except those

* (108) A receipt in full is open to explanation, and upon satisfactory evidence may be restrained in its operation. *The Sophia*, Stuart's Vice-Adm. Rep. 220; *The Jane*, *ibid.* 256. [LOWER CANADA.]

(109) A release under seal by a mariner on payment of wages is only *prima facie* evidence of settlement, and may be rebutted by other evidence. *The David Pratt*, Ware, 495. See also 1 Parsons on Admiralty Law, 447, n. 1. [AMERICAN.]

(110) A seaman, in return for money and goods amounting in value to about one-third of the wages due, gave an order on the owner for payment of his wages (a share in a whaling voyage). *Held*, that the order, though presented and accepted, was no defence, except as to the amount received. *The Barque Rajah*, 15 Law Reporter (5 N.S.) 208. See also *The Betsey and Rhoda*, Daveis, 112.

[AMERICAN.]

(111) The seaman does not lose his lien on the vessel for his wages by taking an order on the owners or charterer for the balance due at the close of the voyage. *The Eastern Star*, Ware, 185; Dunlap's Adm. Practice, 44. [AMERICAN.]

† (112) But see the M. S. Act, 1854 (c. 104), ss. 209, 210, 215, qualified by the M. S. Act Amendment Act, 1862 (c. 63), s. 19, which prescribes payment by bill as one of the modes by which seamen's wages may be discharged.

(113) See also Dunlap's American Admiralty Practice, 240; 2 Parsons on American Maritime Law, 579.

‡ (114) The arrest and imprisonment of a seaman in a foreign port, and sending him home by the public authority as a prisoner, charged with an indictable offence, does not

exclusively employed in fishing on the coasts, and those belonging to the Trinity House, the commissioners of northern lighthouses, the port of Dublin corporation, and pleasure yachts), and also to all ships registered in any British possession, and employed in trading between any place in the United Kingdom, and any place not situate in the possession in which such ships are registered, and to their owners, masters, and crews wherever they may be. See M. S. Act, 1854 (c. 104), s. 109.

215a. So much of the third part of this act as relates to discipline, to naval courts on the high seas and abroad, and to crimes committed abroad, applies also to all ships registered in any of her Majesty's dominions abroad, when out of the jurisdiction of their respective governments, and to their owners, masters, and crews. *Ibid.*

216. Any question of forfeiture of or deductions from the wages of any seaman or apprentice may be determined in any proceeding lawfully instituted with respect to such wages, although the offence is hereby made punishable by imprisonment as well as forfeiture, and has not been made the subject of criminal proceedings. *Ibid.* s. 254.

217. The sections of the M. S. Act, 1854 (c. 104), arranged under the head of "discipline," have reference to British ships only. *Leary v. Lloyd*, 6 Jur. N.S. 1246; 29 L. J. M. C. 194.

218. Misconduct on the part of a previous master and officers, as necessarily weakening the discipline of the ship, is a circumstance worthy of consideration in adjudicating as to a forfeiture of wages

on the ground of subsequent misconduct of a mariner. *The Blake*, 1 W. Rob. 76.

219. The *dictum* that any cause which will justify a master in discharging a seaman during the voyage will also deprive the seaman of his wages, held to be an insufficient test; but that the rule should be, that wages may be forfeited, not in cases of discharge for mere misconduct alone, but for such as renders the seamen's discharge imperatively necessary for the safety of the ship and the due preservation of discipline. *Ibid.* 73.

220. In a suit for wages, where the misconduct of the mariner is set up in bar to his claim, the court has no power to mitigate the penalty (except as provided by statute), but must pronounce for or against the whole claim. *Ibid.* 87.

221. *Quære*, are wages already earned forfeitable for subsequent misconduct? *Cross v. Hyne*, 3 Asp. 80.

222. The plaintiff shipped as mate under articles for a voyage to several named places, if required, and home to a final port of discharge; voyage not expected to exceed twelve calendar months; amount of wages per calendar month, £5 10s., in consideration of services to be duly performed. The mate was left behind at Sulina, and in an action by him claiming wages up to such time as he had been left behind, the jury found that he had been guilty of drunkenness and abusive language, subversive of discipline, and that he was not left behind by wilful misconduct or negligence of the captain, but through his own negligence and misconduct. They declined to find that he had been guilty of desertion. *Held*, by the majority of the court, (1) that the con-

necessarily constitute a bar to a claim for wages for the voyage. Such proceedings do not preclude the court from inquiring into the merits of the case, and making such a decree as the justice of the case requires. *Smith v. Treat*, Daveis, 266. [AMERICAN.]

(115) Forfeiture of half the wages was decreed when his behaviour made it necessary to dismiss the seaman when the voyage was about half performed. *Humphreys v. Brig America*, Bee, 237. [AMERICAN.]

(116) Wages forfeited for an offence are only such as are earned antecedently, and not subsequently, to the offence. *The Mentor*, 4 Mason, 84; *Dixon v. The Cyrus*, 2 Pet. Adm. 407. [AMERICAN.]

(117) Where seamen had forfeited their wages by misconduct on the voyage, and afterwards earned wages, held—(1) that the advance wages stipulated in the shipping

articles should be a charge on the forfeited funds; (2) that money advanced on the voyage for clothes, &c., and not stipulated for, should be a charge on the unforfeited wages; (3) that hospital money should be apportioned *pro rata* on the wages of the whole voyage. *The Mentor*, 4 Mason, 102. [AMERICAN.]

(118) Strict proof of misconduct in a seaman will be required to prevent him from recovering his wages. *Benton v. Whitney*, Crabbe, 417. [AMERICAN.]

(119) Unarticled seamen are not subject to forfeiture of wages for desertion, though it would seem that they are so liable in respect of other offences. See 1 Conkling's Admiralty Law, 122; and see generally as to forfeitures, *Ibid.* 129 *et seq.*; and 1 Parsons on Admiralty Law, 468, 469, 473, n. 1. [AMERICAN.]

tract was for a succession of voyages of indefinite duration, and that the monthly wages became vested and a debt at the end of each month of service, liable, it might be, to forfeiture under certain circumstances provided for by the M. S. Act, 1854 (c. 104); (2) that as a fact, however, the wages due had not been forfeited under any of the provisions of the statute; and (3) that independently of the statute the findings of the jury did not work a forfeiture of the wages due. *Held*, by Brett, J., that the consideration for the stipulated wages was the mate's services for the whole voyage out and home; and that, having by his misconduct made it impossible that such services should be rendered, he had forfeited his claim to any part of the stipulated wages. *Button v. Thompson*, L. R. 4 C. P. 330; 3 Asp. 231.

223. Any question concerning the forfeiture of or deductions from the wages of any seaman or apprentice may be determined in any proceeding as to such wages, notwithstanding that the offence, though made punishable by imprisonment also, has not been made the subject of any criminal proceeding. See M. S. Act, 1854 (c. 104), s. 254.

224. An information laid by the mariner against the vessel for trading in slaves, not being a false and malicious act, cannot work a forfeiture of wages. *The Malta*, 2 Hagg. 172.

2. Masters.*

225. When a loss has been sustained by the owners of a vessel through the negligence or misconduct of the master, mate, or any of the crew, the amount of the loss alone would, according to the practice of the Admiralty Court, be deducted from the wages of the master or mariners so offending. Cases may occur of an

attempt to commit barratry, gross incapacity, or continual drunkenness, working an entire forfeiture of wages. *The Thomas Worthington*, 3 W. Rob. 132, 133; 12 Jur. 1051; 6 Notes of Cases, 570.

226. In the management of the concerns of a vessel in a foreign port, nothing more can be required of a master than the honest exercise of his own discretion, according to the degree of ability and experience in business which a master may fairly be supposed to possess. A mere error in judgment on the part of a master of a vessel, even though loss be thereby sustained by the owners, will not justify a forfeiture of his wages. *Ibid.* and see *The Atlantic*, 1 Lushington, 566; 11 W. R. 188; 7 L. T. N.S. 647; 9 Jur. N.S. 183; 1 Asp. 274.

227. *Semble*, error of seamanship in a master, or neglect to communicate to a Lloyd's agent the stranding of the vessel, or to sign a bottomry bond, may be set up as a counter-claim to his wages. *The Camilla*, 1 Swabey, 312.

228. A mortgagee took possession of the mortgaged vessel, and gave notice thereof to the master, who, by direction of the mortgagor, went to sea with the man in possession on board. *Held*, that the master had by such conduct forfeited all claim to wages except those earned before the mortgagee took possession. *The Fairport*, 10 P. D. 13; 54 L. J. P. D. 3; 5 Asp. 348.

229. If the owners of a vessel were bankrupt, and the master colluded with their agents in a foreign port for the purpose of giving those agents a fraudulent preference in the earnings of the ship, he might forfeit his wages. *The Thomas Worthington*, 3 W. Rob. 137; 12 Jur. 1051; 6 Notes of Cases, 570.

230. *Semble*, the loss of the ship's boat may, if ascribed to the master's intoxication, work *pro tanto* a forfeiture of wages.

* (120) The misconduct of a master or supercargo is no defence to the payment of his wages, unless it has produced injury or misconduct to his employer. *Pawson v. Donnell*, 1 Gill. & Johns. 1. [AMERICAN.]

(121) A master, having negligently secured his vessel so that she fell over and was damaged, and her cargo obliged to be unladen, was charged with the expense of unloading and reloading the cargo and repairing the damage done by the vessel falling over. *The Courier*, May, 1858.

(122) Expenses to owner, occasioned by the master's deviation from the voyage as per charter, allowed by the registrar and mer-

chants against the master. *The John*, Jan. 1858.

(123) It is the duty of the master to give information of the loss of his vessel to his owner as soon as he reasonably can; and his omission to do so is a plain departure from his duty. *Ruggles v. General Interest Ins. Co.*, 4 Mason, 74. [AMERICAN.]

(124) The master of a vessel, which has been wrecked and the proceeds of the wreck reduced to money by him, is responsible to the owners for a diminution in the amount of such money arising from the master's own fault. *Duncan v. Reed*, 39 Maine (4 Heath), 415.

The Atlantic, 1 Lush. 566; 7 L. T. N.S. 647; 9 Jur. N.S. 183; 11 W. R. 188; 1 Asp. 274.

231. If the owner of any vessel or float of timber makes satisfaction for such damage, wilfully or negligently done by the master or person having charge of such vessel or float of timber, or has been compelled to pay any penalty or costs by reason of any act or omission of any other person, the person who actually did the damage or who committed the offence shall repay to the owner the amount of the damage or penalty and costs, with the costs of the proceedings to enforce such repayment. See 10 Vict. c. 27, s. 76.

232. And if such damage or penalty respectively does not exceed £50, the sum may, in England or Ireland, be recovered before two or more justices, and in Scotland before the sheriff. *Ibid.*

233. To work a forfeiture of a master's wages there must be gross misconduct on his part. *The Joseph Dexter*, 3 Asp. 248. [IRISH.]

See also Nos. 222, 225, *supra*.

3. Mates.*

234. A chief mate suing for wages in the Court of Admiralty is bound to show that he has discharged the duties of that situation with fidelity to his employers. Amongst the most important of these duties are a due vigilance, care, and attention to preserve the cargo from robbery, but he is not responsible for any embezzlement that may occur, not arising from any neglect of duty on his part. *The Duchess of Kent*, 1 W. Rob. 285.

235. General neglect of duty or a neglect of duty in a particular instance leading to a robbery of the cargo, would entail

a forfeiture of the wages of a chief mate; but neglect of duty in a particular instance (viz. going on shore without leave during the landing of the cargo, and being absent for a long period of time), unless followed up by consequences injurious to the owners, would not entail such a forfeiture. *Ibid.* 287.

236. The onus of proving such injurious consequences rests with the owners, but direct and positive testimony thereon is not necessary; evidence fairly leading to that presumption is sufficient. *Ibid.*

237. It is not necessary to prove wilful negligence to bar a claim of a mate for wages. Proof of habitual inattention to the ordinary duties of his station, exposing the ship to danger, is sufficient. *Robinett v. The Exeter*, 2 C. Rob. 263.

238. Damage to the cargo (for which a deduction of freight had been made) arising from gross negligence of the second mate, held to be pleadable as a set-off against his claim for wages. *The New Phoenix*, 2 Hagg. 420.

239. In a suit for wages preferred by the mate, the owners claimed to deduct the value of a hogshead of sugar which had fallen overboard while being conveyed from the wharf to the ship's boat, in Jack's Bay, Jamaica, in the absence of the wharfinger, who would have been responsible for the damage had he been present, and it being a rule in Jamaica not to remove goods in the absence of this responsible person. The court, holding that for the interests of commerce it was necessary to protect the principle of law that the owners of vessels are entitled to deduct the losses occasioned by the negligent conduct of seamen, allowed the

* (125) It is the general duty of the mate of a vessel to take in the cargo and deliver it. He is chargeable for the value of articles lost by his inattention and carelessness, and the amount may be deducted from his wages. *The Papineau*, Stuart's Vice-Adm. Rep. 94. [LOWER CANADA.] See also *The New Phoenix*, 2 Hagg. 420; *The Belvidere*, 1 Peters' Adm. Rep. 258.

(126) A mate being charged for articles enumerated in the invoice and not landed, was exonerated for want of proof that the articles were put on board, and that they were not landed. *Sharlock v. The Globe*, Crabbe, 278. [AMERICAN.]

(127) A cask of wine was lost, in hoisting it on board, by a casualty, the mate being present and superintending the receiving. Held, that his wages must contribute for the loss. *Wilson v. Brig Belvidere*, 1 Pet. Ad. 258. [AMERICAN.]

(128) The mate and two seamen were sent on shore with a boat, and one of the hands was detached on the business of the ship from the boat; and afterwards, the mate and the other seaman having left the boat, it was stolen. Held, that the sailor detached was not responsible, but the whole was chargeable to the mate and negligent seaman. *Knapp v. Brig Eliza and Sarah (Wilson v. Brig Belvidere)*, 1 Pet. 200. [AMERICAN.]

(129) In a suit by a mate for his wages, the court cannot investigate a charge of misconduct while in command as master. *Airey v. The Brig Ann C. Pratt*, 1 Curtis, Ct. Ct. 395. [AMERICAN.]

(129a) The mate, having a dispute with the master, took away the ship's chronometer, and refused to return it until paid his wages. His conduct held to work a forfeiture of wages. *The Florence*, 13 L. T. N.S. 613; 2 Asp. 297. [AMERICAN.]

deduction claimed, but without costs. *Ibid.*

240. Claim for wages preferred by a chief mate and opposed on the ground of drunkenness, absence without leave during delivery of cargo, neglect of duty thereby, and partial loss of cargo therefrom. The court pronounced for the wages, holding that there was a failure of proof of drunkenness and of the loss of cargo having been occasioned by such neglect of duty. *The Duchess of Kent*, 1 W. Rob. 283.

241. Claim of a mate for wages, opposed on the ground of drunkenness, insubordination, and negligence, pronounced for, with costs. *The Exeter*, 2 C. Rob. 261; *The Malta*, 2 Hagg. 165.

4. Capture.*

243. If a ship be lost or captured before the end of the voyage the wages are lost. *Yeates v. Hall* (1785), 1 T. R. 79; *Hernaman v. Bawden* (1798), 3 Burr. 1844.

244. An officer or seaman engaged to serve on board a privateer having letters of marque for certain wages during the voyage and a share of all prizes, is not entitled to any wages if the ship is taken before she completes her voyage, although he was sent from the ship before the capture as prizemaster on board a prize taken in the course of the voyage. *Abernethy v. Laudale*, 2 Dougl. 539.

245. If the ship is afterwards recaptured and arrive at her port of destina-

tion, the seamen are entitled to their wages. *Bergstrom v. Mills*, 3 Esp. 36.

246. Where a seaman had been on the capture of the vessel taken out by the enemy and carried to France, and was not on board at the time of a subsequent recapture, *held*, that the recapture did not revive his right to wages. *The Friends*, 4 C. Rob. 143.

247. In an action for the wages of a seaman after a capture and ransom of the ship, *held*, that the seaman was entitled to nothing, he being unable to prove that by the custom of merchants he was entitled *pro ratâ*, as was insisted on his behalf. See *Chandler v. Meade*, mentioned at the end of the case of *Wiggins v. Ingleton*, 2 Ld. Raym. 1211.

248. The master of a vessel which had been seized and restored claimed his wages for the period of detention, although during that time he had been separated from her, she having afterwards earned her freight. The wages for the voyage, exclusive of that period, were paid without dispute, and the defendant is reported to have acquiesced in a verdict given against him for the further sum, by reason of a strong opinion expressed by his lordship at the trial in favour of the claim. *Pratt v. Cuff*, cited in *Thompson v. Rowcroft*, 4 East, 43.

5. Illegal Voyages.†

249. Wages cannot be earned, so as to give a lien on the vessel, on an illegal

* (130) *Quære*, how far does the authority of these cases rest upon the old principle now abrogated (see the M. S. Act, 1854 (c. 104), s. 183, and c. 12, s. 1, p. 2291), that there can be no wages where no freight has been earned?

(131) The capture of a neutral ship does not of itself operate as a dissolution of the contract for mariners' wages, but at most only as a suspension of it. *Brown v. Lull*, 2 Sumner's Rep. 443. [AMERICAN.]

(132) If the ship is condemned by a sentence of condemnation, the contract is dissolved, the seamen are discharged from further duty on board, and lose their wages; but if there is a subsequent restitution of the property or of its equivalent value upon an appeal or by treaty with an allowance of freight, their claim for wages revives. *Ibid.* 442; *The Saratoga*, 2 Gallison's Rep. 178. [AMERICAN.]

† (133) The second section of 7 Geo. 1, c. 21, enacted that all agreements for the wages of any person serving on board any ship in

the service of foreigners, and bound or designed to trade in the East Indies or parts therein mentioned, and employed in such voyages, are declared void, but this enactment, though not directly repealed, has been *held* by the court to be obsolete. See *The India*, 3 N. R. 442; 33 L. J. Adm. 193; 12 L. T. N. S. 316.

(134) Seamen's wages on an illegal voyage are not a lien on the vessel. *The Langdon*, 2 Mason's Rep. 58. [AMERICAN.]

(135) Wages are not due if the further prosecution of the voyage becomes illegal by a war, for the original contract is thereby dissolved. *The Saratoga*, 2 Gallison's Rep. 178. [AMERICAN.]

(136) But if the mariners, after such legal effect of the loss of the voyage, with the consent of the master, remain on board and do duty for the preservation or equipment of the ship, they are entitled to a reasonable compensation in the nature of wages, *pro opere et labore*. *Ibid.*

(137) The claim of seamen for wages, and

voyage or on an unauthorized expedition of a naval or military character. *The Leander*, Edwards, 85; and see *Delamarier v. Winteringham*, 4 Camp. 186; *Bergstrom v. Mills*, 3 Asp. 36.

250. Claim of a mate of a slave ship for wages, &c., under a contract repugnant to the provisions of the stat. 30 Geo. 3, c. 33 (for the regulation of the slave trade), pronounced against as a *turpis contractus*, which the court would not lend its assistance to carry into effect. Under the circumstances, the owners being also to blame, no costs given. *The Vanguard*, 6 C. Rob. 207.

251. A suit for wages on the part of a British pilot, for navigating a foreign ship to an enemy's port, dismissed, but, under the circumstances, without costs. *The Benjamin Franklin*, *Ibid.* 350.

252. The condemnation of a vessel for illegal trading, and before freight is earned, does not work a forfeiture of wages to the mariners, unless implicated in the illegal act. *The Malta*, 2 Hagg. 163.

253. To trade with a blockaded port is not an offence against the municipal law of this country. The law of nations has never declared that a neutral state is bound to impede or diminish its own trade by municipal restriction. *The Helen*, L. R. 1 A. & E. 1; 35 L. J. Adm. 2; 2 Asp. 293.

254. Action for wages. Pleading in answer that the agreement between the parties was "for the purpose of running

the blockade of the Southern ports of the United States, and was and is contrary to law," disallowed. *Ibid.*

255. *Semble*, the serving on board a vessel used as a store ship in aid of a belligerent ship, the fitting out of which to be so used is an offence within the 7th section of the 59 Geo. 3, c. 69, is a serving on board a vessel for a warlike purpose in aid of a foreign state within the 2nd section of that act, and is therefore illegal. *Burton v. Pinkerton*, L. R. 2 Ex. 340; 36 L. J. Ex. 137; 2 Asp. 494, 547.

6. *Mutinous Conduct.**

256. Insolent expressions and acts of a mutinous tendency not apologized for, and for which the mariner had been put in irons, held to amount to a forfeiture of wages. *The Susan*, 2 Hagg. 229, n.

257. Mariners are not discharged from their duty to the owners of a ship in consequence of a mutiny. They are bound, if possible, to recover the ship by using their best endeavours whenever there is a reasonable prospect of success, but not to sacrifice their lives wantonly. *The Governor*, 2 Dodson, 18.

258. A chief mate, who, unknown to the master, signs, and is active in getting signed, a document tending to mutiny, incurs a forfeiture of his wages. *The Lima*, 3 Hagg. 356.

259. A chief mate, after having served in that capacity for six weeks while the

of material men for supplies, where the parties were innocent of all knowledge of, or participation in, the illegal voyage will be preferred to the claim of forfeiture on the part of government. *The St. Jago de Cuba*, 9 Wheat. 409. [AMERICAN.]

(138) Seamen cannot claim wages for a voyage, in violation of the slave trade acts, out of the proceeds of the sale of the forfeited vessel in the registry. *Ibid.* See also 1 Conkling's American Admiralty Law, 138.

* (139) Mutinous and rebellious conduct of the mariners, if persisted in, forfeits their rights to wages. *Relf v. The Ship Maria*, 1 Fet. Adm. 186. [AMERICAN.]

(140) Seamen are authorized under the general maritime law to prevent or restrain their officers from the commission of open and flagrant crimes in the ship, attempted in the presence of the seamen. *The Mary Ann*, 1 Abb. Adm. 270. [AMERICAN.]

(141) The crew are not justified, by circumstances affording reasonable ground of suspicion merely, that the master is about to engage the vessel in the slave trade, in taking

possession of her at sea, or in a foreign port, and bringing her back to her home port; and their undertaking so to do, forfeits both the wages already earned and those for the residue of the voyage. *Ibid.*

(142) If the crew combine together not to do duty, it is an endeavour to make a revolt within the Crimes Act of 1790, c. 9 (36), s. 12, although no orders are actually given afterwards. *United States v. Barker*, 5 Mason, 404; *Carey v. Schooner Kitty*, Bee, 255; *United States v. Gardner*, 5 Mason, 402. [AMERICAN.]

(143) An assault by a mariner on the master will produce a forfeiture of wages, and justifies the master in discharging the mariner unless he makes an apology. *Buck v. Lane*, 12 S. & R. 266. [AMERICAN.]

(144) Half a seaman's wages were decreed forfeited for the offence of striking the master. The latter had inflicted other punishment for the offence, which prevented the court from decreeing a forfeiture of the whole. *Sprague v. Cain*, Bee, 184. [AMERICAN.]

ship was fitting out, and also between eight and nine months at sea (having been suspended during that time for a week, but afterwards reinstated), was then finally disgraced for neglectful conduct, disrespectful language, and the loss of a boat in his charge, arising from disobedience of orders, and by which two lives were lost. His subsequent conduct while in the ship tended to the creation of mutinous misconduct. In a suit for wages brought by him, *held*, that such conduct enured to a forfeiture of his wages, and the suit dismissed accordingly, but without costs, the court holding that there were fair grounds for bringing the case before the court, and that there was some degree of passion and imprudence imputable to the master, the sole owner. Decision affirmed on appeal. *Ibid.* 346.

260. Action for wages. During the voyage the captain died, and the chief mate took upon himself the duties of master. A seaman refused obedience to his orders. *Held*, that a refusal to navigate the vessel, except to an English port, was mutiny against the master *de facto*. *Renno v. Bennett*, 3 Ad. & Ell. 768; 3 G. & D. 54; 6 Jur. 902; 12 L. J. Q. B. 17.

261. The use of intemperate language by the seamen does not touch the merits in a suit for wages, except at a very great distance. *The Eliza*, 1 Hagg. 185.

7. Insubordination.

(a) Masters.

262. The instructions given to the master of a vessel may be so precise and positive that if he wilfully disobeys them, his disobedience, even though no evil consequences arise, may entail an entire forfeiture of his wages. It must, however, be first shown that he was in possession in the most intelligible form of the real intentions of the owners. *The Thomas Worthington*, 3 W. Rob.

134; 12 Jur. 1051; 6 Notes of Cases, 570.

263. A master, instead of taking his vessel direct to the port ordered, took her several intermediate voyages on freight for owner's benefit, alleging that, owing to war, it was dangerous to take the vessel to the port ordered. The alleged dangers were known, and were the subject of discussion between the owner and master at the time the port was named. *Held*, that the master had forfeited his wages for the time the vessel was on the intermediate voyage. *The Roebuck*, 2 Asp. N.S. 387.

264. A master, through an error in judgment, took in payment of freight an ordinary bill instead of a bank bill, which he had been ordered to take; the bill having been dishonoured: *Held*, that the master had not forfeited his wages, and that the owners could not deduct the amount of the bill from his wages. *The Dunmore*, 2 Asp. N.S. 509.

(b) Seamen.*

265. Disobedience of orders being an offence of the grossest kind, it is not a peremptory or harsh tone, or an overcharged manner in the exercise of authority, that will justify resistance. It will not be sufficient that there has been a want of that personal attention and civility which usually takes place on other occasions and might be wished generally to attend the exercise of authority. The persons subject to authority on shipboard are not to be captious, or to take exception to a neglect of formal and ceremonious observance of behaviour. *Robinett v. The Exeter*, 2 C. Rob. 261.

266. Refusal of mariners to perform their duties is insubordination, not desertion. *The Westmoreland*, 1 W. Rob. 222.

267. It is not a single neglect of duty nor a single act of disobedience which ordinarily carries with it the forfeiture of wages. *The Lima*, 3 Hagg. 362, n.

* (145) The wages of seamen are forfeited for gross offences, but not for slight faults, either of negligence or disobedience; there must be either an habitual neglect or disobedience, or a single act of a heinous and aggravated nature. *The Ship Mentor*, 4 Mason, 84; *Drysdale v. The Ranger*, Bee, 148. [AMERICAN.]

(146) A refusal to do duty at a moment of high excitement from punishment inflicted on the party, if not followed by obstinate per-

severance, is not a forfeiture of wages. *Orne v. Townsend*, 4 Mason, 541. [AMERICAN.]

(147) It is a mixed question of law and fact whether a mate is bound to obey the order of the master when commanded to punish a mariner. *Frost v. Hammatt*, 11 Pick. 74. So also, whether the mate used any unnecessary violence in inflicting punishment. *Wood v. The Nimrod*, Gilpin, 83. [AMERICAN.]

268. The court draws a strong line of distinction between disobedience of orders in port, and any insubordination whatever when the vessel is on the high seas. *The Blake*, 1 W. Rob. 87, 88.

269. Disobedience of orders and refusal to work by a mariner, during seven days, while the vessel was in a foreign port and in charge of the chief mate (the master being on shore), who was so quarrelsome that he was there discharged with others of the crew, the mariner being admitted to be quiet and inoffensive, and to have conducted himself properly before and afterwards during a long voyage, *held*, not to work a forfeiture of, nor deduction from, his wages. *The Test*, 3 Hagg. 315.

270. Disobedience of orders committed in a state of intoxication upon one occasion only, while the vessel was in port, and followed by an efficient performance of duty during the remainder of the voyage, *held*, though highly reprehensible, not to enure to a forfeiture of wages. Wages accordingly pronounced for, with costs. *The Blake*, 1 W. Rob. 73.

See also No. 261, *supra*.

8. Desertion.

(a) Generally.

See tit. SEAMEN, Pt. V. p. 2179.

(b) After Leave to go Ashore.

271. Mariners having obtained leave to go on shore at a foreign port, got drunk there, and solely in consequence thereof failed to return by the time prescribed. *Held*, that such conduct was criminal, and a just subject of punishment, but did not amount to desertion enuring to a forfeiture of wages. *The Ealing Grove*, 2 Hagg. 22.

272. Permission of absence given by a master to a mariner, *held*, to imply a stipulation to return, though such obligation of return may not have been expressed. *The Bulmer*, 1 Hagg. 167, 168.

9. Habitual Drunkenness.

(a) Masters and Officers.

273. When it is sought to affect an

officer with intemperance, it is material whether the specific acts of drunkenness proved were on shore or on board; for in a mode of life peculiarly exposed to severe peril and exertion, and therefore admitting in seasons of repose something of indulgence and refreshment, that indulgence and refreshment is naturally enough sought in grosser pleasures; and therefore the proof of a single act of intemperance committed in port is no conclusive proof of disability for general maritime employment. *Robinett v. The Exeter*, 2 C. Rob. 261.

274. Occasional drunkenness of the master will not work a forfeiture of wages, but *aliter* as to habitual drunkenness. *The Roebuck*, 2 Asp. 387.

275. Habitual drunkenness on the part of a master works a forfeiture of his wages. *The Macleod*, 5 P. D. 254; 50 L. J. P. D. & A. 6.

(b) Seamen.*

276. Slight and occasional intoxication will not enure to a total forfeiture of wages, but *aliter* as to habitual drunkenness. *The New Phoenix*, 1 Hagg. 198; *The Atlantic*, 11 W. R. 188; 7 L. T. N.S. 647; 9 Jur. N.S. 183; 1 Lushington, 566; *The Duchess of Kent*, 1 W. Rob. 285, 286.

277. A single instance of intemperance, particularly when a vessel is at anchor or in port, does not work a forfeiture of wages. Habitual drunkenness must be proved in order to produce such an effect. *The Malta*, 2 Hagg. 168.

278. In a claim for wages preferred by the steward, two acts of drunkenness on the outward voyage, and more frequent acts on the homeward voyage, arising probably from the undue force given by bodily disease to the moderate use of liquors, *held*, not to work a forfeiture of wages. *The Lady Campbell*, 2 Hagg. 5.

279. A seaman's entering the master's cabin in his absence, with three or four others of the crew, and drinking three bottles of wine from a locker left open, and afterwards, though rather tipsy, re-

* (148) Where drunkenness is habitual and gross, so as to induce a general incapacity to perform duty, it is a ground of forfeiture of wages. But where it is only occasional, or leaves much meritorious service behind, it is quite sufficient to recover in damages the

amount of the actual or presumed loss resulting from such a violation of the mariner's contract. *Orne v. Townsend*, 4 Mason, 541. See also *Sherwood v. M'Intosh*, Ware, 109. [AMERICAN.]

turning to his work, *held*, to be an irregularity too trivial to incur a forfeiture of wages. *The Gondolier*, 3 Hagg. 191.

280. For the stipulations usually inserted in shipping agreements as to deductions from pay for occasional drunkenness, see tit. SEAMEN, p. 2142.

10. *Smuggling, causing Loss.*

See tit. SEAMEN, Pt. V. p. 2186.

11. *Calculation of Forfeiture.*

See No. 301, p. 2312.

12. *Waiver.**

281. A master who suffers the mutinous conduct of a mariner at the very outset of the voyage to pass with perfect licence and impunity, when it was within his

power and duty to redress himself, comes into court with a very ill grace to require redress, by forfeiture of wages, for subsequent ill behaviour. *The Ealing Grove*, 2 Hagg. 19.

282. A master in a foreign port hired a partially new crew, retaining in the service of his vessel a man, whom, on his afterwards bringing a suit for wages, he charged with having been guilty of embezzlement and disobedience of orders at a time prior to the hiring of the new crew, at which time the embezzlement was known to him. *Quære*, is not the retention of the man under such circumstances a condonation of those offences? *The Test*, 3 Hagg. 315.

283. When it is provided by a ship's articles, that any of the crew who shall absent themselves from the ship without leave, shall forfeit their wages, if after one of the crew has so absented himself the master receives him back again and

* (149) A master has power to remit a forfeiture, and his pardon is a reintegration of the seamen in the right of wages. *The Ship Mentor*, 4 Mason, 84. [AMERICAN.]

(150) When seamen have been guilty of inflamed offences, and serious violations of duty under circumstances of an aggravated nature, if they testify by their subsequent conduct a thorough repentance, and offer amends for the wrong, and show a subsequent exemplary diligence, there is no stubborn rule of law that prohibits the court from mitigating the forfeiture, and giving them the whole or a portion of their wages, according to its discretion. *Ibid.*

(151) After a mariner has voluntarily left his vessel in a foreign port without leave of the officer in command, and his place has been supplied by another, he cannot acquire a right to be reinstated and to wages, by coming clandestinely on board and remaining concealed from her officers until she is out at sea. *The Philadelphia*, Olcott, Adm. 216. [AMERICAN.]

(152) The master, under such circumstances, is authorized to compel him to work his passage whilst he continues with the ship, and no engagement to pay him wages can be implied therefrom. *Ibid.*

(153) If a captain voluntarily discharge a seaman guilty of mutinous and disobedient conduct, and promise to pay his wages, it is a waiver of the forfeiture. *Austin v. Dewey*, 1 Hall, 238. [AMERICAN.]

(154) If after desertion a seaman offers to return to duty in a reasonable time, and repents of the offence, the master is bound to receive him back unless his previous misconduct justifies his discharge. *Cloutman v. Tunison*, 1 Sumner, 373; *Hutchinson v.*

Coombs, Ware, 65. [AMERICAN.]

(155) And if he is again received on board it is a pardon and waiver of the forfeiture. *Whitton v. The Brig Commerce*, 1 Pet. Ad. 160; *Whiteman v. The Ship Neptune*, *Ibid.* 180. [AMERICAN.]

(156) When seamen have been absent without leave, the master by punishing them, and continuing to employ them, waives all claim to forfeiture of wages. *The Ship Elizabeth v. Rickers*, 2 Paine, C. C. 291. [AMERICAN.]

(157) Shipping articles contained a clause that for certain misconduct the seaman's wages should be forfeited, and in case he should be reinstated or employed afterwards it should not do away with such forfeiture. One who had offended had been discharged, and was afterwards received on board and his wages allowed in his account, was *held* entitled to recover them. *Lang v. Holbrook*, Crabbe, 179. [AMERICAN.]

(158) But in such case his wages while absent were deducted, and he was charged with losses and expenses occasioned by his misconduct. *Ibid.*

(159) A seaman who returns to a vessel after a week's absence without leave, and continues during the rest of the voyage, is to receive his wages at the rate originally contracted for in the shipping articles, unless a new contract is explicitly made. *Snell v. The Independence*, Gilpin, 140. [AMERICAN.]

(160) The owners of a vessel, by taking the cargo of their master, and saying they find no fault with him, were *held* to waive his disobedience of orders in sailing on a different voyage from the one he was instructed to follow. *Codwise v. Hacker*, 1 Caines, 526. [AMERICAN.]

allows him to work like the others, the forfeiture is waived, and the wages are recoverable. *Miller v. Brant*, 2 Camp. 590; *Beale v. Thompson*, 4 East, 546.

284. If seamen have incurred a forfeiture of their wages, and in time of distress, when the ship is aground, the captain calls on those seamen to assist in getting her off, this is no waiver of the forfeiture, but if the captain continues them in their work after the peril is over, it is otherwise. *Train v. Bennett*, 3 Car. & P. 3; M. & M. 82.

285. The master of a ship dismissed for drunkenness, and reinstated on condition of having no spirits on board, violated this condition, and was frequently drunk during the voyage. *Held*, that he thereby forfeited his wages from the time of his violation of the condition, although he brought the vessel in safety to the end of her voyage. *McKellar v. McFarlane*, 2 S. M. & P. 123; 15 Court of Sessions Cases (Scotch), 246.

See also No. 287, *infra*.

17. Deductions.

1. Generally.*

286. The master is to set forth in the account to be delivered to the seaman, twenty-four hours before his discharge (as

to which see c. 19, s. 3, p. 2313), all deductions to be made therefrom on any account whatever. Penalty for default not exceeding five pounds, and no deduction from the wages of any seaman (except in respect of any matter happening after such delivery) is allowed unless included in that account. See M. S. Act, 1854 (c. 104), s. 171.

286a. The master must, during the voyage, enter the various matters in respect of which such deductions are made, with the amounts of the respective deductions, as they occur, in a book to be kept for that purpose, and must, if required, produce the book on payment of wages, and also upon the hearing before any competent authority of any complaint or question relating to such payment. *Ibid*.

287. Whenever any seaman contracts for wages by the voyage, the run, or the share, and not by the month or other stated period of time, the amount of forfeiture incurred under this act is an amount bearing the same proportion to the whole wages or share as the calendar month or other period bears to the whole time of the voyage; and if that does not exceed the period for which the pay is to be forfeited, the forfeiture extends to the whole wages or share. *Ibid*. s. 252.

288. As to the right of any court or functionary to determine any question of

* (161) Loss or damage, accruing to the owner or master by any negligence or crime, may be set off against wages. *Thorn v. White*, 1 Pet. Ad. 168; *Macomber v. Thompson*, 1 Sumner, 384. [AMERICAN.]

(162) But only the damage actually sustained by the owner in consequence can be deducted from the wages. *Freeman v. Walter*, 6 Greenl. 68; *Willard v. Dorr*, 3 Mason, 161; *Macomber v. Thompson*, 1 Sumner, 384. [AMERICAN.]

(163) When a seaman ships for a particular service and is found to be not qualified for that duty, the master is authorized to put him to a different service, and make a reasonable deduction from his wages. *Sherwood M'Intosh*, Ware, 109. [AMERICAN.]

(164) Steward displaced and punished without cause is not bound to serve as cook, and may recover his wages. *The Sarah*, Stuart's Vice-Adm. Rep. 87. [LOWER CANADA.]

(165) A master has no right to withhold a part of the seaman's wages, to indemnify the owners against damages claimed in a suit depending at common law. *The Ship Washington*, 1 Pet. Ad. 219. [AMERICAN.]

(166) Debts or liabilities of seamen to the master or owner of a vessel for other cause

than for misfeasance or non-performance in the duties of their position cannot be set up against their demand of wages. *The Hudson*, Olcott, Adm. 396. [AMERICAN.]

(167) When a seaman engages for a certain voyage at a fixed rate, his wages shall not be diminished on account of the diminution of the risks of the voyage after its commencement. *M'Culloch v. The Ship Lethe*, Bee, 423. [AMERICAN.]

(168) Nor shall the wages of a ship's surgeon, under like circumstances. *Shaw v. The Ship Lethe*, Bee, 424. But otherwise when the risk is diminished before the voyage commences. *Brice v. The Nancy*, *ibid*. 429. [AMERICAN.]

(169) If a voyage be interrupted without fault of the crew, they shall receive wages during the time they work on board the vessel in port. *Bray v. The Ship Atalanta*, Bee, 48. See also *Murray v. Kellogg*, 9 Johns. 227. [AMERICAN.]

(170) A seaman is chargeable for the value of articles lost by his inattention or carelessness, and the amount may be deducted from his wages. *Brown v. The Neptune*, Gilpin, 89. [AMERICAN.]

deduction from wages in any proceedings for wages, see No. 22, p. 2280.

289. In a case of alleged desertion, the Court of Admiralty can and will inquire into the legality of an order of magistrates under which the mariner had been imprisoned for desertion, so far at least as that imprisonment bears on the question of desertion. *The Westmoreland*, 1 W. Rob. 224.

2. Agreement as to—

290. For the regulations for maintaining discipline sanctioned by the Board of Trade, and which may be adopted by mutual arrangement in the shipping agreement between master and crew, and the deductions and fines therein allowed, see tit. SEAMEN, Pt. II. p. 2142.

291. In a suit for wages the ship's articles contained a printed clause (usual in the Baltic trade) to the effect that should the vessel winter abroad, on account of the ice, the officers and men agreed to accept half wages during such detention. The ship went out in search of a freight, when the ice prevented her from getting a cargo, but not from sailing without one, and she wintered abroad. *Held*, that there having been no negligence in endeavouring to procure a freight, the crew were entitled only to such half wages during such her detention. Claim of mariner for whole wages pronounced against, but without costs. *The Houghton*, 3 Hagg. 100.

3. Detention from Stranding.

292. The detention of a vessel during the winter by stranding in the river St. Lawrence on her voyage to Quebec does not defeat the claim of the seamen to wages during the detention. *The Factor*, Stuart's Vice-Adm. Rep. 183. See also *Beale v. Thompson*, 3 B. & P. 405; 4 East, 546; 1 Dow. 299, 309; *Hadley v. Clarke*, 8 T. R. 266; *Beystrom v. Mills*, 3 Esp. N. P. C. 37.

4. Masters.

See c. 16, s. 2, p. 2303.

5. Mates.

Ibid. s. 3, p. 2304.

6. *Neglecting to join or proceed to Sea.*

See tit. SEAMEN, Pt. V. p. 2184.

7. Desertion.

Ibid. p. 2179.

8. Absence without Leave.

Ibid. p. 2184.

9. Quitting Ship before secured without Leave.

293. Whenever any seaman lawfully engaged or sea apprentice is guilty of quitting the ship without leave after her arrival at her port of delivery, and before she is placed in security, he is liable to forfeit out of his wages a sum not exceeding one month's pay. See M. S. Act, 1854 (c. 104), s. 243, sub-s. 3.

10. Wilful Damage or Embezzlement.

See tit. SEAMEN, Pt. V. p. 2185.

11. Smuggling, causing Loss.

Ibid. p. 2186.

12. Neglect or refusal to work.

294. No seaman or apprentice is entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work. See M. S. Act, 1854 (c. 104), s. 186.

295. If a seaman's claim for wages be resisted on the ground that he would not do his work, it is a good answer to this defence to show that the refusal to work was caused by the misconduct of the master, which went to induce the men to incur such forfeitures. *Train v. Bennett*, 3 Car. & P. 3; M. & M. 82.

13. Wilful Disobedience.

See tit. SEAMEN, Pt. V. p. 2184.

14. Drunkenness.

296. For stipulations usually inserted in shipping agreements as to deductions from pay for occasional drunkenness, see tit. SEAMEN, Pt. II. p. 2142.

297. As to forfeiture of wages for habitual drunkenness, see c. 16, s. 9, p. 2308.

15. *Illness wilfully caused.**

298. Where a seaman is by reason of illness incapable of performing his duty, and it is proved that his illness has been caused by his own wilful act or default, he is not entitled to wages during the time he is by reason of such illness incapable of performing his duty. See M. S. Act, 1867 (c. 124), s. 8.

16. *Continued Wilful Neglect of Duty.*

See tit. SEAMEN, Pt. V. p. 2184.

17. *Wrongful Complaint of Provisions.*

299. If the officer to whom the complaint of the quality or insufficiency of provisions is made, certifies that there was no reasonable ground for such complaint, each of the parties so complaining is liable to forfeit to the owner out of his wages a sum not exceeding one week's wages. See M. S. Act, 1854 (c. 104), s. 222.

18. *During Imprisonment.†*

300. No seaman or sea apprentice, unless the court hearing the case otherwise directs, is entitled to wages for any period during which he has been lawfully imprisoned for any offence. *Ibid.* s. 186.

19. *False Statement of Name and Ship.*

See tit. SEAMEN, Pt. V. c. 18, p. 2186.

20. *Calculation of—*

301. Whenever any seaman contracts for wages by the voyage the run or the share, and not by the month or other time, the amount of forfeiture to be incurred under this act shall be taken to be an amount bearing the same proportion to the whole wages or share as a calendar month or other period mentioned in fixing the amount of such forfeiture bears to the whole time spent in the voyage; and if

the whole time spent in the voyage does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share. See M. S. Act, 1854 (c. 104), s. 252.

18. *Discharge of Seamen.*

302. As to the discharge of seamen generally, and in the particular cases there referred to, the mode of such discharges, and the wages to be paid thereon, see tit. SEAMEN, Pt. III. p. 2125.

19. *Payment.*1. *In Money.‡*

303. The payment of seamen's wages required by the 209th section of M. S. Act, 1854 (c. 104), is, whenever practicable, to be made in money, and not by bill. See M. S. Act Amendment Act, 1862 (c. 63), s. 19.

2. *By Bill of Exchange.*

304. Where payment of seamen's wages required by the 209th section of the M. S. Act, 1854, c. 104 (on a seaman being left behind abroad, as to which see tit. SEAMEN, p. 2167), is made by bill drawn by the master, the owner of the ship is liable for the amount for which it is drawn to the holder or indorsee. It is not necessary in any proceeding against the owner upon such bill to prove that the master had authority to draw it; and any bill purporting to be so drawn and indorsed, if produced out of the custody of the Board of Trade or of the registrar-general of shipping and seamen, or of any superintendent of any mercantile marine office, is to be received in evidence; and any such indorsement on any such bill made and signed by one of the functionaries therein mentioned is to be received in evidence, and deemed *prima facie* evidence of the facts stated in such indorse-

* (171) A seaman who contracts disease by his own vices or faults is not chargeable upon the vessel for the expense of his cure. *Pierce v. Patten (Holmes v. Hutchinson)*, Gilpin, 435; and see also Dunlap's Admiralty Practice, 78; 1 Conkling's Admiralty Law, 139. [AMERICAN.]

† (172) If the master punishes a seaman by imprisonment, he cannot deduct his prison expenses, nor are the wages liable to forfeiture, nor can the expenses of a substitute during the imprisonment be charged. *The*

Nimrod, Ware, 9; Gilpin, 83; *The Independence*, *ibid.* 140; *The Coriolanus*, Crabbe, 239. See also Dana's Seaman's Manual, 193. [AMERICAN.]

‡ (173) A master has no right to charge advances at a higher rate of exchange than that current at the port where the advance was made, even though he may have obtained cash there at a higher rate. See Board of Trade Instructions to Superintendents of September, 1883.

ment. See M. S. Act Amendment Act, 1862 (c. 63), s. 19.

305. For the old cases on this head, see *Forsboorn v. Krugor*, 3 Camp. 197.

3. *Account of Wages and Deductions deliverable Twenty-four Hours before Discharge.*

306. Every master shall, not less than twenty-four hours before paying off or discharging any seaman, deliver to him, or to the superintendent before whom he is discharged, a full and true account on a Board of Trade form of his wages and all deductions therefrom. Penalty for breach not exceeding £5; no deduction from the wages of any seaman (except as to any matter happening after such delivery) shall be allowed unless so included. The master shall during the voyage enter the various matters in respect of which such deductions are made, with the amounts of the respective deductions, as they occur, in a book to be kept for that purpose, and, if required, produce such book on payment of wages, and upon the hearing before any competent authority of any complaint or question relating to such payments. See M. S. Act, 1854 (c. 104), s. 171, as amended by the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 80), s. 4, sub-s. 2.

4. *Period of—*

307. The master or owner of every ship shall pay to every seaman his wages in the case of a home trade ship, within two days after the termination of the agreement or at the time when such seaman is discharged, whichever first happens; and in the case of all other ships (except ships employed in the southern whale fishery or on other voyages for which seamen by the terms of their agreement are wholly compensated by shares in the profits of the adventure) within three days after the cargo has

been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one fourth part of the balance due to him. See M. S. Act, 1854 (c. 104), s. 187.

5. *Before Superintendent.*

(a) *On Discharge.**

308. If the seaman consents, the final settlement of his wages may be left to the superintendent of a mercantile marine office under Board of Trade regulations, and the receipt of the superintendent in that case operates as a release by the seaman under sect. 175 of the M. S. Act, 1854 (c. 104). See the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 80), s. 4, sub-s. 3.

308a. In the event of all or any part of the seaman's wages not being thus settled, then, unless the delay is due to the act or default of the seaman, to any reasonable dispute as to liability, or to any other cause not being the act or default of the owner or master, the seaman's wages shall continue to run and be payable until the time of the final settlement thereof. *Ibid.* sub-s. 4.

309. When a question as to wages is raised before the superintendent of a mercantile marine office between the master or owner, and a seaman or apprentice, if the amount does not exceed £5, the superintendent may adjudicate, and his decision shall be final; but if he is of opinion the question ought to be decided by a court of law, he may refuse to decide it. *Ibid.* sub-s. 5.

309a. As to the jurisdiction of superintendents, see c. 2, s. 4, p. 2282.

See tit. SEAMEN, Pt. III. p. 2151.

(b) *Release.*

310. (1) Upon the completion before a superintendent of any discharge and

* (174) For the Board of Trade regulations on the settlement of seamen's wages before the superintendent of a mercantile marine office, see their Instructions to Superintendents thereon of September, 1880.

(175) See also as to special regulations of the Board applicable to London, Gravesend, Shields, Swansea, Cardiff, Bristol, Plymouth, Leith, Dundee, and Liverpool, to which list other ports will be added as "arrival ports," under which seamen on leaving their ships

can proceed at once to the ports where they live or to which they wish to go without waiting for payment of their wages, sums requisite for the journey being advanced to them, *Ibid.* pp. 3—6.

(175a) As to the settlement of wages when a seaman is discharged abroad, see Board of Trade Instructions to Officers in British Colonial Possessions, revised January, 1875, pp. 19—24.

settlement, the master or owner and each seaman shall in the presence of the superintendent sign on a Board of Trade form a mutual release of all claims, and the superintendent shall also sign and attest it, and shall retain and transmit it as directed: (2) Such release so signed and attested shall operate as a mutual discharge and settlement of all demands between the parties as to the past voyage or engagement: (3) A copy of such release certified under the hand of the superintendent shall be given by him to any party requiring it; and shall be receivable in evidence upon any future question touching such claims, and have all the effect of the original: (4) In cases in which discharge and settlement before a superintendent are required, no payment or discharge otherwise made shall operate or be admitted as evidence of the release of any claim: (5) Upon any payment being made by a master before a superintendent, the superintendent shall, if required, sign and give such master a statement of the amount paid; and such statement shall as between the master and his employer be evidence that he has made the payments therein mentioned. See M. S. Act, 1854 (c. 104), s. 175.

6. *As affected by Agreements and their Construction.*

See tit. SEAMEN, Pt. II. c. 1, s. 5, p. 2137.

7. *Double Pay.*

See c. 14, s. 5, p. 2297.

8. *Of Seamen dying in the United Kingdom.*

See tit. SEAMEN, Pt. VI. p. 2190.

9. *Of Seamen dying on Board any British Ship.*

311. As to the payment by the master of the wages of any seaman or apprentice dying on board any British ship to the superintendent at the first port at which the ship touches, if in the United Kingdom, or to the British consular officer or officer of customs if the ship first touches at any foreign port in her Majesty's dominions abroad, when such officer requires payment thereof, or when he does not require payment to the superintendent at the ship's port of destination

in the United Kingdom, within forty-eight hours after her arrival there, see M. S. Act, 1854 (c. 104), s. 195, and tit. SEAMEN, Pt. VI. p. 2192.

10. *Repayment to Owners on Seamen entering the Royal Navy.*

See tit. SEAMEN, Pt. IV. p. 2171, and tit. PRACTICE, Pt. III. p. 1702.

11. *Repayment of Wages paid by Third Parties, with and without Leave of the Court.*

See tit. LIENS, p. 811.

20. **Appeals.**

312. As to appeals generally, see tit. APPEALS, p. 1, and *Ibid.* in Addenda.

313. Every order made by justices, or by the sheriff if in Scotland, on any claim for wages under £50 shall be final. See M. S. Act, 1854 (c. 104), s. 188.

21. **Security for Costs.**

See tit. COSTS, p. 365.

22. **Evidence.**

314. As to evidence in actions of wages, see tit. EVIDENCE, p. 461.

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315. As to practice in actions of wages, see tit. PRACTICE, Pt. III. p. 1463.

24. **Registrar and Merchants.**

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25. **Costs.**

316. As to costs in actions of wages, see tit. COSTS, p. 412.

26. **Master's Appointment and Dismissal.**

See tit. MASTERS, p. 1116.

27. **Master's Accounts.**

Ibid. p. 1123.

28. **French Law.**

See this title and chapter in Addenda.

WRECK.

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1. Generally.*

1. Where a man, a dog, or a cat escape quick out of the ship, such ship, or barge,

* (1) The laws relating to wreck were consolidated by 9 & 10 Vict. c. 99, but that act has been repealed, and many of its provisions re-enacted with additional provisions, by the M. S. Act, 1854 (c. 104), and by 17 & 18 Vict. c. 120.

(2) Wreck, deriving its name from the Saxon *wrecc*, signifying outcast or abandoned; in Norman French, *varech*; in Latin, *wreccum*, or *warectum*, or *ejectus maris*, may be divided into two kinds:—1. Wreck cast upon land, which is wreck properly so called, or wreck at common law. 2. Wreck found in

or anything in them, shall not be adjudged wreck, but the goods shall be saved and kept by view of the sheriff, coroner, or the king's bailiff, and de-

the sea, which, strictly speaking, is improperly called wreck, not constituting wreck at common law, but falling under the cognizance of the Admiralty. Wreck found in the sea may be subdivided into wreck at sea, flotsam, jetsam, lagan, and derelict. Palmer on Wreck, 2.

(3) Nothing shall be called wreck but such goods only as are cast or left upon the land by the sea: *quæ naufragio ad terram appellantur*, 5 Rep. 106, a.

(4) Wreck at sea is taken to signify a vessel at sea totally disabled by wind and waves,

livered into the hands of such as are of the town where the goods were found; so that if any sue for those goods, and after prove that they were his, or perished within his keeping, within a

year and a day, they shall be restored to him without delay, and if not, they shall remain to the king or to such others to whom the wreck belongeth. See 3 Edw. 1, c. 4.*

distinguished from flotsam as not a fragment or part of a vessel, and from derelict as not abandoned. 2 Browne's Civil Law, 49; Palmer on Wreck, 2.

(5) Wreck at common law includes vessels or part of vessels, or goods cast by the sea upon land within the body of some county, and there left, not continuing in the possession of the owner, his agents, or mariners. *Ibid.*

(6) While still in the sea, even when floating between high and low water mark, such things were not regarded by the common law, but were under the jurisdiction of the Admiralty; cast upon the beach, though within the same limits, they came under the cognizance of the common law. *Ibid.*

(7) Flotsam, according to Lord Coke, is when a ship sinks or otherwise perishes, and the goods float on the sea. 5 Rep. 106. Perhaps all fragments of a vessel or goods found floating on the sea and not reclaimed would come under this denomination. Palmer on Wreck, 3.

(8) Jetsam, is where goods are cast out of a ship to lighten her when in danger of sinking, and afterwards the ship perishes. 5 Rep. 160; Palmer on Wreck, 3. Perhaps it includes all goods so cast out sinking and remaining under water. 1 Black. Comm. 293.

(9) Ligan, lagan, or lagon, according to Lord Coke, who derives it a *ligando*, is when heavy goods are, to lighten the ship, cast out and sunk in the sea tied to a buoy or cork, or something that will not sink, in order that they may be found again and recovered. Palmer on Wreck, 3; 5 Rep. 106; 1 Black. Comm. 292. It seems rather derived from the Saxon *Lizgan*, to lie, signifying all goods so laid or sunk in the sea. Palmer on Wreck, 3.

(10) In Scotland, under a law of Alexander 2 (c. 25), corresponding to the English statute (3 Edw. 1, c. 4), when any creature escapes alive from a wrecked vessel, the goods cast away are not accounted wreck, but are to be preserved by the sheriff for those who within a year shall prove their property therein, otherwise escheating to the crown. The admiral is considered the king's donatory of wreck where no special right is shown in another. The prior owners may reclaim wrecked goods on proving their title and paying salvage, though no creature escape alive, and, according to a decision of the year 1725, notwithstanding the year has elapsed. Palmer on Wreck, 49.

(11) Much valuable information with regard to the old law of Scotland upon the subject of wreck as connected with royal and

manorial privileges, may be found in the printed papers of the case of *M'Dowall v. M'Dowall*, House of Lords, 1825.

(12) For the old law as to wreck, flotsam, jetsam, lagan, and derelict, see 2 Browne's Civil and Admiralty Law (2nd ed.), 37, 46—51.

(13) The masters of all vessels, on reporting inwards at the custom-house, are to state whether they have fallen in with or picked up any wreck, and the particulars thereof, and a copy thereof is to be sent by the customs officer to the receiver of wreck for the district. See Board of Trade Instructions to Receivers of Wreck, 1886, App. K. p. 132.

* (14) This statute being but declaratory of the common law, these three instances are put but for examples. 2 Inst. 167, 168.

(15) Although the statute only speaks of wreck, yet it refers also to flotsam, jetsam, and lagan. *Ibid.*; 22 Vin. Abr. 539.

(16) By the general law, things found in the open sea, common to all nations, still belong to the first occupant. The posthumous treatise of Lord Hale expressly states that "flotsam, jetsam, lagan, and other sea estrays, if taken up in the wide ocean, belong to the taker of them, if the owner cannot be known," limiting the right of the crown to such things taken up within the king's seas. Hale, de Jure Maris, c. 7; Hargrave's Law Tracts, 41; see also 1 Comm. 295; 2 Comm. 402; Palmer on Wreck, 8.

(16a) For further information as to the wreck register, annually compiled by the Board of Trade, see the forthcoming Second Report and Evidence of the Royal Commission on Loss of Life at Sea, and in particular the evidence of Mr. Gray, Under-Secretary of the Board, thereon.

(17) For instructions to the constabulary of Ireland as to wrecks and wrecked property, see same of April 22, 1870, in Appendix I. to the Board of Trade Instructions to Receivers and others as to Wrecks, Casualties, and Salvage, 1886, Appendix I. p. 131.

(17a) If treasure be found in the sea, the finder shall have it. 2 Inst. 168; 22 Vin. Abr. 541.

(18) Vessels sunk at sea are not "wrecks," but when found are derelict, and he who finds and recovers them has a lien on them for salvage. *Baker v. Hoag*, 3 Seldon, N. Y. 555. [AMERICAN.]

(19) The owner's right of property is not lost by abandonment, but the possession is left vacant. *The Bee*, Ware, 332; *Whitwell v. Wells*, 24 Pick. 25. [AMERICAN.]

(20) No length of time will divest the owner of property found derelict upon the

2. As to the construction of the term "wreck" as including jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal water, and of the term "receiver," as meaning any person appointed in pursuance of this act receiver of wrecks, see M. S. Act, 1854 (c. 104), s. 2.

3. Any officer in command of any ship of her Majesty on any foreign station, or, in his absence, any consular officer may summon a naval court, (1) Whenever the interest of the owner of any British ship, or of the cargo of any such ship, appears to such officer to require it. (2) Whenever any British ship is wrecked or abandoned or otherwise lost at or near the place where such officer may be, or whenever the crew or part of the crew of any British ship which has been abandoned or lost abroad arrives at such place. *Ibid.* ss. 260, 261—266.

4. *Wreckum maris*, or wreck of the sea, is in legal understanding applied to such goods as, after shipwreck at sea, are by the sea cast upon land. *Sir H. Constable's case* (1369), 5 Rep. 106; 2 Inst. 167.

5. *Wreckum maris* is not such in legal acceptation till it comes ashore, until within the land jurisdiction; while at sea it is flotsam, jetsam, or lagan. Above high water mark it belongs to the lord of the manor, but below low water mark he can have no claim. Between high and low water marks it is *divisum imperium*; when the tide covers this space it is sea; when it recedes it is land, and within the jurisdiction of the manor. If the article be floating, it belongs to the sea, and is not *wreckum maris*, but flotsam. If it become fixed to the land, though there be some tide round it, it may be considered as *wreckum maris*; but if it have merely touched the ground, and be again floating about, its character will depend upon its state when seized. *The King v. Two Casks of Tallow*, 3 Hagg. 298.

6. Wrecks of the sea or shipwrecks are *bona waviata*, and when the sea has brought them to land they are within the land jurisdiction; but to constitute a legal wreck the goods must come to land. If they continue at sea they are jetsam,

flotsam, or lagan. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 276, 292.

7. Neither flotsam, jetsam, nor lagan are called wreck of the sea so long as they remain in or upon the sea; but if any of them are driven to the land by the sea, they shall then be called wreck; so that flotsam, jetsam, and lagan pass by the grant of wreck. *Sir R. Constable's case* (1369), 5 Rep. 106; 2 Inst. 167; but see 5 Co. 107.

8. Things which have once touched the ground, though afterwards afloat, do not thereby necessarily become the property of the lord of the manor. Things having become fixed on the shore, and afterwards the sea leaving them and then returning, *quare* wreck or droits. *The King v. Thirty-two Casks of Tallow*, 3 Hagg. 299.

9. Casks picked up, having taken the ground between high and low water mark, though still moved by the waves, the sea at one time surrounding them and at another leaving them dry, *held* to be wreck of the sea. *The King v. Forty-nine Casks of Brandy, ibid.*

10. Goods cast into the sea to disburthen a ship in a storm, and never intended for merchandize, are wreck when cast on the shore, without any shipwreck. *Shepherd v. Gosnold* (1671), Vaugh. 168.

11. Spanish dollars more than 100 years old, found in the sands of a sea-shore, will be presumed to have come there by the loss of some vessel which was wrecked, although no part of any vessel be found near them. *Talbot v. Lewis*, 6 Car. & P. 603. (Parke.)

12. A ship was struck by another ship during a storm, and deserted by her crew for some hours, and when again taken possession of was on shore much damaged and full of water. Her cargo was also much damaged, and was taken out to lighten the ship, which was then got off, and sold for one-third her previous value. *Held*, that neither ship nor cargo were "wreck" within the meaning of the 3 & 4 Will. 4, c. 52, s. 50 (Customs Act) now repealed. *Legge v. Boyd*, 1 C. B. 92; 9 Jur. 307; 14 L. J. C. P. 138.

13. Timber found floating, without an apparent owner, at sea, having drifted

sea. It will be restored upon the payment of salvage according to the circumstances. *Wilkie v. Brig St. Peter, Bee*, 82. [AMERICAN.]

(21) Restitution upon payment of salvage will be adjudged in all cases, if the original owners can be found. *British Consul v. Smith, Bee*, 178. [AMERICAN.]

from the place where it was moored in a river, is not "wreck" within the meaning of that word as defined by the M. S. Act, 1854 (c. 104), s. 2. *Palmer v. Rouse*, 3 Hurl. & Nor. 505.

14. Priority of seizure is a fact of no importance in determining whether property be wreck of the sea or a droight of Admiralty. *The Pauline*, 2 W. Rob. 358; 9 Jur. 286; 3 Notes of Cases, 616.

15. Accidental loss to various portions of property (wreck and droights) claimed by two parties, it not being ascertainable to which party in particular the property damaged belonged, decreed to be apportioned between the parties in proportion to their claims on such property. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 293.

16. Goods to constitute wreck must be actually cast on to the shore. It is not sufficient that they have been taken while floating close to the shore by some one wading out to them. *The Derelict Timber*, 9 Ir. Eq. 619. [IRISH.]

17. Goods thrown up by the sea between high and low water mark shift and vary in character with circumstances. They are wreck while the tide is out and they lie on the beach, and if then taken by the grantee by patent of wreck cast upon the shore, they become his property. But if they are left to the action of the waves, and are again floated by the tide coming in, they then become droights of Admiralty. *Ibid.*

18. Harbour commissioners were empowered to levy dues on goods, merchandise, wares or commodities imported into the harbour, in any ship or unloaded out of any ship, coming into the harbour or landed within the precincts of the har-

bour. A vessel was wrecked in the harbour, and the wreckage partly drifted, and was partly brought ashore within the precincts of the harbour. *Held*, that the commissioners could not exact dues on the wreckage. *Wallace v. Fraserburgh Harbour Commissioners*, 4th Series, vol. 3, p. 368. [SCOTCH.]

19. A barge found adrift near the West India Docks, in the river Thames, *held*, not to be "wreck" within the meaning given to that word by sect. 2 of the M. S. Act, 1854 (c. 104). *The Zeta*, L. R. 4 A. & E. 460; 44 L. J. Adm. 22; 3 Asp. N.S. 73.

20. As to the liability of the hundred for damages in the case of a ship wrecked being plundered by a tumultuous assemblage, see M. S. Act, 1854 (c. 104), s. 477.

21. As to the powers of the Board of Trade, with the consent of the Treasury, to purchase rights to wreck, *Ibid.* s. 474.

22. For provisions as to wreck and salvage in various British Colonial Courts and British Courts in foreign countries, see tit. SALVAGE, Pts. II. and III. pp. 1899—1901.

2. Jurisdiction.

1. Of the Admiralty Division of the High Court of Justice.

See tit. JURISDICTION, Pt. I. p. 638.

2. Of the High Court of Admiralty.*

23. It is accorded and assented that the admirals and their deputies shall not meddle from henceforth of anything done within the realm, but only of a thing done

* (22) Although, strictly speaking, the Court of Admiralty has no jurisdiction over questions of wreck, yet incidentally in suits for salvage the court has jurisdiction. 2 Chitty's Gen. Prac. 531.

(23) The Court of Vice-Admiralty for Lower Canada has no jurisdiction in a claim of property to an anchor, &c., found in the river St. Lawrence, in the district of Quebec. *The Bonulus*, Stuart's Vice-Adm. Rep. 208. [LOWER CANADA.] See also *Hamilton v. Fraser*, Stuart's Lower Canada Rep. 21, 36 *et seq.*; and *Barnes' case*, 2 Roll. Rep. 157, cited in 1 East, 308.

(24) When it is said by the common law authorities that the Admiralty has not jurisdiction over wreck of the sea, the term is to be understood to signify not that which is

in the sense of the maritime and commercial law deemed wreck or shipwrecked property, but "wreck of the sea," in the purely technical sense of the common law, and constituting a royal franchise and a part of the revenue of the crown of England, and often granted as such royal franchise to lords of manors. This and this only is excluded from the Admiralty jurisdiction in England. *The United States v. Coombs*, 12 Peters, 72. [AMERICAN.]

(25) If goods of the description of flotsam, jetsam, and lagan, are taken up at sea and brought on shore, the Court of Admiralty has jurisdiction. *Aliter*, if they are cast on the land by the sea. *Lacaze v. Pennsylvania*, Addis. 63. [AMERICAN.]

upon the sea, as it hath been used in the time of the noble prince, King Edward, grandfather of our lord the king that now is. 13 Rich. 2, c. 5.

24. It is declared, ordained, and established that of all manner of contracts, pleas, and quedeles, and all other things rising within the bodies of the counties, as well by land as by water, and also of wreck of the sea, the admiral's court shall have no manner of cognizance, power, nor jurisdiction; but all such manner of contracts, pleas, and quedeles, and all other things rising within the bodies of counties, as well by land as by water, as afore, and also wreck of the sea, shall be tried, determined, discussed, and remedied by the laws of the land, and not before nor by the admiral, nor his lieutenant in any wise. 15 Rich. 2, c. 3.

25. Prohibition lies to the Court of Admiralty in a suit there for wreck; for by the stat. 15 Rich. 2, c. 3, wreck is expressly mentioned to be determined by the law of the land. 4 Inst. 134, 154.

26. So also, if the suit there be for goods floating upon the sea and afterwards cast upon the land, for that is wreck. 1 Rol. 531, l. 40.

27. So if the suit there be for flotsam when it was wreck. 1 Rol. 529, l. 25; 2 Mod. 294.

28. If flotsam come to land, and be taken by him who has no title, the action shall be brought at common law, and no proceedings shall be had thereon in the Court of Admiralty, for there is no need of condemnation thereof as there is of prizes. *Lady Wyndham's case* (1697), 2 Mod. 294.

29. The Admiralty has jurisdiction over things flotsam, jetsam, and lagan, as being in and upon the sea. 2 Inst. 167; *Sir H. Constable's case* (1369), 5 Rep. 106;

The King v. Forty-nine Casks of Brandy, 3 Hagg. 282; S. P. Raym. 96.

30. The Admiralty has no jurisdiction over wreck of the sea, for that must be cast on the land before it becomes wreck. *Ibid.*

31. The jurisdiction of the Admiralty subsists as long as the shore is covered with water. The jurisdiction of the common law attaches when it is left dry. *The Pauline*, 2 W. Rob. 358; 9 Jur. 286; 3 Notes of Cases, 616.

32. The Court of Admiralty of Ireland, although possessing to the fullest extent its ancient jurisdiction in cases of wreck and droits of Admiralty, is not since the passing of 9 & 10 Vict. c. 99, bound to enforce its jurisdiction upon the application of the Queen's Proctor, where the wreck and droits of Admiralty have been properly taken possession of by the receiver-general of droits appointed by that statute, or his deputy lawfully authorized. *Receiver-General of Droits v. Watt, Her Majesty's Procurator-General*, 4 Ir. Jur. 253.

3. Receivers of Wreck.

1. Generally.*

33. For provisions as to the appointment and jurisdiction of receivers of wreck, see M. S. Act, 1854 (c. 104), ss. 439, 440.

34. Receivers hold their offices during the pleasure of the Board of Trade. See the M. S. Repeal Act, 1854 (c. 120), s. 11.

35. As to the duties of receivers in the cases of ships stranded or in distress off the coasts of the United Kingdom, see tit. SALVAGE, Pt. I. c. 4, p. 1795.

36. For powers of receiver to suppress plunder and disorder by force, see M. S. Act, 1854 (c. 104), s. 444.

37. As to penalties for plundering,

wreck to be sent by receivers to the secretary at Lloyd's, and the fees for such reports, *Ibid.* pars. 110—114, p. 27.

(31) As to the mode of dealing by receivers with owners' claims to wreck property, *Ibid.* pars. 102—109, pp. 25—27.

(32) As to priority, telegrams from receivers of wreck to the Board of Trade, in regard to wrecks and shipping casualties, *Ibid.* par. 83, p. 21.

(33) As to the co-operation of the coast-guard with receivers of wreck, *Ibid.* pars. 217—230, pp. 50—52, and in Ireland of the constabulary, *Ibid.* pars. 231, 232, p. 52, and App. I. p. 131.

* (26) As to the duties of receivers in regard to sunken, stranded, or abandoned vessels, see Board of Trade Instructions to Receivers of Wreck and other Officers, 1886, par. 84, p. 22.

(27) As to what constitutes wreck, derelict, jetsam, flotsam, and lagan, *Ibid.* pars. 88—92, p. 23.

(28) As to the master when present being treated by the receiver as the agent of the owners until it is proved such agency has been put an end to, *Ibid.* par. 195, p. 46.

(29) As to wrecked property of the general lighthouse authorities, *Ibid.* par. 96, p. 24.

(30) As to notices of wreck to be posted at the custom-house and as to the reports as to

selling abroad, and obstructing the saving of shipwrecked property, see M. S. Act, 1854 (c. 104), ss. 478, 479.

38. As to the importation duties on foreign goods wrecked, and powers for the transmission of such goods to their port of destination, *Ibid.* ss. 499, 500.

39. As to the duties of receivers in regard to wreck as connected with salvage, see tit. SALVAGE, Pt. I. c. 4, p. 1794.

2. *Custody.**

40. All cargo and other articles belonging to any ship or boat stranded or in distress off the coast of the United Kingdom washed on shore, or otherwise lost or taken from such ship or boat, shall be delivered to the receiver; penalty not exceeding one hundred pounds against any person, whether the owner or not, who secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the receiver or to any person authorized by him; and the receiver or other person so authorized may take such cargo or article by force from the person so refusing to deliver the same. See M. S. Act, 1854 (c. 104), s. 443.

41. For provisions imposing a forfeiture of salvage on persons finding or taking possession of wreck without giving up possession thereof, or the required notice thereof to the receiver of wreck of the district, *Ibid.* s. 450.

42. For provisions that in cases of concealed wreck being seized by receiver of wreck in consequence of information given to him, the informer shall be entitled by way of salvage to such sum not exceeding £5 as the receiver may allow, *Ibid.* s. 451.

3. *Foreign Consuls in the United Kingdom.*

See c. 4, s. 2, p. 2323.

4. *Sale.†*

43. If no owner or grantee of the crown establishes his claim to wreck before the expiration of such period of a year, the receiver shall forthwith sell the same,

and after payment of all expenses attending such sale, and deducting therefrom his fees and expenses, and paying salvage to the salvors as the Board of Trade may determine, pay the same into her Majesty's Exchequer as the Treasury may direct, and the same shall be part of the consolidated fund of the United Kingdom. *Ibid.* s. 475.

44. Whenever any ship, boat, cargo, apparel, or wreck is detained by any receiver for non-payment of salvage, and the parties liable to pay the same are aware of such detention, then, in the following cases:—(1) Where the amount is not disputed, and payment is not made within twenty days after it is due; (2) Where the amount is disputed, but no appeal lies and payment is not made within twenty days after the decision; (3) Where the amount is disputed, and an appeal lies to some other tribunal, and payment is not made within such twenty days, or process or other proceedings in the appeal are not taken out or instituted within such twenty days; the receiver may forthwith sell the property, or a sufficient part thereof, and out of the proceeds after payment of all expenses defray all sums of money due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners or other parties entitled to receive the same. *Ibid.* s. 469.

5. *Delivery.‡*

45. Upon delivery of wreck or of the proceeds of wreck by any receiver to any person in pursuance of the provisions of the eighth part of the principal act, such receiver shall be discharged from all liability in respect thereof, but such delivery shall not be deemed to prejudice or affect any question concerning the right or title to the wreck which may be raised by third parties, nor shall any such delivery prejudice or affect any question concerning the title to the soil on which the wreck may have been found. See the M. S. Act Amendment Act, 1862 (c. 63), s. 52.

* (34) As to the delivery by the finder of wreck, whether ship or property, to the receiver, see Board of Trade Instructions to Receivers of Wreck and other Officers, 1886, pars. 117, 120, 121, p. 28.

(35) As to the custody of wrecked property by receivers, *Ibid.* pars. 84—121, pp. 22—28.

† (36) As to the sale of wreck or other property by receivers, *Ibid.* pars. 138—147, p. 33, and par. 211, p. 50.

(37) As to the commission to auctioneers on the sale of anchors and chains by receivers, *Ibid.* par. 144, p. 33.

‡ (38) As to the delivery up of wrecked property when arrested by the Admiralty Court, but reserving the receiver's rights to his fees, *Ibid.* pars. 132—137, p. 30.

(39) As to the delivery up by the receivers of wreck property to its owners, *Ibid.* pars. 189—198, p. 45.

46. As to the delivery up of wreck to owners, see No. 1, p. 2315; Nos. 55, 56, *infra*, and to lords of manors, Nos. 47, 48, and 92—107, *infra*.

6. Lords of Manors, &c.

47. In cases where any admiral, vice-admiral, lord of the manor, or other person is entitled for his own use to unclaimed wreck found on any place situate within a district for which a receiver is appointed, such person shall deliver to such receiver a statement containing the particulars of his title, and the address to which notices are to be sent; and upon such statement being so delivered, and proof made to the satisfaction of the receiver of the validity of such title, it shall be his duty, whenever he takes possession of any wreck found at any such place, to send within forty-eight hours thereafter a description of the same and of any marks by which it is distinguished, directed to such address as aforesaid. See M. S. Act, 1854 (c. 104), s. 454.*

48. In the event of no owner establishing a claim to wreck found in any place in the United Kingdom, before the expiration of a year from the date at which the same has come into the possession of the receiver, then, if any such admiral, vice-admiral, lord of any manor, or other person as aforesaid has given notice to and has proved to the satisfaction of the receiver that he is entitled to wreck found at such a place, the receiver shall, upon payment of all expenses, fees, and salvage due in respect of such wreck, deliver up possession thereof to such person; and in case of dispute as to the amount payable, and also in case of default in payment, such dispute shall be determined and payment enforced as in cases where any owner establishes his claim to wreck. *Ibid.* s. 471.

7. Fishing Vessels and Gear.†

49. All fishing boats, all rigging, gear, or other appurtenances of fishing boats, all nets, buoys, floats, or other fishing implements whatsoever found or picked up at sea shall, as soon as possible, be delivered to the receiver of wreck if the article saved be taken into the United Kingdom, and to the commissary of marine if the article saved be taken into France. See the Sea Fisheries Act, 1868, (c. 45), 1st Sched. Art. 22.

50. The receiver of wreck or the commissary of marine, as the case may be, shall restore the articles saved to the owners thereof, or to their representatives, and fix the amount which the owners shall pay to the salvors. *Ibid.*

51. All fishing boats, all their small boats, all rigging, gear, or other appurtenances of fishing boats, and other fishing implements whatsoever, found or picked up at sea, shall be as soon as possible delivered to the competent authority of the first port which the salvor boat returns to or puts into. Such authority shall inform the consul or consular agent of the country to which the boat of the salvor belongs, and of the nation of the owner of the articles found. The same authority shall restore the articles to the owners or their representatives as soon as the articles are claimed, and the interests of the salvors properly guaranteed. See Art. 25 of the International Convention for regulating Fisheries in the North Sea, in Schedule to the Sea Fisheries Act, 1883 (c. 22).

51a. Fishing implements of any kind found unmarked shall be treated as wreck. *Ibid.*

See also tit. SALVAGE, Pt. I. pp. 1797, 1850.

8. Carcasses.‡

* (40) The Board of Trade, not the receiver of wreck, will judge of the sufficiency of such proof. *Ibid.* par. 200, p. 48.

(41) In most cases of such manorial rights, only wreck washed ashore is included, and not wreck found floating. *Ibid.* par. 203, p. 48.

(42) And see as to wreck bumping. *Ibid.*

(43) As to the duties of the receiver when such claims are admitted by the Board of Trade, in sending notice of such wreck and in dealing therewith, *Ibid.* pars. 109—209, p. 48.

(44) As to payments to lords of manors, *Ibid.* par. 210, p. 49.

† (45) As to fishing-boats, nets and tackle, except those used for salmon fishing, being included under wreck, *Ibid.* par. 94, p. 24.

(46) For a list of the distinctive marks which have, pursuant to Art. V. of the International Convention, scheduled to the Sea Fisheries Act, 1883 (c. 22), been assigned by the respective foreign governments parties to that convention to their fishing-boats and appliances in the North Sea, *Ibid.* and App. D. p. 125.

‡ (47) As to the burial in Great Britain and Ireland of carcasses of cattle, animals, and fishes royal washed ashore, *Ibid.* pars. 122—131, p. 29.

9. *Fees and Expenses.**

52. As to the fees of receivers of wreck, see M. S. Act, 1854 (c. 104), s. 455, Table V. annexed thereto, and Board of Trade Instructions to Receivers as to Wreck, Casualties, and Salvage, anno 1886, pars. 234—283, pp. 53—63.

52a. As to the determination by the Board of Trade of disputes as to fees and expenses payable to receivers of wreck, see M. S. Act, 1854 (c. 104), s. 456.

53. See as to fees of receivers for taking depositions, and as to such fees being recoverable like salyage, Board of Trade Instructions to Receivers of Wreck and others as to Wrecks, Casualties, and Salvage, anno 1886, pars. 234—242, pp. 50—55.

10. *Serjeants of the Cinque Ports.*

54. The serjeants of the Admiralty of

the Cinque Ports, their deputies or other officers, shall perform their duties during the pleasure and subject to the directions of the Board of Trade; and all such officers shall possess in their districts the same powers, rights, and privileges, and perform the same duties, as are by the M. S. Act, 1854 (c. 104), committed to receivers, save that they shall not be entitled to take the command in cases of ships or boats stranded or in distress, unless authorized so to do by the Board of Trade. See M. S. Repeal Act, 1854 (c. 120), s. 11.

54a. As to the payment of such serjeants, deputies, and other officers, *Ibid.* ss. 12, 13.

4. Consuls.

1. *British Consuls Abroad.†*

* (48) As to the fees, expenses, and remuneration of receivers and coastguard, see Board of Trade Instructions to Receivers of Wreck and other Officers, 1886, pars. 234—264, pp. 53—60; and as to their accounts and returns, *Ibid.* pars. 265—283, pp. 60—63.

† (49) If parts of the ship or goods are washed on shore, or otherwise found out of the custody of the master or crew, the consul will, so far as he is able, claim and keep the goods for the owners or insurers, or their agents; he will communicate with Lloyd's agent, and will do his utmost to co-operate and act in harmony with him; he will give to the owners notice of the wreck and of the goods in his possession, and will deliver or deal with them subject to the payment of proper fees and expenses, as the lawful claimants may direct. Board of Trade Instructions to Consuls, 1883, par. 208, p. 60.

(49a) The consul's duties with respect to wrecked goods apply not only to vessels stranded within the bounds of the consulate, and their cargoes, but also to any portion of such ship or cargo which may be brought into the consulate in consequence of any wreck or disaster at sea. *Ibid.* par. 209.

(50) If any ship's papers are found, the consul will collect them, and after marking them and keeping a note of them, will restore them to the owners. For this purpose the consul may send them either to the Board of Trade or otherwise, as he thinks best. *Ibid.* par. 210.

(51) The consul will, at the earliest opportunity, communicate any particulars relating to the wreck or damage of British ships and their cargoes to the persons interested. This may be done either directly or through the Board of Trade, if the parties reside in this

country, or in any other way the consul may think best. *Ibid.* par. 211.

(52) In cases in which wrecked property comes into the possession of the consul, and neither the owner nor the master, nor any authorized agent, can be found or communicated with, the consul may, if the case requires it, sell the property, or such part of it as is perishable or not worth the expense of warehousing, for the benefit of those interested; but in such cases, neither the consul, nor those employed by him, must be interested to any extent, directly or indirectly, in the purchase of the articles. If the lawful claimants cannot be found, and the property is not claimed by the local authorities, he will, after the expiration of a reasonable time, sell the property and remit the proceeds to the Board of Trade, to be dealt with as droits of Admiralty. *Ibid.* par. 212.

(53) The consul will interpose his good offices with the local authorities to obtain the reduction or remission of duties on goods, which, on account of shipwreck or jettison, it is necessary to sell in the country. In this he will be guided by the treaties, and will bear in mind that the principle adopted in this country, and which her Majesty's Government would wish to see universally adopted, is that such goods should be admitted for consumption in the country where the wreck takes place to the same extent and on the same terms as if they had been imported in a ship of that country. *Ibid.* par. 213, p. 61.

(54) When cases of general average occasioned by jettison are brought before the consul, he will take all the means in his power to ascertain if the jettison was necessary, and the loss thereby occasioned real,

2. Foreign Consuls in the United Kingdom.

55. In case of wreck of foreign ships on or near the coast of Great Britain, the consul-general of the country to which the ship belongs, or any consular officer of such country authorized in that behalf by any treaty or agreement with such country, is to be deemed the owner. See 18 & 19 Vict. c. 91, s. 19.*

56. Whenever any articles belonging to or forming part of any foreign ship which has been wrecked on or near the coasts of the United Kingdom, or part of the cargo thereof, are found on or near such coasts, or are brought into any port in the United Kingdom, the consul-

and if he has any reason to suppose that any fraud or improper act has been committed by the captain or crew to the injury of the owners, or insurers of the ship or cargo, he will take steps to inform them, and to enable them to procure the requisite evidence. He will also report the case to the Board of Trade, sending the depositions or other evidence in manner mentioned in paragraph 200. *Ibid.* par. 214.

(55) Whenever any British ship is wrecked, lost, or abandoned within the limits of the consulate, it will be the British consul's duty to give every assistance in his power towards saving the lives of those on board, and preserving the property for the owners. *Ibid.* p. 59, par. 202.

(56) In countries where the consul is authorized by treaty to interfere he will, so far as the treaty permits, require the local authorities to allow him to act accordingly, and to prevent the interference of improper and unauthorized persons. He will also demand the restitution of property saved, subject to salvage and other proper expenses. If any difficulty is thrown in his way, contrary to the spirit of the treaty, he will represent the case to the British Minister, or to her Majesty's Secretary of State. *Ibid.* par. 203.

(57) If the master, or any other competent officer of the ship, is present, the consul will not, unless there is reason to suspect foul play, interfere with any steps they may take for saving the ship or cargo, but will give such assistance as may be in his power, and so if any other authorized agent of the owners is present. The consul will, however, consider himself bound to do whatever may be necessary with the local authorities, and will require the master or agent to pay any expenses which he (the consul) has properly incurred. *Ibid.* par. 204.

(58) In cases of death on board the vessel the consul will endeavour to ascertain the identity, will see they are buried, and will report their names and descriptions to the

general of the country to which such ship, or, in the case of cargo, to which the owners of such cargo, belong, or any consular officer of such country authorized in that behalf by any treaty or agreement with such country, shall, in the absence of the owner, master, or other agent, be deemed to be the agent of the owner, so far as relates to the custody and disposal of such articles. See M. S. Act Amendment Act 1855 (c. 91), s. 19.

5. The Crown and its Grantees.

1. Generally.†

57. The king shall have wreck of the

Board of Trade. *Ibid.* par. 205.

(59) The consul will give his best assistance in settling the claims of salvors at the place, which claims will be determined according to the law of the place. *Ibid.* par. 206.

(60) Where the salvor, whether in her Majesty's service or not, and the master of the ship saved, agree between themselves for the purpose, they may enter into an agreement for the former to abandon his lien upon the property saved, and for the latter to abide the adjudication of the Court of Admiralty, or of any Vice-Admiralty Court, and give security for payment of the salvage to be adjudged. See thereon, and as to the statements on both sides to be thereupon made and transmitted, tit. SALVAGE, Pt. I. Nos. 951, 952, p. 1877.

* (61) The countries with which such treaties or agreements have been made are—Austria, Belgium, Brazil, Chili, Columbia, France, Greece, Honduras, Italy, Netherlands, Peru, Portugal, Prussia, Russia, Salvador, Sandwich Islands, Spain. See Board of Trade Instructions to Receivers of Wreck, &c., 1886, par. 196, p. 47.

(62) As to the duties of the receiver in such cases, and to communicate the wreck or stranding to the consul or consular authority with as little delay as possible, *Ibid.*

(63) In the case of those countries with whom no treaty exists, the receiver will do his utmost to act in harmony with the consul or consular agent, but will not deliver the property to him except on proof that he is acting as agent for the owners of the property, or as agent for the consul-general of the country to which the owners of the property belong. *Ibid.*

(64) For the declaration between the British and French Governments for regulating the mode of dealing with the proceeds of vessels wrecked upon the coasts of the two States, signed at London, June 16, 1879, see 14 Hertslet's Collection of Treaties, p. 1202.

† (65) The king shall have flotsam, jetsam,

sea throughout the realm. See 17 Edw. 2, c. 11.*

58. Wreck of the sea is a perquisite royal. *Sir Henry Constable's case*, Dav. Rep. 56 b.; 5 Rep. 107.

59. By the ancient common law all property stranded belongs to the king until the owner is found. He is to protect it for the owner for a year and a day, after which it belongs to him entirely. When a claim is made with a reasonable prospect of proof, his right of custody ceases,

and he has no further interest in the property. *The Augusta*, 1 Hagg. 18, 20.

60. The sea is the property of the king, and so is the land beneath it, except such part of that land as is capable of being usefully occupied without prejudice to navigation, and of which a subject has either had a grant from the king, or which he has exclusively used for so long a time as to confer on him a title by prescription. *Benest v. Pipon*, 1 Knapp, P. C. C. 67.

and lagan when a ship perishes, or when the owner of the goods cannot be known. This right attaches though they are in or upon the sea, for the sea is of the allegiance of the king, and parcel of his crown of England. 5 Rep. 107; 16 Vin. Abr. 577.

(66) By the common law, as declared by the statute *De Prerogativa Regis*, 17 Edw. 2, stat. 2, c. 11, the king is entitled to wreck. 1 Black. Comm. 290.

(67) The prevention of the barbarous practice of destroying the property of the shipwrecked was the object of the law in conferring this prerogative on the king. *Cro. Jur. Belli*, 117, 132, 141; 2 Inst. 167; *Molloy*, 237; *Moor*, 224; *Hale de Jure Mar.* 40.

(68) Wreck may belong to the subject either by grant from the king or by prescription. 2 Inst. 168.

(69) The law of England gave to the sovereign, *jure coronæ*, all wreck cast upon land, and it similarly gave to the sovereign by his prerogative, afterwards to the Lord High Admiral *jure regis*, as of the sovereign's gift, flotsam, jetsam, lagan, and all wreck found in the sea, at all events in the narrow seas, or in any haven, port, or creek, or arm of the sea, on the coasts. In many places wreck cast upon the land was granted by the crown to lords of manors or others. In some places it has been long enjoyed by prescription, presumed founded on a grant from the crown. The right to wreck by prescription may be attached to an honour, as to that of Arundel, or to a county, as all wreck on the Cornish coast belongs to the Duchy of Cornwall unless otherwise specially prescribed for. A subject may also have flotsam and jetsam by the king's grant, and may have flotsam between high and low water mark by prescription. All unreclaimed wreck, however, cast upon land, where not so granted out by the crown or enjoyed by prescription, is still vested in the sovereign, forming part of the casual revenues of the crown placed at the disposal of parliament by her present Majesty during her life, and, by statute 1 & 2 Vict. c. 2, to be carried to the consolidated fund. So unreclaimed wreck at sea, flotsam, jetsam, lagan, and derelict (where there is no grant or prescription to the contrary), having been anciently annexed to the office of lord high admiral,

still constitute droits of Admiralty. These droits are now vested in the sovereign as lord high admiral, but are included in the casual revenues of the crown surrendered as before mentioned. *Palmer on Wreck*, 5.

(70) In the Isle of Man unreclaimed wreck, whether cast on the shore or found in the sea within the headlands of Man, now belongs to the crown. *Ibid.* 50.

(71) Property lagan belongs to the king if no owner appear to claim it, but if any owner appear he is entitled to recover the possession; for even if it be cast overboard without any mark or buoy in order to lighten the ship, the owner is not by this act of necessity construed to have renounced his property; much less can things lagan be supposed to be abandoned, since the owner has done all in his power to assert and retain his property therein. 1 Black. Comm. 292.

(72) As to the right of the crown to property derelict, see *Maclachlan on Merchant Shipping* (3rd ed.), p. 630; and to wreck, *Ibid.* p. 640.

(73) An arm of the sea is where the sea flows and reflows. 2 Rol. 169, l. 12.

(74) And every arm of the sea or navigable river, so high as the sea flows and reflows, belongs to the king, and he has the same property therein as *in alto mari*. Dav. 56; 2 Rol. 170, l. 20.

(75) The king has the property *tam aquæ quam cæli*, and all profits in the sea and all navigable rivers. Cal. 17; Dav. 56, 57; 14 Com. Dig. 260.

(76) So the property of the soil in all rivers which have the flux and reflux of the sea belongs to the king, and not to the lord of the manor adjoining, without grant or prescription. 1 Sid. 148, 149; 14 Com. Dig. 260.

(77) Every haven and port of common right belongs to the king. Dav. 56.

(78) And a grant to the subject is not good, for a subject cannot have it. 1 Rol. 5.

(79) A subject may by grant or prescription have the interest in the water and soil of navigable rivers, as the city of London has the soil and property of the Thames by grant. Dav. Rep. 56 b; 4 Com. Dig. 260.

* (80) This is not a new law, but only a declaration of the common law, which existed antecedently to the statute. Bl. Com. 315; *Britt*, 27, cap. 17; 16 Vin. Abr. 577.

61. The bed of all navigable rivers where the tide flows and reflows, and of all estuaries or arms of the sea, is by law vested in the crown, but subject to the right of navigation by subjects of the realm, and anchorage is one of the rights of navigation. The grantee of the crown, therefore, takes, subject to this right of navigation, and is not entitled to demand any payment for anchorage, although such payments have been made time out of mind, unless he has given some consideration for them, as the creation of a port or harbour. *Gann v. Free Fishers of Whitstable*, 35 L. J. C. P. (H. L.) 29; 2 Asp. 179.

62. During the Russian war, one of the Queen's ships of war, on her passage to Odessa, fell in with and took possession of a raft of timber, having the Russian imperial mark painted on the several spars composing the same. *Held*, that such timber must be condemned as a droit of the crown, and not a droit of Admiralty. *Anon. Raft of Russian Timber*, 5 Jur. N.S. 1109.

63. A ship was seized in port for the king, as for a forfeiture by reason of importation of prohibited goods; she was also seized in port by the officers of the Admiralty as a droit and prize of war. *Held*, that the importation was a forfeiture to the crown antecedent to the seizure for the lord high admiral. *The 9th of June*, 1709, cited in *The Dickenson*, Hay & Marriott, 18.

64. The grantee of wreck has a special property in all goods stranded within his

liberty, and may maintain trespass against a wrong-doer for taking them away, though such goods were part of a cargo of a ship from which some persons escaped alive to land, and though the owners within a year and a day claimed and identified them, and though the taking was before any seizure on behalf of the grantee. *Dunwich, Bailiffs, &c., of v. Sterry*, 1 B. & Ad. 8, 831.

65. A vessel without any living creature on board had been driven against a precipitous cliff, and the timbers and cargo washed on shore at some distance. *Held*, that this was not the case of a vessel stranded or run ashore, the custody of which by statute belonged to the officers of the customs, but a wreck, and that the goods belonged to the donatory of the crown. *Marquess of Breadalbane v. Smith* (Exchequer), Jan. 28, 1850; 12 D. 602. [SCOTT.]

66. As to the rights of the king as lord high admiral when he held that office, see next section.

2. The Lord High Admiral.*

67. The king holds the office of lord high admiral in a capacity distinguishable from his regal character. *The Mercurius*, 1 C. Rob. 81.

68. The rights of the lord high admiral are of great antiquity and splendour, and are entitled to great attention and respect. At the same time, it is not to be understood that an extension of these rights beyond their absolute limits is to

* (81) The office of lord high admiral being now in commission, the Lords Commissioners of the Admiralty are entitled to droits of Admiralty. These, however, are to be distinguished from droits of the crown belonging to the sovereign, *jure coronæ*. See *Anon. Raft of Timber*, 5 Jur. N.S. 1109.

(82) As to the droits or perquisites of the lord high admiral, see 2 Brown's Civil and Admiralty Law (2nd ed.) 45.

(83) As to prize droits, see a learned report, dated 31st March, 1857, by the then registrar of the High Court of Admiralty (H. C. Rothery, Esq.), now the Wreck Commissioner to the Lords Commissioners of the Treasury, on the nature and origin of such droits and the disposal thereof, from the earliest period to the close of the late Russian war.

(84) See further as to prize droits, Pritchard's Admiralty Digest (1st ed. p. 145), and Pritchard's Prize Digest, preparing for publication.

(85) As to *bona piratarum*, see Pritchard's Admiralty Digest (1st ed.), tit. PIRATES, 288; and Pritchard's Prize Digest, preparing for publication.

(86) All derelict *res* being *primâ facie* droits of the Admiralty, their owners can neither obtain restitution of the *res* nor defend an action for salvage, until they have proved their ownership. This is done by an affidavit and claim of the claimant accompanied by documentary evidence of the ownership, such as the register of the ship or the bill of lading of the cargo. These proofs are delivered to the Admiralty proctor, and are submitted by him to her Majesty's advocate-general and the advocate of the Admiralty. If the evidence be satisfactory, the Admiralty proctor will consent to the *res* being restored to the claimant, and the court on such consent will decree the restitution, on the Admiralty proctor's expenses being paid and bail given to answer the salvage. Coote's Admiralty Practice, 101.

be favoured by construction; they are parts and parcels of the ancient rights of the crown, communicated by former grants to that officer under a very different state and administration of his office from that which now exists in practice. *The Rebeckah*, 1 C. Rob. 229; *The Maria Françoise*, 6 C. Rob. 297.

69. As long as the office of lord high admiral, though now residing in the person of his Majesty, continues in this kingdom to have a legal existence, it is extremely proper that the droits and perquisites of the office should continue as anciently distinguished, and that they should be strictly determined, as if the proceeds were carried in the ancient and distinct course. *The Gertruyda*, 2 C. Rob. 218.

70. *Semble*, that the possessions of the East India Company have been so incorporated with the rights and interests of the kingdom, that the claims of the lord high admiral would extend there, and attach on seizures made there, as well as in other ports. *The Maria Françoise*, 6 C. Rob. 282.

71. Wreck may be claimed by prescription and may belong to the lord high admiral by prescription, for it is an ancient office, time whereof, &c. *Wigan v. Branthwaite* (1700), 12 Mod. 260.

72. The grants from the crown of these rights will be construed strictly against the grantee, as all grants of the crown are. *The Rebeckah*, 1 C. Rob. 229; *The Gertruyda*, 2 C. Rob. 219.

73. All ships forsaken by the company belonging to them are the lord high admiral's, unless a ship commissioned have given occasion to such dereliction, and the ship so left be seized by such ship pursuing, or by some other ship commissioned then in the same company, and in pursuit of the enemy; and the like is to be understood of any goods thrown out of any ship pursued. Order in Council of 6 March, 1605-6.

74. Droits of Admiralty are, with other hereditary revenues of the crown, directed to be carried to the credit of the consolidated fund, certain fixed revenues having been granted to the crown in lieu thereof; but power is reserved to the crown of granting out of the proceeds of droits rewards to seizers or informers. See 1 Will. 4, c. 25, s. 2; 1 Vict. c. 2, s. 2; and the M. S. Act Amendment Act, 1862 (c. 63), s. 53.

75. By the general law all goods found afloat and derelict on the high seas belong,

as droits, to the crown in its office of Admiralty. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 270.

76. Derelicts are *prima facie* droits. They are so until a claim is allowed, though they do not become actual droits until a year has expired without such a claim, till when they are only derelicts. *The Thetis*, *ibid.* 235.

77. By the marine law the lord high admiral has the custody of derelicts found at sea; and if no owner appear, they become perquisites of Admiralty. *The Aquila*, 1 C. Rob. 42; *The King v. Property Derelict*, 1 Hagg. 384.

78. As to what is derelict, see *The Aquila*, 1 C. Rob. 42; *The Clarisse*, Swabej, 130; and tit. SALVAGE, Pt. I. p. 1881.

79. A vessel derelict, waterlogged, and very disabled, was met with by another vessel, the master and mate of which fished down the hatchway of the derelict, and dragged up certain property, which they afterwards used up and shared amongst their crew. A monition at the instance of the king in his office of Admiralty was decreed against them to show cause why the same should not be brought into the registry, to be proceeded against as droits of Admiralty. The property having been afterwards brought in by the master pursuant to the monition, and with an affidavit as to the goods found, and his ignorance of the law requiring a condemnation thereof, the property was condemned as a droit of Admiralty, and on a prayer of the master for a salvage remuneration, a moiety thereof decreed to him. *The King v. Property Derelict*, 1 Hagg. 383.

80. The goods of pirates go to the crown as droits of Admiralty. *The Helen*, 1 Hagg. 144.

81. The proceeds of sale of a cargo piratically seized condemned as droits of Admiralty, and an application of the original owners for the same refused. Decision affirmed on appeal. *Ibid.* 142.

81a. Property recaptured from pirates, if unclaimed, belongs to his Majesty, in his office of Admiralty, as *bona vacantia*. *The Marianna*, 3 Hagg. 208.

82. *Bona piratarum*, i. e. goods or property strictly belonging to pirates, are droits of Admiralty, to which the lord high admiral is entitled, but goods or property found in their possession are not droits, and the admiral is not therefore entitled thereto. Certain dollars taken from pirates and unclaimed, *held*,

under the circumstances, to be *bona piratarum* and condemned as droits. An application for a monition against all persons having interest to show cause why they should not be condemned to her Majesty, *jure corona*, refused. *The Panda*, 1 W. Rob. 423, 435.

83. The grant to the lord high admiral of *bona piratarum* must be construed to be of the proper goods of the pirates themselves, and not of those which the pirates stole from other men, to which the owners are entitled. Roll. Rep. 285, pl. 1; 6 Vin. Abr. 526.

84. When the lord high admiral proceeds *pro interesse suo* upon his royal grant of *bona piratarum*, *i. e.*, the goods of pirates, not of others unlawfully taken on the seas by them, he must show that the party has been attainted of piracy. *The Hercules*, 2 Dodson, 373.

85. It is essential to the validity of the lord high admiral's claim to *bona piratarum* that the persons charged as being pirates should have been convicted, or where this is impossible, as in the case of the total destruction or escape of all the pirates, that there should be a judicial declaration that the property captured was the property of pirates. Such a demand of law is satisfied by the fact of pirates having been convicted in a court of the United States, which is tantamount to a conviction in a criminal court of this country, as the courts in both countries are equally courts of nations. *The Panda*, 1 W. Rob. 437.

86. The proceeds of sale of a cargo piratically seized, and afterwards condemned as a droit of Admiralty, granted to the original owners upon a memorial to the crown, the expenses having been first deducted. *The Helen*, 1 Hagg. 143.

87. Priority of seizure is a fact of no importance in determining whether property be wreck of the sea or a droit of Admiralty. *The Pauline*, 9 Jur. 286; 2 W. Rob. 358; 3 Notes of Cases, 616.

88. Of fifty-nine casks of brandy claimed (though forty-nine only were proceeded against), six picked up on the high sea upwards of three miles from low water mark decreed to be droits of Admiralty; thirty-eight picked up outside low water mark, but within three miles thereof, similarly decreed to be droits; five picked

up afloat between high and low water mark, but never having touched the ground, and not having therefore become wreck of the sea, similarly decreed to be droits; three picked up aground, the tide being out, between high and low water mark, decreed to the claimant as wreck of the sea; five picked up, having taken the ground between high and low water mark, though still moved by the waves, the sea at one time surrounding them and at another leaving them dry, *held*, as not on the high sea, but as wreck of the sea, and decreed to the claimant; one picked up afloat, though the land underneath was dry at low water, even in neap tides, decreed to be droits; one picked up aground, decreed to the claimant. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 257.

3. *The Lord Warden of the Cinque Ports.**

89. *Seem*, that wreck belonged to the admiral about the Cinque Ports and such places where he was most conversant in ancient time. *Wiggin v. Branthwaite* (1700), 12 Mod. 260.

90. A whale discovered by some fishermen three miles from the shore, and towed by them on to Whitstable beach, *held*, to belong to the lord warden of the Cinque Ports, as found and taken within his jurisdiction, and not to the commissioners for executing the office of lord high admiral of England, on the ground that the crown was entitled to the whale as a royal fish, and that having apparently from the patents of both functionaries granted such rights to both the claimants, the grant to the lord warden, as being held to be the more ancient office of the two, excluded the like grant to the lord high admiral. *The Lord Warden of the Cinque Ports v. The King in his Office of Admiralty*, 2 Hagg. 438.

91. As to the jurisdiction of the lord warden, his court and officers within the Cinque Ports, see tit. JURISDICTION, Pt. I. p. 676; and in cases of salvage, see tit. SALVAGE, Pt. I. p. 1793.

4. *Lords of Manors.†*

92. Lords of manors are grantees of the crown of those royalties and privi-

* (87) The barons of the Cinque Ports claim to be wreck free by charter of Edw. 1. Plac. t. Edw. 1; Palmer on Wreck, 38.

† (88) In Jersey, Guernsey, Alderney, and Sark, all wreck cast upon the shore or within reach of a person standing on the shore (ex-

leges which may be established by the grants themselves or by immemorial custom, but the grantees cannot stand on higher ground than the crown, nor can their grants avail against the general principle of law as to property stranded. *The Augusta*, 1 Hagg. 19.

93. Manors being part of the *corpus comitatús*, manorial rights are land jurisdictions, but the crown in many instances has granted the royalties of certain manors to subjects. In most manors on the sea coast the lords claim the royalty of wrecks, and prove their right as against the crown by the usage of taking them, and by the exercise of such right never having been questioned. *The King v. Two Casks of Tallow*, 3 Hagg. 297.

94. Usage is not in itself good, as against the crown, except as evidence of a grant from it. *Prima facie* all goods without an owner belong to the crown, and if a claim be set up against it, the party setting it up must show an actual grant or usage from which such a grant may be presumed as might have been made conformably with the law. *Ibid.*

95. Unless the place where a wreck is situated at the time of taking possession thereof be *intra corpus comitatús*, the lord of the manor claiming in that capacity merely can have no right or title thereto. *Regina v. The Pauline*, 9 Jur. 288.

96. Wreck of the sea is land revenue, and is generally granted to the lord of a manor on the coast. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 288.

97. The rights of lords of manors can exist only as long as the land is left dry. *The Pauline*, 2 W. Rob. 358; 3 Notes of Cases, 616; 9 Jur. 286.

98. A vessel stranded within low water mark and abandoned, and taken possession of on the part of the lord of the manor, at a time when the tide being on she was surrounded with deep water, was claimed by the crown as a droit of Admiralty, and by the lord of the manor as wreck of the sea. Claim of the crown allowed. *Ibid.*

99. Things which have once touched the ground, though afterwards afloat, do not thereby necessarily become the property of the lord of the manor. Things having become fixed on the shore, and

afterwards the sea leaving them and then returning, *quære, wreckum maris* or droits? *The King v. Two Casks of Tallow*, 3 Hagg. 299.

100. Claim of a lord of a manor against the king in his office of Admiralty and founded on certain ancient grants from the crown of the castle and manor of Corfe, its rights and privileges, wreck of the sea, &c., to the ancestor of the claimant and his heirs, privileged thereunder to exercise the office of admiral in those parts, pronounced against, so far as the same extended to an asserted jurisdiction of three miles from low water mark on the high sea, or to things flotsam, jetsam, or lagan thereon; such grants being held to confer immunities to the extent of the usual land jurisdiction only, that is, to low water mark at low water. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 257.

101. A ship cannot be considered *wreckum maris*, nor the claim of the lord to wreck sustained, unless at the time of taking possession, she is either on the actual shore itself, or left high and dry on land. A derelict seized on land covered by the sea condemned as a droit of Admiralty, and claim of the lord of the manor thereto as *wreckum maris* pronounced against. *The Pauline*, 9 Jur. 286; 2 W. Rob. 385; 3 Notes of Cases, 616.

102. When in the grant of an island or coast estate the word "wrak" stands in connection with the word "waith" (derelict), it has the same meaning as wreck, and does not mean sea ware. *Lord Advocate v. Hebdien*, 3rd Series, vol. 6, p. 439. [SCORCH.]

103. A crown charter of 1632, granted an island enumerated *inter alia* in the *tenendas* clause "wrak, waith, ware," as conveyed to the defender's predecessor in title, but the words did not occur in the dispositive clause. In subsequent crown charters by progress, the above rights were enumerated in the dispositive clauses. In an action by the crown claiming wreck (wrak) against the defender, held (Lord Curriehill dissenting), that the defender had produced a sufficient title to form the foundation of a prescriptive right, and that on the evidence he had established uninterrupted

cept certain valuables which go to the crown) belongs to the lord of the manor if not reclaimed within a year and a day, though

perhaps the island courts would admit the prior owner's claim if proved though a year and a day had elapsed. *Palmer on Wreck*, 49.

possession for more than forty years. *Ibid.*

104. *Held*, by Lord Curriehill, in the minority that the defender was bound to establish exclusive and uninterrupted possession for forty years, and had failed to do so. *Ibid.*

104a. Claim of a lord of a manor to two casks of tallow picked up on the coast pronounced against, such casks being held having only touched the ground, and being afloat, though between high and low water mark, to be flotsam and not wreck, and to belong therefore to the king in his office of Admiralty, as droits. Claimant's costs allowed out of the droits. *The King v. Two Casks of Tallow*, 3 Hagg. 294.

105. No admiral, vice-admiral, or other person, under whatever denomination, exercising Admiralty jurisdiction, shall as such, by himself or his agents, receive, take, or interfere with any wreck except as hereinafter mentioned. See M. S. Act, 1854 (c. 104), s. 440.

106. If any dispute arises between the receiver and any such admiral, vice-admiral, lord of any manor, or other person, as to the validity of his title to wreck, or if divers persons claim to be entitled to wreck found at the same place, the matter in dispute may be decided by two justices like disputes as to salvage. *Ibid.* s. 472.

107. If any party to such dispute is unwilling to refer the same to two justices, or, having so referred the same, is dissatisfied with their decision, he may within three months from the expiration of such year, or from the date of such decision, take such proceedings as he may be advised in any court of law, equity, or Admiralty having jurisdiction in the matter, for establishing his title. *Ibid.* s. 473.

See also c. 3, s. 6, p. 2321.

6. Droits of Admiralty.

See c. 5, s. 2, p. 2325.

7. Fishes Royal.*

108. The king shall have wreck of the

sea throughout the realm, whales and great sturgeons taken in the sea or elsewhere within the realm, except in certain places privileged by the king. See 17 Edw. 2, c. 11.

109. The king shall have the great fishes of the sea, as whales, sturgeons, &c., which are *pisces regales*, and no subject can have them without special grant of the king. *Ibid.* Dav. Rep. 56 a; 7 Co. 16 a; Stamford, Prer. R. 37, 38; Bracton, lib. 3, cap. 3; 39 Edw. 3, 35 a.

110. The right of the sovereign to royal fish, by which appellation whale and sturgeon are characterized, is a clearly established prerogative of the crown. It may transfer these rights. *The Lord Warden of the Cinque Ports v. The King in his Office of Admiralty*, 2 Hagg. 441.

111. Every navigable river, so high as the sea flows and reflows therein, is *flumen regale*, and the fishery of it is also royal fishery, and belongs to the king by his prerogative. *Royal Fishery of the Banne*, Dav. Rep. 56; 16 Vin. Abr. 577; 2 Rol. 170, l. 20.

112. According to Selden, it is sufficient if the king have the head, and the queen the tail, of a whale. Seld. Fleta, 61, lib. 1, cap. 46. But of a sturgeon the king shall have the whole by his royal privilege. *Ibid.* cap. 45; 16 Vin. Abr. 577.

113. A lord of the manor prescribed to have royal fish, and thereby claimed a porpoise taken; but by Belknap, where a fish is taken in the high sea, it belongs to the taker. 39 Edw. 3, 35 b; Br. Prerogative, pl. 35; 16 Vin. Abr. 577.

114. A man by grant or prescription may claim royal fish, as *balanus et sturgesiones*, within his manor, or have a free fishery in a bay or creek of the sea. Dav. 57 a; 4 Com. Dig. 448.

8. Removal of—

1. Generally.†

115. For removing unserviceable vessels and other obstructions from the harbour,

* (89) The lord high admiral is entitled to royal fish, as whales, sturgeons, &c., not granted to the lords of manors and others. Sir L. Jenkins, vol. i. p. 89.

(90) As to the delivery up to the receiver of fishes royal, i. e., whales, porpoises, sturgeons, and other very large fish, see Board of Trade Instructions to Receivers of Wreck and other Officers, 1886, par. 118, p. 28.

But in Scotland caaing (or small) whales are not fishes royal. *Ibid.* par. 119 and App. F. p. 128.

† (91) The modern enactments relating to the removal of obstructions to navigation are contained in the Harbours, Docks and Piers Clauses Act, 1847 (c. 27), the Dockyard Ports Regulation Act, 1865 (c. 125), and the Removal of Wrecks Act, 1877 (c. 16). In addition

dock, or pier, and keeping the same clear, see *The Harbours, Docks, and Piers' Clauses Act, 1847* (c. 27), s. 52.

116. The terms "harbour," "tidal water," "harbour authority," "conservancy authority," and "general lighthouse authority" are defined by sect. 3 of the *Removal of Wrecks Act, 1877* (c. 16), s. 3.

117. The *Removal of Wrecks Act, 1877*, does not apply to ships belonging to her Majesty. *Ibid.* s. 2.

118. Where any vessel is sunk, stranded, or abandoned in any harbour or tidal water under the jurisdiction of a harbour or conservancy authority, or near any approach thereto, so as in the opinion of the authority to be, or be likely to become, an obstruction or danger to navigation there, the authority may take possession of and raise, remove, or destroy the whole or any part of the vessel, and may light or buoy it in the mean time, and sell, as it thinks fit, the vessel or part so raised or removed, and any other property recovered under these powers, and out of the proceeds reimburse themselves for their expenses; and hold the surplus, if any, in trust for the persons entitled thereto. *Ibid.* s. 4.

119. But except in the case of perishable property, or which would deteriorate by delay, no sale shall be made until seven clear days' notice has been given by advertisement in some local newspaper circulating in or near the district. *Ibid.* s. 4, sub-s. 1.

120. At any time before sale the owner is entitled to have the property delivered to him on payment of the fair market value, to be ascertained by agreement between the authority and the owner, or, failing such agreement, by some person to be named for the purpose by the Board of Trade, and the sum so paid shall be deemed the proceeds of sale. *Ibid.* s. 4, sub-s. 2.

120a. Where any vessel is sunk, stranded, or abandoned in any fairway,

or on the sea-shore, in the United Kingdom, the Channel Islands, or the Isle of Man, or any of the adjacent seas or islands, and there is no harbour or conservancy authority having power to raise, remove, or destroy it, the general lighthouse authority for that part of the United Kingdom in or near which the vessel is situate shall, if in their opinion the same is or is likely to become an obstruction or danger to navigation, have the powers in relation thereto conferred by this act upon a harbour or conservancy authority. *Ibid.* s. 5.

121. All expenses incurred by the general lighthouse authority, and not reimbursed as provided by this act, are to be paid out of the mercantile marine fund. *Ibid.*

122. This act applies to every article or collection of articles forming part of the tackle, equipments, cargo, stores, or ballast of a vessel as if included in the term "vessel," and any proceeds of sale of a vessel and her cargo, or any property recovered therefrom, is regarded as a common fund. *Ibid.* s. 6.

123. Any question arising between a harbour or conservancy authority and a general lighthouse authority, as to their respective powers under this act in relation to any place in or near an approach to a harbour or tidal water, is, on the application of either, to be referred to the Board of Trade, whose decision is final. *Ibid.* s. 7.

124. The powers of this act are in addition to and not in derogation of any other powers. *Ibid.* s. 8.

124a. As to the persons liable for raising wreck in cases of damage by collision and otherwise, see tit. REGISTRAR AND MERCHANTS, p. 1759.

2. *Vessels sunk, or obstructing Navigation.**

(a) *Generally.*

tion to the above, there are special provisions relating to the Thames and Mersey (20 & 21 Vict. c. 147, s. 86; and 21 & 22 Vict. c. 92). *The Douglas*, 5 Asp. 15; 7 P. D. 151.

(91a) For provisions as to the removal of wreck in the Humber, see the *Humber Conservancy Act, 1852* (c. 130, L.), ss. 21—24. For similar provisions for the Clyde, see the *Clyde Navigation Amendment Act, 1868* (c. 124, L.), s. 33. For similar provisions for

the harbour of Belfast, see the *Belfast Port and Conservancy Act, 1852* (c. 121, L.), s. 17.

* (92) The rule as to the use of a navigable river seems to be that it must be used in a reasonable manner and for reasonable purposes; to go beyond this and cause an obstruction is to render oneself liable for damage resulting from the obstruction (*The Original Hartlepool Collieries Co. Limited v. Gibb*, 3 Asp. 411; 36 L. T. N.S. 433); and where the obstruction is under statutory authority,

(b) *In the Jurisdiction of Harbour or Conservancy Authorities generally.*

125. See tit. OWNERS, Pt. II. c. 6, p. 1234; and Board of Trade Instructions to Receivers of Wreck and others as to Wrecks, Casualties, and Salvage, anno 1886, par. 84, p. 22.

126. The harbour-master may remove any wreck or other obstruction to the harbour, dock, or pier, or the approaches to the same, and also any floating timber impeding the navigation, and the expense of such removal shall be repaid by the owner. The harbour-master may detain such wreck or floating timber for the expenses, and on non-payment, on demand, may sell the same, and out of the proceeds pay such expenses, rendering the overplus, if any, to the owner on demand. See the Harbours, Docks, and Piers Clauses Act, 1847 (c. 27), s. 56.

127. For provisions in case of any vessel sunk or stranded in any harbour, port, channel, or navigable river, to summons the owner, master, or person in charge before one or more justices, who, on conviction, shall issue his warrant for its removal; and unless the owner gives security within five days to do so, shall make sale thereof, and thereout pay the charges of such removal. The conviction is to be final, but the sale is not to be made until five days after the distress. See 19 Geo. 2, c. 22.

128. As to the liability of harbour authority for non-removal of obstruction, see *Dormont v. Furness Railway Company*, 11 Q. B. D. 496; 5 L. J. Q. B. 331; 49 L. T. 134; 5 Asp. 127.

(c) *In the Jurisdiction of Lighthouse Authorities.**

129. See for the powers of the general lighthouse authority in parts where there is no harbour or conservancy authority, Nos. 116, 120, 121, and 123, *supra*.

(d) *In Dockyard Ports.*

130. The Queen's harbour-master may remove any wreck, floating timber, or other obstruction to the dockyard port or its approaches. See the Dockyard Ports Regulation Act, 1865 (c. 125), s. 13.

131. The expenses incurred by the Queen's harbour-master in the removal of any such wreck, timber, or other thing, or in the removal or placing of any such vessel, shall be repaid by the owner; the Queen's harbour-master may detain, and in case of non-payment of the expenses, on demand, may sell the property, and out of the proceeds pay the expenses, rendering the surplus (if any) to the owner, on demand; any deficiency may be recovered from the owner. *Ibid.* s. 15.

(e) *The Thames.*

132. For similar provisions in the Thames, see the Thames Conservancy Act, 1857 (c. 147, L.), ss. 86, 87.

(f) *The Mersey.*

133. Section 59 of the Mersey Docks Acts Consolidation Act of 1858 (c. 92, L.), in regard to the removal of wrecks, and charging the expenses thereof on the master or owners referred to in the Digest, p. 183, No. 519, is repealed by the Mersey Docks Act, 1874 (c. 30, L.), s. 16, which empowers the Mersey Docks and Harbour Board to remove wrecks of vessels or cargo sunk or stranded in any docks or elsewhere within the port of Liverpool, or the sea channels leading thereto, forming an obstruction to the safe and convenient navigation thereof, and to sell the same, and apply the proceeds thereof towards the expenses of such removal.

134. The Board may also remove or destroy wrecks, timber, anchors, or other obstructions, in the dock, or elsewhere in

the persons causing such obstruction are, if the obstruction is of a character to injure the property of the public, to take all precautions to avoid such injury. *Jolliffe v. The Wallasey Local Board*, 2 Asp. 146; 29 L. T. N.S. 582. Without statutory authority, no one has a right to cause an obstruction in a navigable river, though at the time it may not be a nuisance, lest it become in future an impediment to navigation. *Att.-Gen. v. Terry*, 2 Asp. 174; 29 L. T. N.S. 716. This even applies to the case of a private river where

there are two riparian owners each entitled to the soil *ad medium filum aque*, and one of the owners erects an obstruction on his own half of the soil. *Birkett v. Morris*, 14 L. T. N.S. 835; *The Douglas*, 5 Asp. 15.

* (92a) The expenses incurred by general lighthouse authorities in pursuance of the Removal of Wrecks Act, 1877, are subject to the provisions of ss. 422, 423 and 427 of the Merchant Shipping Act, 1854. See the Merchant Shipping (Fees and Expenses) Act, 1880 (c. 22), s. 5.

the port or its approaches, at the owner's expense, and on non-payment may sell and retain the expenses out of the proceeds, and if the proceeds are insufficient, may recover the expenses like penalties. See Mersey Dock Acts Consolidation Act, 1858 (c. 92, L.), s. 59.

135. Masters of vessels in the river obstructing the entrance to any dock, pier, or stage, are to remove them when required by dock officers. Penalty for breach £10, and the expense of removal by the Board to be also paid by the master. *Ibid.* s. 53.

135a. For provisions enabling the Board to run dry any dock, or lower the water therein for repair or cleaning it, and remove any vessel therefrom after notice to the master, without responsibility for any damage thereby caused to any such vessel or cargo, and for the recovery of the expenses of such removal, see the Mersey Dock Acts Consolidation Act, 1858 (c. 92, L.), s. 56.

136. Unserviceable vessels encumbering the docks may be removed after four months and sold, and the expenses of the removal retained out of the proceeds. *Ibid.* s. 58.

See also TRADE, BOARD OF—, Pt. III. p. 2265, No. 243.

(g) *The Gloucester and Berkeley Canal.*

137. For provisions as to removal of vessels sunk or otherwise obstructing the navigation of the canal, see the Gloucester and Berkeley Canal Act, 1870 (c. 61, L.), s. 68, and Bye-law of Nov. 21, 1884.

137a. Penalty against the master, 20s. for every hour the obstruction is wilfully continued after notice. *Ibid.*

138. If the master neglects to remove the obstruction, the company's officers shall remove it without delay, unloading the vessel if necessary; and shall seize and distrain all or part of the lading until the charges have been paid. *Ibid.*

(h) *Falmouth.*

139. If any vessel is sunk or stranded in the harbour, the harbour master may, if the owner or master neglects to remove it within a reasonable time, not exceeding twenty-eight days, cause it to be weighed and raised, and the expense shall be repaid by the owner of the vessel and cargo. The harbour master may retain the vessel and cargo for the expenses, and on non-

payment after one week from demand, may sell the vessel and cargo, pay such expenses, and render the overplus, if any, to the owners on demand. The harbour master may remove any wreck or floating timber which impedes the navigation, and the expense of removal shall be repaid by the owners. The harbour master may retain the property until repayment of such expenses, and on non-payment, after one week from demand, may sell it, pay such expenses, and render the overplus, if any, to the owner on demand, or if no owner, to the receiver of wreck. See Falmouth Harbour Bye-laws, allowed June 5, 1871, No. 11.

139a. Subject to the powers of receivers of wreck, every owner, master or other person who attempts or causes to be broken up, any vessel or wreck in the harbour, without permission of the harbour master, penalty, not exceeding £5. *Ibid.* No. 10.

140. All vessels laid by as unfit for sea, the harbour master may cause to be, at the expense of the owner, placed in or removed to such part of the harbour or other locality where it may, without injury, be placed, and the charges of such removing or placing may be recovered from the owners in conformity with the 57th section of the Harbours, Docks, and Piers Clauses Act, 1847 (c. 27).

(i) *Penarth.*

141. As to the removal of vessels unserviceable or obstructing navigation, see Bye-laws of the Penarth Harbour Dock and Railway Authorities, allowed, Aug. 18, 1882, No. 1 (d).

(j) *Great Yarmouth.*

142. For provisions for the raising by the harbour master or other duly qualified officer of the commissioners, of sunken vessels after twenty-four hours' notice to the owner or master, and in default of security being given for the removal and the removal taking place within seven days after such security is given, see the Great Yarmouth Port and Haven Act, 1866 (c. 247, L.), s. 65.

143. For provisions authorizing the harbour master or other officer, if the removal be impracticable, or practicable only at a disproportionate expense, to blow her up or otherwise get rid of the remains, *Ibid.*

144. The expenses incurred by the har-

bour master or other officer in weighing or removing or destroying the vessel and getting rid of the remains, are to be repaid to the commissioners by the owner or master, and if not paid within three days after demand the commissioners may sell all or part of the vessel and its furniture or the remains, and apply the net proceeds to the repayment of the expenses, returning the overplus (if any) to the owner. *Ibid.*

145. For provisions authorizing the commissioners to remove any nuisance or obstruction in or near the haven or rivers likely to be injurious thereto, or to the navigation thereof, after notice in writing to the person committing or permitting the nuisance or obstruction served personally upon him or left at his last known place of abode or business, to remedy or remove the same within a reasonable time to be therein specified. Penalty for non-removal after notice within the time specified not exceeding £5, and £5 a week during the time the offence continues. *Ibid.* s. 66.

146. For provisions in case of failure after such notice to remove any nuisance or obstruction authorizing the commissioners after the time specified in the notice to effect such removal, and charge to the owner or occupier the expenses, which are made recoverable in any court of competent jurisdiction, or as a penalty under the act. *Ibid.* s. 68.

3. Vessels laid by or neglected.

(a) *Within Limits of Harbours, Docks, or Piers.*

147. For provisions enabling the harbour master to cause any vessel laid by or neglected as unfit for sea service, and lying within the limits of the harbour, dock, or pier, to be removed therefrom at the expense of the owner and laid upon any part of the strand, sea-shore, or other place where it may be placed without injury to any person, and to recover the expense of such removal from the owner by summary complaint in England or Ireland before a justice, and in Scotland before the sheriff, and, in case of refusal or neglect to pay such charges within seven days after they are awarded by such justice or sheriff, empowering the harbour master to levy such charges by

distress and sale of the property or any part thereof, and the justice or sheriff to issue his warrant accordingly, see the Harbours, Docks, and Piers Clauses Act, 1847 (c. 27), s. 57.

(b) *In Dockyard Ports.*

148. No vessel laid by or neglected as unfit for sea service is permitted to lie in any part of a dockyard port specified by Order in Council under this act. The Queen's harbour master may cause every such vessel to be removed therefrom, and laid on the strand, sea-shore, or other place where it may without injury be placed. See the Dockyard Ports Regulation Act, 1865 (c. 125), s. 14.

4. Timber.

149. For provisions empowering harbour masters to remove floating timber in the harbour, dock, or pier, or the approaches thereto, to detain the same for payment of expenses, and to charge the owner with the expenses, and in default of payment to sell the property and pay the balance, if any, to the owner, see the Harbours, Docks, and Piers Clauses Act, 1847 (c. 27), s. 56.

149a. Timber which was moored in a river, and drifted to sea in consequence of its fastenings giving way, *held*, not to be wreck within the meaning of sects. 458, 460 of the M. S. Act, 1854 (c. 104). *Palmer v. Rouse*, 3 H. & N. 505; 27 L. J. Exch. 437.

See also tit. COLLISION, p. 240.

9. Inquiries into Wrecks.

150. For provisions empowering receivers to institute examination with respect to ships in distress, see M. S. Act, 1854 (c. 104), s. 448.

151. As to investigation in cases of wreck and shipping casualties, see tit. SHIPPING CASUALTIES INVESTIGATIONS, p. 2195.

10. Foreign Law.

1. *France.**

152. As to property derelict, and the salvage thereof, see tit. SALVAGE, Pt. IV. p. 1903.

* (93) By the 24th art. tit. 9, book iv. of the Ordinance of 1681, vessels stranded or

wrecked, and the property coming from the same, found on the shore or in the sea near

2. *Other Foreign Countries.*

153. For provisions as to wreck and

salvage in various other foreign countries, see tit. SALVAGE, Pt. IV. pp. 1901, 1919.

the shore, shall be returned to the owners or agents of the same, deducting salvage, provided they be claimed within a year and a day of the advertisement thereof. D. A. vo. Propriété, No. 225.

(94) After that period the property, or the produce of the sale of such part of the same as cannot be preserved, goes to the marine fund, and by law is vested in the same, but in practice is always returned, even after the period of a year and a day, to the rightful claimant. Beaussant's Code Maritime, vol. ii. p. 61. D. A. vo. Propriété, Nos. 225, 697, 698, and 711.

(95) The property found about a dead body picked up on or near the sea-shore shall be, by the same ordinance, delivered to those who can lay claim to the same, subject to salvage, but the clothes found on the body are given to those who have landed the body and taken it to the cemetery. The money and other valuables, if not claimed within a year by the owners, are apportioned one-third to the salvor and two-thirds to the

Marine Fund. D. A. vo. Propriété, No. 225.

(96) The burial and other expenses are to be deducted from the amount of the property found on the body before any division. Beaussant's Code Maritime, vol. ii. p. 75.

(97) The officers of the marine administration are alone competent to receive and decide upon the applications of those who claim the property recovered by them from a wreck. *Jouve's case*, D. P. 25:2:134; likewise *Case of the Administration de la Marine*, D. P. 46, 4, 83.

(98) Held, however, on the contrary, by the Court of Rennes, that such claim belongs to the Tribunal of Commerce. *Guillevie's case*, D. P. 50:2:20.

(99) Anchors lost or abandoned without marks recovered in the sea become the property of the discoverer, unless they be claimed by the proprietor within two months after the declaration of the discovery to the proper authority. Art. 28, Ordinance of 1681. D. A. vo. Propriété, No. 233.

The Reader is recommended to make, or cause to be made, the following notes in the Work, to facilitate references between its earlier and later parts, and to indicate more fully the alterations which have occurred during the printing:—

* * Thus : on page 4, after No. 3, insert—p. 2340, No. 1.

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9	"	54	—2340—5	213	"	266	—2360—45-47
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11	"	77	—2341—12	215	"	282	—2360—50
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12	"	95	—2341—15a	221	"	320	—2361—55, 56
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52	"	519	—2344—55-57	242	"	483	—2364—101
52	"	521	—2345—58	243	"	485	—2364—102
53	"	524	—2345—59	244	"	489	—2364—103
53	"	526	—2345—60-61	244	"	493a	—2364—104
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On page 2456, in No. 31a, in lieu of “Where the return voyage has only been partially performed the underwriter is entitled to a share of the whole premium for the return voyage, proportionate to the quantity of cargo loaded and to” —*insert*— “where there is an incomplete return cargo the underwriter is entitled to a share of the premium proportionate to the return cargo loaded besides.”

A D D E N D A.

APPEALS.

- | | |
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1. To the House of Lords.

1. *Generally* (and see p. 4).

1. As to appeals generally to the House of Lords, see 1 *Mews' and others' Digest*, founded on Fisher, anno 1884, pp. 127—135, and *Mews' Annual Digest*, anno 1884, p. 6; *Ibid.* anno 1885, p. 7.

2. To the Privy Council (Judicial Committee).

1. *Generally* (and see p. 5).

2. As to appeals from British colonial courts generally, and to the Privy Council, see tit. JURISDICTION, Pt. II. pp. 693—761.

3. *From Vice-Admiralty Courts.*

(d) *In Actions of Salvage* (and see p. 7).

3. When the claim of loss, damage, and expenses has been ascertained and allowed with exactness, the rate of salvage remuneration pure and simple to be allotted in addition must be estimated on a more moderate scale than when the amount of losses, &c. cannot be fixed with precision. In a case where the losses, &c. had been ascertained with exactness, the Privy Council reduced the total amount awarded from £8,535 to £6,000. *The De Bay*, 8 App. Cas. (P. C.) 559; 52 L. J. P. C. 57; 5 Asp. 156.

5. *From the High Court of Admiralty before the Judicature Act.*

(b) *In Actions of Damage by Collision* (and see p. 7).

4. *Semble*, the owners of a vessel proceeded against in a cause of collision, and decreed solely to blame, having been dismissed from the suit by reason of the vessel being in charge of a compulsory pilot and having neither appealed from the decree nor adhered to the appeal brought by the owners of the vessel injured (the plaintiffs in the court below), cannot, in such circumstances, raise the question whether their vessel was free from blame, or whether both vessels were equally in fault, but are confined to the points raised by the appeal, whether the pilot was solely to blame, or whether there was not contributory negligence on the part of the master and crew of the vessel causing the damage. *The Calabar*, L. R. 2 P. C. 238.

4a. Cross causes of damage having

been instituted in the Admiralty Court between the vessels F. & C. respectively, the court considered that the case made on behalf of the F. in her petition was not substantiated, and held both parties equally to blame. On an appeal by the owners of the C., *held*, by the Privy Council, that, as the owners of the F. had not appealed from the decree declaring she was to blame, such decree operated as *res judicata* that the allegations made in her suit were not substantiated. *The City of Antwerp* and *The Friedrich*, L. R. 2 P. C. 25; 37 L. J. Adm. 25.

(c) *In Actions of Salvage* (and see p. 8).

5. The Appellate Court will not disturb an award of salvage by the court below on the ground that it is too large a sum, unless they are quite satisfied that the judge has formed an exorbitant estimate of the services. *The Fusilier*, 3 Moo. P. C. C. N.S. 51.

See also No. 14, *infra*.

3. To Her Majesty's Court of Appeal in England.

1. *Generally* (and see p. 9).

6. For provisions appointing the Master of the Rolls to be a judge of appeal only, and that the number of ordinary judges of the Court of Appeal should after the passing of this act be five, see the Supreme Court of Judicature Act, 1881 (c. 68), ss. 2, 3, amending s. 4 of the Judicature Act, 1875 (c. 77).

7. A judge not present and acting as a member of a Divisional Court of the High Court of Justice at the time when any decision appealed from was made, or at the argument of the case decided, shall not, for the purposes of the fourth section of the Judicature Act, 1875, be deemed to be, or to have been, a member of such divisional court. *Ibid.* s. 11.

8. The president, for the time being, of the Probate, Divorce, and Admiralty Division is an ex officio judge of her Majesty's Court of Appeal. *Ibid.* s. 4.

8a. When the Court of Appeals equally divided in opinion so that the judgment below stands, it will, if the same point comes before it again, exercise an independent opinion. *The Vera Cruz* (No. 2), 9 P. D. (C. A.) 96; 53 L. J. P. D. 33; 5 Asp. 270.

9 (in lieu of No. 70 on p. 10). Every order by a judge of the High Court in chambers, except orders made in the ex-

ercise of such discretion therein mentioned, may be set aside or discharged upon notice by any divisional court, or by the judge sitting in court, according to the course and practice of his division; and no appeal shall lie from any such order to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal. The Supreme Court of Judicature Act, 1873 (c. 66), s. 50.

10. In an action for general average contribution by owners of ship against owners of cargo in respect of money paid to pilots for salvage services, the jury found that the services were pilotage. A divisional court directed a new trial. On appeal, the Court of Appeal, having all the material facts before it, set aside the verdict for the defendants, and ordered judgment to be entered for the plaintiffs without another trial *Akerblom v. Price*, 7 Q. B. D. 129.

11. As to appeals to the Court of Appeal, see 1 Mews' and others' Digest, founded on Fisher, anno 1884, pp. 135—181, and Mews' Annual Digest, anno 1884, p. 6, *Ibid.* 1885, p. 7.

2. *From Admiralty Branch of Probate, Divorce and Admiralty Division.*

(a) *Generally* (and see p. 11).

12. Though the Court of Appeal will always act on the rule that credit is to be given to the judgment of the court below on facts depending on the credibility of witnesses, yet when it sees that, irrespective of such credit, the findings of the court below are and must be wrong, that rule does not apply. Per the M. R., *The Hector*, 9 March, 1883.

(b) *From what Orders* (and see p. 11).

13. An order made by a registrar sitting as judge under Ord. LIV. is not, for the purposes of the Judicature Act, 1873 (c. 77), s. 50, an order made by a judge in chambers, and hence, where such an order has been reviewed by a judge in court, an appeal from the judge's decision will lie without special leave. *The Vivar*, 2 P. D. 29; 35 L. T. 782; 25 W. R. 453—C. A.

(f) *In Actions of Salvage* (and see p. 12).

14. An appeal against the amount of salvage awarded will be dismissed unless the judge has acted on wrong principles,

or under a misapprehension of the facts, or the amount is exorbitant in the sense of being beyond reason. *The Lancaster*, 9 P. D. (C. A.) 14; 5 Asp. 174.

See also No. 5, *supra*.

15. Six thousand pounds was awarded for services rendered to a steamer which had run aground on a reef in the Red Sea, nearly five miles from Suez, and which, owing to the heavy sea and the nature of her position, was in imminent peril. The services were rendered at much risk to the salving ship. The Court of Appeal refused to alter the award. *Ibid.*

(g) *From Decisions on Appeal from Admiralty County Courts.*

15a. In cases raising important points of law, the court will give leave to appeal to the Court of Appeal, where such leave is necessary. *The Rona*, 4 Asp. 520; 45 L. T. 601; 30 W. R. 614.

5. **To the Probate, Divorce and Admiralty Division.**

1. *Generally* (and see p. 13).

16. All Probate and Admiralty appeals from inferior courts, and from justices, shall be to a Divisional Court of the Probate, Divorce and Admiralty Division. See Ord. LIX. r. 4, No. 887.

See also Nos. 17—22, *infra*.

2. *From Admiralty County Courts and Magistrates.* (and see p. 13).

17. The County Courts Act, 1875 (c. 50), s. 6, gives an additional mode of appeal in certain cases, and does not take away the right of appeal to the Probate, Divorce and Admiralty Division under the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), ss. 26, 27. *The Humber*, 9 P. D. 12; 53 L. J. P. D. 7; 5 Asp. 181.

See also No. 16, *supra*, and Nos. 18—22, *infra*.

6. **To the Admiralty Branch of the Probate, Divorce and Admiralty Division.**

2. *From Admiralty County Courts and Cinque Ports Commissioners* (and see pp. 13—17).

(a) *Generally* (and see p. 13).

18. Admiralty appeals from inferior

courts now lie to the Probate, Divorce and Admiralty Division, and not to the Admiralty branch of that Division. See Ord. LIX. r. 4, No. 887.

19. Therefore appeals from Admiralty County Courts, City of London Court, Liverpool Court of Passage, Cinque Ports Commissioners, and Magistrates, now lie to the Probate, Divorce and Admiralty Division. *Ibid.*

(c) *In what Time* (and see p. 14).

20. Appeal allowed, although the instrument of appeal was not lodged within ten days from the decree appealed from. *The Humber*, 9 P. D. 12; 53 *ib.* 7; 5 Asp. 181; 49 L. T. 604.

5. *From Awards of Magistrates.*

(a) *Generally* (and see p. 15).

21. Appeals from awards of magistrates now lie to the Probate, Divorce and Admiralty Division, and not to the Admiralty branch of that Division. See Ord. LIX. r. 4, No. 887.

(d) *In Wages Actions.*

22. The award of magistrates in cases of seamen's wages not exceeding £50 is made final by the M. S. Act, 1854 (c. 104), s. 188.

6a. To the Court of Admiralty of the Cinque Ports.

23. In all cases arising within the jurisdiction of the Cinque Ports, as defined by the act 1 & 2 Geo. 4, c. 76, s. 18, appeals may be made to the Court of Admiralty of the Cinque Ports in lieu of the Court of Admiralty; and the instruments of appeal are to be lodged in the registry of the Cinque Ports, and the same discretion vested in the judge of the Cinque Ports Court as is by this act vested in the judge of the Court of Admiralty. See the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), s. 33.

10. Practice in the House of Lords.

1. *Generally* (and see p. 18).*

4. *Petition, Appeal, Schedule, Certificates* (and see p. 18).

24. The forms of petition of schedule, of certificate of counsel, and of certificate of service and notice, are the same as those set forth in notes 35, 36, and 37 of pp. 18 and 19. See forms of appeal, method of procedure, and standing orders of August, 1884, p. 3.

25. The appeal must be written on parchment. *Ibid.* p. 4.

6. *Lodging of Petition of Appeal* (and see p. 19).

26. In the event of the autograph signatures of counsel not being subscribed to the parchment appeal, the draft containing them must be shown to the clerks of the judicial department at the time of lodging the appeal. *Ibid.* p. 3.

12. *Proceedings on objection to Substitute or Sureties* (and see p. 20).

27. (In lieu of No. 183.) In the event of the clerk of the parliaments requiring a justification of the sureties, the appellant's agent must within one week from the date of an official notice to him to that effect, lodge in the parliament office an affidavit or affidavits by the proposed sureties setting forth specifically the nature of the property in consideration of which they claim to be accepted as sureties in respect of the bond, and also declaring that the property in question is unincumbered. A copy of the affidavit or affidavits must be served on the agent of the respondents before lodging the same in the parliament office. *Ibid.* p. 5.

17. *Preparation of Cases* (and see p. 21).

28. The title-page of the appellant's case must contain, at the top, a reference to the report of the cause below, if reported, or, if not reported, "catch words"

* (1) (In lieu of note 32, on p. 18.) As to the forms and practice on appeals to the House of Lords, see Wilson's *Jud. Acts and Rules* (4th ed.), pp. 801, 812; and Chitty's *Archbold's Practice of the Queen's Bench Division* (14th ed.), vol. 2, pp. 995--1013.

(2) (In lieu of note 33, on p. 18.) The

practice on appeals to the House of Lords is now regulated by the forms of appeal, method of procedure, and standing orders of August, 1884. They are the same as those of January, 1880, mentioned in the first volume of this work, with the exceptions set forth in the text above.

or "index words" similar to those prefixed to reports of causes in the law reports. See Forms of Appeal, &c., of August, 1884, p. 7.

29. Where reference is made to a document printed in the appendix, the case must contain a marginal note of the page of the appendix containing such document. *Ibid.*

30. For directions for binding printed cases and printed copies of the appeal for the use of the law lords. *Ibid.* p. 18.

See also No. 42, *infra*.

20. *Setting down Cause for Hearing* (and see p. 23).

31. No. 220, on p. 23, is no longer in force. See, in lieu thereof, No. 28, *supra*.

32. Causes, the hearing of which has been postponed on the ground of their being under compromise, are placed at the bottom of the effective cause list in the event of no compromise being arrived at. *Ibid.* No 33, p. 8.

21a. *Petition on Incidental Applications.*

33. Petitions for extension of time, lodged during the prorogation of Parliament (unless the House of Lords be sitting for judicial business), in cases in which time has been already extended on petition, do not prevent the dismissal of an appeal. *Ibid.* No. 20, p. 6.

34. For form of petition for extension of time to lodge cases, &c., see App. C. to Form of Appeal, Method of Procedure, and Standing Orders of August, 1884, p. 19.

23. *Abatement and Revival of Appeal* (and see p. 23).

35. No. 225 on p. 23 is no longer in force. See Forms of Appeal, Method of Procedure, and Standing Orders of August, 1884.

36. In the event of the death of any of the parties to an appeal, immediate notice should be given by letter addressed to the clerk of the parliaments, and lodged in the judicial office. *Ibid.* No. 37, p. 9.

37. The letter must state whether the appeal abates or does not abate by reason of the death in question. *Ibid.*

38. An appeal is held to abate through death, when it becomes necessary to add a new party or parties to the appeal to represent the deceased person's interest. *Ibid.*

39. An appeal is held not to abate through death when the interest of the deceased person is represented by any of the surviving parties to the appeal. *Ibid.*

40. In appeals from England and Ireland, in which it is necessary to add new parties to the appeal, an order must be first obtained in the court below making such persons parties to the cause, and an office copy of the order must be annexed to the petition for revival presented to this house. *Ibid.*

41. In appeals from Scotland, the record being closed in the court below, the petition for revival is presented directly to the house, and a certified copy of the confirmation of the executors of the deceased person must be annexed to the petition. *Ibid.*

42. In the case of appeals which do not abate through death, it is necessary in the printed cases to print the words "(since deceased)" against the name of the deceased person in the title of the appeal. *Ibid.*

43. In the case of an appeal which becomes defective through the bankruptcy of any of the parties, a letter must be addressed to the clerk of the parliaments, and lodged in the judicial office, stating the fact of such bankruptcy, and to this letter must be annexed an office copy of the order of the court adjudicating bankruptcy. *Ibid.*

44. In the event of abatement by death or defect through bankruptcy, an appeal shall not stand dismissed for default under Standing Orders Nos. III., IV., V., provided that notice of such abatement or defect be given by letter addressed to the clerk of the parliaments, and lodged in the judicial office prior to the expiration of the period limited by the standing order under which the appeal would otherwise have stood dismissed. *Ibid.* and Standing Order No. VIII. p. 15.

45. All appeals marked on the cause list of the house as abated or defective shall stand dismissed unless within three months from the date of the notice to the clerk of the parliaments of abatement or defect, if the house be then sitting, or, if not, then not later than the third sitting day of the next ensuing sittings of the house, a petition shall be presented to the house for reviving the appeal or for rendering the same effective. *Ibid.*

24. *Additional Parties* (and see p. 24).

46. Omit from No. 226, on p. 24, the

words "party or parties in the court below have been omitted to be made a party or parties in the appeal before this house and." See Standing Order No. VIII. and Forms of Appeal, Method of Procedure, and Standing Orders of August 1884, p. 15.

25a. Dismissal for want of Prosecution.

47. In cases in which an appeal is dismissed for want of prosecution, the appellant shall be at liberty to serve a notice of such dismissal according to the form in Appendix D. upon the agent of the respondents. See Forms of Appeal, Method of Procedure, and Standing Orders of August, 1884, No. 41, p. 10.

48. Such service is to be verified if necessary by affidavit. *Ibid.*

49. If the respondent does not, within four weeks from the date of such service, lodge in the office of the taxing master of the house his bill of costs, the £200 lodged as security may be paid out to the appellant. *Ibid.*

50. As to the taxation of the respondent's costs when lodged, see tit. Costs, c. 27, s. 3, p. 381.

51. For form of appellant's notice to the respondent of the appeal having been dismissed for want of prosecution, and of the appellant's intention to apply for payment out to him of the £200, under Standing Order No. IV., *Ibid.* App. D., p. 20.

26. Costs.

See tit. Costs, c. 30, s. 1, p. 390.

11. Practice in the Privy Council.

22. Time for Appeal* (and see p. 32).

52. A party desiring to appeal from a decree or order of a Vice-Admiralty Court shall, within one month from the date of the decree or order appealed from, file a notice of appeal (a form of which is

therein provided), and give bail in such amount not exceeding £300, as the judge may order to answer the costs of the appeal. See Rules of Practice for Vice-Admiralty Courts made under Order in Council of August, 1883.

44. Hearing.

53. Action for damage by collision, defendants' ship held solely to blame, but defendants dismissed on the ground that their ship was in charge of a compulsory pilot. The plaintiffs appealed, but the defendants did not adhere to the appeal. *Held*, that the defendants could not, in such circumstances, raise the question on the appeal whether their vessel was free from blame, or whether both vessels were in fault, but were confined to the points raised by the appeal, whether or not the pilot was solely to blame. *The Calabar*, L. R. 2 P. C. 238.

See also No. 4, p. 3340, and No. 62, *infra*.

47a. Unlivery and Sale.

54. On application of the respondents in a pending appeal, order made for unlivery of the cargo and sale of a mortgaged ship, the unlivery and sale of which had been decreed by the Court of Admiralty. *The Jeff Davis*, 5 Moore, P. C. C. N.S. 25; L. R. 2 P. C. 19.

12. Practice in Her Majesty's Court of Appeal, England.

1. Generally (and see p. 51).

55. For decisions in what cases an appeal lies, see 1 Mews' and others' Digest, founded on Fisher, anno 1884, pp. 137—139, and Mews' Annual Digest, anno 1885, p. 7.

56. As to the parties to an appeal, *Ibid.* p. 148, and *Ibid.* since.

57. As to hearing generally on appeal, *Ibid.* pp. 173—176.

* (3) The practice as to appeal in the Vice-Admiralty Courts followed that of the High Court of Admiralty, by which it was required that an appeal *apud acta* or *in scriptis* (as to which see p. 34, n.) should be interposed within fifteen days from the decree (see pp. 32, 33). This is now altered by the Rules of Practice of 1883 for Vice-Admiralty Courts, No. 150, mentioned in the text, and accordingly the cases on pp. 33, 34, Nos. 332,

333, 342, 343, 344, inserted before the issuing of those rules of practice, are now obsolete.

(4) The rules as to appeal in the Rules of Practice of 1883 for Vice-Admiralty Courts relate to the proceedings to be taken on appeal in those courts, and do not affect the statutory regulations in regard to the commencement and prosecution of the appeal in the Appellate Court, as to which see p. 33, Nos. 334, 335.

3. *Time of Appeal* (and see p. 52).

58. As to the times within which appeals must be brought generally, and as to extension of time generally, *Ibid.* pp. 150—159.

4. *Notice of Appeal* (and see p. 52).

59. As to notices of appeal generally, *Ibid.* p. 160.

7. *Application for Stay.*

(a) *Proceedings in Court below*
(and see p. 53).

60. In an action in the Admiralty Division by the owners of the S. C., plaintiffs, against a ship belonging to the L. & N. W. Rail. Co., the defendants, in respect of a collision between the two vessels, *held*, that both ships were to blame. Decision reversed on appeal, and defendants' ship condemned in the damages. Defendants entered an appeal to the House of Lords. Plaintiffs took proceedings in the Admiralty Division to assess the damages, which were large. Motion in the Court of Appeal to stay such proceedings rejected, but execution directed to be stayed on the appellants agreeing to give a guarantee by Baring Brothers for the payment of damages, and the usual solicitor's undertaking for costs. *Owners of Santa Clara v. The L. & N. W. Rail. Co.*, Feb. 10, 1886.

61. For further cases as to stay of proceedings generally pending appeal, see 1 *Mews' and others' Digest*, founded on Fisher, anno 1884, pp. 167, 170, and *Ibid.* 1885, p. 12.

8. *Respondent's Notice to vary* (and see p. 53).

62. Where the respondent to an appeal gives a cross notice under Ord. LVIII. r. 6, and the appellant withdraws his appeal, the respondent may elect whether to proceed on his cross notice. If he elects to proceed the appellant may give a cross notice that he intends to bring forward his original appeal on the hearing of the respondent's appeal. *The Beeswing*, 10 P. D. 18 (C. A.); 54 L. J. P. D. 7; 5 Asp. 335.

See also Nos. 4 and 4a, p. 2340.

10. *Evidence* (and see p. 54).

63. For further cases as to evidence and further evidence on appeal, see 1 *Mews' and others' Digest*, founded on Fisher, anno 1884, p. 170.

p.

11. *Setting down.*

(a) *Generally* (and see p. 55).

64. As to setting down appeal for hearing, *Ibid.* p. 162.

16. *Interest.*

65. On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the court or a judge otherwise orders, and the taxing officer may compute such interest without any order for that purpose. Ord. LIX. r. 19, No. 883.

65a. See as to the allowance of interest generally, tit. REGISTRAR AND MERCHANTS, p. 1715.

13. Practice in Probate, Divorce and Admiralty Division.

1. *Generally.*

66. Appeals from Admiralty County Courts, City of London Court, Liverpool Court of Passage, Cinque Ports Commission, and magistrates, now lie to the Probate, Divorce and Admiralty Division, see No. 16, p. 2341.

67. As to re-arrest of a vessel to answer further claims on appeal, see tit. PRACTICE, p. 1522, Nos. 583, 584.

68. On any motion by way of appeal from an inferior court, the court to which any such appeal may be brought shall have power to draw all inferences of fact which might have been drawn in the court below, and to give any judgment and make any order which ought to have been made. No such motion shall succeed on the ground merely of misdirection or improper reception or rejection of evidence, unless, in the opinion of the court, substantial wrong or miscarriage has been thereby occasioned in the court below. Ord. LIX. r. 7 of 1884.

2. *Evidence.*

See Nos. 70—73, *infra*.

14. Practice in the Admiralty Branch of Probate, Divorce and Admiralty Division.

1. *From Admiralty County Courts*
(and see pp. 56—59).

(a) *Generally.*

69. These appeals now lie to the Probate,

Divorce and Admiralty Division, see No. 16, p. 2341.

(d) Evidence (and see p. 56).

70. Application to admit fresh evidence on an appeal from a county court refused. *The Humber*, 9 P. D. 12; 53 L. J. P. D. 7; 5 Asp. 181; 49 L. T. 604.

71. In the absence of the judge's notes of evidence the Court of Admiralty, on appeal, allowed a witness to be examined who had given evidence in the court below. *The C. S. Butler*, L. R. 4 A. & E. 238; 31 L. T. 549; 23 W. R. 113.

72. On any motion by way of appeal from an inferior court, the court to which any such appeal may be brought shall have power, if the notes of the judge of

such inferior court are not produced, to hear and determine such appeal upon any other evidence or statement of what occurred before such judge which the court may deem sufficient. Ord. LIX. r. 8 of 1884.

73. As to the powers of the court to draw inferences of fact, and as to the effect on appeal of improper reception or rejection of evidence in the court below, see No. 68, *supra*; Ord. LIX. r. 7 of 1884.

4. From Awards of Magistrates.*

(a) Generally (and see p. 58).

74. On appeal from an award of magistrates, the appellants held entitled to begin and to reply. *The Jeune Adolphe*, 2 (Irish) Jur. N.S. 285.

* (5) If it is desired to detain the property in legal custody pending an appeal from a magistrate's award, this may be done by application to the receiver of wreck to exercise the powers conferred on him for that purpose by the 468th section of the M. S. Act, 1854

(c. 104).

(6) If the owners are desirous of obtaining a release of their property before the hearing of the appeal, they may do so by giving bail to the receiver under the provisions of the same 468th section.

AVERAGE.

Part I.—AVERAGE.

2. Jurisdiction.

2. Before the Judicature Acts.

(b) Court of Admiralty (and see p. 62) p. 2346

Part II.—GENERAL AVERAGE.

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(a) Duty of Shipowner to require— (and see p. 99d).

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7. Denmark (and see p. 99h).

10. Germany (and see p. 99i).

Part II.—GENERAL AVERAGE.

1. Generally (and see p. 63).†

* (1) As to the ancient jurisdiction of the Court of Admiralty as embracing questions of average, see Marsden's Reports, annis 1648—1840, pp. 249, 250, 259.

† (2) For forms of Liverpool Average

Agreement and London Average Agreement, see Marine Insurance, Notes and Forms, by Douglas Owen; Sampson Low, Marston & Co., London, 1883, pp. 105—111.

4. Expenses entitling to General Average.

2. In Port of Refuge.

(e) *Unloading and reloading Cargo* (and see p. 81).

1. Where a vessel is compelled for the safety of ship and cargo to put into port to repair an injury which is the subject of particular average, the expense of reloading the cargo, necessarily unloaded for the purpose of repairs to the ship, and other expenses incurred for pilotage and port charges, are not chargeable to general average. *Svensden v. Wallace*, 10 App. Cas. 404; 5 Asp. 453; affirming the decision in 5 Asp. 232.

7. Salvage.

(a) *Of Ship and Cargo* (and see p. 85).

2. Where a master enters into a towage contract rendering the shipowners liable to pay a sum of money named in the contract, whether the services prove beneficial or not, and the ship and cargo are thereby saved, the remuneration agreed upon may be the subject of a general average contribution. *Anderson, Tritton & Co. v. Ocean Steamship Co.*, 10 App. Cas. 127; 5 Asp. 401; reversing the decision, 5 Asp. 202; and *Ocean Steamship Co. v. Anderson, Tritton & Co.*, July 31, 1886.

See also tit. SALVAGE, Pt. I. p. 1855, Nos. 732, 733, 740—742.

8. Recovery of General Average.

1. *Generally* (and see p. 99b).

3. The fact that a shipowner has be-

come liable to pay, and has paid, a sum of money for services rendered to the ship and cargo, and that such payment was reasonable, does not show conclusively that the whole of such sum is chargeable to general average. Before the owners of cargo can become liable for a general average contribution, it must be left to the jury to find what sum should properly be charged to general average under the circumstances. *Ibid.*

3. Bond to pay.

(a) *Duty of Shipowner to require—* (and see p. 99d).

4. When there has been a general average loss incurred, and the contributions have not been ascertained, the shipowner is not entitled to make delivery of the cargo conditional upon the consignee signing an average bond in the form known as the Liverpool average bond, and making a deposit of ten per cent. on the estimated value of their goods in the joint names, as provided by the bond, of the defendants, and their average adjuster, or in the names of the defendants alone, or in the name of the average adjuster alone; a bond in such a form is unreasonable. *Huth & Co. v. Lamport; Gibbs & Son v. Lamport*, 5 Asp. 543; 16 Q. B. D. 442; 54 L. T. N.S. 334, 663.

Part IV.—FOREIGN LAW.

7. Denmark (and see p. 99h).*

10. Germany (and see p. 99i).†

* (3) The new Danish Code, referred to on p. 99h, No. 275, has not yet been published.

† (4) The cargo contributes to general average, (1) with the goods still existing at the end of the voyage when the discharge commenced; or, if the voyage terminated by the loss of the ship, with the goods brought into a place of safety so far as at the time of the casualty these goods, in both cases, were on board the vessel or a lighter; (2) with the goods sacrificed. See the German General Maritime Law Code, Art. 720.

(5) In estimating the amounts, the following points have to be taken in consideration:

—With respect to goods which are undamaged, the market's value as fixed by competent persons of the goods at the end of the voyage when and at the place where the discharge was commenced; or, if the voyage is terminated by the loss of the ship at the time and place of the salvage, after deducting freight duties and other expenses. *Ibid.* Art. 721.

(6) If goods thrown overboard are picked up, they only contribute to a general average occurring at the same time or subsequently, in case the owner demands compensation. *Ibid.* Art. 722.

BOTTOMRY.

Part I.—BRITISH LAW,

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Part I.—BRITISH LAW,

1. *Generally* (and see p. 102).

1. A vessel bound for a foreign port in ballast put into Cowes owing to contrary winds, and the master there took on board some goods of the plaintiffs to be sold by the master for the plaintiff in the foreign port. £100 of the proceeds of these goods the master employed in repairing the vessel at the foreign port, and executed a bottomry bond to the plaintiff. Bond pronounced for. Decision affirmed on appeal. *Day v. Walters*, Marsden's Rep. 325.

4. *What are Bottomry Bonds* (and see p. 106).

2. A foreign vessel being in an English port, and the owner, temporarily in England, being in want of funds for the purchase of necessaries for the ship, entered into an agreement with the plaintiffs, by which, in consideration of their advancing him by cash or acceptance £600 for necessaries supplied to and for the use of the vessel, he undertook to return them the amount so advanced with interest, and all charges on the return of the vessel from her voyage. And the plaintiffs were thereby authorized "to cover

the amount advanced the owner by insurance on the ship, &c., out and home at owner's cost." *Held*, by the Court of Appeal (Bowen and Fry, L.JJ., Brett, M. R., *dubitante*), that the agreement was not equivalent to a bottomry bond. *The Heinrich Bjorn*, 10 P. D. 44.

5. *Bonds, good in part* (and see p. 107).

3. The fact that one of the items making up the amount advanced on bottomry, was a premium of insurance by the bondholder, *held*, not to affect the validity of the bond. *The Lovely Ann*, Marsden, 337.

6. *Maritime Risk.*

1. *Generally* (and see p. 108).

4. A bottomry bond can only hypothecate what is subjected to maritime risk. Therefore freight to be earned on a voyage after the maritime risk is ended, and the bond is no longer obligatory, cannot be hypothecated. *Smith v. Bank of New South Wales, The Staffordshire*, L. R. 4 P. C. 194; 8 Moore, P. C. C. N.S. 443; 41 L. J. Adm. 49; 27 L. T. 46; 20 W. R. 557.

4. *Commencement and Termination.*

(a) *Generally* (and see p. 108).

5. A bottomry bond executed at Lisbon and expressed to be payable on the ship's arrival in London, *held* payable, though the ship having put into Plymouth was there condemned on a survey and never reached London. *The Neptune*, Marsden, 365.

9. **By Masters.**

1. *Generally* (and see p. 116).*

6. A master, however appointed, if *bond fide* appointed, can, under circumstances, grant a bottomry bond for the purpose of enabling the ship to proceed on her voyage. *The Cynthia*, 16 Jur. 748.

6a. A vessel, owing to a mortality which prevailed in the West Indies, had a succession of masters, who were appointed under various circumstances in different islands, and by the agents or consignees. Some of such masters gave bottomry bonds. *Held*, that they were sufficiently appointed to qualify them to give such bonds. *The Wakefield*, cited in *The Kennerley Castle*, 3 Hagg. 8.

7. A master appointed abroad by the British consul at that place may give a bottomry bond. *The Zodiac*, 1 Hagg. 320.

8. The appointment of a master of a post-office packet by the postmaster, *held* a sufficient appointment to bind the owners for necessary repairs to the vessel ordered by the master. *Stokes v. Carne*, 2 Camp. 339.

9. The master putting into a foreign port in distress has no authority to insure the ship and freight there for the rest of the voyage, nor power to bottomry the ship for the premiums of insurance. *The Serafina*, B. & L. 277.

10. Where, from the recital in a bond, it was clear that the meaning was to bind the ship, though the condition only bound the master, the bond was upheld as a bottomry bond. *The Grace*, Marsden, 334.

11. An infant master borrowed from D. in a foreign port £95 to pay wages,

and gave bills on the owner which were returned unpaid. The master subsequently sold part of the cargo to D. to raise funds for the repair of the vessel. D. then refused to pay for the cargo so sold until the master gave him a bottomry bond for the £95. In a suit on the bond in the Admiralty Court, bond decreed for, with interest, damages, and costs. *Day v. Wolfe*, Marsden, 88.

2. *Necessity.*

(c) *Expenses.*

(aa) *Generally* (and see p. 123).

12. Where a lender finds money on bottomry to pay for work and goods it is not sufficient for him to prove the general validity of the bond; he must prove that the items of expenditure were necessary, and the bond will be bad as regards each item to the extent by which such item exceeds the amount which was actually necessary. *The Pontida*, 9 P. D. 102; *Ibid.* C. A. 177; 53 L. J. P. D. 44; *Ibid.* 78; 5 Asp. 284—330.

4. *Notice to Owners* (and see p. 129).

13. See *The Lizzie*, L. R. 2 A. & E. 254; 19 L. T. 71; and Nos. 254, p. 132; 303—316, p. 138.

14. The master's communication should state not only the necessity for expenditure but also the necessity for hypothecation. *Kleinwort v. Cassa Maritima of Genoa*, 2 App. Cas. 156; 36 L. T. 118; 25 W. R. 608.

12. **On Freight** (and see p. 135).

15. Where freight is pledged by an instrument in the nature of a bottomry bond, and the ship is totally lost, whilst the freight is at risk, by a collision with another ship which admits and limits her liability under the M. S. Acts, paying the amount of her liability into court, the holders of the bottomry bond are entitled to rank against the fund paid into court for the freight so pledged to them. *The Empusa*, 4 Asp. 185.

16. *Semble*, the bondholders are en-

* (1) For form of bottomry bond, see Marine Insurance, Notes and Forms, by Douglas Owen; Sampson Low, Marston & Co., London, 1883, p. 115.

(2) A master appointed abroad by an

American consul has the same authority to execute a bottomry bond as if appointed directly by the owner. *The Jackmel Packet*, 2 Ben. 107. [AMERICAN.]

titled to recover out of the fund in court applicable to the payment of damages for loss of freight the same proportion of the sum secured by the bond as the total sum apportioned in respect of loss of freight bears to the whole freight of the ship lost. *The Empusa*, 4 Asp. 185.

13. On Cargo.

1. *Generally* (and see p. 136).

17. Cargo laden after the execution of a bottomry bond on ship, cargo, and freight, is liable to contribute rateably with the cargo laden before, in so far as there is a deficiency after applying the proceeds of ship and freight. *The Trial*, Marsden, 338.

17a. See for a collection of the cases on the hypothecation of cargo, *The Gratitude*, Tudor's Leading Cases in Merc. and Mar. Law, 3rd ed. anno 1884, p. 34.

3. *Remedy over, against Shipowner* (and see p. 140).

18. A master of a French ship contracted in the West Indies to carry goods of an Englishman from thence to Liverpool, and on the voyage was obliged to put into a port of refuge, and to borrow there money on bottomry of ship and cargo. On the ship's arrival at Liverpool the bondholder sued upon the bond, and the cargo owner was obliged to contribute to the payment of the bond in order to redeem his goods. *Held*, that the owner of the goods had no claim against the owners of the ship, inasmuch as by the law of France it was lawful for them to free themselves from the acts and engagements of the master, in all that concerned the ship and voyage, by the abandonment of the ship and freight, and they had done so. *Lloyd v. Guibert*,

L. R. 1 Q. B. Exch. 115; 10 Jur. N.S. 949; 33 L. J. Q. B. 241; 12 W. R. 953; 10 L. T. N.S. 570.

18. Payment.

6. *Priority.*

(b) *Bonds inter se* (and see p. 149).

19. If on a voyage bottomry bonds are given at different ports the posterior bond is preferred; but where a master having borrowed an insufficient sum on bottomry, afterwards, at the same port, takes up more on a second bond, both bonds will rank together. *Mackenzie v. Ogilvie*, Marsden, 134.

20. Two successive bottomry bonds were given at different ports on the same voyage. No particular distress appears to have happened at the second port. *Held*, on the particular facts, that the first bond must have priority. *Dunlop v. Proceeds of the Neptune*, Marsden, 97.

21. In 1768 a bottomry bond was given at Leith by or with the assent of owners, who resided in Scotland, to secure advances made to the vessel two years before. In 1872 another bond was given at Cowes with (*semble*) the consent of the owners, for the purpose of repairing the vessel. The court held that neither bond was such as could properly be enforced in the Admiralty Court, but that no objection being taken to the jurisdiction the rules of equity must prevail, and that the bonds must rank together and be paid in proportion. *Mackenzie & Co. v. The St. Andrew*, Marsden, 124; *Mackenzie v. Ogilvie*, *ib.* 134.

Part II.—FOREIGN LAW.

1a. Brazil.*

2. *Denmark* (and see p. 151).†

* (3) A contract of bottomry, if made out of the realm, must be visé by the Brazilian Consul, if there is one, and in all cases noted on the ship's register; failing these conditions, though valid as between the contracting parties, it is of no effect as against third parties who have claims on the ship. Art. 633, C. C.

(3a) A contract of bottomry may be for the money worth of goods supplied, or services rendered to the ship without money actually passing. *Ibid.*

† (4) The new Danish code has not yet been promulgated.

(4a) The owner as well as the captain may

bottomry in a case of distress, and when the loan on bottomry is taken, in order to the continuance of the voyage. Code of 1683 of King Christian the Fifth, vol. 4, c. 5.

(5) The captain may bottomry not only when authorized by owner under the conditions allowing him to do so, but also on his own responsibility, viz., when he is absent from his owner in foreign countries, and in a case of distress. The captain may pledge in bottomry the ship, her tackle and freight, but it is regarded as doubtful whether he may, without authority from the owner, bottomry the cargo. At all events, he is bound to give the owner of the cargo the opportunity

3. Egypt (and see p. 151).*

of avoiding bottomry of his cargo by providing the funds required by other means. *Ibid.*

(5a) The bottomry holder has an effectual pledge or mortgage, taking special precedence of all former mortgages and bottomry bonds on ship and freight, but his lien is postponed to claims for wages of crew, salvage and average contribution, and the expenses of realization thereof. If the properly bottomried is lost or deteriorated through accidents, the holder's claim is lost or diminished *pro tanto*. *Ibid.*

(6) Respondentia bonds were introduced into Denmark by Ordinance of December 19, 1794.

* (7) Bottomry (*prestato a cambio marittimo*) is a contract in which money is lent on ship or cargo, or both, on condition that if the security perishes from peril of the sea, the debt is extinguished, but if it arrives safely, then it is payable with maritime interest; that is, interest above the ordinary legal rate. C. C. M. 149.

(7a) If the ship during the voyage requires necessaries, and by reason of the distance from the residence of the owners of ship and cargo, or other circumstances, the captain cannot obtain their permission, he may, on showing what the necessity is, by writing, signed by himself and his principal officers, obtain authority to borrow money in bottomry of ship and apparel; and, in case of necessity, of the cargo, from the tribunal of commerce; failing it, the governor; and in foreign

ports the Ottoman consul; and failing him, the proper local authority. Where cargo is sold or pledged for the necessities of the ship, the charterers or shippers may, if they prefer it, have their cargo delivered to them at the port of distress, paying freight *pro rata itine-ris*. *Ibid.*

(8) The instrument of bottomry must contain the following things:—(1) The sum lent, and the maritime interest agreed on; (2) the things which are the security for the loan; (3) the name of the ship, and the names and surnames of the owners and captain and also of the lender; (4) the voyage or time for which the loan is made; (5) the date for repayment; (6) the date and place at which the loan was made. *Ibid.* 150.

(9) Bottomry bonds may either be made under legal authority, before the tribunal of commerce or Turkish consul, or by a private contract between the parties. If the latter, it should be registered before the proper authority within ten days. *Ibid.* 151, 152.

(10) A bottomry bond entered into without these formalities ceases to have any priority over other debts, and renders the borrower personally liable to pay the money in any event, but only with ordinary legal interest. *Ibid.* 153.

(11) Loans on security of freight to be earned by ship, and profits to be obtained by sale of cargo, and also on wages to be earned, are prohibited, and the lender can only recover his principal without interest. *Ibid.* 158, 159.

COLLISION.

PART I.—RIGHTS AND RESPONSIBILITIES OF OWNERS AND OTHERS GENERALLY IN REGARD TO COLLISION.

II.—JURISDICTION.

III.—NEITHER SHIP OR BOTH IN FAULT.

IV.—DUTIES GENERALLY FOR AVOIDANCE OF COLLISION.

PART V.—DUTIES AS TO LIGHTS.

VI.—DUTIES IN FOG, MIST, OR SNOW.

VII.—DUTIES AS TO STEERING.

VIII.—IN PORTS, HARBOURS, AND DOCKS.

IX.—DUTIES, &c. IN PARTICULAR LOCALITIES.

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Part I.—RIGHTS AND RESPONSIBILITIES OF OWNERS AND OTHERS GENERALLY IN REGARD TO COLLISION.

1. Generally* (and see p. 183).**2. Between Three Ships** (and see p. 184).

1. A large iron steam dredger, the property of the respondents, was moored in the river Liffey, below the Pigeon House Fort, for the night, three men being on board. She had two anchor lights exhibited one at each end. *The Annie*, while proceeding down the river, ran into the front of the dredger, driving her from

the position in which she had been moored towards mid-channel, and making a large hole in front of the dredger, through which the water rushed, causing the front part to sink, while the after part remained afloat. The anchor light on the fore part of the dredger was put out, but the stern light remained burning. It could not, however, be seen by vessels coming down the river, the view being obstructed by the elevated machinery of the dredger. The three men on board the dredger got into the dredger's boat almost immediately after the collision with *The Annie*, and remained sitting in the boat on the star-board side of the dredger. About twenty minutes after the collision the D. L., on a voyage from Dublin to Glasgow, ran into the dredger, and sustained such injuries that she sank. *Held*, in an action

* (1) The following cases of collision are reported in Marsden's Reports, between the years 1653 and 1784, but do not appear to involve any questions of importance:—*Gold v. Southwood*, Marsden, 242; *Newman v. Croft*, *ibid.* 254; *Dove v. Marten*, *ibid.* 271; *Stringer v. Browne*, *ibid.* 275; *Kirwan v.*

Underwood, *ibid.* 297; *Fletham v. Godfrey*, *ibid.* 298; *Cowton v. Cocke*, *ibid.*; *Pigg v. Goldsbury*, *ibid.* 299; *Milton v. Maundrell*, *ibid.* 305; *Reed v. Wallford*, *ibid.* 308; *Gibson v. Chapman*, *ibid.* 315; *Sutherly v. Manchester*, *ibid.* 325; *Clarke v. Linch*, *ibid.*; *Nelson v. Durham*, *ibid.*

for damages by the D. L. against the dredger, that the dredger was not to blame. On appeal to the Court of Appeal in Ireland, *held*, that the dredger was to blame. *The Dublin and Glasgow Steam Packet Company v. The Dublin Port and Docks Board*, 2nd April, 1886.

2. On appeal to the House of Lords, *held*, affirming the decision of the Court of Admiralty, and reversing the decision of the Court of Appeal, that the owners of the dredger were not to blame, and that the action had been brought against the wrong ship. *Ibid.* Ho. Lo. 2nd April, 1886.

3. Owners of Ships.

Foreign (and see p. 187).

3. Collision in the Bay of Bilboa within the territory of Spain. Action against the Spanish ship M. Defence, that by the law of Spain the master and mariners and not the owners were liable, sustained (following *The N. Mozham*). *The Machin*, 19th November, 1884.

4. Owners of Cargo* (and see p. 187).

5. Masters.

2. *To assist colliding Ship and give Name of Port* (and see p. 188).

4. A vessel, though too much damaged in a collision to render assistance to the other vessel, should (if she can) reply to the signals for assistance of such other vessel; if she does not, she will be held to blame under the M. S. Act, 1873 (c. 85),

s. 16. *The Emmy Haase*, 9 P. D. 81; 53 L. J. P. D. 43; 5 Asp. 216.

5. Sect. 16 of the M. S. Act, 1873 (c. 85), as to the duty of one vessel to assist the other damaged vessel after collision, applies to a foreign ship as well as to a British ship. Per Butt, J., *The Henry Villard*, 16th November, 1885.†

5a. See, further, as to the master's duty in this respect, tit. SHIPPING CASUALTIES INVESTIGATIONS, p. 2211.

7. Loss of Life and Personal Injury.

1. *Generally* (and see p. 190).

6. See, as to owner's exemption under the terms of the passenger ticket from liability for injury to or loss of life of a passenger occasioned by the negligence of the crew, *Haigh v. Royal Mail Steam Packet Co.*, 52 L. J. Q. B. D. 395; *Ibid.* (C.A.) 640; 5 Asp. 47, 189; and *Thompson v. Royal Mail Steam Packet Co.*, 5 Asp. 190. See also *The United Service*, 9 P. D. 3; 53 L. J. P. D. 1; 47 L. T. 701; 5 Asp. 170; 32 W. R. 565; and for particulars of the case, p. 1228, No. 455.

7. A collision occurred through the fault of both vessels. Three persons on board one of them, an engineer and a passenger who had nothing to do with the navigation, and an officer responsible for it, were drowned. *Held*, following *Thorogood v. Bryan*, 8 C. B. 115,† that their representatives could not maintain an action, under Lord Campbell's Act, against the owners of the other vessel, and that the Judicature Act, 1873 (c. 85), s. 25, sub-s. 9, did not apply. *The Bernina*, 11 P. D. 31; 55 L. J. P. D. 21; 54 L. T. 499.

* (2) Action for damages from collision by owners of the E. and her cargo against the owners of the W. and her cargo. The owners of the cargo of the W. appeared and protested against the arrest of their cargo, but the decree seems to have gone against cargo as well as ship, and to have been affirmed on appeal. *Tomlinson v. Voguel*, Marsden, 313.

(3) In an action of collision brought by the owners of the T. and her cargo against the J. and her cargo, *held*, on appeal to the Delegates, that the owners of the J. and her cargo ought to contribute rateably in proportion to their property not lost in the collision, towards the loss of the T. and her cargo by a common disaster (*ex causâ communis*), to the extent of a moiety

of the value of the T. and her cargo. *Harbyn v. Berry*, Marsden's Rep. 235.

† (4) But the presumption is against the individual and not the ship, and if the individual was properly below at the time, the section does not apply to him.

† (5) As to the case of *Thorogood v. Bryan*, and the cases in which it has been impugned and supported, see notes to p. 206. See also Shearman and Redfield on Negligence, s. 46; Addison on Torts, 4th ed. p. 388. *Adams v. The Glasgow and S. W. Rail. Co.*, Cases of Court of Sessions, 4th Series, vol. 3, p. 215. [SCOTCH.] *Chapman v. Newhaven R. R. Co.*, 19 New York Rep. 341; *Webster v. Hudson River R. Co.*, 38 *Ibid.* 260; *Wabash v. St. Louis and Pacific Rail. Co.*, 49 Am. Rep. 791. [AMERICAN.]

2. *Both Ships to blame.*

8. See No. 7, *supra*.

7a. Submarine Telegraph Cables.

1. *Generally.*

9. For the general provisions of the convention between the United Kingdom and various foreign states for the protection of telegraphic communication by submarine telegraphs, see tit. OWNERS, in Addenda, c. 10a.

10. It is a punishable offence to break or injure a submarine cable wilfully or by culpable negligence, so that it might interrupt or obstruct telegraph communication wholly or partially, except in saving life or property, and after necessary precautions, and such punishment is without prejudice to any civil action for damages. See the Convention, Art. II., annexed to, and confirmed by, the Submarine Telegraph Act, 1885 (c. 49), s. 2.

11. The owner of a cable who, on laying or repairing his own cable breaks or injures another cable, must bear the cost of repairing the breakage or injury, without prejudice to the application, if need be, of Art. II. (for which see No. 10, *supra*) of the Convention, *Ibid.* Art. IV.

12. But this article does not apply to that part of a cable laid in a depth of water exceeding 100 fathoms; and nothing in the convention or this act shall prejudice any right or remedy to which any party may be otherwise entitled. *Ibid.* s. 4.

2. *Jurisdiction.*

13. On heaving anchor it was discovered that the C. K. had got foul of the submarine telegraph cable between England and France. By the direction of the master the cable was cut. *Held*, that the Court of Admiralty had jurisdiction to entertain an action by the owners of the cable against the C. K. *The Clara Killam*, L. R. 3 A. & E. 161; 39 L. J. Adm. 50; 3 Asp. 463; see also *Submarine Telegraph Co. v. Dixon*, 15 C. B. N.S. 759; 2 Asp. 9; 33 L. J. C. P. 139.

3. *Signals* (and see p. 236).

14. Vessels engaged in laying or re-

pairing submarine cables shall conform to the regulations as to signals which have been, or may be, adopted by mutual agreement among the high contracting parties, with the view of preventing collisions at sea. See the Convention, Art. V., annexed to the Submarine Telegraph Act, 1885 (c. 49).

15. When a ship engaged in repairing a cable exhibits the signals, other vessels which see them, or are able to see them, shall withdraw to or keep beyond a distance of one nautical mile at least from the ship, so as not to interfere with her operations. *Ibid.*

16. Fishing gear and nets shall be kept at the same distance, but fishing vessels which see, or are able to see, a telegraph ship exhibiting the signals shall be allowed twenty-four hours at most within which to obey the notice so given, during which time they shall not be interfered with. *Ibid.*

17. The operations of the telegraph ships shall be completed as quickly as possible. *Ibid.*

18. Vessels which see, or are able to see, the buoys showing the position of a cable when the latter is being laid, is out of order, or is broken, shall keep beyond a distance of one-quarter of a nautical mile at least from the said buoys. *Ibid.* Art. VI.

18a. Fishing nets and gear shall be kept at the same distance. *Ibid.*

See also c. 9, Nos. 91—93, p. 2363.

4. *Lights* (and see p. 245).

19. The enactments of the M. S. Act, 1862 (c. 63), and of the acts amending the same, touching regulations as to lights and signals and for the avoiding of collisions, shall extend to authorize regulations for carrying into effect Articles V. and VI. of the schedule to this act (for which see Nos. 14—18, *supra*), within as well as without the territorial waters of her Majesty's dominions, and regulations may be made, applied, altered, and revoked, and the contravention thereof punished accordingly under these enactments; and section 6 of the Sea Fisheries Act, 1883, shall extend to the enforcement of the regulations as regards sea fishing boats within the limits of that act. See the Submarine Telegraph Act, 1885 (c. 49), s. 5 (1).

20. See also Nos. 109, 110, pp. 2364, 2365.

Part II.—JURISDICTION.

1. The Admiralty Branch of the Probate, Divorce and Admiralty Division.

2. *Loss of Life or Personal Injury* (and see p. 191).

21. The Admiralty Division has no jurisdiction *in rem* (under the 7th section of the Admiralty Court Act, 1861, or otherwise) over a claim under Lord Campbell's Act (9 & 10 Vict. c. 93). *The Franconia*, 2 P. D. 163 (for which see No. 73 on p. 191), overruled. *The Vera Cruz* (No. 2), 10 App. Cas. 59; 9 P. D. C. A. 96; 53 L. J. P. D. 33; 54 L. J. P. D. 9, overruling 9 P. D. 96; 5 Asp. 254, 270, 386.

22. But *semble*, in a suit for limitation of liability the court would be able to entertain a claim brought by a person claiming under Lord Campbell's Act. *Per Brett, M. R. Ibid.*

23. *Semble*, however, the court has jurisdiction for personal injury in actions *in personam*. *The Bernina*, 11 P. D. 31.

24. If an action *in personam*, under Lord Campbell's Act, were brought in the Admiralty Branch of the Probate, Divorce and Admiralty Division, that would be a case over which the High Court had jurisdiction, and there would then be only the question whether or not the action should be transferred from the Probate to the Queen's Bench Division. *Per Lord Esher, M. R., The Vera Cruz* (No. 2), 9 P. D. 98.

25. Section 527 of the M. S. Act, 1854 (c. 104) (for which see No. 91, p. 193), is confined to damage to property, and does not extend to injury to the person. *Harris v. Owners of The Franconia*, 2 C. P. D. 173.

26. *Held*, by the majority of the Court, that the Admiralty had no jurisdiction to try offences by foreigners on board

foreign ships within or without the limits of three miles from the shores of England, and that therefore the criminal courts of this country have no power to do so. *The Queen v. Keyn*, 2 Exch. D. 63.*

27. The *ratio decidendi* of the judgment in *The Queen v. Keyn* is that for the purpose of jurisdiction (except where, under special circumstances and in special acts, Parliament has thought fit to extend it), the territory of England and the sovereignty of the Queen stop at low water mark. *Harris v. Owners of The Franconia*, 2 C. P. D. 177.

28. Therefore in an action in the Common Pleas Division, under Lord Campbell's Act (9 & 10 Vict. c. 93), by the administratrix of a person on board a British ship, and killed in a collision beyond the territory of England though within three miles of the coast, between that vessel and a foreign ship, caused by the negligence of those on board the foreign ship, *held*, that the ordinary courts of this country had no jurisdiction, and that service of the writ out of the jurisdiction could not be allowed. *Ibid.* 173.

2. The Court of Admiralty before the Judicature Acts.

2. *Foreign Ships* (and see p. 193).

29. Section 527 of the M. S. Act, 1854 (c. 104), is confined to damage to property, and does not extend to injury to the person. *Harris v. Owners of The Franconia*, 2 C. P. D. 173.

Part III.—NEITHER SHIP OR BOTH IN FAULT.

1. Inevitable Accident.†

1. *Generally* (and see p. 200).

30. A steamer moored at a wharf in the

* (6) This was the celebrated case of *The Franconia*, a foreign vessel, the foreign master of which was indicted for the manslaughter of a passenger on board a British ship, with which *The Franconia* came into collision within three miles from the English coast, the collision resulting in the death of the passenger. The nature and extent of the jurisdiction within the limits of three miles from the English coast, was very fully considered by the learned judges who formed the majority and minority of the court.

† (7) Collision *held* to be the result of in-

evitable accident, and the damages ordered to be equally divided. *Nelson v. Fawcett, Marsden*, 332.

(8) Collision from a common disaster (*ex causa communis*), moiety of damages decreed. *Harbyn v. Berry, Ibid.* 235.

(9) Case of fortuitous collision (*casu fortuito*), between two vessels, the P. and the W., from the W. bringing up to windward of the P., and driving foul of her. The W. condemned in a moiety of the damages. *Trew v. Pierce, Marsden*, 264.

harbour of Halifax, Nova Scotia, broke loose in a gale of unexampled violence and damaged the wharf. *Held*, that those in charge of the vessel were not bound to take precautions against an extraordinary gale like that which was blowing at the time, but were bound to take such precautions against an ordinary gale as a prudent and competent man of nautical science would have taken, and that certain enumerated precautions which would have been taken by a prudent and competent man were not taken, and judgment of court below condemning the vessel in the damage affirmed. *The Chase* (P. C.), 22nd July, 1873.

31. Case of collision held to be merely accidental, and no damages or costs given on either side. *Baker v. Malin*, Marsden, 322.

2. Inscrutable Fault (and see p. 203).

32. Action of collision dismissed, no fault being proved. *Strong v. Teesdale*, Marsden, 269; *Faye v. Graham*, *Ibid.* 331.

33. In an action of collision, defendant, on account of the uncertainty of the proofs (*ob incertitudine probationum, &c.*), condemned in a moiety only of the damages. *Beckham v. Chapman*, Marsden, 270.

4. Both Ships to blame.*

1. Generally (and see p. 204).

34. Both ships held to blame. Damages directed to be equally divided, *Stoker v. Hutton*, Marsden, 328; and this though one was more to blame than the other. *Wildman v. Blakes* (*The Petersfield* and *The Judith Randolph*), *Ibid.* 332.

35. Collision actions damages divided between the two ships, *Rennen v. Humble*, Marsden, 280; *Gull v. Carswell*, *Ibid.* 295; *The Marquis of Granby*, *Ibid.* 323. Same rule applied, but full damages awarded to owners of cargo; *Mason v. Johnson*, *Ibid.* 282. Same rule of half damages applied to ship and cargo. *Marsingill v. Taylor*, *Ibid.* 288; *Noden v. Ashton*, *Ibid.* 290.

36. Case of collision in which half damages were decreed, *Harper v. Grosvenor*, Marsden, 251; *Beckham v. Chapman*, *Ibid.* 270.

2. Pilot in Fault.

37. Where two vessels are to blame for a collision, but the owners of one are exempt from liability owing to compulsory pilotage, such owners are entitled to recover a moiety of their damage without any deduction on account of the damage sustained by the other vessel. *The Hector*, 8 P. D. (C. A.) 218; 52 L. J. P. D. 51; 5 Asp. 101.

Part IV.—DUTIES FOR AVOIDANCE OF COLLISION.

2. Sea Collision Rules of 1885—1863.

1. Generally (and see p. 209).

38. The Sea Collision Rules of 1884 are substituted for those of 1879 by Order in Council of 11th August, 1884.†

3. To Ships of what Nations applicable (and see p. 211).

39. No. 248, on p. 211, as to the Rules of 1879, to the effect that the rules shall not interfere with special rules made by any foreign government as to additional station and signal lights for ships of war or sailing under convoy, is the same as Sea Collision Rules of 1884, Art. 26; and see same in Appendix.

40. The Sea Collision Rules of 1884 are made applicable to the ships of the following nations:—France (see Order in Council of September 16, 1884, L. G. p. 4116), Greece, Italy, and Portugal (see Order in Council of January 1, 1885, L. G. p. 1), Sweden, Norway, and Brazil (see Order in Council of May 22, 1885, L. G. p. 2234), Turkey (see Order in Council of July 14, 1885, L. G. p. 3234).

4. Construction.

(a) Generally (and see p. 212).

42. No. 258, on p. 213, as to the Rules

* (10) Collision between the C, with the wind free, and the A. M. by the wind. The A. M. was damaged, and the C. sunk; *held*, that both vessels were to blame, but the C. was most to blame, and could not therefore recover. *The Ann of Mostein*, *Ibid.* 263.

† (11) They are substantially the same as those of 1879, except with regard to fishing vessels. Their exact resemblance and divergence, and the rules of January and June, 1885, as to fishing vessels, are stated *infra*, and all are printed in the Appendix.

of 1879, to the effect that nothing in those rules is to interfere with rules duly made by local authorities for harbours, &c., is the same as Sea Collision Rules of 1884, Art. 25. See same in Appendix.

43. No. 259, on p. 213, as to the Rules of 1879, not exonerating any ship, &c. from neglect to take proper precautions, is the same as Sea Collision Rules of 1884, Art. 24; and see same in Appendix.

44. The rules are made not merely to prevent collisions, but to prevent danger of collisions, and they must, therefore, be strictly enforced. *The Ebor*, 11 P. D. (C. A.) 25.

(b) *Lights* (and see p. 213).

45. No. 265, on p. 213, as to the Rules of 1879 not exonerating any ship, &c. from neglect to carry lights, is the same as Sea Collision Rules of 1884, Art. 24; and see same in Appendix.

46. A sailing vessel, seeing the mast-head and red lights of a steamer approaching on her starboard bow, showed a flare-up light to attract attention. A collision having ensued, *held*, that the showing of a flare-up light was not prohibited by Art. 2, and that it depends upon the circumstances of each case whether or not the showing of a flare-up light is calculated to mislead, and that the steamer ought not to have been misled, and was alone to blame. *The Merchant Prince*, 5 L. J. P. D. 79.

47. The R., in charge of a tug, was brought athwart the tide in the Humber to go into dock. The R. had, in addition to her masthead and side lights, a bright light at the main peak. The Humber Rules made pursuant to the M. S. Act Amendment Act, 1862 (c. 63), s. 32, incorporate the Regulations for Preventing Collisions at Sea. The E. came into collision with the R., and it was admitted that the E. was to blame; but *held*, that as the R., by carrying a light at her peak, had not complied with Art. 2 of the Regulations, she had infringed a statutory rule within the purview of s. 17 of 36 & 37 Vict. c. 85, and was also to blame; for it was impossible to say that this infringement could not have contributed to the collision, or that it was a necessary departure from the regulation. *The Ripon*, 10 P. D. 65; 54 L. J. P. D. 56; 5 Asp. 365.

(d) *Proper Precautions* (and see p. 213).

48. No. 267, on p. 213, as to the Rules of 1879, not exonerating any ship, &c. from neglect to carry lights or signals, or to keep a proper look-out, or take proper precautions, is the same as Sea Collision Rules of 1884, Art. 24.

49. See also Nos. 209—217, p. 209; Nos. 688, 699, p. 269, notes 59—65, 72—78, p. 207; No. 635, notes 356, 357, p. 262; and Pt. VII. p. 271.

(e) *Proviso for Special Cases* (and see p. 214).

50. No. 274, on p. 214, as to the Rules of 1879, requiring, in construing those rules, that due regard should be had to dangers of navigation, and special circumstances rendering a departure from the rules necessary, is the same as Sea Collision Rules of 1884, Art. 23.

5. *Effect of Breach.*

(a) *Generally* (and see p. 215).

51. If the non-observance of an important rule of navigation can by any possibility have contributed to the accident, the party guilty of such non-observance is to blame. *The Arklow*, 9 App. Cas. 136; 53 L. J. P. C. 9; 5 Asp. 219;* 50 L. T. 305.

52. A steamer came into collision with a trawler, which, contrary to the Sea Collision Rules, was carrying a masthead light as well as side lights. It appeared that those on board the steamer did not see the white light. The court refused to hold the trawler to blame under s. 17 of the M. S. Act, 1873 (c. 85), holding that the white light could not possibly have contributed to the collision. *The Chusan*, 5 Asp. 476; 53 L. T. 60.

(c) *Lights* (and see p. 217).

53. A vessel *held* to blame for not having proper lights exhibited, on the ground that their absence might have contributed to the collision, and judgment of the court below reversed. *The Arklow*, 9 App. Cas. 136; 53 L. J. P. C. 9; 5 Asp. 219.

(e) *Crown Ships.*

54. The provisions of s. 17 of the M. S.

* (12) See also note (a), 5 Asp. 221.

Act, 1873 (c. 85), *semble*, applicable to a Queen's ship. *The Hochung; The Lapwing*, 5 Asp. 43, n.

5. Look-out.

1. Generally (and see p. 219).

55. Nothing in these rules shall exonerate any ship, or the owner, master, or crew thereof from the consequences of any neglect to keep a proper look-out. See the Sea Collision Rules of 1884, Art. 24, in Appendix.

56. A ship in charge of a duly licensed pilot came in collision in the Clyde with a dredger. One of the bye-laws of the Clyde Navigation Commissioners required that every vessel should, during the daytime, have one person, and from sunset to sunrise and in time of fog two persons, properly qualified, stationed at the bows as a look-out. The master and officer and a third man were on the bridge, and there was no look-out forward. *Held*, that the look-out was sufficient. *The Clyde Navigation Co. v. Barclay*, 1 App. Cas. 790.

7. Speed.

1. Steamers.

(a) Generally (and see p. 222).

57. Eight to nine knots an hour *held* not to be an improper rate of speed for a steamer in the North Sea on the Dogger Bank, the night being fine and clear though somewhat dark. *The Pacific*, 9 P. D. 124; 53 L. J. P. D. 67; 5 Asp. 263.

(b) *In Fog, Mist, or Snow* (and see p. 225).

58. No. 354, on p. 225, is the same as Sea Collision Rules of 1884, Art. 13. See same in Appendix.

2. Sailing Vessels.

(b) *In Fog, Mist, or Snow* (and see p. 227).

59. No. 378, on p. 227, as to the Rules of 1879, that every ship shall in fog, mist, or snow go at a moderate speed, is the same as Sea Collision Rules of 1884, Art. 13.

60. The term "moderate speed," in Art. 13, is a relative term depending on the circumstances. When a sailing ship, in a dense fog in the Bristol Channel, was going faster than was necessary

to keep her under command, *held*, that she had infringed Art. 13. *The Beta*, 9 P. D. (C. A.) 134; 5 Asp. 276.

61. A sailing vessel should, in the case of a fog coming on where other vessels are likely to be, reduce her speed to as low a rate as is consistent with her keeping a good steerage way. *The Zadok*, 9 P. D. 114; 53 L. J. P. D. 72; 5 Asp. 252.

62. A sailing vessel held to blame for going five knots an hour in a fog where numerous vessels were to be expected. *Ibid.*

63. Under Art. 13, a vessel in a river or narrow arm of the sea should, in a dense fog, even before the whistle or fog-horn of another vessel is heard, be brought as nearly as possible to a standstill, so as to be just under command. Per Brett, M. R., *The Dordogne*, 10 P. D. 6; 54 L. J. P. D. 29; 5 Asp. 328.

64. In the open sea the rule need not be so strictly construed, unless a whistle or fog-horn is heard. *Ibid.*

(c) *Slackening of Speed on Risk of Collision.*

65. Although Art. 18 does not apply to a sailing vessel, she ought, under similar circumstances, to take off sail until she brings herself as nearly to a standstill as is possible whilst being under command. Per Brett, M. R., *The Dordogne*, 10 P. D. 6; 45 L. J. P. D. 29; 5 Asp. 328.

3. *Slackening of Speed of Steamers on Risk of Collision.*

(a) *Rules of 1885—1863* (and see pp. 228—230).

66. No. 386, on p. 228, as to Rules of 1879, requiring every steamer approaching another ship with risk of collision to slacken speed or stop, and reverse if necessary, is the same as Sea Collision Rules of 1884, Art. 18, and see same in Appendix.

67. Two steamers, the C. and the S., were meeting at night so as to pass starboard to starboard. When the S. had got about three points on the starboard bow of the C., and a quarter of a mile distant, the master of the C. saw the white and green lights of the S. coming into line. This showed that probably the S. was porting, as she in fact was. The engines of the C. had been previously stopped, and afterwards, but not until the red light of the S. was seen,

they were reversed. A collision ensued. The S. having been held to blame: *Held*, also, that the C. should have reversed her engines when the lights of the S. were seen coming into line, as this indicated a probable risk of collision, and that the C. was to blame under Art. 18. *The Stanmore*, 10 P. D. (C. A.) 134; 54 L. J. P. D. 89; 53 L. T. 10; 33 W. R. 197.

69. See also *The Dordogne*, No. 78, *infra*.

70. Collision between the T. and L. The T. held solely to blame in the court below, the Court of Session. On appeal, *held*, that the L. was also to blame under the 18th Sea Collision Rule of 1879, for not having eased or stopped her engines earlier. *Maclaren v. Compagnie Francaise de Navigation à Vapeur*, H. L. 9 App. Cas. 640. [SCOTCH.]

71. Vessel held to blame for not reversing pursuant to Rule 18. *The Emmy Haase*, 9 P. D. 81; 53 L. J. P. D. 43; 5 Asp. 216.

72. Compliance with Rule 18 at the very moment when danger becomes apparent is not necessary, for a man must have time to consider. *Ibid*.

73. Art. 18 becomes applicable before there is actual risk of collision, and while risk of collision can be avoided. *The Beryl*, 9 P. D. (C. A.) 137; 53 L. J. P. D. 75; 5 Asp. 321.

4. *Stopping and Reversing of Steamer's Engines on Risk of Collision.*

(a) *Rules of 1884—1863* (and see p. 230).

75. No. 393, on p. 230, as to Rules of 1879, requiring every steamer approaching another ship with risk of collision to slacken speed or stop and reverse if necessary, is the same as Sea Collision Rules of 1884, Art. 18. See same in Appendix.

5. *Slackening of Steamer's Speed and Stopping in Fog, Mist, or Snow* (and see p. 231).

76. A steamer in a dense fog, when it hears a whistle at no great distance, should not merely slow but should stop. *The Kirby Hall*, 8 P. D. 71; 52 L. J. P. D. 31; 5 Asp. 90.

77. A steamer should stop and reverse, if in a dense fog, if a whistle or fog-horn is heard in the vicinity on either bow and approaching, because there must then be a risk of collision. *The John M'Intyre*, 9 P. D. 135 (C. A.); 53 L. J. P. D. 115; 5 Asp. 278.

78. The steamship D., in a dense fog off Ushant, was proceeding slow when a whistle was heard about three points on her starboard bow. This whistle was heard several times and was answered. In about a quarter of an hour the steamer E. appeared crossing the bows of the D. from starboard to port, about a ship's length away. The engines of the D. were then put full speed astern, but a collision occurred. *Held*, by the Court of Appeal (affirming the judgment of the court below), that the D. had infringed Arts. 13 and 18, and was therefore to blame as well as the E. *The Dordogne*, 10 P. D. 6; 54 L. J. P. D. 29; 5 Asp. 328.

79. It is the duty of a steamer hearing the whistle of another several times, and being in a state of uncertainty as to her position, not only to stop her engines but to reverse, so as to take her way off by the time the vessels come within hailing distance. *The Ebor*, 11 P. D. 25; 54 L. T. 201.

80. A steamer which in a fog neglected to do so *held* to blame, notwithstanding the Trinity Masters were of opinion she was navigated with due care. *The Palermo*, December 11, 1883.

81. The steamer T., in a fog off Cromer, heard a whistle almost right ahead; she was then going slowly, about three knots an hour, and she continued at this speed for about a minute, until a second whistle was heard, when her engines were stopped and reversed; but the steamer E. coming into sight, a collision occurred. The owners of the E. admitted at the trial that their vessel was to blame. *Held*, by the Court of Appeal, affirming the Admiralty Division, that the T. was also to blame for having infringed Art. 18 by going on at the same speed after the first whistle was heard. *The Ebor*, 11 P. D. (C. A.) 25; 54 L. T. 201.

82. *Held*, also, by Lord Esher, M. R., that the plaintiffs were also to blame as having infringed Art. 13. *Ibid*.

83. *Held*, that the term "moderate speed" in the rule meant moderate under the circumstances. And if the master of a vessel heard a whistle ahead, no matter whether dull or not, yet, as it would indicate there was a vessel ahead and it might be coming towards his vessel, it was his duty at once to slacken his speed and go as slowly as he could, and, even if it were necessary with that object, to stop, and go on again at as slow a rate as possible. *Ibid*.

8. Steamers and Ships in Tow.1. *Actions between Tug and Tow.*(a) *Generally* (and see p. 231).

84. Tug owners are under an implied obligation to supply an efficient tug, and one properly equipped, and a term in their contract that they will not be responsible for the default of the master does not release them from this obligation. *The Undaunted*, 11 P. D. 46.

85. It is not the duty of those in charge of a tow, which is being towed with a long scope of hawser, by night at sea, to direct the movements of the tug. The circumstances are different to towing by day in a river. *The Stormcock*, 4 Asp. 410; 53 L. T. 53.

86. As to towage generally, see tit. SALVAGE, Pt. I. c. 6, s. 15, p. 1835.

9. Ships out of Command.1. *Rules of 1885 and 1863.*(a) *Generally.*

87. No. 429, on p. 235, as to the Rules of 1879, requiring balls or shapes to be carried by day by ships out of command, is the same as those in Art. 5 (a) of the Rules of 1884. See both sets of Rules in the Appendix.

(b) *Lights.*

88. As to the lights to be carried at night by such ships, see Nos. 112, 113, *infra*.

(c) *Signals* (and see p. 235).

89. The lights and shapes required to be shown by this article are to be taken by other ships as signals that the ship showing them is not under command, and cannot, therefore, get out of the way. See Sea Collision Rules of 1884, Art. 5, sub-art. (d).

90. For the signals to be made by ships in distress and requiring assistance, see No. 94, *infra*.

See also No. 87, *supra*.

(d) *Ships engaged on Telegraph Cables.*(aa) *Generally.*

91. A ship, whether a steamer or sailing ship, employed in laying or in picking up a telegraph cable, shall by day carry in a vertical line one over the other, not less

than six feet apart, in front of but not lower than her foremast head, three shapes not less than two feet in diameter, of which the top and bottom shall be globular in shape and red in colour, and the middle one diamond in shape and white. See Sea Collision Rules of 1884, Art. 5 (b).

(bb) *Lights.*

92. As to the lights to be carried by such ships at night, see Nos. 109, 110, *infra*.

(cc) *Signals* (and see p. 236).

93. The lights and shapes required to be shown by this article are to be taken by other ships as signals that the ship showing them is not under command, and cannot, therefore, get out of the way. The signals to be made by ships in distress and requiring assistance are contained in Art. 27. See Sea Collision Rules of 1884, Art. 5, sub-art. (d).

See also No. 91, *supra*.

9a. Ships in Distress.

94. When a ship is in distress and requires assistance from other ships or from the shore, the following shall be the signals to be used or displayed by her, either together or separately; that is to say, in the daytime: (1) A gun fired at intervals of about a minute; (2) the International Code signal of distress indicated by N.C.; (3) the distant signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball; at night, (1) a gun fired at intervals of about a minute; (2) flames on the ship (as from a burning tar barrel, oil barrel, &c.); (3) rockets or shells, throwing stars of any colour or description, fired one at a time, at short intervals. See Sea Collision Rules of 1884, Art. 27.

12. British and French Fishing Vessels under the Sea Fisheries Acts.1. *Generally* (and see p. 239).

95. See tit. OWNERS, Pt. II. c. 14, p. 1238, and same title, part and chapter in Addenda.

Part V.—DUTIES AS TO LIGHTS.

1. Rules of 1885—1863.

1. *Generally* (and see p. 240).

96. The lights mentioned in the following articles, numbered 3, 4, 5, 6, 7, 8, 9, 10, and 11, and no others, shall be carried in all weathers, from sunset to sunrise. Sea Collision Rules of 1884, Art. 2, and see same *infra*, in Appendix.

97. The fact that an improper light is carried by direction of a pilot in charge by compulsion of law will not relieve the owners from liability, as it is the master's duty to prevent the rules as to lights being infringed. *The Ripon*, 10 P. D. 65; 54 L. J. P. D. 56; 5 Asp. 365.

98. Instructions as to lights issued by the Board of Trade to their surveyors are not, except so far as they are authorized by statute, binding upon the owners of either British or foreign ships. *The Magnet*, L. R. 4 A. & E. 417; 44 L. J. Adm. 1.

2. *Sea-going Steamers under Way.*(a) *Generally* (and see p. 241).

99. No. 472, on p. 241, as to the Rules of 1875, in regard to steamers' masthead lights is to the same effect as Rules of 1884, Art. 3. See both sets of Rules in Appendix.

(b) *Masthead Light.*

100. No. 477, on p. 241, as to the Rules of 1879, in regard to steamers' masthead lights, is the same as Sea Collision Rules of 1884, Art. 3(a). See same in Appendix.

(c) *Side Lights* (and see p. 241).

101. Nos. 481 and 482, pp. 241, 242, as to the Rules of 1879, in regard to ships' side lights, are the same as Sea Collision Rules of 1884, Art. 3 (b) and (c). See same in Appendix.

(d) *Screens to Side Lights* (and see p. 242).

102. No. 484, on p. 242, as to the Rules of 1879, as regards the screens to side lights, is the same as Sea Collision Rules of 1884, Art. 3 (d). See same in Appendix.

3. *Steamers towing* (and see p. 243).

103. No. 486, on p. 243, as to Rules of 1879, in regard to lights of steamers towing, is the same as Sea Collision Rules of 1884, Art. 4. See same in Appendix.

4. *Sailing Ships under Way or in Tow* (and see p. 244).

104. No. 490, on p. 244, as to the Rules of 1879, in regard to the lights of sailing ships under way or in tow, is the same as Sea Collision Rules of 1884, Art. 6. See same in Appendix.

5. *Ships being Overtaken.*(a) *Generally* (and see p. 244).

105. No. 494, on p. 244, as to the Rules of 1879, in regard to the white light to be shown astern by an overtaken ship, is the same as Sea Collision Rules of 1884, Art. 11. See same in Appendix.

106. A smack was on the port tack, with her trawling gear down, and she was making about one knot an hour. A globular white light was exhibited from her weather crosstree, but this light was partially obscured from overtaking vessels by the smack's sails. The smack did not exhibit any other light to an overtaking steamer. *Held*, that the smack had infringed Art. 11. *The Pacific*, 9 P. D. 124; 53 L. J. P. D. 67; 5 Asp. 263.

107. Action by the owners of the Norwegian ship H. G. against the steamer M. P., in respect of a collision in the Straits of Gibraltar about midnight. As the steamer continued to approach, flare-up lights were burnt on board the H. G. to attract her attention. The M. P. then opened her green light, but almost immediately afterwards shut it in again, leaving her masthead and red lights visible. Another flare-up was then burnt, but the M. P. struck the H. G. on the starboard bow, and sunk her, drowning her captain and seven of her crew. *Held*, that the H. G. was justified in burning flare-up lights, and that the M. P. was alone to blame. *The Merchant Prince*, 10 P. D. 139; 54 L. J. P. D. 79; 53 L. T. 914; 34 W. R. 231.

108. On the question, what is the meaning of being overtaken in Art. 11, *held*, that where one vessel ought to see that another was coming nearer to her into a position which might lead to danger, and so as not to be able to see her red or green side lights, then the obligation to show a white light arose. The leading vessel must give an intimation of her presence to the other in reasonable time. Per the Lord Chancellor, *The Main* (C. A.), June 3, 1886.

6. *Ships engaged on Telegraph Cables* (and see p. 245).

109. No. 500, p. 245, as to the Rules of

1879, in regard to the lights to be carried by ships laying or picking up telegraph cables, is the same as Art. 5 (b) of the Rules of 1884, except that instead of all these lights being red, the highest and lowest are to be red and the middle white, and the lights are to be not less than six feet apart, and they are to be of such a character that the red lights shall be visible at the same distance as the white light. See both sets of Rules in the Appendix.

110. The ships referred to in this article, when not making any way through the water, shall not carry the side lights, but when making way shall carry them. The lights and shapes required to be shown by this article are to be taken by other ships as signals that the ship showing them is not under command, and cannot therefore get out of the way. See the Sea Collision Rules, 1884, Art. 5.

111. For the signals to be made by ships in distress and requiring assistance, see No. 94, *supra*.

7. Ships out of Command (and see p. 245).

112. No. 502, p. 245, as to the Rules of 1879, in regard to the lights to be carried by ships under command is the same as Art. 5 (a) of the Rules of 1884, except that these red lights are to be visible in a dark night and clear atmosphere at least two miles. See both sets of Rules in Appendix.

113. These ships, when not making any way through the water, shall not carry the side lights, but when making way shall carry them. The lights and shapes required to be shown by this article are to be taken by other ships as signals that the ship showing them is not under command, and cannot therefore get out of the way. See the Sea Collision Rules of 1884, Art. 5, sub-arts. (c) and (d).

113a. For the signals to be made by ships in distress and requiring assistance, see No. 94, *supra*.

7a. Ships in Distress.

114. See No. 94, *supra*.

9. Ships at Anchor (and see p. 246).

115. No. 511, on p. 246, as to the Rules of 1879, in regard to the lights of ships at anchor, is the same as Sea Collision Rules of 1884, Art. 8. See same in Appendix.

116. Collision between a vessel under

way and a vessel showing an anchor light but actually in motion. The latter held to blame in the court below and Court of Appeal. *The Tiber*, 6th June, 1886.

10. Pilot Vessels on Pilotage Duty (and see p. 246).

117. No. 517, on p. 246, as to the Rules of 1879, in regard to the lights of pilot vessels engaged on pilot duty, is the same as Sea Collision Rules of 1884, Art. 9. See same in Appendix.

11. Pilot Vessels not on Pilotage Duty (and see p. 247).

118. No. 519, on p. 247, as to the Rules of 1879, in regard to pilot vessels not on pilotage duty, is the same as Sea Collision Rules of 1884, Art. 9. See same in Appendix.

12. Small Vessels in bad Weather (and see p. 247).

119. No. 521, on p. 247, as to the Rules of 1879, in regard to the lights for small vessels in bad weather, is the same as Sea Collision Rules of 1884, Art. 7. See same in Appendix.

12a. Sea Fishing Boats.

120. The regulations respecting lights for the time being in force under the M. S. Acts, shall, so far as they relate to sea fishing boats, be deemed to be provisions of this act, and may be enforced accordingly, and a sea fishing officer shall for that purpose, in addition to his other powers, have the same powers as are given to any officer by the M. S. Acts. See the Sea Fisheries Act, 1883 (c. 22), s. 6.

121. As to sea fishing boats generally, see tit. OWNERS, Pt. II. p. 1235, and same tit. and part in Addenda.

13. Open Fishing and other Boats.

(a) Generally (and see p. 247).

122. In lieu of No. 524, on p. 247, see Sea Collision Rules of 1884 and 1885, *infra*, Nos. 123—144, *infra*, Art. 10 of 1884 and 1885, and its subdivisions in Appendix.

(b) Under Way (and see p. 247).

123. In lieu of No. 528, on p. 247. Open boats and fishing vessels of less than twenty tons net registered tonnage, when under way and when not having their nets, trawls, dredges, or lines in

the water, shall not be obliged to carry the coloured side lights; but every such boat and vessel shall in lieu thereof have ready at hand a lantern with a green glass on the one side and a red glass on the other side, and on approaching to or being approached by another vessel such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side. See Sea Collision Rules of 1884, Art. 10.

13a. *Fishing Vessels and Fishing Boats in the European Seas, North of Cape Finisterre.*

(a) *Generally.*

124. All fishing vessels and fishing boats when in the sea off the coast of Europe lying north of Cape Finisterre and of twenty tons net registered tonnage, or upwards, when under way and when not required by the following regulations in this article to carry and show the lights therein named, shall carry and show the same lights as other vessels under way. See Sea Collision Rules of 1884, Art. 10(a).

(b) *Steam Vessels Trawling* (and see p. 248).

125. Steam vessels in the European seas, north of Cape Finisterre, engaged in trawling when under steam, if of twenty tons gross register tonnage or upwards, and having their trawls in the water, and not being stationary in consequence of their gear getting fast to a rock or other obstruction, shall between sunset and sunrise either carry and show the lights required by Art. 3 of the Regulations of August, 1884 (for which see No. 472, on p. 241, and No. 99, *supra*, p. 2364), or shall carry and show in lieu thereof, but not in addition thereto, the following, for which see Nos. 126, 127, *infra*. *Ibid.* of December, 1884, in Appendix.

126. (1) On or in front of the foremast head and in the same position as the white light which other steamers are required to carry, a lantern showing a white light ahead, a green light on the starboard side, and a red light on the port side, so constructed and arranged as to show an uniform and unbroken white light over an arc of the horizon of four points of the compass, an uniform and unbroken green light over an arc of the horizon of ten points of the compass, and an uniform and unbroken red light over

an arc of the horizon of ten points of the compass, and so fixed as to show the white light from right ahead to two points on the bow on each side of the ship, the green light from two points on the starboard bow to four points abaft the beam on the starboard side, and the red light from two points on the port bow to four points abaft the beam on the port side; and (2) a white light in a globular lantern of not less than eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light all round the horizon; the lantern containing such white light shall be carried lower than the lantern showing the green, white, and red lights, so, however, that the vertical distance between them shall not be less than six feet, nor more than twelve feet. *Ibid.* Sched. I.

127. These lights are to be of such a character as to be visible at a distance of not less than two miles on a dark night with a clear atmosphere. *Ibid.*

128. Such steamers when not having their trawls in the water shall carry the lights required in Art. 3 of the Rules of August, 1884 (for which see No. 472, on p. 241, and No. 99, *supra*, p. 2364). *Ibid.*

129. The rules in No. 126, *supra*, do not apply to foreign vessels until made applicable thereto by Order in Council. *Ibid.*

(c) *Sailing Vessels Trawling* (and see p. 248).

130. Sailing vessels in the European seas, north of Cape Finisterre, engaged in trawling, if of twenty tons net register tonnage or upwards, and having their trawls in the water, and not being stationary in consequence of their gear getting fast to a rock or other obstruction, shall between sunset and sunrise either carry and show the lights required by Art. 6 of the Regulations of 1884 (for which see No. 490, on p. 244, and No. 104, *supra*), or shall carry and show in lieu thereof, but not in addition thereto, the following (for which see No. 131, *infra*). *Ibid.* in Appendix.

131. On or in front of the foremost head a lantern having a green glass on the starboard side and a red glass on the port side, so constructed, fitted, and arranged that the red and green do not converge, and so as to show an uniform and unbroken green light over an arc of the horizon of twelve points of the compass, and an uniform and unbroken red light over an arc of the horizon of twelve points of the compass, and so fixed as to

show the green light from right ahead to four points abaft the beam on the star-board side, and the red light from right ahead to four points abaft the beam on the port side; and (2) a white light in a globular lantern of not less than eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light all round the horizon; the lantern containing such white light shall be carried lower than the lantern showing the green and red lights, so, however, that the vertical distance between them shall not be less than six feet, and not more than twelve feet. *Ibid.* Sched. II. in Appendix.

132. These lights are to be of such a character as to be visible at a distance of not less than two miles on a dark night with a clear atmosphere. *Ibid.*

133. Such sailing vessels when not having their trawls in the water shall carry the lights required in Art. 6 of the Rules of August, 1884 (for which see No. 490, on p. 244, and No. 104, *supra*). *Ibid.*

134. The rules in No. 131, *supra*, do not apply to foreign vessels until made applicable thereto by Order in Council. *Ibid.*

135. As regards sailing vessels engaged in trawling, such vessels having their trawls in the water and not being stationary in consequence of their gear getting fast to a rock or other obstruction, if they do not carry and show the lights required by Art. 6 of the Regulations of 1884 (for which see No. 490, on p. 244, and No. 104, *supra*), or the lights required by the Regulations of December, 1884 (for which see No. 131, *supra*), shall carry and show in lieu thereof a white light in a globular lantern of not less than eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light all round the horizon, and visible on a dark night, with a clear atmosphere, for a distance of at least two miles; and also a sufficient supply of red pyrotechnic lights which shall each burn for at least thirty seconds, and be visible for the same distance under the same conditions as the white light. The white light shall be shown from sunset to sunrise, and one of the red pyrotechnic lights shall be shown on approaching, or on being approached by, another ship or vessel in sufficient time to prevent collision. *Ibid.* of June, 1885, in Appendix.

136. These lights are to be carried and

shown in lieu of, but not in addition to, the lights required by the Sea Collision Rules of August and December, 1884. *Ibid.*

(d) *Vessels Drift-net Fishing* (and see p. 248).

137. All vessels in such localities, when engaged in fishing with drift-nets, shall exhibit two white lights from any part of the vessel where they can be best seen, placed so that the vertical distance between them shall be not less than 6 feet and not more than 10 feet; and so that the horizontal distance between them measured in a line with the keel of the vessel shall be not less than 5 feet and not more than 10 feet. The lower of these two lights shall be the more forward, and both of them shall be of such a character, and contained in lanterns of such construction, as to show all round the horizon, on a dark night with a clear atmosphere, for a distance of not less than three miles. See Sea Collision Rules of 1884, Art. 10 (b).

(e) *Vessels employed in Line Fishing.*

138. A vessel employed in line fishing with her lines out shall carry the same lights as a vessel when engaged in fishing with drift-nets. *Ibid.* Art. 10 (c).

(f) *Vessels becoming Stationary during Fishing.*

139. If a vessel when fishing becomes stationary in consequence of her gear getting fast to a rock or other obstruction, she shall show the light and make the fog-signal for a vessel at anchor. *Ibid.* Art. 10 (d).

(g) *Use of Flare-ups.*

140. Fishing vessels and open boats may at any time use a flare-up in addition to the lights which they are by this article required to carry and show. All flare-up lights exhibited by a vessel when trawling, dredging, or fishing with any kind of drag net, shall be shown at the after part of the vessel, excepting that, if the vessel is hanging by the stern to her trawl, dredge, or drag-net, they shall be exhibited from the bow. *Ibid.* Art. 10 (e).

(h) *At Anchor.*

141. Every fishing vessel and every open boat, when at anchor between sunset and sunrise, shall exhibit a white

light visible all round the horizon at a distance of at least one mile. See Sea Collision Rules of 1884, Art. 10 (f).

(i) *In Fog, Mist, or Snow.*

142. In fog, mist, or falling snow, a drift-net vessel attached to her nets, and a vessel when trawling, dredging, or fishing with any kind of drag-net, and a vessel employed in line fishing with her lines out, shall, at intervals of not more than two minutes, make a blast with her fog-horn and ring her bell alternately. *Ibid.* Art. 10 (g).

15. *Fishing Vessel Trawling* (and see p. 248).

143. A trawler attached to her trawl to be stationary within Art. 9 of the Regulations, 1863 (temporarily substituted for Art. 10 of the Regulations, 1880), must not be going faster than is necessary to enable her to keep herself under command. *The Dunelm*, 9 P. D. (C. A.) 164; 53 L. J. P. D. 81; 5 Asp. 304.

144. A trawler attached to her trawl was going $2\frac{1}{2}$ knots an hour through the water and $4\frac{1}{2}$ knots an hour over the ground. She carried a single white light. *Held*, that she was not stationary within Art. 9 of the Regulations, 1863, and that she was subject to Art. 3 of the Regulations of 1879, and ought to have carried side lights. *Ibid.*

Part VI.—DUTIES IN FOG, MIST, OR SNOW.

1. Signals.

1. Rules of 1884—1879.

(a) *Generally* (and see p. 251).

145. Nothing in these rules shall exonerate any ship, or the owner, master or crew thereof, from the consequences of any neglect to carry signals. See the Sea Collision Rules of 1884, Art. 24, in Appendix.

(b) *Steamers* (and see p. 252).

146. No. 557, on p. 252, as to the Rules of 1879, requiring steamers to have whistles, fog-horns, and bells, is the same as Sea Collision Rules of 1884, Art. 12. See same in Appendix.

(c) *Sailing Ships* (and see p. 252).

147. No. 559, on p. 252, as to the Rules of 1879, requiring sailing vessels to have fog-horns and bells, is the same as Sea Collision Rules of 1884, Art. 12. See same in Appendix.

(d) *Steamers under Way* (and see p. 252).

148. No. 561, on p. 252, as to the Rules of 1879, requiring steamers to sound their whistles in fogs, &c., is the same as Sea Collision Rules of 1884, Art. 12 (a). See same in Appendix.

(e) *Sailing Ships under Way.*

(aa) *Generally* (and see p. 252).

149. No. 564, on p. 252, as to the Rules of 1879, requiring sailing ships to sound their fog-horns in fog, &c. is the same as Sea Collision Rules of 1884, Art. 12 (b). See same in Appendix.

150. Proof that a fog-horn was blown, yet was not heard at a distance it might be expected to be heard, cannot be accepted as proof that there was negligence on the part of those who did not hear it. *The Zadok*, 9 P. D. 114; 53 L. J. P. D. 72; 5 Asp. 252.

(f) *Steamers and Sailing Ships not under Way.*

(aa) *Generally* (and see p. 253).

151. No. 567, on p. 253, as to the Rules of 1879, requiring vessels not under way to ring their bells in fog, &c. is the same as Sea Collision Rules of 1884, Art. 12 (c). See same in Appendix.

152. A steamer having let go her anchor in consequence of a sudden fog and whilst swinging to the tide with the assistance of a tug, is justified in ringing her bell, and there is no duty on her to sound her whistle. *The Consul*, 1st May, 1885.

153. But there may be circumstances in which a vessel with her anchor down, and a considerable scope of chain out, may be so under way as to make it her duty to whistle instead of to ring her bell. *Ibid.*

154. See Nos. 139—142, *supra*.

5. Steering (and see p. 254).

155. *Held*, that captains of ships have no right to assume, on first hearing the

whistle of another steamer in a fog, that that steamer is on an opposite course to themselves, and at once to alter the course of their own vessel. In this case both vessels altered their courses immediately on hearing the whistle of the other, and were held to blame for having done so. *The Bellcairn*, Jan. 19, 1885.

See also p. 231, Nos. 398—404, and Nos. 76—83, p. 2362.

Part VII.—DUTIES AS TO STEERING.

1. Rules of 1885—1863.

1. Generally (and see p. 255).

156. A manœuvre made too late to affect the collision does not make the ship liable as having contributed to the collision, even if the manœuvre was erroneous. *The Bougainville*, *The James C. Stevenson*, L. R. 5 P. C. 316; 28 L. T. 822; 21 W. R. 653.

1a. Defects in Steering Gear.

157. The defendants' steamer while proceeding down the Thames, owing to some sudden derangement of the patent steam steering gear, ran into the plaintiffs' vessel which was lying at a wharf. A few days before, a similar difficulty had arisen with the gear, but on examination the cause could not be discovered. Some 500 of these gears were in use on steamers. *Held*, that negligence must be proved against the defendants to render them liable. *The European*, 10 P. D. 99; 54 L. J. P. D. 61; 52 L. T. 868.

158. *Held*, also, that having regard to what had taken place a few days before, the defendants were guilty of negligence. *Ibid*.

2. Steamers meeting.

(a) Generally (and see p. 254).

159. Nos. 583—587, on pp. 254, 255, as to the Rules of 1879, for steamers meeting end on, are the same as Sea Collision Rules of 1884, Art. 15. See same in Appendix.

(c) One Vessel misled by wrong Lights of the Other.

160. The steamer G. on seeing a green

light about three-quarters of a mile distant starboarded. Shortly afterwards the port side of the B. was seen without a red light. As the only chance of avoiding a collision the G. hard astarboarded, and kept on at full speed, but the B. struck the G. on the starboard side. *Held*, that Art. 18 did not apply to the G., and that Art. 23 did, and that the B. was alone to blame. *The Benares*, 9 P. D. (C. A.) 16; 53 L. J. P. D. (C. A.) 2; 5 Asp. 52, 171.

161. See also p. 249, No. 545.

3. Steamers crossing (and see p. 256).

162. No. 596, on p. 256, as to the Rules of 1879, for steamers crossing, is the same as Sea Collision Rules of 1884, Art. 16. See same in Appendix.

163. Article 16 becomes applicable before there is actual risk of collision, and while risk of collision can be avoided. *The Beryl*, 9 P. D. 137 (C. A.); 53 L. J. P. D. 75; 5 Asp. 193, 321.

164. Two steamers, the A. and the B., were on crossing courses at about right angles, the A. having the B. on her starboard side. At a distance of from a quarter to half a mile the B., finding that the A. was not giving way, eased. As the A. still did not get out of the way the B., at a distance of about 300 yards, stopped and reversed. A collision was then unavoidable. *Held*, reversing the judgment of the court below, that the B. ought to have stopped and reversed earlier, and that, therefore, the B. was to blame as well as the A. *Ibid*.

165. Where a vessel is both overtaking and crossing, the overtaking rule (Art. 20) is to prevail. *The Seaton*, 9 P. D. 1; 53 L. J. P. D. 15; 5 Asp. 191.

4. Indications of Courses by Steamers (and see p. 258).

166. No. 604, on p. 258, as to the Rules of 1879, for the indications of courses by steamers, is the same as the Sea Collision Rules of 1884, Art. 19. See same in Appendix.

5. Steamer and Sailing Ship* (and see p. 258).

167. No. 609, on p. 258, as to Rules of 1879, requiring steamers to keep out of

* (13) An American ship bound for New York came into collision, at night, about fifty miles from New York, with a British

steamer bound from New York to Liverpool. The ship averred that she was close-hauled on the starboard tack, heading a little S. of

the way of sailing vessels, is the same as Sea Collision Rules of 1884, Art. 17. See same in Appendix.

168. A steamer and sailing vessel, on opposite courses, came into collision. The sailing vessel saw the steamer a good distance off port to port, and observing that the steamer took no steps to avoid her, the sailing vessel, when so near that it was dangerous to keep her course, ported. The steamer shortly afterwards starboarded. *Held*, that the steamer was alone to blame, as it was her duty to keep out of the way either by starboarding or porting; and that she had a bad look-out. *The Velasquez*, L. R. 1 P. C. 494; 4 Moore, P. C. C. N.S. 426.

6. *Steamer with Ship in tow, and Sailing Ship* (and see p. 260).

169. No. 620, on p. 260, as to Rules of 1879, requiring steamers with ships in tow to keep out of the way of sailing vessels, is the same as Sea Collision Rules of 1884, Art. 17. See same in Appendix.

8. *Sailing Ships on opposite tacks.*

(a) *Both free* (and see p. 261).

170. No. 624, on p. 261, as to Rules of 1879, when both vessels are running free, is the same as Sea Collision Rules of 1884, Art. 14 (c). See same in Appendix.

(b) *Both close-hauled* (and see p. 261).

171. No. 629, on p. 261, as to the Rules of 1879, when both vessels are close-hauled, is the same as Sea Collision Rules of 1884, Art. 14 (b). See same in Appendix.

172. Collision between two sailing vessels, the B. on the starboard tack and the W. on the port tack. Each vessel kept her reach until the collision was inevitable. *Held*, in the Privy Council, overruling the judgment of the court below,

that the B. was close-hauled, and, therefore, it was the duty of the W. to get out of her way, and that she was to blame for not having done so. *The Byfoged Christensen — The William Frederick*, 4 App. Cas. 669; 4 Asp. 201.

(c) *One free, the other close-hauled* (and see p. 262).

173. No. 638, on p. 262, as to the Rule of 1879, when vessels are on opposite tacks for the one free to give way to the one close-hauled, is the same as Sea Collision Rules of 1884, Art. 14 (a). See same in Appendix.

(d) *One having the Wind aft* (and see p. 263).

174. No. 643, on p. 263, as to the Rule of 1879, for the ship which has the wind aft to keep out of the way of the other ship, is the same as Sea Collision Rules, 1884, Aug. 14 (c). See same in Appendix.

9. *Sailing Ships on the same tack* (and see p. 263).

(a) *Both free.*

175. No. 647, on p. 263, as to the Rules of 1879, that when both sailing ships are running free on the same tack, the ship to windward of the other shall give way to that other, is the same as Sea Collision Rules, 1884, Art. 14 (d). See same in Appendix.

(c) *One free, the other close-hauled* (and see p. 264).

176. No. 652, on p. 264, as to the Rules of 1879, as to the vessel free giving way to the vessel close-hauled, is the same as Sea Collision Rules of 1884, Art. 14 (d). See same in Appendix.

W., that she saw the lights of the steamer on her starboard bow, at a distance of several miles, and kept her course till just as the vessels were coming together, when her helm was altered, but too late to affect her course. The steamer averred that she was heading E. by S. $\frac{1}{4}$ S. when she saw the green light of the ship two or three miles distant, a little on the port bow, that her helm was ported, but the bearing of the light was not changed, that when the collision was

inevitable her helm was put hard a-port, and her speed checked, but not before, and she struck the ship on the starboard bow, and sunk her. *Held*, that the steamer was to blame in continuing to port, although the bearing of the ship's light was not changed, and in not stopping until the collision was inevitable. *Dyer v. The National SS. Co.*, 4 Asp. 27; Circuit Court of New York. [AMERICAN.]

(d) *One having the Wind aft* (and see p. 264).

177. No. 655, on p. 264, as to the Rules of 1879, as to the vessel having the wind aft keeping out of the way of the other ship, is the same as Sea Collision Rules of 1884, Art. 14 (e). See same in Appendix.

10. *Overtaking Ship* (and see p. 264).

178. No. 657, on p. 264, as to the Rules of 1879, as to the overtaking ship keeping out of the way of the overtaken ship, is the same as the Sea Collision Rules of 1884, Art. 20. See same in Appendix.

179. Where a vessel is both overtaking and crossing, the overtaking rule (Art. 20 of the Regulations of 1879 and 1884) is to prevail. *The Seaton*, 9 P. D. 1; 53 L. J. P. D. 15; 5 Asp. 191.

180. Collision between two sailing vessels, the R. and the N., the N. overtaking the R. The R. commenced tacking when at least half a mile from the N., but missed stays, and was struck in her stern. *Held*, that the N., as the overtaking vessel, was to blame. *The North*, 1st Nov. 1885.

181. It does not follow because a vessel misses stays, that her crew are to blame for her having done so. *Ibid*.

182. Action by the owners of the French steamer S. A. against the steamer S. in respect of a collision in the River Usk. The S. A. was going down the river against the flood tide ahead of the S., and stopped to pick up a pilot boat a few turns astern, her whistle at the same time being blown to call the attention of those on board the S. to her manœuvres. By the reverse action of her screw her head canted slightly across the river to starboard, but there was plenty of room left on each side of her for the S. to pass clear. The S. however struck and damaged the S. A. on the starboard side. *Held*, that the S. A. performed a common manœuvre of stopping to pick up her pilot boat, and did so in a proper manner, at the same time whistling to warn the S. astern of her; that there was ample room for the S., if properly navigated, to have passed clear on either side of her, and plenty of time for the captain of the S. to have stopped and reversed his engines and so avoided the collision, and that the S. was solely to blame. *The Solent*, 22nd Jan. 1885.

12. *Duty of the Ship out of whose way the other is to keep* (and see p. 268).

183. No. 682, on p. 268, as to the Rules

of 1879, that when one ship is to keep out of the way the other ship is to keep her course, is the same as Sea Collision Rules of 1884, Art. 22. See same in Appendix.

184. The words "keep her course," in Art. 22, mean that a vessel is to keep in the same direction as before. It has nothing to do with the question of speed. *The Beryl*, 9 P. D. 137 (C. A.); 53 L. J. P. D. 75; 5 Asp. 321.

Part VIII.—IN PORTS, HARBOURS AND DOCKS.

1. Steamers in Narrow Channels.

1. Rules of 1879.

(a) *Generally* (and see p. 273).

185. Article 21 of the Regulations, 1880, is applicable to steamers entering or coming out of Falmouth Harbour. *The Clydach*, 5 Asp. 336; 51 L. T. 668.

186. The Strait of Messina is a narrow channel within the meaning of the above Article. As to what particular width and length will constitute a narrow channel, *quære*. *The Rhondda*, 8 App. Cas. 549; 5 Asp. 114.

186*a*. The steamer A. L. improperly kept on the port side of a narrow channel, in breach of Art. 21. The steamer R. coming from the opposite direction hard-a-ported her helm, and this would have determined the risk of collision but for the action of a variable current. On discovering that the R. was not obeying her helm her engines were reversed, but too late to prevent a collision. *Held*, that there had been no infringement of Arts. 16 or 18 by the R. and that the A. L. was alone to blame. *Ibid*.

187. The Bristol Channel, in the neighbourhood of the English and Welsh grounds, held to be a narrow channel within the meaning of Art. 21. *The Brooklyn City*, 12th June, 1885.

3. Harbours, Docks, and Piers.

3. *Actions by Dock Proprietors* (and see p. 282).

188. By the Regulations for Falmouth Harbour, masters of vessels are to cast off and remove them when required, and in the event of refusal they may be removed by the dock master, and vessels are to strike their yards and masts if required.

The master of the E. was desired by the dock master to remove her to the western pier, and to strike his topgallant masts, &c. On his refusal, the vessel having only three persons on board, the dock master removed her to the western pier, where, during a gale, she broke from her moorings and did damage to the wharf. *Held*, that the master was bound to obey the order and assist in the removal of the ship, even though, if the interests of the ship alone were to be considered, such removal was injudicious; that it was the duty of the master to have kept a sufficient crew on board to protect his ship against ordinary perils; that the damage was caused by the negligence of the master, and his refusal to obey the orders of the dock master; and that the vessel was liable for the damage. *The Excelsior*, L. R. 2 A. & E. 268; 3 Asp. 151.

189. The respective duties of a dock company and the master of a ship depend in a measure upon the actual condition and place of the dock, as well as upon the statutes which regulate their authority. *Ibid.* 3 Asp. 154.

4. Actions against Dock Proprietors.

(a) Generally (and see p. 283).

190. The port or harbour of W., in New Zealand, belongs to the government, who have the control and management of it, with power to remove obstructions, and the public have a right to navigate therein, subject to the harbour regulations and without payment of harbour dues; the staiths and wharves belong to the government, which receives wharfage and tonnage dues in respect of vessels using them. *Held*, that it was the duty of the government to take reasonable care that vessels using the staiths in the ordinary manner could do so without damage. *Reg. v. Williams*, 9 App. Cas. 418.

191. Reasonable care is not shown when after notice of danger at a particular spot no inquiry is made as to its existence and extent, and no warning is given. *Ibid.*

192. The principle of liability for negligence established by *Parnaby v. Lancaster Canal Co.*, 11 A. & E. 223; and *The Mersey Docks Trustees v. Gibbs*, L. R. 1 H. L. 93, approved of and applied. *Ibid.*

193. The R. was anchored in Falmouth outer harbour, and was to be beached in the inner harbour. S., the harbour master, directed the master of the R. where to beach her, and before the R.

left the outer harbour S. came on board, although a Trinity pilot was there. When the R. arrived near the place where she was to be beached, S. gave directions as to the lowering of her anchor. The R. overran her anchor, and grounded on it just outside the jurisdiction of the harbour commissioners. She sustained damage, and her owners brought an action against the harbour commissioners and S. in respect of such damages. *Held*, that there was negligence on the part of S., and that the place where the R. grounded was outside the jurisdiction of the harbour commissioners. *Held*, also, that the duties of S. as harbour master comprised directions as to the mooring and beaching of vessels; that, by giving directions when he went on board, S. had resumed his functions as harbour master; that he was guilty of negligence; and that he and the commissioners were liable for the damages. *Held*, further, that S. was personally liable as a volunteer. *The Rhosina*, 10 P. D. 24; affirmed on appeal, *Ibid.* 131; 5 Asp. 460.

194. Action by the owners and underwriters of the B. A., of 1,700 tons, for damages for the loss incurred by the sinking of the vessel in the Royal Victoria Dock. The vessel arrived in the Royal Victoria Dock with a cargo early in December, and at the end of some ten days was moved to another jetty, which was admittedly much more exposed to the then prevailing gales from the west. The jury found that the B. A. was not properly moored at the second jetty; that the dock company was guilty of negligence in the mooring, and undertook the responsibility of the mooring; and that there was no negligence on the part of the plaintiffs' servants. Judgment for plaintiffs accordingly. *M'Cunn v. London & St. Katherine's Dock Co.*, 19 May, 1886.

194a. Action by the owners of the schooner St. D. against the Sutton Harbour Improvement Company to recover damages for injuries sustained by the St. D., through grounding in Sutton harbour in December, 1884. The plaintiffs alleged that the St. D. entered the harbour in tow of a steam-tug; that while proceeding up the harbour those in charge of her were directed by the harbour master's assistant to moor at certain buoys, and that while doing so the vessel took the ground on a large stone or rock in the fairway of the harbour, and as the tide fell became so strained that she filled with water. *Held*, that the St. D. came into

the harbour at a time when there was not sufficient water for her, and did so at her own risk; that she was not acting under the orders of the harbour master's assistant; that she had grounded in the fairway because there was not enough water for her; that the fairway was not a proper place for vessels to lie; and that the harbour authorities could not be supposed to warrant that vessels lying there would not suffer damage. Judgment for the defendants. *The St. Devenick*, Nov. 18, 1885.

5. Powers of Harbour and Dock Masters.

(a) *Generally* (and see p. 284).

195. See also tit. OWNERS, Pt. II. p. 1233.

4. Ships anchoring or weighing Anchor.

1. *Generally** (and see p. 287).

196. Collision between the barque A. coming to an anchorage, and the N. at anchor. *Held*, in the court below, where there was a difference of opinion between the Trinity Masters, that the officer of the A. was not acting wrongly in bringing his vessel to anchor in the Downs among the shipping; but *held*, in the Court of Appeal, that a vessel about to come to anchor has to consider not only her own safety but also that of other vessels already at anchor, and whether she would be justified in causing peril to them must depend upon circumstances. The court put the question to its assessors—Ought an officer of ordinary care and skill, having regard to the safety of his own ship and also of the ships at anchor in the Downs, considering the state of the weather and the fact that his anchor had dragged under Dungeness, and that he had only one anchor left available, to have entered the Downs to endeavour to anchor there ahead of ships at anchor without the assistance of the tug which he had the opportunity of employing? The assessors answered in the negative, and the court *held*, that the A. might have made for Margate Roads, where she would have been better shel-

tered, but that the master endeavoured to anchor in the Downs for his own convenience, to communicate with the shore, and not to go too much out of his way, and was therefore to blame for the collision. *The Annot Lyle*, 11 P. D. 114.

6. Ships anchored or moored.

1. *Generally* (and see p. 289).

197. The defendant, under a local act, constructed a solid pier and floating landing-stage. The latter was moored by anchors and chains, one of the mooring chains was insufficiently buoyed to mark the anchor's position under the water. *Held*, in an action for injury by the anchor to a boat properly navigated, that there was a cause of action against the defendant for negligence in not sufficiently buoying the anchor. *Jolliffe v. Wallasey Local Board*, L. R. 9 C. P. 62; 43 L. J. C. P. 41; 29 L. T. 582.

198. In an action by the owners of the W. and her cargo, against the S. for damages caused by the W. coming in contact with the anchor of the S., the S. held to blame for having left her anchor unbuoyed. *Clarke v. Scattergood*, Marsden, 243.

198. See also No. 30, p. 2358.

7. Launch.

2. *In the Mersey* (and see p. 292).

200. In the case of a launch in the Mersey a tug should be in attendance decorated with flags, so that approaching vessels may know that a launch is taking place. *The George Roper*, 8 P. D. 119; 52 L. J. P. D. 69.

Part IX.—DUTIES, &c., IN PARTICULAR LOCALITIES.

2. Gloucester and Berkeley Canal.†

1. *Generally*.

201. The docks, property and works of the company, lie to the southward of a

* (14) For Admiralty warrants under 54 Geo. 3, c. 159, s. 2, making regulations for the anchoring and mooring of ships in certain harbours, see those harbours under their respective names in the L. R. Index to London Gazette, p. 1197, and elsewhere.

† (15) The bye-laws of the company, al-

lowed January, 1871, and set forth, on pp. 293, 294, in Nos. 923 to 950a, are annulled, and the bye-laws, allowed 21 Nov. 1884, above set forth, have been issued in lieu thereof. To avoid intricacy of reference the whole of Chap. 2 in Vol. I. is reprinted above.

line drawn east and west through West-gate Bridge over the river Severn at Gloucester. See Bye-laws, allowed 21st November, 1884, of the Sharpness New Docks and Gloucester and Birmingham Navigation Company, made under the Gloucester Canal Acts, 1870 and 1874, the Sharpness Docks Act, 1879, and the acts incorporated therewith. Preamble.

202. As to all vessels at the entrances of or within the canal, being there at the risk of their masters or owners, *Ibid.* No. 6.

203. As to the power of the harbour-master to regulate by which of the two entrances to the canal from the Severn vessels shall enter, see 33 & 34 Vict. c. 61, s. 54.

204. Owners of vessels and floats of timber, and masters of vessels, are liable for all damage done to the canal by their vessels or floats of timber, or by any person employed about the same, and the vessel or floats of timber causing such damage may be detained as security for the damage done. The amount of damage may be recovered by distress and sale. See 10 Vict. c. 27, ss. 74, 75.

205. As to requirements that vessels are to be seaworthy, to have a sufficient crew, and to have no part of their side cloths under water, see Bye-Laws of Gloucester and Berkeley Canal Navigation Company, 1884, No. 2.

206. All steamers shall sound their whistle on approaching any turn in the canal, and until they are round the turn. *Ibid.* No. 4, sub-n. 13.

207. No master shall navigate his vessel in the canal under sail. *Ibid.* No. 4, sub-n. 1.

208. As to vessels with lowering masts and gear, unless from the nature of the cargo it cannot be done, lowering their masts before commencing to navigate the canal, and keeping them lowered until they have passed under the Severn Bridge, and that no such vessel shall be taken in tow until this has been done; but this does not apply to vessels having topmasts or mizens: *Ibid.* sub-n. 16.

209. Penalty of £10, after notice, against any master of a vessel entering the canal, or approaching the piers without his vessel being dismantled, as directed by the harbour-master. See 10 Vict. c. 27, s. 59.

210. The master of any vessel shall send such hands ashore as are necessary to assist in opening and closing the

bridges, locks and gates. See Bye-Laws of November, 1884, No. 4, sub-n. 10.

211. As to vessels exceeding 150 tons register passing along the canal or through any of the locks or bridges, having proper persons with ropes on shore to check them; as to no wire rope being allowed as a check rope, and as to fenders, *Ibid.* sub-n. 9, 12.

212. Barges and boats without masts, or having their masts lowered, when tracked by other than steam-power, shall be allowed to keep on the towing-path side of the canal when other vessels are passing them. *Ibid.* sub-n. 6.

213. No vessel or raft shall be tracked or propelled on the canal by other than manual or horse-power, unless by permission of the company. *Ibid.* No. 29.

214. Whose officers shall determine the order and manner thereof. *Ibid.* No. 30.

215. As to no trawling for fish being allowed in the canal, and penalty against master doing so, or resisting search for nets by any officer of the company. *Ibid.* No. 4, sub-n. 21.

216. The penalty against any person offending against any of the bye-laws, where the sum is not specifically stated, is a sum not exceeding £5. *Ibid.* Preamble.

2. Pilotage.

217. Pilotage in the canal is not compulsory, but if any person besides the master is employed in that capacity it must be one of the licensed pilots. The company will not be responsible for any damage done to or by any vessel whilst in the charge of a licensed pilot. *Ibid.* No. 10.

3. Speed.

218. As to passenger steamers meeting vessels or trains of vessels slackening their speed; and as to the speed of the tug when overtaken being slackened, and every facility given for the passenger steamer to pass, *Ibid.* No. 4, sub-n. 14.

4. Easing and stopping of Engines.

219. As to vessels passing down the canal outward bound to the old entrance being stopped 250 yards from the Lock Gates, and having good and sufficient stern ropes fast to the shore, *Ibid.* No. 4, sub-n. 8.

5. *Steamers and Vessels in Tow.*

220. See Nos. 212, 213, 218, *supra*, and Nos. 223, 224, and 243, *infra*.

6. *Lights.*

221. For limitations as to vessels navigating the canal from one hour after sunset until one hour before sunrise, and the lights they are then to carry, viz., a white light at the bow and a red light at the stern, or if a train of more than one vessel the white light at the bow of the first, and the red light at the stern of the last, see Bye-laws of November, 1884, No. 3.

7. *Steering.*

222. The rule of the way on the canal, except as otherwise ordered in Regulations, Nos. 4, 5, and 6 (for which see No. 212, *supra*, and Nos. 223—225, *infra*), is, that when vessels meet each other, those going towards Gloucester shall keep on the towing-path side of the canal, and those going towards Sharpness on the opposite side. *Ibid.* No. 4, sub-n. 2.

223. Steamboats propelled only by their own power shall observe rule No. 2 in passing steamboats similarly propelled; but in meeting or passing all vessels that are being towed they shall keep on the side of the canal opposite the towing-path. *Ibid.* No. 4, sub-n. 5.

224. Vessels not using check-lines, when they shall require to pass vessels employing check-lines, shall pass on the side of the canal opposite the towing-path, whichever way they may be going. *Ibid.* No. 4, sub-n. 4.

225. Whenever two vessels meet, or will probably meet, in a part of the canal where there is not room to pass, the direction of any officer or bridge-keeper of the canal shall be obeyed. *Ibid.* No. 4, sub-n. 7.

8. *Vessels Overtaking or Overtaken.*

226. When one vessel overtakes another, the one overtaken shall haul over to the side of the canal opposite the towing-path, and there remain, if necessary, until the other has passed. *Ibid.* September, 1884, sub-n. 3.

8a. *Obstructions.*

227. If any vessel shall be fastened or moored, or shall be in the Severn, near any of the company's locks or basins, or shall be sunk in any part of the canal, or of the river contiguous thereto, so as to obstruct or interrupt the passage of ves-

sels through the canal, the master shall forfeit 20s. for every hour of such obstruction wilfully continued, after written notice of the company; and the company's officers may remove the same, and unload the vessel, if necessary; and seize and detain such vessel or lading for payment of the charges. See 33 & 34 Vict. c. 61, s. 68; 10 Vict. c. 27, s. 66.

9. *Powers of Harbour Masters, Bridge Keepers and Others.*

228. As to the general powers of harbour masters of the canal, see Bye-laws of 21 November, 1884, No. 1.

229. As to their powers for regulating the time at which, and the manner in which any vessel shall enter into, go out of, or lie in or near to the canal, and within the prescribed limits, if any, and its position, mooring, or unmooring, placing and removing, whilst therein, *Ibid.*

230. As to their powers for regulating the manner in which any vessel entering the canal, or coming to the piers, shall be dismantled, *Ibid.*

231. Masters of vessels within the canal, or at or near the piers, must regulate their vessels according to the directions of the harbour master. Penalty against masters for breach, £20. See 10 Vict. c. 27, s. 53.

232. See also Nos. 203, 209, 213, 214, 215, 225, 227, *supra*, and Nos. 233—240, *infra*.

10. *Vessels Mooring, Docking, or Unmooring.*

233. Masters of vessels in the canal, or at or near the piers, not having proper hawsers, tow-lines, or fasts properly fixed after notice from the harbour master, are liable to a penalty of £10. See 10 Vict. c. 27, s. 61.

234. As to penalty, if any vessel in the canal is improperly fastened or moored or left without a competent person in charge, see Bye-laws of November, 1884, No. 7.

235. No vessel shall be moored on the towing-path side of the canal, except with the consent or by order of the harbour master. *Ibid.* No. 4, sub-n. 15.

236. As to no person being allowed, without the authority of the harbour master, to unmoor or remove any vessel in the canal, or cut, cast off, or break any rope, chain, or fastening; and the offender is also liable for all damage beside penalty: see Bye-laws of September, 1884, No. 8.

237. As to masters of vessels after notice from the harbour master, removing their vessels from the canal when it is deemed necessary to repair or cleanse the canal; penalty for default, not exceeding £10; and the harbour master may remove it at the expense of the owner or master: see 10 Vict. c. 27, ss. 64, 65.

238. No vessel, except by permission of the harbour master, shall lie in either entrance to the canal. Penalty, £5 against masters for non-removal when required by the harbour master; and further penalty of £1 every hour they remain. *Ibid.* s. 63.

See also No. 210, *supra*, and Nos. 240—243, *infra*.

10a. Rafts of Timber.

239. No person shall float any timber upon the canal, or suffer the lading or cargo of any vessel entering or using the canal, to project on the outside of, or beyond the bulwarks of such vessel, so as to interfere with or obstruct the passage of any other vessel; but shall immediately upon notice given to him for that purpose remove such obstruction. See Bye-laws of November, 1884, No. 4, sub-n. 11; No. 31, *Ibid.* sub-nn. 1—9.

11. Sharpness Docks.

240. As to vessels stopping near the bridge, and as to the signals for opening it, see Bye-Laws of September, 1884, No. 4.

4. The Mersey.

6. Lights (and see p. 296).

241. Every vessel exceeding ten tons in the Mersey is to obey the Sea Collision Rules of 1884. See Order in Council of June 24, 1885, as to the Mersey, r. 1.

241a. The rule on p. 297, No. 971, as to lights for canal flats and vessels without masts while towed, is the same as *Ibid.* r. 2.

242. The rule on p. 296, No. 970, as to lights for steamers towing, is the same as *Ibid.* r. 3.

242a. The lights for vessels at anchor on p. 297, No. 973, are substantially the same as those in *Ibid.* r. 4. The lanterns are to be eight inches in diameter, and the light visible a mile. *Ibid.*

234. The light mentioned on p. 297, No. 972, as to be continuously shown by an overtaken vessel, is the same as *Ibid.* r. 5.

243a. The lights mentioned on p. 297,

No. 976, as marking obstructions, are the same as *Ibid.* r. 6, and the signals in No. 979, are the same. *Ibid.*

7. The Thames.

8. Construction and Effect of Breach.

244. The Thames Rules do not fall within the operation of s. 17 of the M. S. Act, 1873 (c. 85), and therefore, though the court found in an action of collision that a steamer ought to have reversed under Rule 14, yet it did not find the steamer to blame, as reversing would not have made any difference in regard to the collision. *The Harton*, 9 P. D. 44; 5 Asp. 213; *The Margaret*, 9 P. D. 47; 8 *Ibid.* 126; 54 L. J. P. D. (H. L.) 18; 53 *Ibid.* 17; 52 *Ibid.* 65; 5 Asp. 137, 204, 371.

10. Speed of Steamers.

(d) Slackening on Rounding Points (and see p. 302).

245. A collision occurred off Blackwall Point between the steamer C. S., proceeding down the river against the tide, and the steamer M., coming up the river with the tide. It was alleged that the C. S. had not complied with Rule 23 of the Thames Rules. The judge of the Admiralty Division held the M. alone to blame. The Court of Appeal held that the C. S. had infringed Rule 23, and was also to blame. The House of Lords held that, assuming the C. S. had infringed the rule, her doing so had not, in fact, contributed to the collision, and that, therefore, she was not to blame, as the Thames Rules are not within the purview of s. 17 of the M. S. Act, 1873 (c. 85). *The Margaret*, 9 App. Cas. 873; 8 P. D. 126; 9 *Ibid.* 47; 52 *Ibid.* 65; 54 L. J. P. D. (H. L.) 18; 53 L. J. P. D. 17; 5 Asp. 137, 204, 371; 52 L. T. 361; 33 W. R. 281.

246. Notwithstanding the heading prefixed to the Thames Rules following Rule 16, the application of Rule 23 is not confined to the seaward side of a line drawn from Blackwall Point to Bow Creek. *Ibid.* 54 L. J. P. D. (H. L.) 18; 5 Asp. 371.

247. A "point" within the meaning of the Thames Rules, No. 23, begins where a vessel going round the point or promontory commences using her steerage power for the purpose of rounding, and it ends where the necessity for using that steerage power ceases. The words "before rounding" apply not only before a vessel begins to round the point, but they include

the whole time during which she is rounding it. *Ibid.* 9 P. D. 47; 53 L. J. P. D. 17; 5 Asp. 204.

248. *Quære*, how far is the above strictly accurate? *Ibid.* 54 L. J. P. D. (H. L.) 18; 5 Asp. 371.

249. The meaning of the words "ease their engines and wait" in Rule 23 of the Thames Rules is that the vessel shall go as slowly as possible consistent with safety. *Ibid.* 9 P. D. 47; 53 L. J. P. D. 17; 5 Asp. 204.

250. *Quære*, is not the above too strict a construction of the words? *Ibid.* 54 L. J. P. D. (H. L.) 18; 5 Asp. 371.

16. *Steering.*

(d) *Steamers crossing and Vessels going up or down* (and see p. 304).

251. In an action for damages from a collision in the River Thames between two steamers, *held*, that one vessel was to blame under Art. 24 of the Thames Rules, which provides that "steam vessels crossing from one side of the river towards the other side shall keep out of the way of vessels navigating up and down the river." *The Hispania*, July 24, 1885.

25. *Barges.*

(b) *Complement of Crew* (and see p. 308).

252. By the Thames watermen's bye-laws as to the navigation of barges on the Thames, it is provided by Bye-law 66, that no barge, &c. shall be navigated unless there be in charge of it a lighter-man licensed or an apprentice qualified. By the Bye-laws of the Company of Watermen, No. 35, it is required that in all cases in which it is required that two able and skilful persons shall be employed in the navigation, one waterman or lighter-man licensed, or an apprentice licensed, shall be deemed to be able and skilful persons. By the Bye-laws of the Thames Conservators, No. 16, it is required that all barges shall have at least one competent man on board constantly, and, when under way, one man in addition to assist in the navigation. In this case there was one licensed man on board

and a longshore man not licensed. The magistrate convicted the owners, but stated a case. *Held*, that under the 16th Bye-law of the Conservancy Rules of 1872 and Bye-law 35, the two men to be on board must be competent, but a competent man did not mean a licensed man. *Perkins v. Gingell*, Q. B. D. Nov. 4, 1885.

8. The Tyne.

1. *Generally** (and see p. 308).

253. A person while intoxicated shall not navigate any vessel. See Bye-laws of the Tyne Improvement Commission of 1884, No. 96.

254. A competent person in charge shall at all times, both by day and by night, be on board every boat or other vessel lying at or alongside any stairs, causeway or landing-place, and on board every sea-going vessel, whether serviceable, unserviceable, stranded, disused, or laid up. *Ibid.* No. 78.

255. Every steam vessel and every sailing vessel while under way shall be manned by a properly-qualified master, and a sufficient number of able-bodied and experienced men. *Ibid.* No. 16.

256. Every vessel before entering and while in the dock shall have its sails furled, its anchors stowed on deck, its standing and flying jibboom and mizen-boom rigged close. *Ibid.* No. 106.

257. For provisions for the control and management of the moorings by the harbour master, see the Tyne Improvement Act, 1852 (c. 110, L.), ss. 16—20.

258. As to the recovery of damages and penalties for damaging moorings, cutting ropes, and destroying boats of the commission, *Ibid.* ss. 23—26, 32.

259. As to the liability of the owner or master of any vessel or float of timber for such damages committed by persons on board, *Ibid.*

260. For general provisions as regards vessels in the Northumberland and Albert Edward Docks, see Bye-laws of the Tyne Improvement Commission of 1884, Nos. 111, 112, 117, 118, 125, 126, 128, 138, 147.

261. For powers to make bye-laws and

* (16) The Bye-laws of the Tyne Commission, dated 12 December, 1867, sanctioned 9 May, 1868, and referred to in c. 8, pp. 308—313, are annulled by the Bye-laws of 1884
P.

of the same Commission.

(17) Extracts from the Bye-laws of 1884 under the same heads as those in pp. 308—313, are set forth in the text above.

for what purposes, and to impose penalties for breach, see the Tyne Improvement Act, 1865 (c. 274, L.), s. 53.

262. For provisions authorizing the commissioners to regulate the rate of speed of steamers on the Tyne, and penalties for breach, see the Tyne Improvement Act, 1861 (c. 91, L.), ss. 64, 65.

2. *Look-out.*

(a) *Generally.*

263. The master of any steam vessel carrying passengers shall, while the same is under way, be in such a position above the deck as to have an unobstructed view all round, clear of the vessel. See Bye-laws of Tyne Improvement Commission of 1884, No. 51.

264. Every steam vessel and every sailing vessel while under way shall during the day-time have one person, and during the night-time two persons, properly qualified, stationed at the bow as a look-out, and to give notice in due time of any obstruction or danger. *Ibid.* No. 46.

(b) *In Fog, Mist, or Snow.*

265. Every steam vessel and every sailing vessel while under way shall during the day-time have one person, and during the night-time, or in time of fog or snow, two persons, properly qualified, stationed at the bow as a look-out, and to give notice in due time of any obstruction or danger. *Ibid.*

3. *Steamers and Sailing Vessels.*

(a) *Generally.*

266. Every steam vessel and every sailing vessel while under way shall be manned by a properly-qualified master and a sufficient number of able-bodied and experienced men. *Ibid.*

See also No. 263, *supra*.

4. *Speed of Steamers.*

(a) *Generally* (and see p. 309).

267. Sea-going steam vessels shall not be navigated in the port above the low lighthouse at a greater speed over the ground than six knots or seven statute miles per hour, whether going with or against the tide. *Ibid.* No. 25.

(b) *Steamers and Vessels in Tow or Sailing Vessels.*

268. When any steam vessel (except a

steam vessel when towing sailing vessels) is approaching any sailing vessel or steam-tug with sailing vessels in tow proceeding in the opposite direction, the speed of such steam vessel shall, if necessary, be slackened when it is within thirty yards of, and until it shall have passed, the sailing vessel, or steam-tug and towed vessels. *Ibid.* No. 24.

5. *Easing or Stopping of Engines.*

(a) *Vessels in opposite Directions.*

269. See No. 302, p. 2382.

(b) *Overtaking or Overtaken Vessels.*

See No. 304, p. 2382.

(c) *For Pilot.*

270. Every steam-tug, or other steam vessel, towing a vessel into the port, not having a pilot already on board, and whether showing a signal for a pilot or not, shall be eased or stopped if necessary, to enable a pilot to board the towed vessel, unless the master thereof shall have previously informed the master of the steam-tug or other steam vessel that he did not intend to take a pilot, but unless prevented by stress of weather, every pilot intending to take charge of a vessel coming into the port shall board such vessel outside the port, that is, seaward of the ends of the Tyne piers; and every pilot in charge of a vessel going to sea shall not leave such vessel within the port. See Bye-laws of Tyne Improvement Commission of 1884, No. 29.

(d) *For Divers, Dredgers, &c.*

271. For provisions for all steamers easing their engines, and for steamers and all other vessels keeping well clear when passing the divers' boats, diving bells, screw keels, weigh keels, dredgers, or other craft or appliances of the commissioners, at work or being used, and for the engines of steamers to go dead slow for the distance therein named, and for a white flag being hoisted on board the boat or appliance in use at least six feet above the highest part of the vessel or appliance. *Ibid.* No. 40.

271a. For further provisions that when the white flag is so exhibited within fifty yards of the end of either the north or south pier, no boat or other vessel shall pass between such flag and the pier, but shall be kept outside of such flag; and

well clear of the commissioners' craft and appliances; and that no vessel shall, even if the flag is not so exhibited, pass between the buoy, at the end of the submerged rubble base of either the north pier or south pier, and such pier. *Ibid.*

(e) *For Obstructions.*

272. When sunken vessels or other obstructions are being lifted or removed, or moorings drawn or fixed by or under the direction of the commissioners' officers or servants, all steam vessels shall go dead slow when within 100 yards of the place where the operation is being performed; and all vessels are to be kept well clear. *Ibid.* No. 41.

(f) *Launch.*

273. See p. 309, No. 1089.

6. *Steamers and Vessels in Tow.*

(a) *Generally.*

274. A steam-tug or other steam vessel shall not tow at one time two or more vessels in line so that the stern of the hindmost vessel is distant more than 450 feet from the stern of the towing vessel, or two or more vessels abreast, or rafts exceeding 250 feet in length, and 40 feet in breadth. See Bye-Laws of Tyne Improvement Commission of 1884, No. 32.

275. A steam-tug or other steam vessel shall not tow at one time more than one sea-going vessel of a registered tonnage exceeding two hundred tons (200 tons). *Ibid.* No. 31.

276. Every steam vessel having any vessel in tow shall attend upon such vessel until it is properly moored or secured. *Ibid.* No. 47.

(b) *Tow-line.*

277. The scope of tow-line used in towing any hopper barge in any part of the river above the Low Lighthouse shall not exceed sixteen fathoms. *Ibid.* No. 73.

278. Subject thereto, a tow-line shall not be used with a scope exceeding twenty fathoms for towing any steam or other vessel, except eastward of a line running due south from the Low Lighthouse at North Shields. *Ibid.* No. 30.

(c) *Steamers and Hopper Barges.*

279. A red flag shall be hoisted on every steam hopper barge and on every steamer having a hopper barge in tow

when the ballast or substance therein is about to be, and is being, discharged; and the doors of such hopper barge shall not be struck for the purpose of discharging until such flag is hoisted. *Ibid.* No. 74.

280. As to sounding lines, in good order and properly marked, being carried on every hopper barge and steamer towing it; and as to the depth of water being ascertained to be not less than fifteen fathoms before the barge is discharged, *Ibid.* No. 75.

7. *Vessels out of Command.*

(a) *Drifting.*

281. A vessel shall not be allowed to drift in any part of the river or port. *Ibid.* No. 35.

8. *Lights.*

282. Every steamer while steaming under way and engaged in towing any other vessel during night time shall, in addition to the lights prescribed by Bye-law 12 (for which see No. 288, *infra*), carry on or in front of the foremast, or if there be no foremast on the staff mentioned in that bye-law, a second bright white light, similar to and placed vertically at least three feet above or below the bright white light prescribed in that bye-law. *Ibid.* No. 13.

283. The owner of any landing-stage, or place for the embarkation or disembarkation of passengers upon or from any vessel, shall provide sufficient gangways for the accommodation of such passengers, and shall keep such landing-stage or place well and sufficiently lighted while in use during night time. *Ibid.* No. 56.

284. Every steamer shall be provided with a steam whistle or other efficient steam sound signal, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog-horn, and with an efficient bell. Every sailing vessel shall be provided with a similar fog-horn and bell. In fog, mist, or falling snow, whether by day or night, the following signals shall be used:—
(a) Upon a steamer under way a prolonged blast shall be made with the steam whistle, or other steam sound signal, at intervals of not more than two minutes. (b) Upon a sailing vessel under way a like blast shall be made with the fog-horn at intervals of not more than two minutes. (c) Upon a steam vessel and a sailing vessel, if and

when anchored, the bell shall be rung at intervals of not more than two minutes. See Bye-laws of Tyne Improvement Commission of 1884, No. 18.

285. Upon every vessel at anchor, and upon every outside vessel of a tier of vessels moored, there shall at night be exhibited, where it can best be seen, but at a height not exceeding twenty feet from the upper deck, a bright white light in a globular lantern, of eight inches in diameter, so as to show a uniform and unbroken light all round the horizon, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least one mile. If the harbour master shall consider it advisable for the safe navigation of the river that a like light shall be exhibited during night upon any other vessel moored, whether one of a tier or not, and shall leave an order on board such vessel to that effect, such light shall be exhibited accordingly, and in a similar position to that hereinbefore prescribed. This bye-law, except the last preceding paragraph thereof, does not apply to boats. *Ibid.* No. 16.

286. Every steamer in tow, or under sail only, and every sailing vessel when under way, is to carry side lights only. *Ibid.* No. 14.

287. For provisions that upon every open fishing and other boat, and every raft under way at night shall be exhibited the proper green and red side lights, or a lantern with red and green slides, *Ibid.* No. 17.

288. Steamers between sunset and sunrise while under way are to carry a white light at the foremast head, and red and green lights on the port and starboard sides, similar to those required by the Sea Collision Rules, and the side lights are to be similarly screened. *Ibid.* No. 12.

288a. Subject to Bye-law 13 (for which see No. 282, *supra*), the under-mentioned lights, and no other light, shall be carried and displayed upon every steamer while steaming under way during night time:—(1) On or in front of the foremast, at a height above the hull of not less than twenty feet; and if the breadth of the vessel exceeds twenty feet, then at a height above the hull not less than such breadth, a bright white light, so fixed as to show a uniform and unbroken light over a horizontal arc of twenty points of the compass, and to throw the light ten points on each side of the steamer (that is to say, from right

ahead to two points abaft the beam on each side), and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles; provided always, that in the case of a steamer having no foremast, it shall be sufficient if the said white light be at a height not less than twelve feet above the hull, fixed on a staff not more than thirty feet from the stem, and in the case of a steam vessel not exceeding twelve feet in breadth, it shall be sufficient if such light be at a height not less than six feet above the hull, fixed on a staff not more than twelve feet from the stem. (2) On the starboard side a bright green light, so fixed as to show a uniform and unbroken light over a horizontal arc of ten points of the compass, and to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least one mile. (3) On the port side, a bright red light, so fixed as to show a uniform and unbroken light over a horizontal arc of ten points of the compass, and to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least one mile. The said green light and red light shall each be fitted with an inboard screen, projecting at least three feet forward from the light, so as to prevent such light from being seen across the bow of the steamer. *Ibid.*

9. Lights and Signals.

(a) Dangerous Dredgers.

289. When any dredger's working chains are taut, so as to be dangerous, the master of such dredger shall hoist, by day, a red flag, and by night a red light, on the dangerous side of the dredger, and all passing vessels shall proceed on the opposite side accordingly. *Ibid.* No. 42.

289a. As to the height and place where the danger light or signal shall be hoisted, *Ibid.*

290. As to the signal being taken down when the necessity for it has ceased, *Ibid.*

290a. For provisions that when a dredger, not working, is moored in a situation where, in the master's judgment, there is not a proper passage left, the danger signal (red flag or red light) shall be shown on the side where the passage must not be

taken, and all passing vessels shall proceed on such opposite side accordingly, and that the danger signal shall be removed so soon as the dredger is shifted, or the passage clear, *Ibid.* No. 43.

(b) *Sunken Vessel or Craft.*

291. For provisions for immediate notice of any vessel sunk or stranded in the port being sent to the nearest river police station, or to the harbour master's or dock master's office, and for exhibiting over such vessel at night two bright white lights, and during day a green flag, or wreck buoy painted green, *Ibid.* No. 86.

10. *Signals.*

(a) *By Divers, Dredgers, &c.*

292. See Nos. 289—290a, *supra*.

(b) *Steamers and Hopper Barges.*

292a. See No. 279, *supra*.

11. *Bells, Whistles, and Fog-horns.*

(a) *For Steamers.*

293. Every steamer shall be provided with a steam whistle or other efficient steam-sound signal, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog-horn and bell. See Bye-laws of Tyne Improvement Commission of 1884, No. 18.

(b) *Sailing Vessels.*

294. Every sailing vessel shall be provided with a similar fog-horn and bell. *Ibid.*

12. *In Fog, Mist, or Snow.*

(a) *Signals of Steamers and Sailing Vessels.*

295. In fog, mist, or falling snow, whether by day or night, the following signals shall be used:—(a) Upon a steamer under way, a prolonged blast with the steam whistle, or other steam-sound signal, at intervals of not more than two minutes. (b) Upon a sailing vessel under way, a like blast with the fog-horn, at intervals of not more than two minutes. (c) Upon a steamer and sailing vessel, if and when anchored, the bell rung at intervals of not more than two minutes. *Ibid.*

(b) *Speed of Steamers and other Vessels.*

296. Every vessel under way, when

overtaken by a fog, shall be navigated at a very moderate speed, and shall, as soon as practicable, be moored or anchored out of the navigable channel. Vessels shall not, without the permission of the harbour master, be got under way during a fog. *Ibid.* No. 39.

(c) *Look-out.*

See No. 265, p. 2378.

13. *Steering.*

(a) *Side of Mid-channel* (and see p. 311).

297. Every vessel under weigh shall when proceeding seaward be kept to the south of mid-channel, and when proceeding inward from sea or up the river to the north of mid-channel, and so that in either case such vessel shall, with a port-helm, always be and be kept clear of any vessel proceeding in the opposite direction. See Bye-Laws of Tyne Improvement Commission of 1884, No. 19.

298. Every steam or other vessel (whether towing any other vessel or not, or being towed), shall, unless prevented by stress of weather, be brought into the port to the north of mid-channel, and be taken out of the port to the south of mid-channel. *Ibid.* No. 20.

299. Every vessel under weigh, and required to pass over a part of the channel not reserved for its navigation, to proceed to or from any landing, mooring, or other place, shall be navigated so as to cause no obstruction or damage to any other vessel; and every vessel after reaching such place shall be navigated, as soon as practicable, on its proper side of the river. *Ibid.* No. 21.

300. Every vessel proceeding to the Northumberland, Tyne, or Albert Edward Dock, and arriving off the entrance of such dock before the signal for its admission is hoisted, must keep on either side of the navigable channel, and out of the fairway of the river or dock traffic until the signal is hoisted for its admission. *Ibid.* No. 35.

301. The meaning of No. 20 of the Bye-laws for the Regulation of the River Tyne, is that a vessel about to enter the Tyne coming from the S. is not to cross from the S. to the N. of mid-channel close up to the pier heads, but is to get on to her proper course some considerable distance outside the pier heads. A vessel ought not to cross the line of mid-channel to get on to her proper side at only two

cables length outside the pier heads.
The Harvest, 11 P. D. 14, 90.

(b) *Vessels in opposite Directions.*

302. When steamers proceeding in opposite directions are approaching each other they shall be kept on their proper sides, and, if necessary, speed slackened, the vessel going against the tide in all cases giving way to the one going with the tide; and when steamers are approaching so as to involve risk of collision, their helms shall be put to port, and, if necessary, their engines stopped or reversed. See Bye-Laws of Tyne Improvement Commission of 1884, No. 23.

(c) *Vessels crossing and turning.*

303. Every vessel crossing the river, and every vessel turning, shall be navigated so as not to cause obstruction or damage to any other vessel. *Ibid.* No. 22.

(d) *Vessels overtaking and overtaken.*

304. Every sailing or steam vessel overtaking any other vessel shall be kept out of the way of the overtaken vessel, which shall be kept on her course, and no obstruction shall be wilfully caused by the overtaken vessel to the passage of the overtaking vessel; and any vessel having passed another shall not cross the bows of the passed vessel until at such a distance as will not necessitate the stopping or easing of the passed vessel to avoid a collision. *Ibid.* No. 28.

14. *Powers of Harbour Master* (and see p. 312).

305. See Nos. 308—311, 314, 319, 329—333, *infra*.

15. *Vessels mooring, docking, or unmooring.*

306. Vessels (unless belonging to or employed by the commissioners) shall not be moored at the moorings provided for the commissioners' dredgers, hopper barges, steam-tugs, or other craft. The buoys of such moorings are painted white. See Bye-laws of Tyne Improvement Commission of 1884, No. 44.

307. Every vessel shall be and be kept properly and effectually moored whilst at any public or private mooring place, quay, wharf, jetty, staith, drop, spout, or landing place, and especially during high

winds, freshes, or accumulation of ice, and otherwise than by means of anchors, except in case of emergency. *Ibid.* No. 5.

308. No anchor shall be put down from any vessel, whether at moorings or in any other place in the port, except in case of emergency, or with the sanction of the harbour-master; and if such sanction is granted, the anchor shall be placed clear of the navigable channel, and so as not to endanger any other vessel. *Ibid.*

309. Any anchor put down shall be removed as and when the harbour-master directs. *Ibid.*

310. If any vessel parts from its anchor, the fact shall be reported to the harbour-master as soon as practicable. *Ibid.*

311. Every vessel moored or anchored, or about to be so, shall be subject to any directions of the harbour-master as to its berth or place, and manner of mooring or unmooring, or removal, or otherwise. *Ibid.*

312. Any craft, raft, boat, timber, or other obstruction shall not lie, or be placed, made fast, or moored between any tiers and the shore nearest to them, so as to prevent the free transit of any ferryboat or any other vessel, or in the river so as to form an obstruction to the approach to any public or private landing place. *Ibid.* No. 88.

16. *Vessels anchored or moored.*

(a) *Generally.*

313. A competent person in charge shall at all times, both by day and by night, be on board every boat or other vessel lying at or alongside any stairs, causeway, or landing place, and on board every sea-going vessel, whether serviceable, unserviceable, stranded, disused, or laid up. *Ibid.* No. 78.

314. The sails of every vessel, whether moored or at anchor, shall be furled; the standing and flying gibboom and mizen-boom rigged close in, and all booms and boom irons taken off the yards; the bumpkins and boats davits swung in or unshipped; and the topsail and lower yards peaked or braced sharp up, and the vessel otherwise dismantled, if and as the harbour-master directs. *Ibid.* No. 6.

315. While any steamer remains attached to any mooring buoy, mooring post, dolphin, jetty, or landing place, the engines of such steamer shall not be set in motion, so that damage may be caused

to any such moorings, vessel or thing. *Ibid.* No. 11.

(b) *Carriage of Anchors.*

316. See No. 256, p. 2377.

17. *Launch, Regatta and Crowds* (and see p. 312).

317. See p. 293, No. 921; p. 309, No. 1089, and p. 312, No. 1130.

18. *Northumberland Dock.*

(a) *Generally.*

318. For provisions that vessels generally shall be navigated in this dock, see Bye-laws of Tynes Improvement Commission of 1884, No. 119.

319. Steam-tugs are to take their turn to tow as appointed by the dock-master, and shall not, without his permission, tow at the same time more than one vessel into or out of dock. *Ibid.* No. 110.

320. Vessels shall not be moved across the dock whilst the dock gates are open, and shall not be worked under sail in dock. *Ibid.* No. 108.

321. Ropes, chains, or tackle shall not be made fast from any vessel to any post, jetty, quay, ring, fender, mooring, or other thing not assigned for the purpose. *Ibid.* No. 127.

322. No vessel shall enter or approach any basin or lock to enter it while any vessel is passing out, or until a blue flag by day and a red light by night is exhibited. *Ibid.* No. 102.

323. For provisions that persons shall not be nor loiter about the dock or any of the premises of the commissioners without business there, and for the removal of such persons, *Ibid.* No. 137.

324. As to vessels having proper port sails, *Ibid.* No. 123.

(b) *Responsibility of Dock Commissioners for Damage.*

325. Every vessel and its boats, stores, tackle and cargo, while entering or leaving, or in the dock or any basin or lock thereof, shall be in the custody, care and management of the master, crew, watchman or shipkeeper employed by the owner or master; and the commissioners shall not be responsible for the same or for the insufficiency of any rope, chain or warp which they may lend or allow to be used, or for any accident or damage

happening in consequence of any voluntary assistance rendered by any of their vessels, officers or servants. *Ibid.* No. 120.

(c) *Damage to Works.*

326. See previous No.

(d) *Duties and Responsibilities of Pilots.*

327. For provisions as to pilots keeping themselves acquainted with the depth of water in the dock, and the entrances thereof, and with other matters necessary to qualify them to navigate vessels into, in and out of the dock, *Ibid.* No. 116.

(e) *Speed of Steamers.*

328. Steamers shall not be navigated in the dock at a greater speed than two miles an hour. *Ibid.* No. 109.

(f) *Vessels mooring, docking or unmooring.*

329. For provisions against any vessel entering or leaving the dock until the proper signal is exhibited for her to do so, and for the dismantling of vessels before entering the dock, *Ibid.* Nos. 102, 103, 106 b.

330. For provisions for each vessel entering to be taken to such mooring place as the dock master shall direct, and not being removed therefrom without his or the staith master's permission, *Ibid.* No. 113.

331. For provisions against vessels or timber being moored in the entrance of the lock or basin of the dock without the dock master's permission, *Ibid.* No. 125.

(g) *Vessels anchored or moored.*

332. For provisions that vessels in the dock shall not have their sails loose after sunset or in squally weather, and that the topgallant masts of vessels lying up in the dock shall be struck if required by the dock master, *Ibid.* No. 107.

333. A watchman or other competent person shall at all times be on board every sea-going vessel in the dock, and if and when required by the dock master, on board any other vessel, and such person shall cause ropes, chains or other fastenings to be slackened, tightened or thrown off, as and when the dock master or staith master shall direct. *Ibid.* No. 114.

9. Other Ports and Places in the United Kingdom (and see p. 313).

334. For bye-laws to prevent collisions in the port of Belfast, see Parliamentary Return as to Pilotage, No. 325, of 1882, p. 148, reg. 8.

Part X.—FOREIGN LAW.

1. America (United States).

2. *International Collision Rules** (and see p. 314).

335. The following revised interna-

tional rules and regulations for preventing collisions at sea, shall be followed in the navigation of all public and private vessels of the United States upon the high seas, and in all coast waters of the United States, except such as are otherwise provided for. See the Revised Statutes of the United States, approved 3rd March, 1885, c. 354.

3. *Collision Rules in Gulfs, Lakes, Rivers,* §c.†

(a) *Generally* (and see p. 316).

* (18) The international rules and regulations above referred to are the same as those of August, 1884 (set forth in the Appendix to this work), except that in Article 10 (g), the words "mist or falling snow" are left out, and except that in Art. 12 the word "signals" is used for "signal."

(19) All laws and parts of laws inconsistent with the above revised International Rules and Regulations of the United States, are hereby repealed, except as to the navigation of such vessels within the harbours, lakes, and inland waters of the United States. See Revised Statutes of the United States, approved March 3, 1885, c. 354.

(20) The above Act came into operation 1 Sept. 1884.

(21) The above statutory enactments of the United States, adopting the revised international regulations, have superseded those of the Treasury department mentioned in note 491 c, p. 314.

(22) Such Treasury department regulations will not, therefore, be printed in the Appendix, as was originally intended.

(23) For the same reason note 491 c, with its additions set forth in pp. 314, 315, may be cancelled as obsolete.

† (24) Every vessel propelled, in whole or in part, by steam, shall be deemed a steam vessel within the meaning of this title. Revised Statutes of the United States, tit. LII. c. 1, s. 4399.

(25) All steam vessels navigating any waters of the United States which are common highways of commerce, or open to general or competitive navigation, excepting public vessels of the United States, vessels of other countries, and boats propelled in whole or in part by steam for navigating canals, shall be subject to the provisions of this title. *Ibid.* s. 4400. [AMERICAN.]

(26) All coastwise sea-going vessels, and vessels navigating the great lakes, shall be subject to the navigation laws of the United States when navigating within the jurisdiction thereof; and all vessels propelled in whole or in part by steam, and navigating as

aforesaid, shall be subject to all the rules and regulations established in pursuance of law for the government of steam vessels in passing, as provided by the title. *Ibid.* s. 4401. [AMERICAN.]

(26a) On any steamers navigating rivers only, when from darkness, fog, or other cause, the pilot or watch shall be of opinion that the navigation is unsafe, or, from accident to or derangement of the machinery of the boat, the chief engineer shall be of opinion that the further navigation of the vessel is unsafe, the vessel shall be brought to anchor, or moored as soon as it can be prudently done, provided that if the person in command shall, after being so admonished by either of such officers, elect to pursue such voyage, he may do the same; but in such case both he and the owners of such steamer shall be answerable for all damage which shall arise to the person of any passenger or his baggage, from such causes in so pursuing the voyage, and no degree of care or diligence shall in such case be held to justify or excuse the person in command, or the owners. *Ibid.* c. 2, s. 4487. [AMERICAN.]

(27) Whenever damage is sustained by any passenger, or his baggage, from explosion, fire, collision, or other cause, the master and the owner of such vessel, or either of them, and the vessel shall be liable to each and every person so injured, to the full amount of damage. *Ibid.* s. 4493. [AMERICAN.]

(28) If such damage happens through any neglect or failure to comply with the provisions of this title, or through known defects or imperfections of the steering apparatus or of the hull; and any person sustains loss or injury through the carelessness, negligence, or wilful misconduct of any master, mate, engineer, or pilot, or his neglect or refusal to obey the laws governing the navigation of such steamers, he may sue such master, mate, engineer or pilot, and recover damages for any such injury caused by any such master, mate, engineer, or pilot. *Ibid.* s. 4493. [AMERICAN.]

(b) *Look-out* (and see p. 316).*

(c) *Rules of Supervising Inspectors.*

(aa) *Generally.*†

336. THE BOARD OF SUPERVISING INSPECTORS have revised to February, 1886, their regulations for the navigation of SEAS, GULFS, LAKES, BAYS, SOUNDS OR RIVERS, *except* rivers flowing into the Gulf of Mexico, and these revised regulations are set forth in the Appendix to this work.

(bb) *Lights.*‡

337. The mast-head and side lights to be carried by steamers under these Regulations are the same as Art. 3 in the Sea Collision Rules of 1879, except that as to the position of the bright light, it is only indicated that it shall be shown at the foremast head. Regulations revised to February, 1886, p. 45, r. 3.

338. The rule prescribing two white lights for steamers towing is the same as Art. 4 of the Sea Collision Rules of 1879. *Ibid.* p. 45, r. 4.

339. The rule for sailing vessels carrying side lights and no mast-head light in Art. 6 of the Sea Collision Rules of 1879, is made to apply only to steamers not being ocean-going steamers, nor carrying sail. *Ibid.* p. 45, r. 5.

340. The rule for lights for vessels at anchor is the same as Art. 8 of the Sea Collision Rules of 1879, except that it does not indicate the size of the light, and prescribes only that it shall be at least twenty feet above the surface of the water. *Ibid.* p. 49.

(cc) *In Fog or thick Weather* (and see p. 316).§

341. Steamers when drifting or at anchor in the fairway of other vessels in fog or thick weather shall ring their bells at intervals of not more than two minutes. *Ibid.* p. 43, r. 4.

(dd) *Steering and Signals indicating Courses* (and see p. 317).||

(ee) *In Narrow Channels.*¶

4. *As to Rivers flowing into the Gulf of Mexico.*

(a) *Generally.***

342. The Board of Supervising Inspectors have revised to February, 1886, their regulations for the navigation of rivers flowing into the Gulf of Mexico and their tributaries, and these revised regulations are set forth in the Appendix to this work.

(b) *Lights.*††

(28a) The Regulations of the Board of Supervising Inspectors, in notes 1 to 6 on p. 316, are the same as those revised to February, 1886, with the exceptions following:—

(29) Note 3, p. 316, is the same as Regulations revised to February, 1886 (p. 33), r. 5, sub-r. 8, but the rule is therein made to apply to every steamer above 100 tons burthen, and every such pilot is limited in his licence to the particular service for which he is adapted.

(30) Note 4, p. 316, is the same as Regulations revised to February, 1886 (p. 35), r. 5, sub-r. 17, but it is therein further required that the report should be both in person and in writing, except when, from distance, a personal report may be inconvenient, when the written report must be sworn to; and see Revised Statutes, s. 4448.

(31) Note 5, p. 316, is the same as Regulations revised to February, 1886 (p. 44), r. 8.

(32) Note 6, p. 316, is the same as Regulations revised to February, 1886 (p. 44), r. 9.

* (33) Note 7, p. 316, is the same as Regulations revised to February, 1886 (p. 33), r. 5, sub-r. 8.

† (33a) Their Regulations under this head, revised to February, 1886, are the same as those set forth on pp. 316, 317, with the ex-

ceptions following:—

(34) The interpretation clause, rule 1 of these Regulations, is the same as Art. 1 of the Sea Collision Rules of 1879. See Regulations revised to February, 1886 (p. 45), r. 1.

‡ (34a) Notes 14 and 15 are the same as Regulations revised to February, 1886 (p. 44), r. 9.

§ (35) The Regulations of the Board of Supervising Inspectors as to certain fog signals in notes 17—23, on pp. 316, 317, are the same as those revised to February, 1886. See pp. 51 and 52 of same.

(35a) Note 16, p. 316, is the same as those revised to February, 1886 (p. 43), r. 4.

|| (36) The Regulations in notes 24—32, on p. 317, are the same as those revised to February, 1886 (pp. 43 and 44), rr. 1, 2, 3, 5, 6, and 8.

¶ (36a) Note 33, p. 317, is similar to Regulations revised to February, 1886 (p. 44), r. 7.

** (37) The Regulations of the Board of Supervising Inspectors for the government of pilots of steamers navigating the rivers flowing into the Gulf of Mexico and their tributaries, on p. 318, note 494, are the same as those revised to February, 1886 (printed in the Appendix). See pp. 49—51 of same, with the exceptions following:—

†† (38) Notes A, B, C, and D, on p. 318, as

- (c) *In Fog and thick Weather.**
 (d) *Steering and Signals indicating Courses.†*
 (e) *Narrow Channels.‡*
 (f) *Overtaking Steamer.§*
 (g) *Steamers mooring or unmooring.||*

2a. Brazil.

1. Generally.

343. The commercial judge is the only person to decide causes of collision and

decree damages, whether in port or on the high seas. Decree No. 2,030 of 1857.

344. Captains of ports can only decide as to breaches of port regulations, and the infliction of the penalties therefore. *Ibid.*

345. If there is a doubt as to which vessel is to blame for a collision, each bears its own loss. Art. 750, C. C.

346. The judge avails himself of the assistance of skilled arbitrators. *Ibid.*; Decree No. 737 of 1850, Art. 189.

347. Damages by collision are in cases particular average losses. Art. 752, C. C.

348. Except in the case where a vessel, to avoid a worse collision, slips her anchors and falls foul of another to preserve herself. *Ibid.*

to the lights of steamers under weigh, are the same as Regulations revised to February, 1886 (pp. 50 and 51), rr. 10 and 11.

(39) Note E, as to the lights of steamers at anchor, is the same as Regulations revised to February, 1886 (p. 51), r. 11, except that it is not to exceed twenty feet above the hull.

(40) Notes F, G, and H, as to the lights of steam ferry boats, and barges in tow of steamers, are the same as Regulations revised to February, 1886 (p. 51), rr. 12, 13, and p. 50, r. 9.

* (41) Note I, p. 318, as to whistling in fog, is the same as Regulations revised to February, 1886 (p. 50), r. 5.

† (42) Note J, p. 318, as to signals for passing, is the same as Regulations revised to February, 1886 (p. 49), r. 1, but it relates to steamers approaching each other in opposite directions, and provides that the pilot of the ascending (not descending) steamer is to be the first to indicate the side he desires to pass. *Ibid.*

(42a) But if the pilot of the descending steamer shall deem it dangerous to take the course so indicated, he shall at once indicate with his steam whistle the side on which he desires to pass, and the pilot of the ascending steamer shall govern himself accordingly, the descending steamer being deemed to have the right of way. *Ibid.* p. 49, r. 1.

(43) But in no case shall pilots on steamers attempt to pass each other until there has been a thorough understanding as to the side each steamer shall take. *Ibid.*

(44) The signals for passing must be made, answered and understood before the steamers have arrived at a distance of 800 yards of each other. *Ibid.*

(45) (In lieu of note K, p. 318.) If the signals for passing are not made at the proper time, or not promptly understood, and either boat becomes imperilled thereby, the pilot on either steamer may be the first to

sound the danger signal. *Ibid.* r. 2.

(46) The danger signal shall consist of three or more short blasts of the steam whistle in quick succession. *Ibid.*

(47) Whenever the danger signal is given, the engines of both steamers must be stopped and backed until their headway has been fully checked, and the engines of neither steamer shall be again started until the steamers can safely pass each other. *Ibid.*

‡ (48) Note L, p. 318, as to narrow channels, is the same as Regulations revised to February, 1886, r. 3, except that when two boats unavoidably meet, it is the duty of the pilot of the ascending (not descending) boat to make the proper signals, and when answered the ascending boat shall lie as close as possible, &c. *Ibid.* p. 50, r. 3.

(49) Notes M and N, p. 318, as to narrow channels, are the same as Regulations revised to February, 1886 (p. 50), rr. 4 and 6.

§ (49a) (In lieu of note O, p. 319.) When steamers are running in the same direction and the pilot of the boat astern shall desire to pass either side of the boat ahead, he shall give the signal, as in rule 1 (for which see n. J, p. 318), and the pilot of the boat ahead shall answer by the same signal, or if he prefers to keep on his course, he shall make the necessary signals, and the boat astern must govern herself accordingly, but the boat ahead shall in no case attempt to cross her bow or crowd on her course. *Ibid.* p. 50, r. 7.

|| (50) Note P, on p. 318, as to mooring or unmooring, is the same as Regulations revised to February, 1886 (p. 50), r. 8, except that after clearing their berths, &c., they shall be governed by rule 1, for which see notes 42-44, *supra*.

(50a) Note Q, on p. 319, as to the lower limits of New Orleans, is the same as Regulations revised to February, 1886 (p. 51), r. 14.

349. Then the damages of ship and cargo are apportioned as general average upon ship, freight, and cargo. *Ibid.*

350. Captains and persons legally authorized to conduct a vessel are responsible if they do not at once render assistance after a collision. Decree 4,678 of 1871, Art. 21.

2. Sea Collision Rules.

351. Brazil has acquiesced in the Regulations of 1880 for Preventing Collisions at Sea. See Order in Council of Nov. 27, 1880, in 5 P. D. 286.*

352. Owners and masters are liable for damages caused by ignorance or breach of the regulations. Decree No. 4,678 of 1871.

353. In the absence of local regulations, these regulations apply to the rivers and internal waters of Brazil. *Ibid.*

354. The regulations apply to men-of-war and merchant vessels in time of peace. *Ibid.* Preamble and Arts. 20, 26.

355. In time of war men-of-war and merchant vessels under convoy will carry such lights as may be ordered. *Ibid.*

356. Other regulations for vessels entering and leaving harbour and dragging are contained in Decree No. 447 of 1846, tit. V., but are practically superseded by the international regulations contained in Decree No. 8,943 of 1883.

3. Canada.

5. Sea Collision Rules † (and see p. 320).

358. If her Majesty in Council should annul or modify any of the Sea Collision Rules of August, 1879, or make new regulations in addition thereto, or in substitution therefor, the Governor in Council may make corresponding changes as therein mentioned. See the Canadian Act, 44 Vict. c. 20, in 15 Hertslet, 986.

359. All owners, masters, and persons in charge of any ship, vessel, or craft, shall obey the rules prescribed by this act, and shall not carry or exhibit any other lights, nor use any other fog-

signals, than such as are prescribed by those rules. Penalty not exceeding 200 dollars; nor less than twenty dollars, for wilful default against master or person in charge or owner. See the Canadian Act, 43 Vict. c. 29, in 15 Hertslet, 970.

360. Whenever foreign ships are within Canadian waters, the rules for preventing collisions prescribed by this act, and all provisions relating to such rules or otherwise relating to collisions, shall apply to such foreign ships, and in any case arising in any court of justice in Canada concerning matters happening within Canadian waters, foreign ships shall, so far as regards such rules and provisions, be treated as if they were British or Canadian ships. *Ibid.* 971.

361. In case any damage to person or property arising from the non-observance by any ship or raft of any of the rules prescribed by this act, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of such raft or in charge of the deck of such vessel at the time, unless the contrary is proved, or it is shown to the satisfaction of the court that the circumstances of the case rendered a departure from the rules necessary; and the owner of the vessel or raft in all civil proceedings, and the master or person in charge, or the owner—if it appears that he was in fault—shall, in all proceedings civil or criminal, be subject to the legal consequences of such default. See the Canadian Act, 44 Vict. c. 20, in 15 Hertslet, 970.

362. If in any case of collision it appears to the court before which the case is tried, that such collision was occasioned by the non-observance of any of the rules prescribed by this act, the vessel or raft by which such rules have been infringed shall be deemed to be in fault, unless it can be shown to the satisfaction of the court that the circumstances of the case rendered a departure from the rules necessary. *Ibid.*

363. Any rule or bye-law of the Harbour Commissioners of Montreal, or of the Trinity House of Quebec, or of the Quebec Harbour Commissioners, or any other local rule or bye-law of any other

* (51) The Brazilian official version of the rules is a very accurate rendering of the English one.

† (52) For the application of the Sea Collision Rules of August, 1879, to the Dominion of Canada, see the Canadian Act of 43 Vict. c. 29.

competent local authority, not inconsistent with this act, shall be of full force and effect within the locality to which it applies. See the Canadian Act, 44 Vict. c. 20, in 15 Hertslet, 970.

6. Masters.

(a) Generally.

364. See No. 362, *supra*.

(b) To assist Colliding Ship, and give Name of Port.

365. For provisions in case of collision, that the person in charge of each ship, if and so far as he can do so without danger to his own ship and crew, do render to the other ship, crew, or passengers (if any), such assistance as may be practicable and necessary to save them from any danger caused by such collision, and to give the name of his ship and her port, or whence and whither bound, see Canadian Act, 43 Vict. c. 29.

366. In case he fails to do so without reasonable excuse, the collision shall, in absence of proof to the contrary, be deemed to have been caused by his neglect or default. *Ibid*.

7. Rafts.

367. Rafts shall be so navigated and anchored as not to cause any unnecessary impediment or obstruction to vessels navigating the same waters. *Ibid*. in 15 Hertslet, 969.

368. Rafts while drifting or at anchor on any of the waters of Canada, shall

have a bright fire kept burning on them from sunset to sunrise. *Ibid*.

369. Whenever any raft is going in the same direction as another, which is ahead, the one shall be so navigated as not to come within twenty yards of the other, and every vessel must on overtaking a raft keep out of the way thereof. *Ibid*.

8. Harbour of Sorel.

370. Unless it is otherwise ordered by the Harbour Commissioners of Montreal, ships and vessels entering or leaving the Harbour of Sorel shall take the port side. *Ibid*.

4. The Danube.

1. Regulations of European Commission (and see p. 320).

371. By Article 34, Chapter II. of the Danube Commission Rules, a vessel going down the river shall keep to the right bank. The Y. was going down and the S. was coming up the river. When the Y. had got near the place of collision there was a degree of mist sufficiently great to prevent those on board her seeing across the river, and the Y. improperly went to the left side of the river, and so caused a collision with the S. *Held*, that the Y. was to blame under the rules for doing so. *Held*, also, that the S. was to blame for not having lights. *The Yourri v. The Spearman*, 10 App. Cas. 276; 5 Asp. 458; 53 L. T. 29.

5. Denmark.

1. Generally* (and see p. 234).

* (53) The new Danish Code, mentioned in note 518, on p. 324, has not yet been promulgated.

(54) If the damage cannot be brought home to either captain, various rules of law apply, according to whether both ships are under way at the time, or one of them is at anchor: viz.—

(55) When both ships are under way the damage is divided, that is to say, the total of the damage which both ships have sustained is divided, and each ship pays half.

(56) This rule of equal division applies, even though one ship sustains damage, and though the half which has to be paid by the one ship reaches, or even exceeds, the value of the vessel. But when the half of the damage

exceeds the value of the ship, the owner is never personally bound to pay the balance.

(57) When one ship is at anchor, and the other is under way, and the ship under way alone sustains damage, she bears her own loss. If the ship at anchor alone sustains damage, that damage is divided according to the estimate of impartial men, a rule which is also in force when two ships in motion collide and sustain damage. The strict principle of equal division does not however apply in the case of the two ships, but in the assessment of the damage regard will be had to the value of each ship, the damage each ship has sustained, &c.

(58) There are special rules applicable to cases of ships sustaining damages from the

6. Egypt.

7. *The Suez Canal*.*(a) *Generally* (and see p. 325).

372. Collision between two steamers, the E. M. and the C. in the Suez Canal. The E. M. was under weigh and the C. moored. There were difficulties in the navigation of the canal in that locality, but the E. M. had no pilot on board. *Held*, that the conclusion from such circumstances was that the collision was owing to negligence of those on board the E. M., as it could not be allowed that

such a collision under no difficulties of weather was an inevitable accident. *The Egyptian Monarch*, 19th January, 1886. (C. A.)

(b) *Jurisdiction* † (and see p. 797).

7. France,

1. *Generally* ‡ (and see p. 326).5. *Inscrutable fault* § (and see p. 327).14. *Loss of Life or Personal Injury*.||

anchors of another ship. If the anchor is furnished with a buoy, or the buoy has drifted away, and the captain has not been neglectful by omitting to lay out another buoy, the damages are equally divided. On the other hand, if the buoy is wanting, and this want can be attributed to the neglect of the captain, his ship pays all the damages of the other ship.

(59) If a ship drives before a storm, and other ships, to avoid her, slip their anchors and chains, the loss sustained by them in so doing is divided between the driving ship and those ships which have slipped their anchors and chains. The damages are estimated according to the opinion of impartial men.

* (60) The Suez Canal Company is responsible for damage done to ships by collision—When the collision is caused by default in preservation and maintenance of the canal (*bonero police et entretien*), as, for example, (a) if the canal has not the regular width and depth; (b) or if the passage is obstructed, or if it enforces the employment of pilots who do not know their business; or if it has allowed a vessel to pass without a pilot, when she was bound to have one by the Regulations (Art. 4), and by her fault a collision happened; or, generally, if it has not furnished every security for navigation which it is bound to furnish, or which may reasonably be expected from it. *Philippe v. Comp. de Canal de Suez, Ismailia*, Journ. de Droit Int. Privé, 1878, p. 168.

(61) According to general maritime law the master is responsible for the conduct of his ship, and for collisions of which that ship is the cause. *Ibid*.

† (62) The mixed commission court of Egypt has jurisdiction in an action for collision in the Suez Canal, brought by the owners of the ship injured against the Canal Commissioners, alleging negligence on the part of a pilot supplied by the company. *Ibid*.

(63) See as to the mixed commission courts of Egypt, tit. JURISDICTION, p. 797.

‡ (64) In cases of collision on the high seas between ships of different nationalities, the

court will decide according to the law of France. *Morell v. Com.-Gen. Transatlantique*, Journ. de Droit Int. Privé, 1883, p. 145.

(65) To entitle a person to bring an action for collision in France, he must have conformed to the French law as to protest (Arts. 435, 436, C. C.) If the captain of the ship finds himself in England after the collision, he must, in the absence of the other ship, give notices of his protest at the Consulate of the ship's nationality. *Riviere v. Malmroes*, *Ibid*. p. 148.

(66) See also as to proceedings in France in cases of collision, p. 783, Nos. 1684—1686, 1690, 1692.

§ (67) See also, as to the apportionment of damages by French law when both ships are to blame, tit. REGISTRAR AND MERCHANTS, p. 1777, notes 360, 361.

|| (68) All persons who have suffered damage from the act or negligence of another have an action for damages against the wrong-doer. See C. C. Arts. 1382, 1383.

(69) Husbands and wives, parents and children, are in the first rank of parties entitled to claim the benefit of such provisions.

(70) This right extends to the representative of a person killed by the tortious act of another.

(71) The masters or employers of those to whom a tortious act is attributable are also liable for the act, if arising in the course of such employment. C. C. Art. 1384.

(72) Such a liability is made specially applicable to shipowners. See C. C. Art. 216, subject to their power of exonerating themselves by abandonment of ship and freight under the same article.

(73) The regulations of the French Code requiring the making and notification of a protest against the wrong-doer within twenty-four hours, and the institution of the action within a month after the occurrence of the act complained of, do not apply to the case of an action by a widow claiming damages for the loss of her husband drowned in a collision. Court of Aix of 29 January, 1862. *Recueil de Jurisprudence du Havre*, 1867: 2: 112.

11. Italy.

11. *Jurisdiction.**

14. Portugal.

1. *Generally* † (and see p. 238).

15. Russia.

4. *Jurisdiction.* †5. *Loss of Life or Personal Injury.* §

20. Turkey.

3. *Rules for Navigating the Bosphorus.* ||

* (74) Actions for damage by collision may be brought either at the place of the collision or at the first port reached after it, or at the place of destination, saving the disposition of Art. 14 (a) of the Mercantile Marine Code, Art. 873. The captain of the port in the capitals of provinces and port officers in other ports arbitrate in cases of collision, fouling anchors, salvage, tonnage, pilotage, injury, and other maritime causes, when the damage does not exceed 400 lire, and the accident occurred in harbour.

† (75) If a vessel under weigh does damage without fault to another vessel anchored or moored, the vessel doing the damage bears half the damage of the other vessel and cargo, unless this latter vessel ought to be responsible for the damage. See C. C. Art. 1581.

(76) This damage shall be shared in the form of general average by vessel and cargo. *Ibid.*

(77) This indemnification shall not take place if the captain of the vessel moored was able to prevent or diminish the damage by manœuvring without damage to himself. *Ibid.*

(78) Should there be a doubt as to the cause of the collision, the damage occasioned to the ships and cargoes, after being valued by arbitrators, are thrown into one, and are borne by each in proportion to the respective values of the ships and cargoes. This damage is apportioned in the shape of general average to each ship and cargo. *Ibid.* Art. 1570.

(79) The damage from fouling of vessels from fortuitous accident is borne by the vessel which sustained it, subject to the provisions of Article 1581. *Ibid.* Art. 1569.

(80) In cases of collision, the tribunal of the nearest port, and which is at the same time the port of refuge, has jurisdiction. *The City of Mecca* (Sup. Trib. 21 June, 1880), Journ. de Droit Inter. Privé, 1881, p. 177.

(81) If a vessel drags her anchor and fouls the tackle of another vessel anchored near her, the vessel that dragged her anchor is responsible for all the damage. See C. C. Art. 1571.

(82) Should a vessel be run into by another through the fault of her master or any of her crew, the entire damage to the vessel and her cargo must be borne by the master of the vessel which caused it, and is regulated by arbitrators' experts. *Ibid.* Art. 1567.

(83) Damage by collision not being one of the privileged liens enumerated in the Commercial Code, Art. 1300 (for which see tit.

LIENS, p. 840), it follows that a vessel can only be arrested in such an action, subject to the regulations in Art. 298 of the Novissima Reforma Judicial (for which see tit. JURISDICTION, p. 791), that is to say, after proof by clear preponderance of testimony, that the vessel sought to be arrested is solely to blame for the collision, thereby establishing the certainty of the debt referred to in the last-mentioned article, or on proof of change of state, and of absence of effects or suspicion of flight, also referred to in that article, and in heading 31 of book 3 of the Ordinance (for which see tit. JURISDICTION, p. 791), *ex relatione Dr. Alvez de Sa*.

(84) When, however, proof of this vessel being solely to blame is thus established, a maritime lien attaches upon her for the damage from the moment of the collision, and follows her into the hands of innocent purchasers. See C. C. Art. 1298.

‡ (85) See tit. JURISDICTION, p. 793, Nos. 1817, 1818.

§ (86) If a person notoriously incapable is put in charge of a steamer, or if no proper supervision is exercised over those in charge, and in consequence any person is killed or injured, the guilty party is liable to suspension for three months or more, or a fine not exceeding 300 roubles, or to imprisonment for not less than two or more than six months. Decree of January 25, 1878.

(87) The proprietors of a steamer are also bound to pay damages for loss of life or personal injury in accordance with the Civil Code, except when occasioned by force majeure or without any fault on the part of themselves or their agents. Ann. de Leg. Et. 1877, vol. 8, p. 650.

|| (88) Sea-going steamers passing through the Bosphorus must keep in mid-channel, in order to avoid causing difficulties and danger to the "Shirket-i-Hairieh" steamers, and to small craft. See Regulations of the Sublime Porte of 1868, re-issued in May, 1872, and Notice of July 14, 1881, kept at the British Consulate, Constantinople.

(89) Steamships navigating the Bosphorus must keep in mid-channel and not close to the shore, on account of danger to small craft and passenger steamboats.

(90) See Notice of the Sublime Porte of June 3, 1872, kept in the British Consulate at Constantinople, and set out in 15 Hertset's Collection of Treaties, &c., 831.

(91) Steam-tugs must keep clear of the imperial palaces at Beshiktash, passing out-

side the inner line of iron clads, so as not to cause inconvenience by the smoke. See Notice of the Sublime Porte of June 3, 1872, kept in the British Consulate, Constantinople, and British Consul's Notice of July 14, 1881, in 15 Hertslet, 832.

(92) All steamers going up and down the Bosphorus must, in order to avoid collision, keep far from the shores and capes, and pass in mid-channel. Penalty for breach, TL.10 to TL.30 in gold, and the transgressor must

repair the damage done. See Rules of the Prefecture of the Port of Constantinople (2), Feb. 14, 1883, in 15 Hertslet, 832.

(93) Sailing vessels towed from shore which, according to an old custom, pass close to the shore, are, when they go before the wind, subjected to the same rule and penalty as steamers. *Ibid.*

(94) These provisions are applicable to all steamers or sailing vessels under Ottoman or foreign flags. *Ibid.*

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1. As to the practice in regard to the payment of money into and out of court, see tit. PRACTICE, Pt. I. pp. 1479—1486.

12. Discontinuance of Action (and see p. 349).

See tit. PRACTICE, Pt. II. c. 28, p. 1579.

14. Proceedings by Default.*

1. *Generally* (and see p. 350).

15. Actions in Superior Court proper to be tried in Inferior Court.

1. *Generally* (and see p. 350).

2. The 9th section of the County Courts Admiralty Jurisdiction Act, 1868 (c. 71), enabled the Admiralty Court to certify that a cause was a proper one to be tried in the Admiralty Court, although such cause may not have proceeded to a hearing by reason of the defendants admitting their liability. *The Wilhamina*, 3 P. D. 97.

3. Collision between the A. and the N. The owners of the A., in the *bond fide* belief that their damage was greater than it proved to be, arrested the ship in the Court of Admiralty for a large amount, but accepted bail, and released the ship at once on ascertaining their actual damage. The defendants admitted

38. In Actions of Salvage.

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liability, and the damage was referred to the registrar; the claim of the plaintiffs was a little over £300, but was reduced by more than one third, and the registrar made no report as to costs. On application by the plaintiffs, the court certified for costs of the action, but condemned the plaintiffs in the costs of the reference. *The Naomi*, 32 L. T. 836; 23 W. R. 387.

4. In an action for damage by collision the plaintiff's damages were assessed by the registrar and merchants at £231. The court refused to certify for costs under sect. 9 of the County Courts Jurisdiction Act, 1868 (c. 71), holding that such section was repealed by implication by Order LV. r. 1. *The Elijah Packer*, 15 May, 1877.

4a. See also tit. PRACTICE, Pt. II. c. 16, p. 1541.

5. As to transfer of actions, *Ibid.* c. 15, pp. 1536—1541.

6. As to the Admiralty jurisdiction of County Courts, see tit. JURISDICTION, Pt. I. p. 677.

1a. *Leave to proceed in Admiralty Division.*

See tit. PRACTICE, Pt. II. c. 16, p. 1541.

1b. *Rescinding of such Leave to proceed.*

See tit. PRACTICE, p. 1543.

3. *Actions within the M. S. Acts* (and see p. 352).

7. In an action of salvage, where £200 was awarded the plaintiffs, *held*, entitled to costs. *The Camelia*, 9 P. D. 27; 5 Asp. 197.†

* (1) As to costs in the Queen's Bench in cases of judgment by default, see Order of

the Masters of January 31, 1884.

† (2) A salvaged vessel was valued by a re-

16. After Tender.

1. *Generally.*

(a) *Since the Judicature Acts* (and see p. 354).

8. In making a tender it is not necessary, on the contrary it is an erroneous course, to offer to pay costs up to the time of tender. *The William Symington*, 10 P. D. 4; 5 Asp. 293 (overruling *The Hickman*, *The John*, *The Thracian*, *The Comte Nesselbrood*, and *The Scotia* on p. 355).

3. *In Actions of Salvage.*

(a) *Since the Judicature Acts* (and see p. 355).

9. In an action of salvage where a tender (after action) and payment into court were upheld, the court gave the plaintiffs their costs up to such payment, and the defendants their costs subsequent to such payment. If, however, salvors unreasonably refuse an offer made before suit, they will be condemned in the whole costs. *The William Symington*, 10 P. D. 1; 54 L. J. P. D. 4; 5 Asp. 293.

10. In a salvage action tender pronounced for and decree drawn up in the registry dismissing the defendants on payment of costs up to the tender, and condemning the plaintiffs in costs after

the tender. Motion to alter the decree and condemn the plaintiffs in all the costs rejected. *Ibid.* 10 P. D. 1; 5 Asp. 293.

11. The court pronounced for the sufficiency of the tender, and condemned the plaintiffs in costs from the time of the rejection of the tender. *The Cargo ex Honor*, L. R. 1 A. & E. 87; 35 L. J. Adm. 115; *The Waverley*, L. R. 3 A. & E. 369; 40 L. J. Adm. 42.

12. In a cause of salvage, where a sufficient though not a liberal tender was made, the court gave the salvors costs up to the time of payment into court, and made no order as to the subsequent costs. *The Lotus*, 7 P. D. 199; 4 Asp. 495.

17. References to Registrar and Merchants.

3. *In Actions of Bottomry* (and see p. 358).*

13. As to the allowance in the accounts of the bondholder of costs incurred abroad, see tit. REGISTRAR AND MERCHANTS, p. 1724.

5. *In Actions of Damage by Collision.*

(a) *Generally* (and see p. 360).†

16. The Admiralty Division has and always had a discretion as to costs, and

ceiver of wreck at £746 on December 3. On the 8th the salvors instituted an action in £2,500; on the 18th they applied for an appraisal of the vessel; on January 14 following they gave notice that they proceeded no further in the action. Salvors condemned in costs, on the ground that they must have been aware within a short time of taking out the appraisal that the value fixed by the receiver was substantially correct. The court also condemned the salvors in damages from December 22 to January 14. *The Margaret Jane*, L. R. 2 A. & E. 345. But see tit. PRACTICE, Pt. II. c. 16, p. 1542.

* (3) On reference, the objections by the defendants to the accounts in a bottomry bond report were not sustained, the whole sum claimed being allowed; but as some of the accounts investigated did at first sight appear extravagant, the defendants were not condemned in the costs. *The Romulus*, No. 4928, July, 1870. R. & M.

† (4) The plaintiff's claim was reduced by nearly two-thirds, but as certain items, representing the greater portion of the disallowances, were taken off under the decree in the action, and therefore before the claim came before the registrar, each party was ordered

to bear his own costs of the reference. *The Trossacks*, No. 4762, April, 1869. R. & M.

(4a) Plaintiff's costs of the reference disallowed, although less than one-fourth of the claim was struck off. More than one-fourth of the claim, however, consisted of the Thames Conservancy charges for raising the vessel, which were not questioned by the defendants. *The John Brogden*, No. 3538, 3 September, 1867. R. & M.

(5) More than one-fourth was struck off the plaintiff's claim, but, the defendant having largely increased the expenses of the reference by objections which he failed to sustain, the registrar allowed the plaintiff his costs. *The Lizzie Aisbitt*, No. 3894, March, 1868. R. & M.

(5a) The claim was reduced by more than one-third, but the expenses of the reference having been increased by a defence set up, but not insisted upon, each party was ordered to bear his own costs. *The Wild Rose*, No. 2869, December, 1866. R. & M.

(6) More than one-third was struck off the plaintiff's claim; each party left to bear his own costs of the reference. *The Normandie*, No. 5083, January, 1870; *The Isabella Granger*, No. 5157, April, 1870; *The*

this discretion is to be exercised in each individual case, and it is wrong to lay down a hard-and-fast rule that the claimant shall be condemned in the costs of the reference where more than a third of the claim is disallowed, and have no costs of the reference where as much as a fourth is disallowed. (*The Empress Eugenie*, Lush. 40, overruled.) *The Friedeberg*, 10 P. D. 112; 5 Asp. 426; 54 L. J. P. D. A. 75; 52 L. T. 837; 33 W. R. 687.*

17. The plaintiff, in a reference in a collision action, withdrew a portion of his claim at the hearing. The registrar awarded less than two-thirds of the original claim, but more than two-thirds of the reduced claim. *Held*, that the plaintiff must pay the costs of the reference. *The Eilean Dubh*, 5 Asp. 154; 49 L. T. 444.

18. In an action of damage the plaintiff's claim, which was very large, was reduced by considerably more than one-third, in consequence of an objection taken by the defendants at a very and unnecessarily late period in the proceedings. As the defendant's laches had caused additional expense and delay, the registrar recommended that each party should pay his own costs of the reference, but the court condemned the plaintiff in costs. *The Atalanta*, No. 6056, August, 1875. R. & M.

19. As to the allowance of costs in

salvage actions as part of the damages, see tit. REGISTRAR AND MERCHANTS, p. 1770.

See also No. 3, *supra*.

5a. In Actions of Co-ownership.†

19. Security.‡

1. Generally (and see p. 363).

20. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction. Ord. LXV. r. 6a, No. 42.

21. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter. Ord. LXVI. r. 6, No. 966.

22. Two actions were instituted by plaintiffs against a vessel for necessaries. The plaintiffs in both actions stopped payment and assigned their goods to trustees. On motion of the defendant, the mortgagee and owner of the vessel, for security for costs, the court ordered the plaintiffs in each action to give security in £300. *The Palm Tree*, January 14, 1868.

23. As to dismissal of causes for delay in giving security for costs, see tit. PRACTICE, Pt. II. p. 1579, Nos. 1091, 1092.

Aquidaband, No. 5450, April, 1871; *The Pallas*, Nos. 5946 and 6109, July, 1872; *The Copefield*, No. 6973, June, 1875; *The Cesarevitch*, No. 7271, September, 1875. R. & M.

(7) Salvors obtained a reference to the registrar and merchants to report as to the amount (if any) available for the payment of salvage. After marshalling of proceeds, the registrar reported that no funds were available, and that the salvors ought to pay the costs of the reference. *The Mary A. Way*, No. 7163, November, 1875. R. & M.

(8) For precedents of bills of costs of reference to the registrar and merchants, see Roscoe's Adm. Prac. (2nd ed.) App. pp. 540—543.

(9) The plaintiff, who was claiming for the total loss of his vessel, filed an affidavit containing serious mistakes as to the date of his purchase and the amounts expended in repairs. To rebut this affidavit the defendants brought up a witness from Liverpool, thereby incurring expenses which would have been avoided if the affidavit had correctly stated the facts. The plaintiff was left to bear his own costs of the reference, although only one-fifth of

his claim was disallowed. *The Appendix*, Nos. 5853, 5854, and 5876, February, 1872. R. & M.

* (10) The court, however, though exercising its discretion in each case, is still influenced by similar considerations as before.

† (11) In an action of co-ownership, it appeared on the reference that the defendant, the managing owner, had been remiss in rendering his accounts; his accounts, as first filed, were incorrect, and an amended account had to be filed. The plaintiff took objection to the amended accounts, but failed therein. The registrar ordered the defendant to pay all costs incurred up to the date when the amended account was filed, and the plaintiff to pay the costs incurred subsequently. *The Idas*, No. 1460, May, 1865. R. & M.

‡ (12) As to security for costs on application to answer interrogatories, see, in explanation of note 24 on p. 363, tit. EVIDENCE, note 1a, p. 425.

(13) As to security for costs in the Queen's Bench Division, see Archbold's Practice (14th ed. by Chitty & Leslie), vol. 1, p. 395.

23a. For cases in the other divisions as to security for costs, see 5 Mews' and others' Digest, founded on Fisher, anno 1884, pp. 1777—1794, and Annual Digests since.

2. *Counter-claim* (and see p. 364).

24. The Court of Admiralty may, on the application of the defendant in any cause of damage, and on his instituting a cross cause for the damage sustained by him in respect of the same collision, direct that the two causes be heard at the same time and upon the same evidence; and if in the principal cause the ship of the defendant has been arrested or security given by him to answer judgment, and in the cross cause the ship of the plaintiff cannot be arrested, and security has not been given to answer judgment therein, the court may, if it think fit, suspend the proceedings in the principal cause, until security has been given to answer judgment in the cross cause. See the Admiralty Court Act, 1861 (c. 10), s. 34.

25. The words "security given," in the above 34th section contemplates bail being given in the usual course, and the section does not apply to proceedings *in personam*. *The Amazon* and *The Osprey*, 36 L. J. Adm. 4.

26. The court has jurisdiction under the above 34th section to order a plaintiff in an action for damage by collision to give security for the damages to a defendant who brings a counter-claim, and this even when plaintiff is a foreign sovereign whose ship cannot be arrested. *The Newbattle*, 10 P. D. 33.

2a. *On Discovery*.

27. In every cause or matter, the costs of discovery by interrogatories or otherwise, shall, unless otherwise ordered by the court or a judge, be secured in the first instance, as provided by Rule 26 of this Order, by the party seeking such discovery, and shall be allowed as part of his costs where, and only where, such discovery shall appear to the judge at the trial, or, if there is no trial, to the court or a judge, or shall appear to the taxing officer, to have been reasonably asked for. Ord. XXXI. r. 25, No. 367.

28. Any party seeking discovery by interrogatories shall, before delivery of interrogatories, pay into court to a separate account called "Security for Costs Account," to abide further order, the sum of £5, and if the number of folios exceeds

five, 10s. for every additional folio. Any party seeking discovery otherwise than by interrogatories shall, before delivery, pay into court to a like account, to abide further order, the sum of £5, and may be ordered to pay into court an additional sum. The party seeking discovery shall, with his interrogatories or order for discovery, serve a copy of the receipt for this payment into court, and the time for answering or making discovery shall commence from the date of such service. The party from whom discovery is sought shall not be required to answer or make discovery unless and until this payment has been made. *Ibid.* r. 26, No. 368.

29. Unless the court or a judge shall at or before the trial otherwise order, the amount standing to the credit of the Security for Costs Account, shall, after the cause or matter has been finally disposed of be paid out to the party by whom it was paid in on his request, or to his solicitor on such party's written authority, if costs are adjudged to him, but if he is ordered to pay costs it shall be subject to a lien for the costs. *Ibid.* r. 27, No. 369.

30. In a co-ownership action, brought by the managing owner, the plaintiff sought to interrogate the defendants, who were numerous, and to be relieved from making the usual deposit, the defendants objected that a deposit ought to be made in respect of each defendant interrogated, the court ordered a deposit of £5, and 10s. for each additional folio over five, but refused to order the plaintiff to pay in a sum in respect of each defendant. *The Whichham*, 5 Asp. 479.

31. See also tit. EVIDENCE, p. 425, note 1a.

10. *In the House of Lords*.

(b) *Bond to answer Costs* (and see p. 366).

32. For form of appellant's solicitor or agent's notice, and certificate as to sufficiency of sureties, see Appendix A. to Form of Appeal, Method of Procedure, and Standing Orders of August, 1884, p. 17.

12. *In the Court of Appeal* (and see p. 369).

33. For further cases as to security for costs on appeal, see 1 Mews' and others' Digest, founded on Fisher, anno 1884, pp. 163—167.

20. Costs and Damages.

1. *Generally* (and see p. 369).

34. Commission on giving bail is not part of the defendant's costs in an action of salvage or damage, but it may be recovered as damages from the plaintiff where the arrest of the vessel is made maliciously or with gross negligence. *The Collingrove; The Numida*, 10 F. D. 158.

15. *Measure of Damages.*

35. As to the measure of costs and damages, see tit. REGISTRAR AND MERCHANTS, Pt. II. p. 1775.

23. Solicitor's Lien.

1. *Generally* (and see p. 374).

36. When a fund, by a sale of a ship, is placed in court by one set of claimants, so as to be available for other claimants, the former are entitled to their costs up to and inclusive of the sale, though they do not rank first in respect of their actual claim. *The Immacolata Concezione*, 9 P. D. 37; 5 Asp. 208.

26. Court Fees, Percentages and Stamps (and see p. 377).

37. See tit. EVIDENCE, p. 442; tit. PRACTICE, p. 1478; Order as to Supreme Court Fees, 1884, and Supreme Court Fund Rules, 1884.

27. Taxation.

1. *Generally** (and see p. 378).

38. In the R. S. C. of 1883, the term "taxing officer" means taxing master in the Chancery Division, and the master or person whose duty it is to tax the costs to be taxed in the other divisions respectively. Ord. LXXI. r. 1, No. 1041.

3. *House of Lords*† (and see p. 381).

39. When there has been served on the respondent a notice of dismissal of an appeal for want of prosecution, unless the respondent shall, within four weeks from

the date of such service, if the House be then sitting, or, if not, then not later than the third sitting day of the next ensuing sittings of the House, lodge in the office of the taxing officer of the House a copy of his bill of costs, the clerk of the parliaments or clerk assistant shall, upon a proper receipt for the same being given, repay to the appellant or his agent the said sum of £200. See Form of Appeal, Method of Procedure, and Standing Orders of August, 1884, No. 41, p. 10.

40. In the event of the respondent so lodging his bill of costs, the taxing officer may, if the sum demanded by the respondent be less than £200, tax the same, and the clerk of the parliaments or clerk assistant shall pay over to the respondent or his agent so much of the £200 as will liquidate the amount reported to the clerk of the parliaments or clerk assistant as being due from the appellant to the respondent in respect of the appeal. *Ibid.*

41. The remaining portion of the £200 shall be paid back to the appellant or his agent upon a proper receipt for the same being given to the clerk of the parliaments or clerk assistant. *Ibid.*

42. As to the modes of proceeding when costs are to be taxed under 12 & 13 Vict. c. 78, and under 28 & 29 Vict. c. 27, *Ibid.* p. 21.

43. As to the deposit, for taxation, of bills of costs incurred in promoting or opposing any private bill, provisional order, or provisional certificate in parliament, *Ibid.*

28. Allowance on Taxation.

2. *Higher Scale* (and see p. 384).

44. Costs on the higher scale will only be granted when special grounds of urgency or importance are shown, as it was intended that the lower scale should be the ordinary scale. *The Horace*, 9 P. D. 86; 5 Asp. 218; 53 L. J. P. D. A. 64.

3. *Lower Scale* (and see p. 384).

45. In a salvage action, £2,400 awarded as salvage, application for costs on the

* (14) As to taxation of costs in the Chancery Division, see Rules of the Supreme Court of Dec. 1885, Ord. LXV. rr. 19 (a)—19 (h).

† (15) Printed forms of bills of costs, to be

adopted by attornies and solicitors having charge of appeal cases in the House of Lords, may be obtained at the office for the sale of printed papers, House of Lords.

higher scale rejected, and costs ordered on the lower scale. *Ibid.*

46. In actions of salvage costs on the higher scale will only be allowed under exceptional circumstances, and *held*, that there were no such circumstances in this case. *The Raisby*, 5 Asp. 473; 53 L. T. 56.

4. Counsel.

(a) *Generally* * (and see p. 384).

47. In an action of collision, where the plaintiffs sustained damage to the amount of £2,000, three counsel allowed them on taxation. *The Mammoth*, 9 P. D. 126; 53 L. J. P. D. 70; 5 Asp. 289.

48. In an action of collision where the successful plaintiffs' claim amounted to £20,000, the court allowed, on taxation between party and party, fees to the plaintiffs' three counsel of seventy-five, fifty and thirty guineas respectively. *The City of Lucknow*, 5 Asp. 340; 51 L. T. 907.

49. Where two actions are heard together, the evidence taken in the first being agreed to be used in the second, and the same counsel being employed in both actions, refreshers will not be allowed in respect of the second action where they have already been allowed in respect of the first. *The Queen*, 17 March, 1868.

50. The master has a discretion under the rules as to the allowance of refreshers to counsel. *Svendson & Co. v. Wallace*, Nov. 5, 1885.

7. Documents.

(a) *Generally* (and see p. 386).

51. Charts ought not to be allowed on taxation. *The Queen*, 17 March, 1868.

(e) *Copies, Prints and Printing* (and see p. 387).

52. The parties to an action of collision agreed that the printed evidence taken in a prior action by other parties against the same defendants should be used. The plaintiffs paid the solicitors of the plaintiffs in the prior action for copies. *Held*, on defendants' objection to taxation, that the successful plaintiffs were entitled to

charge the defendants not only with the sums paid to the solicitors of the plaintiffs in the prior action, but also with the regular charge of 3*d.* per folio under Ord. LXVI. r. 7, and App. N. *The Mammoth*, 9 P. D. 126; 5 Asp. 289; 53 L. J. P. D. 70.

7a. Printing.

53. Where, by any order of the court (whether of appeal or otherwise) or a judge, any pleading, evidence or other document is ordered to be printed, the court or judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit. Ord. LXVI. r. 7, No. 1009, sub-n. O.

14. *Witnesses* (and see p. 388).†

54. Costs of witnesses, though not actually called, may be allowed between party and party in the registrar's discretion. *The City of Lucknow*, 5 Asp. 340.

55. The detention of a witness kept in Italy for the trial, allowed, notwithstanding that he was out of the jurisdiction. *Picasso v. Trustees of Maryport Harbour*, 20 March, 1884, Q. B. D.

17. *Interest* (and see p. 389).

56. As to interest generally and in various actions, see tit. REGISTRAR AND MERCHANTS, p. 1717.

30. On Appeal.

3. *Her Majesty's Court of Appeal.*

(a) *Generally* (and see p. 394).

57. Costs not allowed when the Court of Appeal reversed the decision of the court below, in an appeal for which permission was necessary. *The Swallow*, 36 L. T. 231.—C. A.

57a. As to costs of appeal generally, see 1 *Mews' and others' Digest*, founded on Fisher, anno 1884, pp. 176—179, and *Ibid.* 1885, p. 12.

* (16) The signature of the counsel's clerk will not be accepted, but the initials of Queen's counsel will suffice. Nov. 15, 1883, C. A.

† (17) As to the expenses of witnesses retained for inquiries and prosecutions, see Board of Trade Instructions to Superintendents of August, 1879, p. 87.

(f) *In Action of Damage by Collision.*

(dd) *Both Ships to blame** (and see p. 395).

58. Where the Court of Appeal varies a decision of the court below by finding both vessels to blame, each party must bear his own costs of the litigation (following *The Milanese, ubi supra*); but where the court below finds both vessels to blame, and one unsuccessfully appeals, the appealing vessel ought to bear the costs of the appeal. *The Hector*, 8 P. D. (C. A.) 218; 5 Asp. 101.

59. Collision between the steamers L. and T. The court below held the L. solely to blame. The Court of Appeal held the T. solely to blame. The House of Lords held both ships to blame. No costs given in the court below or in the House of Lords. *Maclaren v. Compagnie Française de Navigation à Vapeur*, 9 App. Cas. 652.

31. In Actions of Bottomry.

1. *Generally* (and see p. 398).

60. In a bottomry suit *in rem*, M., the owner, intervened, and bail was given. After the institution of the suit M. became bankrupt, and obtained his certificate under 5 Geo. 2, c. 30, s. 7. M. then took various steps in the suit, and finally prayed to be dismissed on the ground of the bankruptcy. The judge of the Admiralty Court having dismissed M., the Court of Delegates on appeal pronounced for the bond, and condemned M. in the costs of suit both in the court below and Court of Appeal. *Jamison & Co. v. Merry*, Marsden, 118.

33. In Actions of Damage by Collision.

1. *Generally*† (and see p. 400).

61. The expenses of procuring bail for the release of a ship cannot be recovered as costs, except where the arrest of the ship was malicious or the result of gross negligence. *The Numida, The Collingrove*, 10 P. D. 158; 54 L. J. P. D. 78; 34 W. R. 156; 5 Asp. 483.

62. A cause of damage was instituted, and, by arrangement, the defendant's vessel was not arrested, bail being given

in £7,200. The vessel went on a long voyage, and before her return her owners and one of the sureties suspended payment; and, on application by the plaintiffs the court, on the return of the vessel, decreed a warrant to issue under which she was arrested. The defendants moved for a release, on an affidavit that the vessel had changed owners since the institution of the action, and that one of the sureties was a merchant of large means. Order made for the release of the vessel with costs, occasioned by the arrest. *The Southern Empire*, 8 March, 1867.

5. *Both Ships to blame* (and see p. 401).

63. In an action for damages by collision the defendants, by letter, and subsequently in their pleadings, admitted their vessel was to blame for the collision, but contended the other vessel was also to blame, and the court so found. Plaintiffs condemned in costs subsequently to the date of the letter. *The Ebor and The Telesilla*, 8th May, 1885.

10. *Costs of defending Actions of Salvage as part of the Damages*‡ (and see p. 402).

10a. *Costs of Commission for Bail in Actions of Salvage as part of the Damages.*

63a. Commission paid for bail in a salvage action will not be allowed as part of the damages recoverable by the salvaged vessel in an action of damage. *The British Commerce*, 9 P. D. 128; 5 Asp. 335; 33 W. R. 20.

34a. In Actions of Marine Insurance.

64. See tit. MARINE INSURANCE, p. 1114.

35. In Actions of Mortgage.

1. *Generally* (and see p. 405).

65. The plaintiff, as third mortgagee, instituted a suit against a ship of which the defendant was first mortgagee in possession, and caused her to be arrested.

* (18) For precedents of a bill of costs in the Court of Appeal, see Roscoe's Adm. Prac. (2nd ed.) App. p. 544.

† (19) For precedents of bills of costs in actions of damage by collision, *Ibid.* pp. 521

—539.

‡ (20) As to when costs of former actions are recoverable, see Mayne on Damages (4th ed.), p. 76.

The defendant, to obtain the release of the ship, paid into court the sum of £500 in lieu of bail. The defendant then sold the ship for an amount insufficient to satisfy the sum secured by his mortgage. The plaintiff, when the cause was ripe for hearing, abandoned the suit, and the £500 was paid out to the defendant. *Held*, that the defendant was entitled to interest at the rate of £4 per cent. per annum on the £500 for the time that it remained in court. *The Western Ocean*, L. R. 3 A. & E. 38.

66. Mortgagees having commenced an action against a vessel, material men, with a possessory lien, intervened, and the vessel was sold. The claim of the material men exceeded the amount of the proceeds. *Held*, that the mortgagees were entitled to their costs up to date of sale out of such proceeds. *The Sherbro*, 5 Asp. 88.

67. The C. was arrested in an action for necessities supplied by the plaintiff. The owners appeared, but did not give bail or deliver pleadings. The mortgagees of the C. intervened, and took possession under the mortgage, but the C. still remained in the custody of the marshal, and was subsequently sold by him under an order of the court obtained by the interveners. Judgment with costs by consent for the interveners was afterwards entered. Under it the interveners claimed from the plaintiffs the amount due to the marshal for the expenses of sale. *Held*, that as the interveners, though able to obtain the release of the C. by giving bail had not done so, but had obtained an order for the sale of the C., and had received the proceeds of such sale, they must bear the expenses of it. *The Colonsay*, 11 P. D. 17; 5 Asp. 545.

36a. In Actions between Co-owners.

68. A managing owner who had not delivered accounts for nine years instituted a co-ownership action, and money was found due to him, but the court refused him his costs, on the ground of the delay in rendering his accounts. *The Charles Jackson*, 52 L. T. 631; 5 Asp. 399.

38. In Actions of Salvage.

1. Generally.*

(a) *Since the Judicature Acts.*

69. Agreement between the masters of the steamers W. and N., the latter being in need of assistance, that the W. should tow the N. to Queenstown for £200, and the N. was towed there accordingly. Subsequently thirteen of the officers and crew of the W. brought an action of salvage against the N. Agreement upheld, and salvors condemned in costs, on the ground of excessive bail taken, and that the suit should have been brought in an Admiralty county court. *The Nasmyth*, 10 P. D. 41.

10. *When Excessive Bail taken* (and see p. 409).

70. Where the plaintiffs in a salvage action arrested the defendant vessel for an exorbitant sum they were condemned to pay the defendant's costs and expenses of taking bail. *The George Gordon*, 9 P. D. 46; 5 Asp. 216; *The Saga*, March 13, 1885; *The Earl Grey*, 1 Spinks' Eccl. & Adm. Rep. 180; *The Nasmyth*. No. 69, *supra*.

70a. Action of salvage against a steamer valued at £14,000. Arrest and bail for £3,000 required and given. Award, £450. Plaintiffs condemned in the costs and expenses of the giving of bail. *The George Gordon*, 9 P. D. 46.

71. Half costs only allowed on account of excessive bail. *The British Queen*, May 19, 1866.

72. It is no excuse that the plaintiff's solicitors were ignorant of the facts at the time, and that the defendants did not apply to have the bail reduced. *The Camelia*, 9 P. D. 27.

13. *Appraisalment* (and see p. 411).

73. A cause of salvage was instituted against ship, cargo, and freight in the sum of £1,000, and the defendants filed an affidavit stating the value of ship and cargo at £1,058. Upon valuation by the receiver of wreck at the plaintiff's request, under the 50th section of the M. S. Act Amendment Act, 1862 (c. 63), the vessel and her cargo were valued at £955. On motion by the defendants to dismiss the defendants and their bail

* (21) For precedents of bills of costs in salvage actions, see Roscoe's Adm. Prac. (2nd ed.) App. pp. 517, 520.

from the suit, on the ground that the value of the property salvaged was under £1,000, the court *held*, that, under the circumstances of the case, it could not act upon the assumption that the value was under £1,000, and dismissed the motion with costs. *The Dart*, 1870.

39. In Actions of Wages.

74. On reference of a master's claim for wages and disbursements, two-thirds of the amount claimed and two-thirds of a counterclaim set up by the owners being disallowed, each party was ordered to pay his own costs of the reference. *The Ocean Belle*, No. 3314, August, 1866. R. & M.

75. In a master's action for wages and disbursements the claim as filed was reduced on the reference to less than one-half its original amount. The master, however, was allowed his costs of the reference, as the objections to his claim were not taken until the hearing. *The Pharamond*, May, 1865. R. & M.

76. A master's claim for wages and disbursements was rejected *in toto* as being fraudulent. It appeared, however, that the owner had managed the ship's affairs very carelessly and improperly, and the registrar therefore ordered each party to bear his own costs, and pay a moiety of the reference fees. *The Vectis*, No. 4755, April, 1869. R. & M.

41. Of Investigations into Shipping Casualties.

1. Generally* (and see p. 415).

77. It is not the intention of the legislature that costs should be given as a matter of course in all cases, and the object of Rule 21 of the Rules of 1878, is to enable the court to give costs, but in exceptional cases only. *The Dimorah* and *The Dorunda*, July 27, 1876.

4. Against the Board of Trade.

78. *Held*, by the wreck commissioner, that the power to order the Board of Trade to pay costs was only intended to be exercised in a case where there was no foundation for the charge or for any in-

quiry at all. *The Vigilant*, Sol. Jour. xxi. p. 31.

79. On an investigation into the stranding and loss of a steamer on the coast of Holland, where no blame could be imputed to the master, officers, or any one on board, but the loss was due to the violence of a storm, costs against the Board of Trade refused, it being admitted that the case was a proper one for inquiry, and it appearing that the master would receive detention money as a witness at the usual rate. *The Nora*, April 1, 1879.

80. On an investigation into the stranding and loss of a steamer on Whitby Rocks, *held*, that the only fault of the master was not having starboarded his helm, so as to bring the vessel's head round to the south when he found that she would not come up under her port helm with her head to the north; and as this was a mere error of judgment, his certificate was returned; but *held*, further, that it was a proper case for inquiry, and therefore no costs given. *The Lorentzen*, April 1, 1879.

81. In the case of a casualty from the defective state of one of the soil-pipes, but for which the owners were held not to blame, the court, though admitting their conduct throughout to have been most proper, refused to give them their costs against the Board of Trade, as the pipes were defective, and the Board of Trade was clearly not to blame. *The Broomhall*, March 7, 1877.

82. Where the loss of a steamer was *held* to have been due to the defective state of her machinery, to the weight of her cargo, and to an insufficient quantity of coal, for which the court *held* the master and engineer chiefly to blame, application of the owner for costs refused, on the ground that he also was not free from blame. *The Athlete*, July 20, 1882.

83. In a case of re-hearing, where the first decision had been overruled and the master held to blame, but the Board of Trade did not ask that his certificate should be dealt with, application of the owner and master for costs rejected, as the owner must share the responsibility of the master's appointment, and the master was to blame. *The Cerwyn*, July 19, 1880.

84. Where a charge of unseaworthi-

* (22) As to the court's powers as to costs generally, their enforcement and taxation, see Murton's Wreck Inquiries, pp. 125—127.

(23) As to the expenses of witnesses ro-

tained for inquiries and prosecutions, see Board of Trade Instructions to Superintendents of August, 1879, p. 87.

ness had been made by seamen, and on the inquiry instituted thereon fully disproved, application of the owners for costs against the Board of Trade rejected, the result of the inquiry being an advantage to the owners in clearing away all suspicion. *The May Fly*, November 21, 1885.

5. Against Owners.

85. Where, though the vessel was not seaworthy, the Board of Trade made no charge against the owners, application of the Board of Trade to condemn the owners in costs refused. *The Brightman*, February 26, 1877.

86. The counsel of the Board of Trade, after all the witnesses produced by the Board of Trade had been examined, stated he should make no charge against the owners, the master, or any of the officers of the S., but should ask the court to condemn the owners in costs; but the court rejected the application, because no charge had been made, and because costs would be in the nature of a punishment against the owners, when, according to the statement of the representative of the Board of Trade, they had been guilty of no offence. *The Sardinian*, June 27, 1878.

87. The court condemned an owner, to blame for the ship being overladen and undermanned, in £250 *nomine expensarum*. *The Marlborough*, No. 565, March 23, 1880.

88. The owner was held to blame for the unseaworthy state of the ship, which was lost with twelve men. The court ordered him to pay £200 towards the costs of the inquiry. *The Secret*, No. 1613, Dec. 13, 1882.

89. The owner held to blame for the grossly unseaworthy state of his vessel, and condemned in £150 towards the costs. *The Yanikale*, Nov. 1880.

90. Loss of ship and twenty-one men from being overladen. The court condemned the owners in £100 *nomine expensarum*. *The Calliope*, No. 1236, Jan. 13, 1882.

91. A ship was held to have been allowed by the owner to leave port in an unseaworthy state, she was sunk with the loss of ten men, the court condemned the owner in £100 *nomine expensarum*. *The Jackal*, No. 1228, Jan. 20, 1882.

92. The owner held to blame for the unseaworthy state of the vessel, and condemned in £100 towards costs. *The Oleander*, February, 1883.

93. A ship was lost from improper ballast, and the owner was held to blame

for not having seen that proper ballast was taken. The owner was ordered to pay £100 towards costs. *The Golden Sea*, Dec. 15, 1881.

94. The managing owner held in default, and ordered to pay £20 towards costs. *The Joseph*, Jan. 29, 1883; *The Commodore*, Feb. 25, 1881.

95. For cases of part costs given against owners in connection with the explosion of coal gas on board their ships, see *The Alne Holme*, No. 185; *The Llanishen*, No. 184, in tit. SHIPPING CASUALTIES INVESTIGATIONS, p. 2220.

95a. As to costs against owners in connection with injuries as to unsafe ships, see tit. OWNERS in Addenda, Pt. III. c. 1, Nos. 55, 64, 65, 67, 91, 92, 94, 97, 98, 107.

96. An owner having unduly prolonged proceedings by refusing to give information to the Board of Trade as to the insurance of the vessel, and by refusing to give evidence on those points until he was compelled to do so, condemned in part payment of the expenses of certain witnesses who had in consequence been necessarily subpoenaed, and in part of the costs of the underwriters who had appeared. *The Furius*, February 11, 1886.

97. On an inquiry into the loss of a barque, on which inquiry the court held that the owner was to blame for having sent the ship to sea in an unseaworthy state, considering the nature of the voyage and the time of the year, and it appeared that the owner had owned eleven vessels and lost nine, application of the Board of Trade to condemn the owner in costs rejected, the court observing that a condemnation of an owner in some £50 or £100, *nomine expensarum*, as a punishment for having sent an unseaworthy ship to sea, was not a satisfactory way of dealing with such a case; for that if the owner had committed so grave an offence, a condemnation in costs was not a sufficient punishment, and the court would not give him the opportunity of saying that he had been already punished in this court for the offence, and of urging it as an excuse for his not being punished if he deserved it in any other court. *The Cowstip*, March 11, 1885.

See also *The Elephant*, May 14, 1884, and *The Linhope*, July 18, 1884.

6. Against Masters.

98. The court generally considers that the suspension of the master's certificate is a sufficient punishment, and will in

general refuse to condemn him in the costs. *The Rescue*, December 18, 1876.

99. On an investigation into the stranding and loss of the steamers A. and H. while the former was in tow of the latter, held, that the masters of both vessels largely contributed to the losses, and that had they held certificates the court would have suspended them, but costs of the Board of Trade against them refused. *The Augusta* and *The Flying Hurricane*, March 18, 1879.

7. From Collision.

100. On an investigation into the loss of the sailing barge, K., from a collision in Northfleet Hope, in the Thames, with the steamer M., the pilot of the M. was held solely to blame. Costs were asked for on behalf of the owner of the K. against the owners of the M., but refused, as the inquiry was instituted by the Board of Trade, and both the K. and the M. had intervened to protect their respective interests, and the collision had been caused not by any act done by the owners, master or officers of the M., but by the pilot. *The Kathleen* and *The Maas*, Sept. 20, 1879.

101. Where on an investigation into the loss of the ship H., attended with loss of life, from collision with the ship E., the H. was held not to blame, and the master of the E. was held to blame, and his certificate suspended, the court nevertheless refused to give costs to the owners of the H. *The Helena* and *Electryon*, Nov. 27, 1878.

102. Though on an inquiry into the circumstances of a collision between the ships H. and P. no charge was made against those in charge of the P., and the collision was held to have been caused by the want of proper precautions by the master of the H., and his certificate was suspended for a year for not rendering assistance to the P. after the collision, the court refused to condemn the master in the costs of the inquiry, but left each party to pay his own costs. *The Hurumui* and *The Pater*, Nov. 28, 1876.

44. In Naval Courts.

1. *Generally** (and see p. 415).

2. *Allowances to Witnesses.*†

* (24) In all cases of danger or damage to property, where a naval court is held purely in the interests of owners of property, the court should carefully exercise its powers relating to costs. See Board of Trade Instructions as to Naval Courts, anno 1885, p. 9.

(25) When the court is held at or near a port where there is a British consul, the consul will pay the expenses of the court unless otherwise ordered, and will charge them in his account with the Board of Trade. When there is no British consul at hand, the expenses will be paid by the paymaster of the ship of war under the authority of the senior naval officer. *Ibid.* p. 18.

(26) All expenses should be entered in the report of the court as part of the costs, and no expenses will be allowed unless so entered. *Ibid.*

† (27) No allowances can be authorised to witnesses except in cases of great hardship, or where experts are called to assist the court by their evidence. *Ibid.* p. 17.

(28) When a crew has been detained a long time at considerable loss, the court may make them an allowance not exceeding the rate of

the pay they were last receiving provided that they have not been in receipt of wages during the time, and have been detained solely for the purposes of the court, and have no interest in the investigation. *Ibid.*

(29) The only allowances are as follows:—For British shipmasters or merchants on the court, £2 2s. a day. For expert witnesses, £1 1s. or £2 2s. a day, according as the court may think right. For the clerk of the court, £2, if the court sit but one day; if more than one day, then for each day (including the first), £1 10s. This allowance is to include copying expenses and all clerical work necessary before and after the court sits. For a petty officer of the royal navy for acting as provost marshal, 5s. a day. Interpreters, surveyors, medical men, and translators, when not holding appointments under her Majesty's government, the charges customary at the port. No charge should be made for the serving of summonses, except money actually paid out of pocket for boat hire and other necessary expenses incurred in serving them. *Ibid.* p. 18.

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1. **Generally** (and see p. 420).

1. In considering the international *status* of the Khedive of Egypt, *held*, that the court may inquire into the general history of the government of Egypt, the firmans of the Porte, and European treaties concerning the relations between Egypt and the Porte, and that the court may also obtain direct information from the Foreign Office. *The Charkieh*, L. R. 4 A. & E. 59; 42 L. J. Adm. 17.

2. The evidence was conflicting, and the court was unable, from the demeanour of the witnesses, to say which story was

the true one, and the Elder Brethren were unable to say, as a matter of seamanship, that there was negligence on either side. *Held*, therefore, that each party had failed to sustain the onus of proof resting on him to establish negligence; and claim and counter-claim dismissed, each party to bear his own costs. *The Frigorifique*, May 27, 1884.

3. As to inquiries, see tit. PRACTICE, Pt. II. p. 1571.

4. As to accounts under directions, *Ibid.*
4a. For practice as to proof, *Ibid.* c. 35, p. 1458.

5. As to evidence of implied contract, see tit. GOODS, CARRIAGE OF, p. 586; as to evidence of shipment, *ibid.* p. 522; as to the effect of statements of weight and quantity, *ibid.* p. 523; as to evidence of statements of quantity and quality unknown, *ibid.* p. 586; and as to evidence of computation, *ibid.* p. 588.

5a. As to evidence generally, see Mews' and others' Digest, founded on Fisher, 1884, vol. 3, p. 1151, and Archbold's Practice, 14th ed. by Chitty, vol. 1, p. 451.

2. Witnesses.

1. *Examination in Court* (and see p. 420).

6. As to examination of witnesses in court before and at trial, see tit. PRACTICE, Pt. II. pp. 1620, 1637.

2. *Examination out of Court* (and see p. 420).

7. As to examination of witnesses out of court before and after trial, and by commission or otherwise, *Ibid.* pp. 1620—1626.

4. *Nautical Experts* (and see p. 421).

8. *The Kirby Hall*, on p. 421, No. 22, is also reported in 52 L. J. P. D. 31; 5 Asp. 90.

8a. In appeals under the Shipping Casualties Investigation Act, 1879, the court will not permit witnesses to be called to give evidence on questions of nautical knowledge and skill. *The Kestrel*, 6 P. D. 182; 4 Asp. 433; 45 L. T. 111; 30 W. R. 182.

5: *Contradicting* (and see p. 422).

9. See, as to contradicting witnesses, Mews' and others' Digest, founded on Fisher, 1884, vol. 3, p. 1452, and Annual Digests since.

11. *Subpoenas*.

See tit. PRACTICE, Pt. II. p. 1630.

3. Affidavits.

See tit. PRACTICE, Pt. II. pp. 1626—1629.

4. Oaths.

See tit. PRACTICE, Pt. II. p. 1631.

5. Foreign Law (and see p. 423).

10. See also, as to proof of foreign law, Mews' and others' Digest, founded on

Fisher, 1884, vol. 3, p. 1228, and Annual Digests since.

6. View (and see p. 424).

11. Application by plaintiffs under the Admiralty Court Act, 1861 (c. 10), s. 18, before the hearing, that two Trinity Masters should inspect the lights of the defendant's ship, refused as premature. *The Vector Covacevich*, 10 P. D. 40.

12. The court will not, at the hearing, accede to an application for an inquiry into a ship's lights, unless in great doubt as to the substantial merits of the case. *The Durango*, 23rd January, 1885.

13. As to view in the Queen's Bench Division, see Mews' and others' Digest, founded on Fisher, 1884, vol. 4, p. 1174, Annual Digests since, and Archbold's Practice, 14th ed. by Chitty and Leslie, vol. 1, p. 527, 609.

7. Interrogatories.

1. *Since the Judicature Acts*.

(a) *Generally* (and see p. 425).

14. In an action against a shipowner for non-delivery of goods, the defendant pleaded loss by excepted perils. The plaintiff then delivered interrogatories to show that the ship was unseaworthy, and that the loss was occasioned thereby. *Held*, that the interrogatories were not admissible. (*Bolchow v. Fisher* distinguished.) *Grumbrecht v. Parry*, 5 Asp. 176.

15. For further cases as to interrogatories in the other divisions, see Mews' and others' Digest, founded on Fisher, anno 1884, vol. 3, p. 394; Annual Digests since, Archbold's Practice, 14th ed. by Chitty and Leslie, vol. 1, p. 515; and Daniell's Chancery Forms and Precedents, 4th ed. 1885, pp. 780, 1830.

16. As to the procedure on interrogatories, see tit. PRACTICE, Pt. II. p. 1616.

17. As to the ruling in *The Radnorshire* in No. 60a, p. 425, see *The Biola*, No. 18, *infra*.

(b) *In Actions of Damage by Collision* (and see p. 425).

18. In an action of damage by collision, interrogatories which seek to obtain information, given in the preliminary act of the party interrogated are inadmissible, and will be struck out on the application of the party sought to be interrogated. *The Biola*, 34 L. T. 185; 24

W. R. 524; but see *The Radnorshire*, p. 425, No. 60a.

8. Production, Discovery, and Inspection (and see p. 426).

19. The court has power to order interrogatories to be administered to a defendant before the plaintiff has filed his petition. *The Murillo*, 28 L. T. 374.

20. As to the procedure on production, discovery, and inspection of documents, see tit. PRACTICE, Pt. II. p. 1617.

21. See also as to production, discovery, and inspection, Mews' and others' Digest, founded on Fisher, anno 1884, vol. 3, pp. 336, 375, Annual Digests since, and Archbold's Practice of the Queen's Bench Division, 14th ed. by Chitty and Leslie, vol. 1, pp. 484, 505, and 507; and Daniells' Forms and Precedents, 4th ed. anno, 1885, pp. 797, 812.

9. Admissions.

1. *Generally* (and see p. 429).

22. As to declaration of agent, see tit. PRACTICE, Pt. II. p. 1616.

23. See also as to admissions, Mews' and others' Digest, founded on Fisher, 1886, vol. 3, p. 1156, and Archbold's Practice, 14th ed. by Chitty, vol. 1, p. 477.

1a. *By Pleadings.*

See tit. PRACTICE, Pt. II. p. 1602.

2a. *Of Proofs from other Actions.*

See tit. PRACTICE, p. 1619.

10. Answers* (and see p. 429).

11. Right to Particulars.

See tit. PRACTICE, p. 1570.

13. On Reference to Registrar and Merchants (and see p. 430).

See tit. PRACTICE, p. 1460.

14. On Objections to Reports of Registrar and Merchants (and see p. 430).

See tit. PRACTICE, p. 1460.

15. On Appeals (and see p. 430).

See tit. APPEALS in Addenda, pp. 2345, 2346.

16. Documentary.

1. *Generally* (and see p. 430).

24. Acts of parliament, proclamations, orders, or other documents by the government printer, the Queen's printer, or other printing authorized by her Majesty, and purporting to be printed under the superintendence of her Majesty's Stationery Office, shall be receivable in evidence. See the Documentary Evidence Act, 1882 (c. 9).

24a. As to evidence affecting charter-parties, see tit. GOODS, CARRIAGE OF—, p. 475; as to usage in regard to reasonable time under charter-parties, *ibid.* p. 608; as to evidence affecting bills of lading, *ibid.* pp. 518, 520, 610, and of usage under bills of lading, *ibid.* p. 575; as to evidence of implied contract, *ibid.* p. 586.

24b. Any document required by this act to be executed in the presence of, or to be attested by, any witness or witnesses, may be proved by the evidence of any person who is able to bear witness to the requisite facts without calling the attesting witness or witnesses, or any of them. See the M. S. Act, 1854 (c. 104), s. 526.

24c. As to documentary evidence of various kinds, see Mews' and others' Digest, founded on Fisher, 1886, vol. 3, p. 1226, and Annual Digests since.

7a. *Engineer's Logs.*

25. Entries in an engineer's log are evidence against his owner. *The Earl of Dumfries*, 10 P. D. 31; 54 L. J. P. D. 7; 5 Asp. 342.

10. *Protests* (and see p. 438).

26. In cases where salvage services have been rendered it is the duty of the owners of the vessel salvaged to cause a protest to be made as speedily as possible after the services are rendered. The protest will then be received by the court with great attention. *The James McQueen*, 4 W. R. 91; *The Alawal*, Nov. 21, 1853.

* (1) For the old practice in the Court of Admiralty as to answers, see *The Protector*,

3 Hagg. 240, and the Admiralty Court Act, 1854 (c. 78), ss. 7, 8.

26a. The protest of the master, although formally deposed to, cannot be received as evidence on behalf of the owner or master, but it may be used as evidence against them. *Rex v. Scriveners' Co.*, 10 B. & C. 511; *Senat v. Porter*, 7 T. R. 158; and see M. S. Act, 1854 (c. 104), s. 270; and Murton's Wreck Enquiries, 1884, p. 115.

11. *Depositions before Receiver of Wreck and others * generally* (and see p. 438).

As to the Depositions, or Wreck, Register, see tit. BOARD OF TRADE, p. 2256.

12. *Registers and Certificates of Registry* (and see p. 440).

27. In an action of tort for negligence on the part of the ship keeper in charge of the defendant's vessel, *held*, by the majority of the court, that the fact of ownership, as proved by the production of the ship's register, was, if unexplained, evidence to go to the jury of the ship keeper being employed by the defendants. *Hibbs v. Ross*, L. R. 1 Q. B. 534; 35 L. J. Q. B. N.S. 193; 2 Asp. 397; 7 B. & S. 655.

28. A British register is at most only *prima facie* proof of British ownership, and may be contradicted by other circumstances. *The Princess Charlotte*, B. & L. 75.

29. *Seemle*, the register is not even *prima facie* proof where the question is that of the vessel's nationality. *Ibid.*

29a. *The Laura*, in No. 217, p. 441, is also reported in 3 Moore, P. C. N.S. 181; 2 Asp. 225.

30. The English certificate of registry showing the tonnage is not conclusive evidence of such tonnage, and consequently the Order in Council of June 26, 1873, made under s. 60 of the M. S. Act, 1862 (c. 63), directing that German steamers measured after January 1, 1873, should be deemed to be of the tonnage denoted in their registers, in the same manner and to the same extent in and to which the tonnage denoted in the certificate of registry of British ships is deemed

to be the tonnage of such ships, does not make the registers of such German ships conclusive evidence of their tonnage. *The Franconia*, 3 P. D. (C. A.) 164.

13a. *Copies of Documents.*

See tit. PRACTICE, Pt. II. p. 1618.

15a. *Letters of Masters to Owners.*

31. In an action for non-delivery of cargo shipped in defendant's vessel, *held*, that a letter from the master to his owners, the defendants, was admissible in evidence against the owners as to the facts stated therein, but not as to his opinion. *The Solway*, 10 P. D. 137; 54 L. J. P. D. 83; 5 Asp. 482.

16. *Stamps.*

1a. *On Charter-parties.*

32. See tit. GOODS, CARRIAGE OF—, Pt. II. c. 4, p. 476, and same tit. and cap. in Addenda.

2a. *On Bills of Lading.*

See tit. GOODS, CARRIAGE OF—, Pt. III. p. 514.

18. In Actions of Damage to Cargo.

1. *Generally* (and see p. 446).

See No. 31, *supra*.

19. In Actions of Damage by Collision (and see p. 447).

32a. As to the burthen of proof in regard to the damage being caused by the negligence of a licensed pilot compulsorily in charge, see tit. EVIDENCE, p. 450; and *Clyde Navigation Co. v. Barclay*, in tit. OWNERS, p. 1351, No. 1474.

20. In Actions of Limitation of Liability.

33. See tit. OWNERS, Pt. VI. p. 1177, and tit. PRACTICE, Pt. III. p. 1685.

* (2) As to depositions taken before receivers of wreck under sect. 448 of the Merchant Shipping Act, 1854 (c. 104), in cases of casualties, including collision, the mode and form of summoning the witness, and the payment of his expenses, and as to transmission of copies of such depositions to

Lloyd's and the Board of Trade, see Board of Trade Instructions as to Wrecks, Casualties, and Salvage, 1886, pp. 8—11.

(3) As to the taking of the depositions on form Eng. 1, and form Wr. 1, and Wr. 2, and for the forms thereof printed in the Appendix thereto. *Ibid.* p. 7.

21. In Actions of Marine Insurance.

See tit. MARINE INSURANCE, pp. 1107—1114.

26. In Actions of Salvage.

1. *Generally* (and see p. 458).

34. Where the defendant in a salvage action admits the facts in the statement of claim, the plaintiff will not be permitted to give further evidence, except on special grounds. *The Hardwick*, 9 P. D. 32; 5 Asp. 199.

34a. See also tit. PRACTICE, Pt. III. c. 15, p. 1463.

4. *Damages during the Service* (and see p. 460).

35. And see tit. PRACTICE, Pt. III.

p. 1693, and tit. REGISTRAR AND MERCHANTS, Pt. I. p. 1732.

27. In Actions of Wages (and see p. 461).

36. The entry in the log book and certificate of the consul are not conclusive evidence of desertion. *Lewis v. Jewhurst*, 30 J. P. 740.

36a. See also tit. PRACTICE, Pt. III. p. 1463.

38. In Admiralty County Courts.

37. As to evidence therein, and in appeals therefrom, see tit. PRACTICE, Pt. IV. p. 1707.

39. In Vice-Admiralty Courts.

37a. See tit. PRACTICE, Pt. IV. p. 1712.

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Part II.—CHARTER-PARTIES.

1. Generally.*

4. Stamps (and see p. 476).

1. A charter-party wholly executed by both parties thereto abroad is duly stamped so as to be admissible in evidence if it has been stamped within two months after it has been first received in the United Kingdom, as provided by sect. 15 of the Stamp Act, 1870, and it is not necessary that such a charter-party should be stamped under sect. 68 of the same act. *The Belfort*, 5 Asp. 291; 9 P. D. 271; 52 L. T. N.S. 271; 53 L. J. P. D. A. 88.

2. *Semble*, that a charter-party, wholly executed by both parties thereto abroad must be stamped with an impressed stamp and not with an adhesive stamp. *Ibid.* 5 Asp. 291; 9 P. D. 215; 52 L. T. N.S. 271; 53 L. J. P. D. A. 88.

8. Parties.

4. Masters.

(b) *Liabilities and Duties.*(cc) *Transshipment* (and see p. 481).

3. Where a ship is by perils of the sea so much damaged as to be incapable of repair so as to prosecute the adventure, except at an expense exceeding her value,

16. On Abandonment of Ship (and see p. 585) p. 2413

20. Computation.

3. *By Measure* (and see p. 587) 2414

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together with the freight, when repaired, the master is justified in abandoning the voyage, and is not bound as agent of his owner to send the goods on in another bottom. *De Cuadra v. Swann*, 16 C. B. N.S. 772; *Worms v. Storey*, 11 Ex. 427.

10. Interference by Mortgagees (and see p. 486).

4. Where a ship is mortgaged, but left by the mortgagee in the possession of the mortgagor, the mortgagor may make any contract in respect of the ship which an ordinary owner may make provided he does not impair the security, and hence may enter into a charter-party for the earning of freight, even though by such charter-party the freight is payable to a third party; and the mortgagee cannot interfere with the performance of the charter-party upon taking possession after the same is entered into, and if he does attempt to interfere an interim injunction will be granted restraining him from interference with the performance of the charter-party. *Cory Bros. & Co. v. Stewart*, C. A., April 7, 1886.

13. Conditions Precedent.

3. *Representations and Warranties.*(b) *Seaworthiness* (and see p. 491).

5. The warranty of seaworthiness implied in a bill of lading is an absolute

* (1) See as to the rights and duties of charterers by German law, tit. LIENS, p. 857, Nos. 248, 256.

warranty that the ship shall be in fact fit for the voyage, and not merely that the shipowner shall take all reasonable care to make her so fit, and hence a latent defect in a screw-shaft existing prior to the commencement of the voyage, and resulting in the breaking of the shaft, is a breach of the shipowner's warranty of seaworthiness, although the shipowner may have taken all reasonable precaution in the selection of the shaft. *The Glenfruin*, 5 Asp. 413; 52 L. T. N.S. 769; 10 P. D. 10.

6. See also Nos. 8 and 15, *infra*; and p. 531.

5. *Sailing* (and see p. 493).

7. The word "port" in a charter-party means the port as commonly understood by shipowners and merchants in its popular or commercial sense, and not the port as defined by Acts of Parliament or by-laws for the purposes of revenue or pilotage, and is to be so construed in determining whether a ship has "finally sailed from her last port." *Sailing Ship Garston Co. v. Hickie & Co.*, 5 Asp. 499; 15 Q. B. D. 580.

7a. A provision in a charter-party that a ship shall sail from a named port before a fixed date is a condition precedent; and "perils of the sea, &c., throughout this charter-party always excepted," do not affect the operation of the condition, and hence, if the ship sail after the date, the charterer is released from the obligation to perform his contract. *Crookevit v. Fletcher*, 1 H. & N. 893; 26 L. J. Ex. 153.

6. *Arrival* (and see p. 494).

8. The cancellation clause in a charter-party, being for the benefit of the charterers, and the arrival of the ship on a date therein named, being a condition precedent to the duty of the shipowner to load, the excepted perils mentioned in the charter-party, have no application to such a clause, and hence where the ship is prevented by these perils from arriving at the port of loading by the date mentioned, the charterers have the right to cancel. *Smith v. Dart*, 14 Q. B. D. 105; 5 Asp. 360; 52 L. T. N.S. 218; 54 L. J. Q. B. 121.

See also *Shubrick v. Salmond*, 3 Burr. 1697.

F.

7. *Ready to receive Cargo* (and see p. 495).

8a. A charter-party provided for lay days for loading the cargo at a Russian port. Whilst the ship was in the port of loading, and before the lay days expired, a war was declared between England and Russia. Before and after the declaration of war, the master asked for his cargo, and was told there was none, and that he had better go. He did not sail at once; but after some delay, and before the lay days had wholly expired, sailed with another cargo. *Held*, that the master not having treated the refusal as a breach before the declaration of war, which dissolved the contract, there was no right of action against the charterer. *Avery v. Bowden*, 6 E. & B. 953; 26 L. J. Q. B. 3.

16. *Deckload* (and see p. 500).

9. Words in a charter-party providing that a deckload of timber is to be carried at full freight but "at merchants' risk" do not preclude the owner of the deckload from recovering general average contribution if the cargo is carried on deck by the custom of trade, and is jettisoned. *Burton v. English*, 5 Asp. 187; reversing on appeal the decision in this case, in No. 285, p. 500.

22. *Safe Port* (and see p. 503).

10. In an action for breach of charter-party, an expression of opinion by the judge that a certain port is a safe loading place is not a misdirection if he leaves the question to the jury. *Smith v. Dart*, 14 Q. B. D. 105; 5 Asp. 360; 52 L. T. N.S. 218; 54 L. J. Q. B. 121.

30. *Avoidance or Dissolution.*

3. *Perils of the Seas.*

(b) *As affecting outward Voyage* (and see pp. 494, 508).

See also No. 8, *supra*.

30a. *Option to cancel.*

11. Where a charter-party provides that if "the steamer be not ready to load on or before the 31st May, 1882, the charterers to have the option of cancelling the charter-party, the same to be declared on the steamer being ready to receive

cargo," the fact that the steamer has partly discharged her outward cargo, and can begin to take in her chartered cargo whilst discharging the remainder before the cancelling date will not operate to deprive the charterer of his option to cancel, as he is entitled to have the whole reach of the ship's hold at his disposal before the cancelling date. *Groves, Maclean & Co. v. Volkart Bros.*, C. A., 5 May, 1886.

11a. See also No. 8, *supra*, and pp. 494, 509.

Part III.—BILLS OF LADING.

5. Rights of Consignees, Indorsees, and Assignees.

1. *Since* 18 & 19 *Vict. c. 111.*

(a) *Generally* (and see p. 515).

12. Indorsees of a bill of lading can only sue in respect of rights arising out of the contract contained in such bill of lading, and hence cannot sue for the loss of goods brought alongside of a ship, but not shipped on board of her, as the contract relates to goods shipped only. *Thorman v. Burt*, C. A., 3 March, 1886.

2. *Before* 18 & 19 *Vict. c. 111.*

(a) *Generally* (and see p. 518).

13. When, from all the facts, it may fairly be inferred that it was the intention of a seller to pass the property in goods shipped to order, the mere circumstance of the bill of lading being taken in the name of the seller and remaining undorsed will not prevent its passing. *Joyce v. Swann*, 17 C. B. N.S. 216.

6. Liabilities of Consignees, Indorsees, and Assignees (and see p. 519).

14. A shipper of goods who has endorsed a bill of lading in blank, and delivered it to the indorsee simply by way of security for money advanced, does not thereby pass the property in the goods to the indorsee so as to transfer to him all liabilities in respect of them within the meaning of sect. 1 of the Bills of Lading Act (18 & 19 *Vict. c. 111.*), and consequently such an indorsee cannot be made liable in an action by the shipowner for freight. *Sewell v. Burdick* (H. L.), 10 App. Cas. 74; 5 Asp. 376; 52 L. T. N.S.

445; 54 L. J. Q. B. 156; reversing *Burdick v. Sewell* (C. A.), 5 Asp. 298; 51 L. T. N.S. 453; 13 Q. B. D. 159; which reversed (Q. B.) 5 Asp. 79; 48 L. T. N.S. 705; 10 Q. B. D. 363; 52 L. J. Q. B. 428.

10. Seaworthiness (and see pp. 491, 520 and 530).

See also No. 15, *infra*.

12. Barratry (and see p. 534).

See also tit. MARINE INSURANCE, pp. 1019—1038.

22. Exceptions.

4. *Negligence* (expressly excepted).

(a) *Generally* (and see p. 530).

15. The excepted perils in a bill of lading have no application to the case of a vessel sailing in an unseaworthy condition, and hence they are no defence to an action brought for loss or damage to the charterer's goods occasioned by such unseaworthiness. *The Glenfruin*, 10 P. D. 103; 5 Asp. 413; 52 L. T. N.S. 769.

9. *Leakage and Breakeage* (and see p. 532).

15a. The ordinary exception in a bill of lading of perils of the seas does not exempt a shipowner from liability for damage caused to one part of a cargo by leakage of another. *Gillespie v. Thompson*, 6 E. & B. 477, n.

11. *Rats* (and see p. 534).

16. Damage to cargo caused by water getting through a hole made by rats in a ship's bottom is not damage by "perils of the sea" within the meaning of the exceptions in a charter-party or bill of lading. *Quare*, in a policy of marine insurance. *Pandorf & Co. v. Hamilton, Fraser & Co.*, C. A., August, 1886; reversing 54 L. T. N.S. 536.

Part IV.—STOPPAGE IN TRANSITU.

2. Who entitled to stop (and see p. 543).

17. M. & Co., merchants, of Jamaica, ordered of P. & G., merchants, of Baltimore, goods to be shipped from Baltimore to Jamaica at the risk and expense of

M. & Co. The goods were shipped on board the ship C., and were by the terms of the bills of lading deliverable to M. & Co. or their assigns on payment of freight. The goods were not paid for. While the vessel was on her voyage M. & Co. became bankrupt. On her arrival at Jamaica the agents of P. & G. went on board and demanded a package of the cargo in the name of the whole on behalf of P. & G. Before the arrival of the goods at Jamaica, P. & G. wrote to their agents, saying, "In disposing of the cargo use your own judgment," and forwarded a power of attorney for that purpose, but the letter did not arrive at Jamaica till the agents had seized the cargo. *Held*, first, that the agents at the time of the seizure of the goods had authority to stop the goods *in transitu* on behalf of P. & G. *Hutchings v. Nunes*, 1 Moore, P. C. C. N.S. 243; 10 Jur. N.S. 109.

17a. *Held*, secondly, that there was an effectual stoppage of the goods *in transitu* by the agents. *Ibid*.

Part V.—GENERAL DUTIES OF CARRIERS.

4a. Discharge during Voyage.

18. A vessel having been chartered to convey a cargo of coals to China, and having become damaged, the master was forced to discharge the cargo, and the owner declined to re-ship it, on the ground that, having become wet, it was liable to spontaneous combustion. On a bill by the charterers to restrain the owner from employing the ship in any manner inconsistently with the charter-party, the court directed an inquiry as to the state of the cargo, and granted an injunction pending such inquiry. *Heriot v. Nicholas*, 12 W. R. 844—L. J.

18a. When a cargo has been shipped, and the voyage is delayed by an accident not within the perils excepted in the contract of affreightment, in consequence of which the cargo has to be discharged, the shipowner has a lien on the cargo for the purpose of enabling him to earn her freight, and the cargo owner is not entitled to insist on delivery of the cargo without payment of freight before the completion of the voyage on which the freight is to be earned, but the shipowner may insist upon re-shipping the original cargo if it is capable of being carried on. *The Blenheim*, 5 Asp. 522.

Part VI.—DAMAGE OR LOSS.

1. Generally (and see p. 558).

19. Action by charterers against the owners, for damages, through negligent navigation, and consequent loss of cargo. The E. of D. left Taganrog, in the Black Sea, in July, 1884, with a cargo of rye, for delivery at Altona. It was stated for the defence that she passed Cape St. Vincent at the distance of about half-a-mile; that she then shaped a course N.- $\frac{1}{2}$ -E. towards Cape Roca, on the coast of Portugal, the weather being fine, though rather hazy, and the sea smooth; that from that time the vessel proceeded at about eight knots an hour, until 9 p.m., when she suddenly entered a dense fog; that thereupon she was slowed to about six knots, and her course altered to N.- $\frac{3}{4}$ -W. magnetic; that early on the morning of the 5th the fog became so dense that the speed was reduced to three knots; that at 4 a.m. the second officer came on deck to take the watch, and was joined by the master, and about twenty minutes afterwards the sound of breakers was heard; that the master ordered the helm to be put hard-a-starboard, and the engines to be stopped and reversed, but a moment or so afterwards she struck on some rocks about half-a-mile to the westward of Cape Guia Light. She was afterwards got off and taken into Lisbon, temporarily repaired there, and then proceeded to Cardiff. It was admitted that no soundings had been taken to test the position of the vessel; the defendants contending that the course which the E. of D. had shaped ought to have carried her clear of the land; and, therefore, there was no necessity for soundings; that from the nature of the bottom about that part of the coast any soundings were unreliable; that to have stopped to take them would have been dangerous both to their vessel and others, and that some unknown and abnormal force had carried the vessel on to the rocks. On the other hand it was contended that the course steered was, looking at the dangerous and well-known indraught current at that part of the coast of Portugal, running too close to Cape Razo, even in fine weather; that she ought to have been given more sea room; and that when she got into the fog and the course was altered, the lead should have been used; and if it had been used half an hour before the accident the ship's danger would at once have become ap-

parent. Verdict for the plaintiff on the ground of negligence of the defendants, and judgment accordingly. *Scaramanga, Manhouse & Co. v. Martin & Marquand*, 27 January, 1885.

19a. Action *in rem* against a foreign ship for damage to cargo. The pleadings stated that while the vessel was on a voyage to a British port with the cargo, the master, and sole owner, wilfully cut down and destroyed parts of the vessel, and abandoned her, and she was afterwards taken possession of by salvors and brought into a British port, and the plaintiffs were compelled to pay salvage to obtain their cargo, the delivery of which was delayed by such circumstances. *Held*, that the facts disclosed a breach of duty, or of contract, within the meaning of sect. 6 of the Admiralty Court Act, 1861 (c. 10), entitling the plaintiffs to damages, although no criminal proceedings had been taken against the master, who appeared as defendant, and was a foreign subject. *The Princess Royal*, L. R. 3 A. & E. 41; 39 L. J. Adm. 43; 22 L. T. 39.

19b. See further as to negligence of master and crew, p. 530; as to bad navigation and other misconduct of master and officers causing shipping casualties, see tit. SHIPPING CASUALTIES INVESTIGATIONS, pp. 2206—2209.

5a. Railway and Canal Traffic Acts.

20. The provisions of the Railway and Canal Traffic Act, 1854 (c. 31), restricting the power of railway companies to limit their liability in respect of goods carried by them are extended to steamers belonging to railway companies and carrying on communication between towns or ports. See the Railway Clauses Act, 1863 (c. 92), s. 31, and the Regulation of Railways Act, 1868 (c. 119), s. 16.

20a. Such provisions also apply to contracts made with railway companies who procure goods to be carried in steamers owned by other persons. See the Regulation of Railways Act, 1871 (c. 78), s. 12.

21. By sect. 16 of the Regulation of Railways Act, 1868 (c. 119), sect. 7 of the Railway and Canal Traffic Act, 1854 (c. 31), is incorporated, and its provisions extended and made applicable to luggage conveyed by railway companies on board steamers used by them for the purpose of

carrying on communication between any towns or ports. (*Stewart v. London & North-Western Rail. Co.*, 19 L. T. N.S. 302, discussed.) *Cohen v. South-Eastern Rail. Co.*, L. R. 2 Exch. D. 253; 3 Asp. N.S. 248.

22. Where a railway company, having no steamers of their own, make a contract with a person to carry that person's goods by a route which involves a sea transit, and procure a steamship company to carry the goods over the sea transit for them, such contract is, as far as regards the sea transit, governed by the Railway and Canal Traffic Act, 1854 (c. 31), s. 7, and any stipulation in it which is unreasonable is void, and hence the railway company cannot exempt themselves from the negligence of the steamship company's servants during the sea transit. *Doolan v. Midland Rail. Co.*, L. R. 2 App. Cas. 792; 3 Asp. N.S. 485.

23. As to what conditions have been held to be "just and reasonable," and *vice versa*, see *Doolan v. Midland Rail. Co.*, L. R. 2 App. Cas. 792; 3 Asp. N.S. 485; *Peek v. North Staffordshire Rail. Co.*, 10 H. L. Cas. 473; *Rooth v. N. E. Rail. Co.*, L. R. 2 Ex. 173; *Ashenden v. L. B. & S. C. Rail. Co.*, 5 Ex. Div. 190; *Allday v. G. W. Rail. Co.*, 34 L. J. Q. B. 5; *Wise v. G. W. Rail. Co.*, 25 L. J. Ex. 258; *Lewis v. G. W. Rail. Co.*, 29 L. J. Exch. 425.

24. All conditions limiting the liability of a railway company as carriers must be set out in a written contract signed by or on behalf of the consignor or owner of the goods, and must be such as, in the opinion of a court or judge, are just and reasonable. *Peek v. North Staffordshire Rail. Co.*, 10 H. L. Cas. 473; 32 L. J. Q. B. 241; *Aldridge v. Great Western Rail. Co.*, 15 C. B. N.S. 582; 33 L. J. C. P. 161.

28. Practice in Actions for Damage to Cargo (and see p. 566).

25. The Admiralty Court rule that in cases of collision the damages are to be equally divided where both ships are to blame, does not apply to actions for breach of contract brought by owners of cargo against the carrying ship to recover damages for loss of or injury to their goods, and hence the plaintiffs in such actions are entitled to recover their full

damages from the owners of the carrying ship. *The Bushire*, 5 Asp. 416; 52 L. T. N.S. 740.

And see tit. PRACTICE, p. 1680.

29. Measure of Damages.

26. Where, owing to negligent navigation, a ship is cast ashore, and her cargo thereby suffers damage and loss, money paid by the underwriters of the cargo to a salvage association who were employed with the assent of the shipowner for salving a portion of the cargo is not a voluntary payment, and is recoverable by the owners of the cargo from the shipowners, being money paid on behalf of the cargo owners to avert a loss which would have fallen on the shipowners if the cargo had not been sent to its destination. *Scaramanga v. Martin, Marquand & Co.*, 5 Asp. 410, 506.

27. Premiums paid for the insurance of cargo are recoverable by the charterers from the shipowners for breach of the contract of carriage in not delivering the goods; the value of the cargo at the port of destination, including all the reasonable mercantile expenses of taking it there, among which are premiums of insurance. *Great Indian Peninsular Railway Co. v. Turnbull*, 5 Asp. 465; 53 L. T. N.S. 325; and see Pt. VII. c. 2, s. 4, *infra*, and p. 570.

See also tit. REGISTRAR AND MERCHANTS, p. 1738.

30. Passenger's Luggage.

See tit. OWNERS, p. 1310, Nos. 1103—1105.

Part VII.—PAYMENT.

1. Generally* (and see p. 566).

28. Where a cargo is shipped by vendors to become the property of the shipowners on payment of price and other contingencies, and the master signs bill of lading binding himself to deliver to order on payment of freight, but no rate of freight is specified, and the shipowners fail to pay the price, and the bills of lading are presented by persons who have taken up the bill of exchange drawn for the price by the shipper, the holders of the bill of lading must pay freight for

the cargo. *Swann v. Tyrie*, 4 B. & P. 680; 33 L. J. Q. B. 97.

2. Under Charter-parties.

4. *Advanced Freight* (and see p. 570).

29. The words "steamer lost or not lost" in a clause in a charter-party providing for payment of freight in advance within a certain time of the ship sailing, do not preclude the charterer recovering the advanced freight paid under such clause as damages for breach of contract, where the ship has been lost through the negligence of the shipowners, *semble*, because the words "lost or not lost" are applicable only to the perils excepted in the contract of carriage, and negligence of the master and crew was not one of the exceptions. *Great Indian Peninsular Railway Company v. Turnbull*, 5 Asp. 465; 53 L. T. N.S. 325.

4. Under Charter-parties and Bills of Lading (and see p. 578).

30. Where, by a bill of lading, freight is payable at a certain rate, and "other conditions as per charter-party," and by the charter-party freight is payable at a higher rate, and the shipowner is given an absolute lien on the cargo for freight, the shipowner has no right, as against the consignees who were not the charterers, to detain the cargo to enforce payment of freight at the rate mentioned in the charter-party; the conditions as to such freight not being incorporated in the bill of lading, and the consignees being entitled to delivery upon payment of the freight mentioned in the bill of lading. *Gardner v. Trechmann*, 5 Asp. 558; 15 Q. B. D. 154.

16. On Abandonment of Ship (and see p. 585).

31. When a salving ship takes a crew off a vessel in distress, and puts men on board of her, refusing to allow her own crew to return, and the two vessels are in company navigated into port, there is no such abandonment of the ship as to put an end to the contract of carriage, and consequently there will be freight due upon the consignees requiring delivery of the cargo, such freight being *pro rata*, assuming the port not to be the

* (2) See, as to freight according to German law, tit. LIENS, p. 836, Nos. 235—247 and Nos. 257—276.

port to which the cargo ought to have been taken under the contract of carriage. *The Leptir*, 5 Asp. 411; 52 L. T. N.S. 768.

20. Computation.

3. *By Measure* (and see p. 587).

32. By a charter-party making goods deliverable in England freight was payable "at and after the rate of thirty-five shillings per 180 cubic English feet taken on board as per Gothenburg custom." *Held*, on appeal, that freight was payable according to the quantity as ascertained by Gothenburg and not English measurement. *The Skandinav*, 51 L. J. P. D. 93; 50 L. J. P. D. 46.

24. Set-off prior to the Judicature Acts (and see p. 590).

33. In an action for freight the defendant pleaded a set-off, to which the plaintiff replied, on equitable grounds, that while the freight was in the course of being earned, he assigned it for value to A., of which the defendant, before the debt became due, and before the action was brought, had notice; and that the plaintiff was suing only as trustee for A. *Held*, no answer to the plea. *Wilson v. Gabriel*, 4 B. & S. 243.

Part IX.—DEMURRAGE.

2. Under Charter-parties.

4. *Running Days* (and see p. 606).

34. Running days in a charter-party in the absence of custom are consecutive days, but a custom of a port, by which days occupied in moving the ship from one part of the port to another are not counted as lay days, is consistent with a charter-party providing for so many running days as lay days, and it is a good custom. *Nielsen & Co. v. Wait, James & Co.*, 5 Asp. 553; 16 Q. B. D. 67; 54 L. T. N.S. 344.

35. By charter-party it was agreed that the plaintiff's steamer, having loaded a grain cargo, should therewith proceed to a port in the B. Channel as ordered, "or so near thereto as she may safely get at all times of the tide, and always afloat, eight running days, Sundays excepted, to be allowed the merchants, if the ship be

not sooner despatched, for loading and discharging." The ship was ordered to discharge at G., and having arrived at S. Dock, which is within the port of G., but some miles from the basin where grain cargoes are discharged if the ship's burden will admit; partial delivery was there made, owing to the ship not being able to get to the basin until part of her cargo was discharged. The consignees then required the ship to be taken to the basin where the discharge was completed, when the ship returned to S. Dock. In an action for demurrage the following custom of the port of G. was proved, viz., that the ordinary place for discharging grain cargoes was at the basin, that when vessels laden therewith were of too heavy a burden to get there they were lightened at S., that during the discharge at S. the lay days counted, but that the time occupied in going up to the basin and returning to S. was not counted. *Held*, that the custom was reasonable, and that it was not inconsistent with the express terms of the charter as to "running days," and that, therefore, the time occupied by the ship in going from S. to the basin and in returning ought to be excluded from the lay days. *Ibid.*

8. *Port of Discharge* (and see p. 607).

36. Where, by the terms of a charter-party, a ship was to load a cargo "and therewith proceed to D. and deliver the same alongside consignee's or railway wharf, or into lighters, or any vessel or wharf where she may safely deliver as ordered;" and upon her arrival at D. she was ordered to discharge at the railway wharf, but, owing to all the discharging berths being occupied, she was not berthed until twenty-four hours after her arrival in dock: *Held*, in an action for demurrage, that the voyage was not completed until the ship was berthed at the railway wharf, and, therefore, the defendants were not liable for demurrage for the period between the ship's arrival in dock at D. and her being berthed at the railway wharf. *Murphy v. Coffin & Co.*, 5 Asp. 531, n.

37. Where, by a charter-party, it was agreed that the plaintiff's vessel, after loading a cargo, should proceed "to London or Tyne dock, to such ready quay berth as ordered by the charterers," demurrage at an agreed rate per day, and the master or owners to have an absolute lien on the cargo for all freight, dead

freight, and demurrage, and the vessel was ordered by the charterers to a London dock, and upon her arrival there was no quay-berth ready for her reception, and a delay of one day was thereby caused in discharging her cargo: *Held*, in an action by the shipowner claiming a lien upon the cargo for demurrage, that, in the true construction of the charter-party, the charterers were bound to name and provide a ready quay-berth, and that, for a delay caused by their neglecting to do so, the plaintiffs were entitled to a lien on the cargo for demurrage, the damages being sufficiently in the nature of demurrage to come within the demurrage clause in the charter-party. *Harris & Dixon v. Marcus Jacob & Co.*, 5 Asp. 530; 15 Q. B. D. 247; 54 L. T. N.S. 61; 10 App. Cas. 247.

Part XI.—LIENS.

1. Generally* (and see p. 611).

* (1) By the general maritime law, and the law of America, the master has a lien on the freight for his necessary disbursements for incidental expenses and the liabilities which he contracts for those expenses during the

10. Landing of Goods under M. S. Act Amendment Act, 1862 (and see p. 619).

38. Where goods are landed for assortment under the 6th sub-section of section 67 of the M. S. Act Amendment Act, 1862, the 7th sub-section, which relates to the case of a vessel discharging overside, is not applicable, and the goods owner is not entitled to insist on the twenty-four hours' notice in writing referred to in the 7th subsection. *The Clan Macdonald*, 8 P. D. 178; 52 L. J. P. D. 89; 5 Mar. L. C. N.S. 148.

38a. Even if the 7th sub-section applies to the case of goods landed for assortment, it is still the duty of the goods-owner to take away the goods within a reasonable time after he has notice, whether written or verbal, that he can receive them. The notice in writing is only required as a condition of the shipowner's right to land or unship the goods at the goods-owner's risk and expense. *Ibid.*

voyage. *Drinkwater et al. v. The freight, &c. of The Spartan*, 3 (American) Jur. 26; *The Packet*, 8 Mason, 255; *The Larch*, 2 Curtis, C. C. 427. [AMERICAN.]

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Part I.—COURTS OF THE UNITED KINGDOM.

4. Her Majesty's High Court of Justice.5. *Transfer of Action* (and see p. 638).

1. An action in which the sole question is one of salvage, may properly be transferred to the Admiralty Division, but such a transfer should not be ordered where there are other questions in the action capable of being tried by a jury. *Ocean Steamship Company v. Anderson*, 33 W. R. 536.

2. See also as to transfer of actions, tit. PRACTICE, Pt. II. c. 15, p. 1536.

6. The Admiralty Branch of the Probate, Divorce, and Admiralty Division.2. *To enforce Foreign Judgments.*

3. Application to the English Court of Admiralty to enforce a sentence of the Irish Admiralty Court refused. *Pilkington v. The Orrory*, anno 1679, Marsden, p. 253.

8. The Law.5. *Limitation of Action.*

4 (in lieu of No. 193 on p. 658). As to limitation of actions, see *Mews' and others' Digest*, founded on Fisher, anno 1884, vol. 4, p. 1882, and *Annual Digests* since; *Chitty's Equity Index*, 4th ed. vol. 4; and the *Mercantile Law Amendment Act*, 1856 (c. 97), s. 15.

9. Lis alibi pendens (and see p. 658).

5. A collision occurred on the high seas between the C. and the J., two foreign vessels. An action *in rem* was commenced against the C., in Holland, by the owners of the J. and her cargo.

The C. was arrested in the action; but was released by the Dutch court with the consent of the agent of the J. on certain underwriters interested in the C. guaranteeing the plaintiffs to answer judgment in the action. Cross proceedings were instituted in the Dutch court by the owners of the C. Proceedings in respect of the same collision were then commenced by the owners of the J. and her cargo against the C. in the Admiralty Division, and the C. was arrested. The plaintiffs offered to abandon the proceedings in Holland. *Held*, by the majority of the Court of Appeal (affirming the judgment below), that whether the guarantee was equivalent to bail, or was a private agreement by which the release was purchased, the proceedings in this country must be stayed, and the C. released. *Held*, by Lord Esher, M. R., that the guarantee was not equivalent to bail, and that as the plaintiffs' remedy in Holland was not so good as in England, the action should be allowed to continue. *The Christianborg*, 10 P. D. 141 (C. A.); 54 L. J., P. D. 84.

5a (in lieu of No. 206 on p. 659). See for further cases as to *lis alibi pendens*, *Mews' and others' Digest*, founded on Fisher, anno 1884, vol. 4, p. 2035, and *Annual Digests* since.

10. Res Judicata.1. *Generally* (and see p. 659).

6. A collision occurred between the ships K. & A., when the K. and its cargo were lost. The owners of the K. brought an action against the owners of the A. in respect of the collision, but the action was discontinued by consent of all parties, without costs, on the ground of inevitable accident, and this was embodied in an order of court in this form:—"Upon consent of both solicitors, it is ordered that this action be discontinued, without costs, on the ground of inevitable accident."

The owners of the cargo on the K. then brought an action against the owners of the A., when the court found both vessels to blame for the collision. The owners of the A. instituted an action to limit their liability to £8 a ton (the statutory limit). The owners of the K. then took out a summons to have the consent order rescinded, so as to allow them to come in and prove, and it was rescinded accordingly. On the claims coming before the registrar, the cargo owners objected to the claim of the owners of the K. on the fund. The registrar admitted the claim, and his decision was affirmed by the President. On appeal, *held*, that the agreement in question was only an agreement to treat the action as at an end, and in fact to discontinue it; and judgment affirmed, Coleridge, C. J., *dubitante*. *The Ardandhu*, March 18, 1886, and in court below, 11 P. D. 40.

7. See also *The Storm Cock*, No. 538, in tit. SALVAGE, p. 1837. But see *The Bellecain*, No. 1405a, in tit. OWNERS, Pt. VI. p. 1344.

8. As to the conclusiveness in an English court of an average adjustment made abroad at the port of delivery according to the law of the place, though different to English law, see *Dent v. Smith, Dalgleish v. Davidson, Newman v. Cazalet and others*, in tit. AVERAGE, pp. 90, 91, Nos. 138—145.

9. Action for damage by collision brought by the owners of the Em. against the El., *held*, in the Admiralty Division, by Sir R. Phillimore, and by the Court of Appeal, that the El. was solely to blame. Subsequent action for damage in respect of the same collision, brought by the owners of the cargo of the Em., and tried before the President of the Probate, Divorce and Admiralty Division. In that action the El. admitted her liability, but contended that the Em. was also to blame, on the ground that she was going at the time at a speed which was immoderate according to the Sea Collision Rules of 1879. This defence had been set up in both courts in the former action, but some of the witnesses on both sides examined at the hearing before Sir Robert Phillimore had not been called on the second trial. The President observed,

that though in respect of the number of witnesses the plaintiff's case in the first action might have been stronger, yet, as in other respects, the facts in this action were substantially the same as those in the action tried before Sir Robert Phillimore and the Court of Appeal, and as those two tribunals had *held*, the Em. was in no way to blame, there would be judgment for the plaintiff, with costs, although had the case come before the court for the first time, he should have *held* the defendants had established their case, and that the Em. was going at an improper speed, and was therefore jointly to blame. Decision affirmed on appeal, and also in the House of Lords, three peers voting against the appeal and two in its favour. *The Elysia*, in the Admiralty Division, March 16, 1883; in the Court of Appeal, Feb. 25, 1884; and in the House of Lords, May 11, 1885.*

10 (in lieu of No. 212, on p. 661). See for further cases as to *res judicata*, Mews' and others' Digest, founded on Fisher, anno 1884, tit. ESTOPPEL, vol. 3, p. 1074, and Annual Digests since.

11. As to the effect of foreign judgments, see Mews' and others' Digest, *Ibid.* vol. 4, p. 1027; in France, tit. JURISDICTION, Pt. IV. p. 784; in Germany, *Ibid.* p. 786; in Portugal, *Ibid.* p. 791; in Russia, *Ibid.* p. 793; and in Spain, *Ibid.* p. 794.

12. As to estoppel on other grounds, see tit. PRACTICE, Pt. II. p. 1581.

12. Government Ships.

1. *British* (and see p. 668).

13. A post office packet may be arrested in a suit for wages. *The Lord Hobart*, 2 Dodson, 103.

14. When the officer in command of a Queen's ship is proceeded against and *held* to blame for a collision, the Lords of the Admiralty indemnify the officer as acting as their agent. *Rogers v. Dutt*, 3 L. T. N.S. 160.

15. Proceedings having been taken in respect of a collision with a Queen's ship against Captain S., the commander of the Queen's ship, he died in the course of the proceedings, and an order was subse-

* (1) A question raised as to whether the judgment in the first action amounted to an estoppel as against the defendant to setting up such a defence in the second action, stood

over until after the questions of fact had been decided, and in the result became immaterial.

quently made substituting Lieutenant B., the next in command, in his place, he being duly authorized to be so substituted and consenting. *The Hochung—The Lapwing*, 5 Asp. 40.

2. Foreign (and see p. 669).

16. *Held*, that a foreign sovereign was entitled to sue for ships purchased with money taken from him during a revolution, and remaining in the port of L., and that the persons making the remittance were not necessary parties to the suit. *King of the Two Sicilies v. Wilcox*, 1 Sim. N.S. 333.

17. When a foreign government sues in an action of damage in the Admiralty, and the defendant counterclaims, though the plaintiff's ship is not liable to arrest, the court can order the plaintiff to give security to answer the counterclaim, such counterclaim being equivalent to the cross action mentioned in s. 34 of the Admiralty Court Act, 1861 (c. 10). *The Newbottle*, 10 P. D. 33 (C. A.); 54 L. J. P. D. 16; 5 Asp. 356.

13. Foreigners.

1. Generally (and see p. 671).

18 (in lieu of No. 323, on p. 673). See for cases in the other divisions as to foreign law and foreigners, Chitty's Equity Index, 4th ed. vol. 3, p. 2585, and Mews' and others' Digest, founded on Fisher, anno 1884, tit. INTERNATIONAL LAW, vol. 4, p. 950, and Annual Digests since.

20. Admiralty County Courts.

1. Generally (and see p. 677).

19. The County Courts Admiralty Jurisdiction Act, 1869, does not confer jurisdiction over a claim for the loss of the personal luggage of a passenger on board a ship. *The Queen v. The Judge of the City of London Court*, 12 Q. B. D. 115; 53 L. J. Q. B. D. 28; 5 Asp. 283; 51 L. T. 197; 32 W. R. 291.

7. *As to Necessaries, Repairs and Supplies* (and see p. 680).

20. See tit. NECESSARIES, REPAIRS AND SUPPLIES, c. 3, p. 1156.

21. County Courts (and see p. 682).

21. The County Courts Admiralty Jurisdiction Acts, 1868 and 1869 (cc. 71 and 51), do not deprive county courts not having Admiralty jurisdiction of their jurisdiction to try actions for freight under charter-parties, when the amount claimed does not exceed £50. *The Queen v. The Judge of the Southend County Court*, 13 Q. B. D. 142; 53 L. J. Q. B. D. 423; 32 W. R. 754.

Part II.—BRITISH COURTS IN COLONIAL OR FOREIGN POSSESSIONS OF THE UNITED KINGDOM.

1. Courts of Vice-Admiralty.

1. Generally (and see p. 686).

22. Vice-Admiralty Courts abroad had, prior to this act, only the ordinary jurisdiction exercised by the Court of Admiralty before the passing of the 3 & 4 Vict. c. 65. *The Australia*, Swabey, 480; 13 Moore, P. C. C. 132; *The John*, 2 Hagg. 305.

3. Concurrent Jurisdiction (and see p. 689).

23. Proceeds of a ship and cargo sold abroad and transmitted from a Vice-Admiralty Court to the registry of the High Court of Admiralty, decreed on motion to be paid out to the respective consignees of the cargo, on the consent of the purchaser of the cargo. *The Lady Banks*, 1 Hagg. 306.

2. Naval Courts.

1. Generally* (and see p. 690).

* (2) Naval courts are British tribunals to investigate facts and try cases connected with British shipping in ports or places out of her Majesty's dominions, when occasion demands the prompt interference of British authority. See Board of Trade Instructions as to Naval Courts, anno 1885, p. 3.

(3) They must not, therefore, be held in Great Britain nor in any British possession abroad. *Ibid.*

(4) They should not be held in any case in which a consul can deal satisfactorily with the matter, and where practicable a consultation should be held between a naval officer and a consul before summoning a naval court. *Ibid.*

(5) A naval court may be summoned—(a) If a master or any of the crew of a British ship make a complaint to a consul or a naval officer, which appears to such officer to re-

1a. Constitution of Court.*

2. Shipping Casualties Investigations.
(a) Generally† (and see p. 691).

quire immediate investigation. (b) Whenever the interest of the owner of any British ship, or of the cargo of any such ship, appears to such officer to require it. (c) Whenever any British ship is wrecked or abandoned, or otherwise lost, at or near the place where such officer may be, or whenever the crew or part of the crew of any British ship which has been wrecked, abandoned, or lost abroad, arrives at such place. *Ibid.*

(6) These cases may be classed under the following heads:—1. Crimes committed on the high seas and abroad. 2. Offences against discipline. 3. Misdemeanours and other offences against the M. S. Acts. 4. Wrecks and casualties. 5. Misconduct and incompetency of officers of the mercantile marine, holding certificates granted by the Board of Trade, or colonial certificates of the same validity. 6. Loss of or danger to health or life on board British ships, however caused. 7. Danger or damage to property in ships or cargoes. *Ibid.*

(7) Naval courts, when they punish by inflicting imprisonment or forfeiture of wages, or both, under sect. 243 of the M. S. Act, 1854 (c. 104), should not also punish by inflicting forfeiture of wages under the 263rd section of the same act. *Ibid.* anno 1885, Offences and Discipline, p. 5.

(8) Naval courts, before exercising jurisdiction under sect. 18 of the M. S. Act, 1885 (c. 91), should bear in mind that—1. A complaint must be made which appears to the officers summoning the court to require immediate investigation. 2. A complaint must be made to such officer by the master of a British ship, or by a certificated mate, or by one or more of the seamen belonging to such ship. 3. The complaint must touch the conduct of the master or one of the crew of such ship. See Board of Trade Instructions as to Naval Courts, anno 1885, p. 6.

(9) When the offenders are masters holding certificates, it will generally be better to use only the court's power to suspend or cancel their certificates, and supersede them in command, treating the cases as those of gross misconduct. *Ibid.*

(10) For a list of offences against the M. S. Acts, in respect of which two justices would, if the case were tried in the United Kingdom, have power to convict summarily, with their penalties and punishments, and as to which a naval court has similar power. *Ibid.* pp. 75, 76.

* (11) The court is to be called by an officer in command of a ship of her Majesty on a foreign station, or in his absence by a consular officer. It is to consist of not more than five and not less than three members. *Ibid.* p. 9.

(12) No person can form one of a naval

court who is not either an officer in the naval service of her Majesty, a consular officer, the master of a British merchant ship, or a British merchant. For the definition of a consular officer, see sect. 2 of M. S. Act, 1854 (c. 104). A person who possesses a master's certificate, but has never commanded as master, is not eligible. *Ibid.*

(13) Except it be impossible to procure their attendance, a naval court is not legally constituted unless one of the court is an officer in the naval service of her Majesty not below the rank of lieutenant, one a consular officer, and one a master of a British merchant ship. More than one consular officer cannot sit on a naval court. When there is no naval officer, one of the court must be a master of a British merchant ship when possible. *Ibid.*

(14) Where it is impossible to obtain the services of either a naval officer or a master of a British merchant ship, a court composed of one consular officer and two or more British merchants is legally constituted, and then only, or where there is no consular officer and there is a naval officer, the court may be composed of one naval officer and two or more British merchants. *Ibid.* p. 13.

(15) In cases of danger to life and health, a medical officer of the royal navy shall, when possible, be a member of the court, and, when necessary, medical men may be examined as experts. *Ibid.*

(16) Neither the master nor the consignee of the ship to which the parties complaining or complained against may belong can be a member of a naval court. *Ibid.* p. 13.

(17) The president of the court must be either a naval or a consular officer, and if there is both a naval and a consular officer in such court, then the president of the court must be the naval or consular officer who is of the highest rank, according to regulation, whether he has summoned the court or not. *Ibid.*

(18) No power is given for the appointment of an engineer or surveyor as a member of a naval court; but where the court needs advice relating to machinery, ship-building, local navigation, or any other point involved in the case, it can call experts as witnesses, and examine them on the evidence given. *Ibid.* p. 7.

† (19) There are two things which should always be made the subject of the fullest possible inquiry. The cause or causes of the casualty, the conduct of the officers and crew, and in every notice of a naval court issued to masters, or to others, it will be well to mention both subjects of investigation. Where the facts are clear, the officers and crew free from blame, and no public benefit can be derived from a formal investigation, a naval court should not be held. But every other

2a. *Practice.**3. *Report*† (and see p. 691).3a. *Forms.*‡4. *Orders conclusive* (and see p. 691).

24. All orders made by a naval court—
(1) Superseding the master and appointing, with the consent of the consignee of the ship, if then at the place, another

case of a wreck abandonment or important casualty to a British ship outside British jurisdiction should, if possible, be investigated by a naval court. *Ibid.* p. 6.

(20) Where there is reason to believe that the ship was unseaworthy, a most careful inquiry and report should be made as to the character of the unseaworthiness, and its cause, the time when it began, and any defect in the ship, its machinery, stowage, equipment, or crew, which caused the danger. *Ibid.* p. 7.

(21) Whenever the misconduct or incompetency shown by an officer is connected with a casualty to a ship it will be best to deal with it by an inquiry into the casualty. *Ibid.* p. 8.

(22) In any grave case of loss of or danger to health or life by improper or insufficient water, accommodation, medicines, or anti-scorbutics, where several of a crew have died, or are suffering severely from scurvy or other sickness due to such causes, a naval court should be held, the ship and stores surveyed, and evidence carefully taken as to how far the provisions of the law relating to provisions, health, and accommodation on board ships have been complied with. *Ibid.*

(23) Loss of or danger to health or life, if attended by a casualty to the ship, should be inquired into at the same time as the casualty. *Ibid.*

(24) In cases of loss of or danger to health or life by defective equipment, &c., the court has no power to do more than make inquiry, unless there has been default on the part of the master or officers. *Ibid.* p. 9.

(25) Cases of danger or damage to ships or cargoes when unattended with danger to life or health, or the misconduct of officers, will rarely require the holding of a naval court, except at the express request of those interested in the property, and should only be held in exceptional cases. *Ibid.*

* (26) The parties, and all necessary witnesses, should be summoned by the court, and their attendance may be compelled, and the production of all necessary documents may be ordered. *Ibid.* p. 14.

(27) Unless there is any special reason to the contrary, the court should be open to the public. *Ibid.*

(28) Parties to the proceedings include only parties on whose complaint the court has been held, or who have been complained against, or person on whose application the court has been held. *Ibid.* p. 18.

(29) The court has, in general, inherent power to control the right of audience before it, but, under suitable circumstances, it

should permit an accused person to plead through his advocate. *Ibid.* p. 14.

(30) All evidence should be, whenever practicable, taken on oath. *Ibid.*

(31) A copy of the report or statement of the case upon which the investigation is ordered should be furnished before the commencement of the investigation to the master and any of the crew holding certificates. Unless this is done, the court cannot cancel or suspend such certificates. *Ibid.*

(32) Every person against whom a charge is made should be informed in writing of the precise nature of the charge, and of the time and place at which the court is to sit; he should also be allowed to be present when evidence is taken to cross-examine, and to bring any evidence and make a statement in defence. *Ibid.*

(33) The decision of the court on the points in question, or with regard to the cancelling or suspending of certificates, should be stated in open court at the conclusion of the case, or as soon afterwards as possible. *Ibid.*

(33a) In cases of gross misconduct or incompetency, it will be better not to suspend the certificate, but to cancel it, with a recommendation to the Board of Trade to return it at a stated time on being satisfied that the officer is again fit to be in possession of it. *Ibid.* p. 16.

† (34) When the proceedings are concluded, a report must be made to the Board of Trade, and as to the particulars to be contained in the report, *Ibid.* p. 15.

‡ (35) For the following forms for the use of Naval Courts:—

B 2. Summons of Consular Officer convening it.

C. Notice of Summons to a Party.

A. Report of Proceedings of a Naval Court.

B 1. Summons of Naval Officer convening it.

D. Summons to a Witness.

E. Heading and Terminations for Depositions where no Interpreter is required.

F. and G. The same when the witness is unacquainted with English, and an Interpreter is employed.

H. Form of Oath or Affirmation of a Witness.

I. Account of Expenses of Naval Court.

K. Form of Finding and Order of the Court.

L. Order for the Conveyance of a Prisoner.

M. Account of Expenses incurred for a Prisoner sent to Trial.

N. Form of Summons to Master or Member of Crew for an Offence.

O. Form of Conviction of Master or one of the Crew for an Offence. *Ibid.* pp. 81—102.

master in his stead; (2) discharging any seaman from his ship; (3) ordering the wages of any seaman so discharged or any part thereof to be forfeited; (4) deciding any questions as to wages, fines or forfeitures arising between any of the parties to the proceedings; (5) directing all or any costs incurred by the master or owner in procuring the imprisonment of any seaman or apprentice in a foreign port, or in his maintenance whilst so imprisoned, to be paid out of his wages; (6) exercising the powers as to offences at sea or abroad given to British consular officers; and (7) as to costs of proceedings before it, shall, in any subsequent legal proceedings, be deemed conclusive as to the rights of the parties. See M. S. Act, 1854 (c. 104), s. 263.

6. *Costs.*

See tit. *Costs*, in *Addenda*, p. 2402.

6. **Cyprus** (and see p. 696).

25. See further, as to the powers of the Supreme and district courts as to practice and procedure, the Civil Procedure Amendment Law, 1885, as contained in Ordinance No. 10 of 1885.

26. For provisions regulating the conduct of inhabitants of Cyprus during hostilities between states with which her Majesty is at peace, and as to the procedure in the High Court of Justice for Cyprus against ships offending such provisions, see Order in Council of May 18, 1881, in 15 *Hertslet*, p. 108.

7. **Gibraltar** (and see p. 697).

27. The governor may, by warrant from time to time, form a marine court, consisting of not more than seven, nor less than five, members, of whom one shall be the captain of the port, two (or more) masters of the mercantile marine, and one (if practicable) a commissioned officer in the royal navy. See the Merchant Shipping Ordinance, 1886 (No. 2), s. 62.

28. A registrar is appointed by the governor, and on receiving a notice of appeal or a reference from the governor under the provisions of the ordinance, he summons a court. *Ibid.* s. 63.

29. Where an appeal is provided by the above ordinance, by the M. S. (Colonial Inquiries) Act, 1882 (c. 76), or by any other imperial act in force in Gibraltar,

there is an appeal from the decision of the marine court and court of survey to the Supreme Court. The appellant must give notice within seven days of his intention to appeal and enter into security. *Ibid.* s. 80.

30. Large powers are given by the above ordinance for detaining unseaworthy or overladen or improperly-laden ships (both British and foreign); for the survey of steamers of fifty tons and upwards; for the appointment of surveyors; the grant, suspension, and cancellation of certificates; the regulation of boats to passenger ships, and the limitation of numbers to be carried. *Ibid.*

31. For the general rules for the marine courts and courts of survey made under the M. S. Ordinance, 1886, see those set out on p. 35 of the Ordinances for Gibraltar for the year 1886, and made by the governor on the 1st June, 1886.

32. For the rules and regulations relating to the police, navigation, and use of the port of Gibraltar, see the Gibraltar Port Order in Council, 1886, proclaimed by the governor, May 15, 1886.

8. **Heligoland** (and see p. 698).

33. The Ord. No. 2 of 1872, as to the Court for Divorce and Matrimonial Causes, is amended by Ord. No. 2 of 1884.

9. **Malta** (and see p. 698).

34. For provisions regulating the importation, manufacturing, keeping, selling, and carrying of explosive substances, *Ibid.* No. 4 of 1885.

35. For provisions prohibiting the importation of Sicilian money, *Ibid.* No. 16 of 1885.

36. For provisions as to treatment of prisoners found on merchant ships, and offences at sea, *Ibid.* No. 3 of 1882, in 15 *Hertslet's Collection of Treaties*, p. 1005.

11. **Ceylon** (and see p. 701).

37. For provisions that the steam packets of the *Compagnie des Messageries Maritimes*, employed by the French Post Office in carrying mails to and from this colony, shall, when in the ports of this colony, be considered as vessels of war, and shall be entitled to all the rights and privileges of such vessels, and shall not be liable to seizure or detention by order of

any court or judge, see Ord. No. 7 of 1881, in 15 Hertslet, p. 987.

38. For provisions as to vessels carrying passengers between parts of Ceylon, *Ibid.* No. 3 of 1886.

39. For further provisions as to criminal courts and procedure, see the Criminal Procedure Code as contained in Ord. No. 2 of 1883, and as amended by Ord. No. 36 of 1884, and Ord. No. 5 of 1886.

12. Hong Kong (and see p. 702).

40. For provisions as to merchant shipping generally, the survey and detention of unseaworthy ships, the carriage of dangerous goods, the examination of masters and mates for certificates, the shipping and discharge of seamen, and seamen's boarding houses, see M. S. Consolidation Order, 1879 (No. 8 of 1879), as amended by No. 3 of 1880.*

41. Marine courts and courts of survey, with powers of suspension and cancellation of masters' and officers' certificates are constituted. *Ibid.* ss. 13—15.

42. For powers to the Governor-General to order a rehearing in case of miscarriage of justice, either before the original marine court or court of survey, or before the judge of the Vice-Admiralty Court, *Ibid.*

43. For provisions as to the status of French mail steamers within the ports of the colony, see Ord. No. 6 of 1880, in 15 Hertslet's Collection of Treaties, p. 992.

44. For provisions as to passenger emigration ships, see the China Emigration Consolidation Ordinance, 1874, and the Amending Ord., No. 6 of 1879.

44a. For further provisions as to criminal law and procedure, see the Banishment Conditional Pardons Ordinance, 1882, No. 8 of 1882, in 15 Hertslet's Collection of Treaties, p. 993.

45. The Supreme Court of Hong Kong takes cognizance of offences committed by British residents within the peninsula of Macao, and of suits originating there, but have no power to issue any warrant or writ to be executed or served there. See Order in Council of 1865, Art. 159.

45a. For the powers of the Supreme Court at Hong Kong, see Order in Council of 1865.

See further thereon, p. 773, Nos. 1555, 1556.

13. India (British).

1. Generally (and see p. 703).

46. As to the law of evidence in India, see the Indian Evidence Act Amendment Act, No. 18 of 1872.

47. As to investigations into shipping casualties, the suspension and cancellation of masters' and officers' certificates, and grant of fresh certificates, agreement with seamen, seamen's wages, and health officers, see Indian Act, No. 5 of 1883.

48. For provisions for the licensing and control of pilots in British Burmah, and the constitution of a special court to control them, *Ibid.* No. 12 of 1883.

49. For provisions for the survey of inland steamers, for their protection from fire, and for the carriage of passengers therein, for the examination and grant of certificates to masters, engineers and engine-drivers, and for the suspension and cancellation of such certificates, for detention of vessels when suspected to be unseaworthy, for holding investigations into shipping casualties and explosions, see the Indian Steamships Act, No. 6 of 1884, applicable to all British India, except the territories of Fort St. George.

50. For provisions for the hiring of passenger steamers and the grant and cancellation of certificates thereof, for the examination of engineers and engine-drivers and the grant to them of certificates of competency, and for powers to investigate causes of explosions on board steamers, see the Indian Steamships Act, No. 7 of 1884, applicable to the whole of British India.

51. For provisions regulating the transport and importation of explosives, the entry and search of vessels supposed to have explosives on board, and their detention and destruction (powers analogous to those given under the Imperial Explosives Act of 1875), see the Indian Explosives Act, 1884, No. 4 of 1884.

52. For provisions as to the conveyance of native passengers between British India and ports in the Red Sea, see Indian Acts, No. 5 of 1876, and No. 17 of 1883, applicable to the whole of British India.

52a. For provisions for the improvement of the Indian law reports, see Act No. 18 of 1875.

* (36) A book of general rules made under the Order of 1872, as sanctioned by the governor, for the examination of masters,

mates, and engineers in the mercantile marine, is annexed to the Ordinances of 1879 in the colonial library.

53. See further, as to criminal jurisdiction and procedure in India, *Ibid.* No. 3 of 1884.

4. *North-West Provinces* (and see p. 706).

54. In Oudh there are four grades of civil courts:—(1) The court of the Munsif. (2) The court of the subordinate judge. (3) The court of the district judge. (4) The court of the judicial commissioner, the last being the highest, and to which there is a right of appeal. See the Oudh Civil Courts Act, 1879; Act No. 13 of 1879; and the second edition of the Oudh Code, published under the authority of the Government of India, and containing the regulations and unrepealed local acts in force in the provinces in March, 1886.

5. *Bombay.*

(a) *Generally* (and see p. 706).

55. The Bombay Act, No. 2 of 1864, and No. 4 of 1873, as to the survey of steamers, &c., are repealed by the Government of India Act, No. 6 of 1884.

55a. For further provisions as to the port of Bombay, see the Government of India Act, No. 12 of 1875.

56 (in lieu of No. 695, p. 707). For the rules as to coasting and other British vessels in the Presidency of Bombay, and their naming, marking and registering, *Ibid.* No. 19 of 1838.

57 (in lieu of No. 697 on p. 707). For provisions for the collection of land customs on certain frontiers of Bombay and Madras, see the Indian Tariff Act, No. 11 of 1882, ss. 5 and 8; and see also No. 29 of 1857.

58 (in lieu of No. 698 on p. 707). As to courts for proceedings against Sardars and others in the Dekhan, see Khândesh Reg. No. 29 of 1827; the Government of India Act, No. 19 of 1835; and Reg. No. 1 of 1834, in the Bombay Code.

(b) *High Court* (and see p. 707).

59 (in lieu of No. 702 on p. 707). Appeals lie to the High Court from decrees and orders of the district courts. See Reg. No. 2 of 1827, and 24 & 25 Vict. c. 104, s. 9. Also from the consular court of Zanzibar, see p. 776, No. 1611.

60 (in lieu of No. 703 on p. 707). The High Court enforces the hearing of suits and complaints by the district courts, and

directs and controls such courts. See Reg. No. 2 of 1827, and 24 & 25 Vict. c. 104, s. 9.

61. *Held*, upon a construction of the Bombay charter (of December, 1823), that the rules and practice of the High Court of Admiralty in England governed the proceedings in the Supreme Court at Bombay in maritime causes. *Loughman v. Bhulladina (The Hydroos)*, 7 Moore, P. C. C. 373.

(c) *Inferior Courts* (and see p. 707).

62 (in lieu of No. 711 on p. 707). As to the jurisdiction of civil courts in caste questions, see Reg. No. 2 of 1827, c. 208.

63 (in lieu of No. 712 on p. 707). This act, No. 16 of 1838, is now obsolete, and the code of civil procedure regulates proceedings in all the courts.

7. *Madras.*

(a) *Generally* (and see p. 708).

64 (in lieu of No. 730a on p. 708). For provisions as to port dues and fees at ports within the Presidency, see Indian Act, No. 12 of 1875.

65 (in lieu of No. 731 on p. 708). For provisions as to the landing and shipment of merchandise within the Madras Presidency, *Ibid.*

66 (in lieu of No. 732 on p. 708). For provisions consolidating the several charges in the port of Madras into a port duty, *Ibid.*

67 (in lieu of No. 733 on p. 708). For provisions for the management of Indian boats and catamarans in the Madras roads, and for harbour regulations, *Ibid.*, No. 4 of 1842, and Madras Act, No. 4 of 1869.

68. The Regulations No. 9 of 1803 in No. 735, p. 709, are repealed by Act, No. 12 of 1876.

69. For further provisions as to tolls, &c., and for the construction and improvement of lines of navigation within the Presidency, see the Madras Act, No. 4 of 1878.

70 (in lieu of No. 737 on p. 709). For provisions as to ships carrying native passengers, see Indian Acts, No. 8 of 1876, and No. 17 of 1883.

71 (in lieu of No. 738 on p. 709). For provisions as to Madras and other piers, see Madras Acts, No. 5 of 1873, and No. 7 of 1871.

(b) *High Court** (and see p. 709).

72 (see No. 741, p. 709). The amended letters patent of the High Court of Madras are dated 28 Dec. 1865, and the edition of 1883 of the Rules and Orders of the High Court is now published by Higginbotham & Co., Madras.

(c) *Inferior Court* (and see p. 709).

73 (in lieu of No. 745 on p. 709). As to the District Courts of Madras, see Indian Act, No. 3 of 1873, ss. 3—30, and Nos. 674—680, p. 706.

74 (in lieu of No. 750 on p. 709). As to the ministerial officers of the district courts, *Ibid.* ss. 22—24, and No. 19 of 1877.

75 (in lieu of No. 752). The jurisdiction of a district munsif extends to all civil proceedings (not otherwise exempted from his cognizance) not exceeding 2,500 rupees. *Ibid.* s. 12.

76 (in lieu of No. 755 on p. 710). For a digest of the rules and orders regulating the practice and procedure of the courts subordinate to the High Court and on appeals therefrom, see Digest of Rules and Orders, Higginbotham & Co., anno 1883.

77 (in lieu of No. 756 on p. 710). For provisions for investing district munsifs in this Presidency with the jurisdiction of courts of small causes, and for powers of investing other courts with such jurisdiction, see Indian Act, No. 3 of 1873, s. 28.

78 (in lieu of No. 757*a*, on p. 710). For provisions for conferring civil jurisdiction in certain cases upon cantonment joint magistrates, see Indian Act, No. 3 of 1859, and Madras Act, No. 1 of 1866, s. 9.

79. The provisions in No. 758, on p. 710, are repealed by Madras Act, No. 2 of 1881.

14. The Straits Settlements.

1. *Generally* (and see p. 711).

80. As to the annual survey of steamships plying exclusively between ports of the colony, the appointment of surveyors, grant of certificates of survey, examination and certificates of officers and engineers, with various other general enactments relating to shipping matters, see Ord. No. 2

of 1882, amended by Ord. No. 2 of 1885, and Rules under the Ord. of 1882, approved by the Governor, 30th May, 1882.

81. As to lighthouse dues, see Ord. No. 8 of 1882.

82. As to pilots and pilotage, see Ord. No. 8 of 1879, amended by Ord. No. 5 of 1885.

83. As to passenger ships, see Ord. No. 6 of 1874, amended by Ord. No. 12 of 1885.

2. *Supreme Court* (and see p. 711).

84. There are to be three puisne judges instead of two, of the Supreme Court as a Court of Appeal. See Ord. No. 15 of 1885, amending No. 5 of 1873.

85. The arrangements for the dates and residences of the judges are to be made by a majority of the judges, with the concurrence of the governor, but so that the Chief Justice shall ordinarily reside at Singapore, and the senior puisne judge in Penang, and whenever there are more than two judges in the colony, two judges shall ordinarily be stationed in Penang. See Ord. No. 15 of 1885, amending No. 8 of 1875.

86. Appeals are to be heard by not less than three judges. *Ibid.*

87. For further provisions as to appeals from the Supreme Court to the full court, see Ord. No. 1 of 1883, and No. 11 of 1884.

3. *Vice-Admiralty Court* (and see p. 712).

87*a*. The commission empowering the Lords of the Admiralty to appoint a vice-admiral or judge and other officers for the Vice-Admiralty Court of the Straits Settlements, is dated 27th March, 1867. Vice Admiralty jurisdiction had been previously conferred by Letters Patent of 25th February, 1837, upon the Court of Judicature at Prince of Wales Island, Singapore and Malacca, now included in the Straits Settlements. *The Hochung—The Lapwing*, 5 Asp. 39, n.

15. Mauritius.

1. *Generally* (and see p. 713).

88. For provisions for granting certificates of competency to masters, mates, and engineers, after examination, under the Imperial Acts, and their suspension

* (37) For reports of cases in the High Court of Madras, see the Indian Law Re-

ports, published since the passing of the Indian Act, No. 18, of 1875.

and cancellation, see Ord. No. 3 of 1884.

89. For provisions as to the carriage of explosives, see Ord. No. 30 of 1884—5.

90. For the pilotage and harbour dues to be levied and collected in Port Louis, see Ord. No. 18 of 1884—5.

2. *High Court* (and see p. 713).

91. Page 713, in No. 815, after the words, the "Ordinance No. 2 of 1850," add "in relation to the High Court, is amended by Ord. No. 17 of 1884—5."

4. *Inferior Courts* (and see p. 714).

92. For further provisions as to stipendiary and police magistrates, see Ord. No. 2 of 1884.

16. *Natal* (and see p. 714).

93. For further provisions as to the constitution of Natal, see Ord. No. 1 of 1883.

94. For further provisions as to the port and harbour of Natal, see Ord. No. 3 of 1884.

95. For further provisions as to shipping casualties, see Ord. No. 4 of 1884.

96. As to customs and customs regulations, see the Law, No. 6 of 1855 and No. 11 of 1855.

97. As to the fishery laws, see Ord. No. 8 of 1868, No. 13 of 1880, and No. 21 of 1884.

97*a*. As to cases in the English courts relating to Natal, see *Davis v. Shepstone*, 11 App. Cas. 187.

97*b*. As to wills, see *Salmon v. Duncombe and others*, in the Privy Council, 25th June, 1886.

17. *South African Provinces.*

1. *Generally* (and see p. 715).

98. The limits of the district within which courts are established are defined by the South African Jurisdiction Order in Council, Jan. 30, 1885, Art. 1.

99. The jurisdiction conferred by the order includes all powers and jurisdiction possessed by her Majesty under the Foreign Jurisdiction Acts, 1843—1878, or under a treaty made with Mankovoane, chief of the Batalpins, on the 3rd of May, 1884, and with Montsioia, chief of the Baralongs, on the 22nd of May, 1884. *Ibid.* Art. 2.

100. The High Commissioner may establish such courts, and appoint and remove such judges, magistrates, and other officers as he may consider necessary. *Ibid.* Art. 3.

101. The civil and criminal law to be administered under the order is to be the civil and criminal law in force in the colony of the Cape of Good Hope at the date of the order. *Ibid.* Art. 6.

102. For the treaties or agreements between Great Britain and various African chiefs, for the encouragement of peace and good order, the settlement of the boundary between Natal and Zoolah, and between the Orange Free State and Basutoland, and between the Orange Free State and British territory, see 15 Hertslet's Collection of Treaties, pp. 847—870.

2. *Basutoland.*

103. The Act, No. 12 of 1871, mentioned in No. 843, p. 716, is repealed, and Basutoland disannexed from the Cape. See Act, No. 34 of 1883, Order in Council of Feb. 2, 1884, and Governor's Proclamation of March 21, 1884.

104. Basutoland is thenceforth to be governed by the High Commissioner, to whom authority is given to make laws for the district, and to appoint resident magistrates for its government. *Ibid.*

3. *Bechuanaland.*

105. Her Majesty has assumed the Protectorate over the territory known as Bechuanaland and the Kalahar, extending over the parts of South Africa, situate west of the boundary of the South African Republic, north of the colony of the Cape of Good Hope, east of 20th meridian of east longitude, and south of 22nd parallel of south latitude; and the governor and commander in chief of the colony of the Cape of Good Hope, for the time being, has been appointed governor thereof. See Proclamation of Sept. 30, 1885, of the Governor in the Cape of Good Hope Government Gazette of Oct. 7, 1885; and Government Notice, dated Oct. 1, 1885.

106. An administrator and chief magistrate has been appointed. *Ibid.*

107. For the laws of Bechuanaland, see the Proclamation of the Governor of the territory, dated Oct. 6, 1885, and published in the Cape of Good Hope Government Gazette of Oct. 7, 1885.

108. A court of the chief magistrate has been constituted. See laws in Cape of Good Hope Government Gazette of October 7th, 1885, s. 1.

109. All the powers of the Supreme Court, of the Appeal Court, and of the Court of Criminal Appeal of the Cape Colony shall, in British Bechuanaland, be exercised by the chief magistrate. *Ibid.* s. 28.

110. Courts of resident magistrates are constituted for each of the territories of Vrijburg, Taungs, and Mafeking, and the governor may establish such courts in any other district if necessary. *Ibid.* s. 2.

111. The pleadings and proceedings shall be in the English language, and in open court. *Ibid.* s. 6.

112. The trial of any person for an offence punishable by death shall be held before the chief magistrate, and any two of the resident magistrates. *Ibid.* s. 16.

113. An appeal lies from the decisions of resident magistrates to the court of the chief magistrate. *Ibid.* s. 22.

114. An appeal to her Majesty the Queen in Council lies from the court of the chief magistrate of Bechuanaland in all cases in which appeals are allowed from the Supreme Court of the Cape of Good Hope. See Governor's Proclamation of 4th March, 1886, published in Cape of Good Hope Government Gazette of March 8th, 1886.

115. The magistrate for Vrijburg has jurisdiction and authority within the district of Hellaland, and the magistrate of Taungs has jurisdiction within Batlassing territory. See Governor's Proclamation of 6th October, 1885, published in Cape of Good Hope Government Gazette of October 7th, 1885.

116. The resident magistrate for Mafeking has jurisdiction and authority within Baralong territory. *Ibid.*

18. Cape of Good Hope.

1. Generally (and see p. 715).

117. For provisions sanctioning the use of the Dutch language in legal proceedings, upon the application of any of the parties, see Act, No. 21 of 1884.

118. Act No. 1 of 1847, as to the removal of stranded vessels (mentioned in No. 834, p. 715), is repealed. See the Wrecks Removal Amendment Act, 1885, No. 46 of 1885.

119. See for extensive powers as to removal of wreck similar to those of the Imperial acts thereon, *Ibid.*

6. Basutoland (and see p. 716).

See Nos. 103, 104, *supra*.

7. Further Territories.

120. The districts of Tembuland, Emigrant Tembuland, Gealakeland, and Bomvanaland, are annexed to the Cape (as from the date of the governor's proclamation) under letters patent of her Majesty, dated Oct. 2, 1884, and Act, No. 3 of 1885. They are subject to the laws in force in the Cape, except as modified in the governor's proclamation. See Act, No. 3 of 1885, s. 1.

121. The court of the eastern districts has a concurrent jurisdiction with that of the Supreme Court over these territories. *Ibid.* s. 3.

122. An appeal lies in civil cases from the decisions of the resident magistrates of the territories to either the chief magistrate, under sect. 26 of the Governor's Proclamation of Jan. 26, 1882, or to the Supreme Court or the court of the eastern districts, at the option of the suitor. *Ibid.* s. 6.

123. The governor has been authorized to annex the territory of St. John's River. See Letters Patent of her Majesty, dated Oct. 10, 1881.

124. That district has accordingly been annexed to the Cape Colony. See Act, No. 35 of 1884.

125. The court of the eastern districts has a jurisdiction concurrent with that of the Supreme Court over the territory of St. John's River. *Ibid.* s. 2.

126. The district of Walfish Bay on the West Coast of Africa is annexed to the Cape. *Ibid.*

19. The Government of the Settlements of West Africa.

1. Generally (and see p. 716).

127. Consular courts are established. See the West Africa Order in Council of March 26, 1885.

128. The limits of the district within which courts are established defined. *Ibid.*

129. All powers and jurisdiction con-

ferred by the order are vested in the consular courts. *Ibid.* Art. 3.

130. Every consul-general, consul or vice-consul, or person acting in any of such capacities by authority of a secretary of state, shall, when a district has been assigned to him, hold and form a consular court for such district. *Ibid.*

131. In the case of any crime committed on the high seas, or within the Admiralty jurisdiction, by any British subject on board a British ship, or on board a foreign ship to which he did not belong, a court acting under this order shall have jurisdiction. *Ibid.* Art. 6, s. 2.

132. The civil and criminal law to be administered under this order shall be the civil and criminal law in force in England at the date of the order, subject to the modifications of the order. *Ibid.* Art. 7.

133. A secretary of state may from time to time declare any of the laws or ordinances for the time being in force in the West Africa Settlements, or the Gold Coast Colony, in force within the limits with which the order deals. *Ibid.* Art. 7, s. 2.

134. The consular court may from time to time make rules and forms of procedure as to all civil or criminal matters within its jurisdiction, subject to the approval of a secretary of state, and, until they are made, may use those in use under the West Africa Order in Council of 1872, or such as are for the time being in force in the Supreme Court of Sierra Leone. *Ibid.* Art. 21.

135. For the registration, at the consular courts, of British subjects resident within their districts, *Ibid.* Art. 31.

136. For the code of laws and procedure enacted by the order, *Ibid.*

137. For provisions for the establishment of an equity court in the River Cameroons to carry out the byelaws for the better regulation of trading matters between the supercargoes and native traders, see Bye-laws of the River Cameroons, in 10 Hertslet's Collection of Treaties, p. 30.

138. See also the Treaty of Oct. 15, 1877, with Onitsha, on the River Niger, in 14 Hertslet, p. 50.

1a. Supreme Court.

139. The powers and duties of the chief justice of Sierra Leone are transferred to and vested in the chief justice

of the West Africa Settlements, and the office of chief justice of Sierra Leone is abolished. See Ord. No. 1 of 1880.

140. The Supreme Court shall, from the 31st March, 1880, consist of, and be holden by, a judge, to be called the chief justice of the West Africa Settlements. See the Supreme Court Ord. 1881, No. 9 of 1881.

141. The chief justice shall usually reside at Freetown, and hold the sittings there of the Supreme Court. *Ibid.* s. 5.

142. The Supreme Court is a superior court of record, and possesses all the jurisdiction vested in H. M.'s High Court of Justice in England, as constituted by the Supreme Court of Judicature Acts, 1873 and 1875, save the jurisdiction possessed by the High Court of Admiralty. *Ibid.* s. 15.

143. The court also has the jurisdiction of the Lord High Chancellor of England over guardians, infants, idiots, lunatics, and their estates. *Ibid.* s. 17.

2. Sierra Leone.

(a) Generally (and see p. 717).

144. The general statute law of England in force on the 1st January, 1880, is in force in the Settlement, but not English statute law subsequently passed. *Ibid.* s. 19.

145. For provisions as to quarantine, see Ord. No. 18 of 1882, and No. 14 of 1883.

146. As to the Freetown harbour regulations and dues, see Ord. No. 1 of 1883, and No. 24 of 1883.

147. For provisions abolishing compulsory pilotage, see Ord. Nos. 7, 11 of 1884.

148. For provisions exempting pleasure-yachts from port dues, see Ord. No. 1 of 1885.

149. The Krim country is annexed to this settlement. See Proclamation of the Administrator-in-Chief of 7th August, 1883.

(b) Supreme Court (and see p. 717).

150 (in lieu of Nos. 853—856, on p. 717). The office of chief justice of Sierra Leone is abolished, and his powers and duties transferred to the office of chief justice of the West Africa Settlement. See No. 139, *supra*.

3. Gold Coast.

(a) Generally (and see p. 718).

151. As to the revision of the statute

law of the Gold Coast and Lagos, see No. 1 of 1886.

152. Ord. No. 3 of 1878, mentioned in No. 863*b*, p. 718, as to the harbour of Lagos, and the pilots, pilotage, and seamen mentioned therein, is amended by Ord. No. 13 of 1882.

153. As to the importation and stowage of explosives, see Ord. No. 4 of 1884.

(b) *Courts* (and see p. 718).

154. The Ord. establishing the Supreme Court is Ord. No. 4 of 1876.

154*a*. Apparently no appointment has been made under a commission dated Sept. 6, 1880, empowering the Lords of the Admiralty to appoint a vice-admiral or judge for the Gold Coast Colony (settlements on the Gold Coast and Lagos united), instead of the separate vice-admiralty courts then existing. See *The Hochung—The Lapwing*, 5 Asp. p. 39, n.

4. *Settlements on the Gambia.*

(a) *Generally* (and see p. 718):

155. The Ord. of October 7, 1856, mentioned in No. 870, on p. 718, and *semble*, that of 18th April, 1860, as to quarantine, are repealed. See Ord. No. 4 of 1885, which consolidates and amends the law on the subject.

(b) *Courts* (and see p. 719).

156. For the procedure of the court of civil and criminal justice, see Ords. No. 4 of 1882, No. 4 of 1883, and No. 5 of 1884.

156*a*. There is a court of requests at Bathurst and M'Carthy's Island for the recovery of small debts. At Bathurst, it is held before the chief magistrate or two commissioners of the court at Bathurst, and at M'Carthy's Island before the manager. It is a court of record, and there is an appeal in any matter involving the value of £5 to the court of civil and criminal justice. See Ord. No. 6 of 1882.

20. St. Helena (and see p. 719).

157. As to the apprehension of deser-

ters from foreign vessels, see Ords. No. 1 of 1873, No. 5 of 1882, and No. 3 of 1886.

157*a*. As to the exemption of transhipment dues on whaler's catches, see Ord. No. 1 of 1886.

21. Dominion of Canada.*

1. *Generally* (and see p. 719).

158. For provisions of the Dominion Acts as to maritime jurisdiction, see the Maritime Jurisdiction Acts, 1877, 1879 & 1882 (cc. 21, 40 & 34).

158*a*. As to seamen's wages, see the Seamen's Act, 1873 (c. 129), amended by 45 Vict. c. 33.

158*b*. As to pilots and pilotage, see the Pilotage Act, 1873 (c. 54), amended by 45 Vict. c. 32.

159. The new regulations for preventing collisions at sea, promulgated by Order in Council of 11th August, 1884, are made applicable to the Dominion. See 43 Vict. c. 29.

159*a*. The rules and regulations framed by the Board of Steamboat Inspection in reference to boilers, lifeboats, and the duties of and liabilities of engineers under s. 8 of the Steamboat Inspection Act of 1882 (45 Vict. c. 35), are on pp. 95—104 of the Dominion Statutes of 1882.

159*b*. They apply to the whole of the Dominion including Manitoba and the North-West Provinces. *Ibid.*

160. The bye-laws of the Harbour Commissioners of Three Rivers, approved by the Governor General in Council, 22nd Feb. 1883, are on pp. 78—92 of the Dominion Statutes of 1882.

160*a*. The rules and regulations governing the examination of candidates for certificates of competency as masters and mates (under the provisions of the Act 46 Vict. c. 28), approved by the Governor General in Council the 17th November, 1883, are on pp. 106—109 of the Dominion Acts of 1883.

160*b*. These certificates apply only to persons navigating the inland waters of Canada, or engaged in the coasting trade between Quebec and any of the lower ports, or in the coasting trade between Canada and Newfoundland, or between

* (38) For the earlier Imperial Acts relating to the Dominion of Canada, see 14 Geo. 3, c. 83 (1774); 18 Geo. 3, c. 12 (1778);

31 Geo. 3, c. 31 (1791); 3 & 4 Vict. c. 35 (1840); 11 & 12 Vict. c. 56 (1848); 17 & 18 Vict. c. 118 (1854).

Canada and a port of the United States of America. *Ibid.*

160c. As to cases in the English courts relating to Canada, see as to Canadian railways, *The Windsor and Annapolis Railway Co. v. The Queen and the Western Counties Railway Co.*, in the Privy Council, June 25, 1886; as to sureties, *Lewin and another v. Wilson and others*, *Ibid.*

2. Courts (and see p. 720).

161. The exchequer court has concurrent original jurisdiction with the courts of the several provinces in all suits of a civil nature at common law or equity, as therein mentioned, in which the Crown in the interest of the Dominion of Canada is plaintiff or petitioner. See Dominion Act, 38 Vict. c. 11, s. 59.

161a. The chief justices and judges of the supreme court are also the judges of the exchequer court. *Ibid.* s. 60.

161b. The process of the supreme court runs throughout the Dominion, and is tested in the name of the chief justice, or, in his absence, of the senior puisne judge of the court. *Ibid.* s. 75.

161c. See for powers to the judges to make rules and orders, *Ibid.* s. 79.

3. Quebec.

(a) Generally (and see p. 721).

162. Additional regulations for the pilotage district of Montreal, approved by the Governor-General in Council, July 29, 1882, are on pp. 69—73 of the Dominion Statutes of 1882.

162a. For provisions as to procedure by petition of right, see Provincial Act, 46 Vict. c. 27.

162b. As to cases in the English courts relating to Quebec, see as to the rights of the Crown, *The Exchange Bank of Canada v. The Queen*, 11 App. Cas. 157; as to the powers of the Quebec legislature, *Attorney-General for Quebec v. Read*, 10 App. Cas. 141; as to sheriff's sale of an immeuble, *Prévost v. La Compagnie de Fives-Lille and the Attorney-General of Canada*, 10 App. Cas. 643; 54 L. J. P. D. A. 35; as to mortgages, *Carter v. Molson*, *Holmes v. Carter*, 10 App. Cas. 664; as to wills, *McGibbon v. Abbott*, 10 App. Cas. 653; 54 L. J. P. D. A. 39; as to the rights and remedies of

Quebec barristers, *The Queen v. Doutré*, 9 App. Cas. 745.

(b) Courts (and see p. 721).

163. For further provisions as to the superior court, see 46 Vict. c. 13, and 47 Vict. c. 7.

4. New Brunswick.

(b) Courts (and see p. 721).

164. See further as to the equity jurisdiction of the supreme court, 45 Vict. c. 8, and 49 Vict. c. 9.

164a. See further as to the probate courts of New Brunswick, 45 Vict. c. 10.

165. For further provisions as to the county courts, see 45 Vict. c. 9, and 49 Vict. c. 18.

165a. For further provisions as to the town of Portland civil court (referred to in No. 919, p. 722), see 45 Vict. c. 16, and as to the Parish civil courts, see 45 Vict. c. 13.

5. Nova Scotia.

(b) Courts (and see p. 722).

166. For provisions for the constitution of a supreme court of judicature for Nova Scotia (analogous to that of England), see the Nova Scotia Judicature Act, 1884 (c. 25).

166a. The act came into operation in October, 1884. *Ibid.* s. 2.

166b. The supreme court so constituted includes the equity court or court of the judge in equity, and whether administering common law or equity. *Ibid.* s. 3.

167. The bench of the supreme court consists of a chief justice and six other judges, including the judge in equity. *Ibid.* s. 4, sub-s. 1.

167a. The judges of the supreme court are to hold no other offices under government, except that the judge of the vice-admiralty court and the judge ordinary for divorce and matrimonial causes may also hold those offices. *Ibid.* sub-s. 3.

167b. The supreme court has within the province the jurisdiction formerly exercised by the courts of Queen's Bench, Common Pleas, and Exchequer, in England; and also the same powers as are now exercised in England by the Supreme Court of Judicature, save in respect of Probate and Surrogate courts. *Ibid.* s. 9.

168. For provisions as to the sittings of the court, and the distribution of business

therein, including circuits, and for making Rules of Court, see Nova Scotia Judicature Act, 1884 (c. 25), s. 9.

168a. The Rules of Court are on p. 148 of the Year's Statutes.

168b. The provision as to the Supreme Court in No. 922 on p. 722, are repealed by the Nova Scotia Judicature Act, 1884 (c. 25).

169. For further provisions as to the Probate Court of the province, see 46 Vict. c. 3.

169a. The rules and regulations of the port of Halifax, in Nova Scotia, approved by the Governor General in Council the 18th August, 1883, are on p. 99 of Dominion Statutes of 1883.

169b. As to cases in the English courts relating to Nova Scotia, see as to composition deeds, *The Exchange Bank of Yarmouth, Nova Scotia v. Blethen*, 10 App. Cas. 295; 54 L. J. P. D. A. 57; as to payment of money by mistake, *The Colonial Bank v. The Exchange Bank of Yarmouth, Nova Scotia*, 11 App. Cas. 85.

6. Ontario.

(b) Courts (and see p. 722).

170. For provisions constituting a Supreme Court of Judicature for Ontario (analogous to that of England), see the Ontario Judicature Act, 1881 (c. 5).

170a. The various courts in existence at the time of the act are amalgamated in the High Court of Justice and High Court of Appeal. *Ibid.*

170b. For provisions for making rules of court, *Ibid.* These rules of court are to be found on p. 51 of the Ontario Statutes for 1881. *Ibid.*

171. The Court of Appeal for Ontario, constituted under the Ontario Judicature Act, 1881 (c. 5), is composed of the chief justice of Ontario and four other judges (instead of three, as provided by the creating act), to be called justices of appeal. See the Administration of Justice Act, 1883 (c. 6), s. 2.

171a. It shall be the duty of one of the judges to assist from time to time in the transaction of the business of the High Court, and especially of the Chancery division thereof, when his duties as a justice of appeal permit. *Ibid.* s. 3.

171b. No new judge of the Court of Appeal is to be appointed until the number are less than four, it being in-

tended that the permanent number of judges of the Court of Appeal shall not exceed four, including the chief justice. See the Administration of Justice Act, 1885 (c. 13), s. 2.

172. When the judges of the Court of Appeal shall be reduced to four, there shall be appointed (as provided by the British North America Act, 1867), a judge of the High Court of Justice, in addition to the number of judges of that court authorized to be appointed by the Ontario Judicature Act, 1881. The judge appointed in pursuance of this act shall be attached to the Chancery division. *Ibid.* s. 3.

172a. For further provisions as to the Court of Queen's Bench and Common Pleas, see 49 Vict. c. 12.

172b. For further provisions as to county courts and local courts, *Ibid.* c. 13.

173. For further provisions as to the surrogate courts, *Ibid.* c. 14.

173a. For further provisions as to division courts, see 43 Vict. c. 8; 47 Vict. c. 9; 48 Vict. c. 14, amended by 49 Vict. c. 15.

173b. Except as by this act excepted, all persons shall have in the province of Ontario the like rights and remedies in all matters (including cases of contracts and tort, and proceedings *in rem* or *in personam*) arising out of or connected with navigation, shipping, trade, or commerce on any river, lake, canal, or inland water of which the whole or part is in the province of Ontario, as such persons would have in any existing British vice-admiralty court, if the process of such court extended to such province. See the Maritime Jurisdiction Act, 1882 (c. 34), s. 1.

174. There is hereby constituted in the province of Ontario a superior court of maritime jurisdiction under the name of the "Maritime Court of Ontario," which shall be a court of record, which shall, save as by this act excepted, have as to the matters aforesaid all such jurisdiction as belongs in similar matters within the reach of its process to any existing British vice-admiralty court. *Ibid.* s. 2, sub-s. 1.

174a. In any matter referred to in the first section, but arising within reach of the process of the vice-admiralty court at Quebec, the court shall have the same jurisdiction as any existing British vice-admiralty court has under like circumstances in any matter arising beyond the reach of its process. *Ibid.* sub-s. 2.

174b. The jurisdiction of the court in respect of claims touching the ownership, possession, employment, or earnings of

ships, shall extend to the case of a ship registered in a port in the province of Quebec, but navigating the waters aforesaid. *Ibid.* sub-s. 3.

175. No right or remedy *in rem* given by this act shall be enforced as against any subsequent *bonâ fide* purchaser or mortgagee of a ship unless the proceedings for the enforcement thereof are begun within ninety days from the time when the same accrued. *Ibid.* sub-s. 4.

175a. The court shall not have jurisdiction save as aforesaid in any matter to which the process of any existing British vice-admiralty court extends, nor in any prize case, nor in any criminal matter, or in any case of breach of the regulations and instructions relating to her Majesty's navy, or arising out of droits of admiralty, or out of any seizure for breach of the revenue, customs, trade, or navigation laws, or out of any violation of the Foreign Enlistment Act, or of the laws relating to the abolition of the slave trade, or to the capture and destruction of pirates and piratical vessels. *Ibid.* s. 3.

175b. The principal seat of the court shall be at Toronto, but sittings may be held at any city, town, or place within the province of Ontario. *Ibid.* s. 4.

176. The judge of the court may make rules of court for regulating the practice and the appointment of assessors. *Ibid.* ss. 6—10.

176a. The governor in council may from time to time appoint one or more judges of any county court in Ontario surrogate judge or judges. *Ibid.* s. 11.

176b. An appeal lies from all final orders or decrees of the court to the supreme court of Canada. *Ibid.* s. 19.

7. Manitoba.

(b) Courts (and see p. 722).

177. The various acts relating to the constitution and procedure of the Court of Queen's Bench are amended and consolidated. See the Court of Queen's Bench Act, 1885 (c. 15).

177a. The court is to sit at Winnipeg. *Ibid.* s. 11.

178. The court consists of a chief justice and three puisne judges. *Ibid.* s. 13.

178a. The law and procedure of the Court of Queen's Bench is consolidated and codified. See the Administration of Justice Act, 1885 (c. 17).

179. Former acts in regard to the constitution and procedure of the Court of Queen's Bench and the law and proce-

dures thereof, are superseded by the Court of Queen's Bench Act, 1885 (c. 15), and the Administration of Justice Act, 1885 (c. 17).

179a. For further provisions as to county courts, see 46 & 47 Vict. c. 21, and 48 Vict. c. 22.

180. As to cases in the English courts relating to Manitoba, see as to appeal in criminal cases, *O'Riel v. The Queen*, 10 App. Cas. 675.

180a. As to appeals from justices in criminal matters to the county courts, see 46 & 47 Vict. c. 20.

8. British Columbia.

(a) Generally (and see p. 723).

180c. The amended bye-laws for pilots of the pilotage district of Lanaimo, British Columbia, approved by the Governor General in Council on the 13th December, 1883, are on pp. 110-115 of the Dominion Statutes of 1883.

(b) Courts (and see p. 723).

181. For further provisions as to the Supreme Court, see 48 Vict. c. 5.

182. For further provisions as to county courts, *Ibid.* c. 7.

9. Prince Edward's Island (and see p. 724).

183. For provisions as to proceedings in equity, see the Chancery Act, 1884 (c. 3).

184. For further provisions as to appeals in equity, see the Appeal in Equity Act, 1883 (c. 6).

10. North-West Territories (and see p. 724).

185. The territories formerly known as Rupert's Land, and the north-west territory, with the exception of such portion thereof as forms the province of Manitoba and the district of Keewatin, shall continue to be styled and known as the north-west territories. See Canadian Act (c. 25).

22. Newfoundland.

1. Generally (and see p. 724).

186. For further provisions as to merchant seamen, see Newfoundland Act (c. 6).

187. For provisions as to aliens, see 44 Vict. c. 3, in 15 Hertslet, p. 1009.

2. *Courts* (and see p. 724).

188. For further provisions as to the Supreme Court and amending 45 Vict. c. 16, see 47 Vict. c. 11.

189. For further provisions as to the district court, see 46 Vict. c. 12.

23. The Bermuda Islands.

1. *Generally* (and see p. 725).

190. For further provisions as to investigations of shipping casualties, see No. 2 of 1885.

191. For further provisions as to light-houses and light dues, see No. 11 of 1884.

192. And as to criminal procedure, see No. 7 of 1881, No. 10 of 1882, and No. 16 of 1883.

24. The Bahama Islands.

1. *Generally* (and see p. 726).

193. For further provisions as to pilotage, see 46 Vict. c. 6.

194. For further provisions as to export duties, see 47 Vict. c. 12.

195. For provisions as to quarantine, see 34 Vict. c. 6, and 47 Vict. c. 13.

2. *Courts* (and see p. 727).

196. For provisions as to the appointment, powers and jurisdiction of stipendiary and circuit magistrates, see the Administration of Justice Act, 1885 (c. 16).

197. For further provisions as to the summary jurisdiction of magistrates in civil and criminal proceedings, see 44 Vict. c. 9, and 48 Vict. c. 13.

25. Colony of Jamaica.

1. *Generally* (and see 727).

198. For the letters patent, dated March 3, 1882, for the annexation of Morant and Pedro Cays to the island of Jamaica, see 15 Hertslet's Collection of Treaties, p. 999.

2. *Jamaica*.

(a) *Courts* (and see p. 728).

199. For provisions as to the powers of district courts in matters of probate and administration, see No. 15 of 1884.

3. *British Honduras* (and see p. 728).

200. For further provisions as to wrecks, casualties, and salvage, see No. 5 of 1884.

201. For further provisions as to tonnage dues, see No. 4 of 1882, and Nos. 17 and 26 of 1885.

202. For further provisions as to the Supreme Court of British Honduras, see No. 7 of 1884.

203. And as to district courts, see No. 9 of 1883.

4. *Turks and Caicos Islands* (and see p. 729).

204. For further provisions as to wrecks and salvage, see Jamaica Laws, No. 14 of 1885.

205. For provisions as to the boarding of vessels on their arrival at these islands, see No. 5 of 1884.

26. The Leeward Islands.

1. *Generally* (and see p. 730).

206. For provisions as to salvage and unclaimed wreck, see No. 7 of 1885.

207. As to receivers of wreck, see No. 8 of 1885.

208. For further provisions as to the registration of deeds, see the amendments of No. 14 of 1881, in No. 4 of 1885.

209. For further provisions as to quarantine, see No. 26 of 1876, and No. 3 of 1884.

210. As to escheats, No. 15 of 1880, amended by No. 11 of 1884.

211. As to lunatics, No. 19 of 1884, amended by No. 6 of 1885.

212. And as to criminal law, see No. 10 of 1886.

2. *Courts* (and see p. 730).

213. For further provisions as to the Supreme Court, see Nos. 6, 9, and 15 of 1884, and No. 9 of 1886.

214. See further, as to appeals from a court of summary jurisdiction, the amendments of the Act of No. 15 of 1881 by No. 9 of 1885, and No. 5 of 1886.

214a. For a summary of the Vice-Admiralty jurisdiction of the supreme court of the Leeward Islands, see the note to *The China Merchants' Steam Navigation Co. v. Bignold*, 5 Asp. 39.

7. *St. Christopher and Nevis* (and see p. 732).

215. For the letters patent of September 15th, 1883, for the government of the United Presidency of Saint Christopher and Nevis, see 15 Hertslet's Collection of Treaties, p. 1004.

27. The Windward Islands.

3. *Barbados.*

(a) *Generally* (and see p. 733).

216. For further provisions as to trade and navigation, see the amendments of the Act of No. 44 of 1878, in No. 51 of 1885.

217. For provisions as to seamen's lodgings, see the Seamen's Lodging Houses Act, 1884, amended by No. 39 of 1885.

4. *Granada.*

(a) *Generally* (and see p. 733).

218. The code of civil procedure of Granada is amended by No. 3 of 1884.

(b) *Courts* (and see p. 734).

219. For further provisions as to the Supreme Court, see No. 5 of 1886.

5. *St. Lucia.*

(a) *Generally* (and see p. 734).

220. For further provisions as to wrecks and shipping casualties, see No. 7 of 1884.

(b) *Courts* (and see p. 735).

221. For further provisions as to district courts, see No. 7 of 1882.

6. *St. Vincent* (and see p. 735).

222. For provisions as to explosives, see No. 4 of 1885.

7. *Tobago* (and see p. 736).

223. For further provisions as to shipping casualties, see No. 9 of 1884.

224. For further provisions as to tonnage and light dues, see Nos. 1 and 9 of 1885.

225. For further provisions as to coroners, see No. 13 of 1885.

28. British Guiana.

1. *Generally* (and see p. 736).

226. For provisions as to customs duties, see Ord. Nos. 1 and 16 of 1884, and No. 9 of 1885.

227. For further provisions as to immigration, see Ord. No. 1 of 1883.

227*a*. As to cases in the English courts affecting British Guiana, including the old colonies of Demerara and Berbice, see Tarring on Colonial Law, pp. 145-149.

29. Trinidad.

1. *Generally* (and see p. 738).

228. For provisions as to customs duties, see No. 21 of 1885, amended by Nos. 2 and 4 of 1886.

228*a*. As to cases in the English courts relating to Trinidad, see as to status of children born before marriage, *Escallier v. Escallier*, 10 App. Cas. 312; 54 L. J. P. D. A. 1.

2. *Courts* (and see p. 738).

229. For the Rules of the Supreme Court in its summary jurisdiction, see Ord. No. 38 of 1885.

30. Falkland Islands.

1. *Generally* (and see p. 738).

230. For provisions as to customs duties, see No. 10 of 1882, amended by No. 1 of 1883, No. 3 of 1885, and No. 2 of 1886.

30*a*. Australasia.

231. There shall be in and for her Majesty's possessions in Australasia a federal council, called the federal council of Australasia. See The Federal Council of Australasia Act, 1885 (c. 60), s. 2.

232. Within such possessions, her Majesty shall have power by and with the advice and consent of the council to make laws for the purposes herein provided, subject to the provisions herein as to the operation of the act. *Ibid.* s. 3.

233. A session of the council shall be held once at least every two years. *Ibid.* s. 4.

234. Each colony shall be represented by two members, but crown colonies shall be represented by one member each. *Ibid.* s. 5.

235. The first session of the council

shall be held at Hobart, in Tasmania, subsequently as the council shall determine. The Federal Council of Australasia Act, 1885 (c. 60), s. 7.

236. Saving her Majesty's prerogative and subject to the provisions as to the operation of the act, the council shall have legislative authority in respect of the matters following:—(a) The relations of Australasia with the islands of the Pacific; (b) prevention of the influx of criminals; (c) fisheries in Australasian waters beyond territorial limits; (d) the service of civil process of the courts of any colony within her Majesty's possessions in Australasia out of the jurisdiction of the colony in which it is issued; (e) the enforcement of judgments of the courts of law of any colony beyond the limits of the colony; (f) the enforcement of criminal process beyond the limits of the colony in which it is issued, and the extradition of offenders (including deserters from wives and children, and deserters from the imperial or colonial naval and military forces); (g) the custody of offenders on board ships belonging to her Majesty's colonial government beyond territorial limits; (h) any matter which, at the request of the legislature of the colonies her Majesty by Order in Council shall think fit to refer to the council; (i) such of the following matters as may be referred to the council by the legislatures of any two or more colonies, *i. e.*, general defences, quarantine, patents of invention and discovery, copyright, bills of exchange and promissory notes, uniformity of weights and measures, recognition in other colonies of any marriage or divorce duly solemnized or decreed in any colony, naturalization of aliens, status of corporations and joint stock companies in other colonies than that in which they have been constituted, and any other matter of general Australasian interest with respect to which the legislatures of the several colonies can legislate within their own limits, and as to which it is deemed desirable that there should be a law of general application. *Ibid.* s. 15.

237. This act shall not come into operation in respect of any colony until the legislature of such colony shall have passed an act or ordinance declaring that the same shall be in force therein, and appointing a day on and from which such operation shall take effect, nor until four colonies at the least shall have passed such act or ordinance. *Ibid.* s. 30.

31. Queensland.

1. Generally (and see p. 740).

238. As to bills of exchange, see the Bills of Exchange Act, No. 10 of 1884.

239. For further provisions as to customs, see 49 Vict. No. 9.

2. Supreme Court (and see p. 740).

240. For further provisions as to the Supreme Court, *Ibid.* No. 12.

2a. Supreme Court of Moreton Bay District.

241. The district of Moreton Bay now forms part of the colony of Queensland. See Letters Patent of 6 June, 1859, and Imperial Act, 24 & 25 Vict. c. 44. See, as to the district Supreme Court thereof, while belonging to New South Wales, Nos. 1172, 1173, p. 743.

32. New South Wales.

1. Generally (and see p. 742).

242. See further, as to the constitution of New South Wales, the Constitution Act Amendment Act, No. 5 of 1884.

243. For further provisions as to duties and customs, see 47 Vict. No. 10. And as to fisheries, see 48 Vict. No. 6.

244. For the provisions in force as to evidence, see the Imperial statutes 13 Geo. 3, c. 63; 46 Geo. 3, c. 37; 1 Will. 4, c. 22; 6 & 7 Vict. c. 22; 31 & 32 Vict. c. 37; and the colonial statutes 8 Vict. No. 1; 11 Vict. No. 38; 13 Vict. No. 16; 16 Vict. No. 14; 18 Vict. No. 13; 20 Vict. No. 23; 22 Vict. No. 7; 24 Vict. No. 16; and 40 Vict. No. 8.

245. For provisions as to juries, see 4 Vict. No. 28; 5 Vict. No. 4; 11 Vict. No. 20; 15 Vict. No. 3; 18 Vict. No. 18; 37 Vict. No. 8; and 40 Vict. No. 6.

245a. As to cases in the English courts relating to New South Wales, see as to the powers of the legislature of New South Wales, *Powell v. Apollo Candle Co.*, 10 App. Cas. 282; as to the powers of the legislative assembly of New South Wales, *Barton v. Taylor*, 11 App. Cas. 197; as to sureties, *Taylor and another v. The Bank of New South Wales*, in the Privy Council, 25th June, 1886; as to bank incorporating acts, *Bank of New South Wales v. Campbell*, 11 App. Cas. 193; as to slander, *Harris v. Davies*, 54 L. J. P. D. A. 15.

246. For provisions as to the criminal courts and their jurisdiction, see 46 Vict. No. 17, and the Criminal Law Amendment Act, 1883.

2. *Supreme Court* (and see p. 743).

247. For provisions regulating appeals to, and the constitution of the Supreme Court sitting in *banca*, see No. 13 of 1884.

248. See further, as to the divorce and matrimonial jurisdiction of the Supreme Court, No. 3 of 1884.

249. For further provisions as to district courts, see the District Courts Act Amendment Act, No. 7 of 1884.

250. For further provisions as to the practice and procedure in the equity division of the Supreme Court, see the adopting act 5 Will. 4, No. 8, and the Imperial acts therein referred to in preamble thereto; and the colonial acts 11 Vict. No. 22; 11 Vict. No. 27; 13 Vict. No. 31; 16 Vict. No. 3; 16 Vict. No. 13; 17 Vict. No. 7.

3. *Supreme Court of Moreton Bay District* (and see p. 743).

251. The district of Moreton Bay now forms part of the colony of Queensland. See No. 241, *supra*.

4. *District Courts* (and see p. 743).

252. For further provisions as to district courts, see 22 Vict. No. 18, and Amending Acts, 22 Vict. No. 25; 23 Vict. No. 1; 29 Vict. No. 11; 30 Vict. No. 9; 44 Vict. No. 30, and 48 Vict. No. 7; and for further provisions for the recovery of debts in such courts, see 45 Vict. No. 47.

33. South Australia.

1. *Generally* (and see p. 744).

253. For provisions as to district councils, see the District Councils Act, 1876, amended by No. 244 of 1884.

253a. As to cases in the English courts affecting South Australia, see as to the Registration Act, 5 Vict. No. 8, *White v. Neaylon*, 11 App. Cas. 171; as to insurance, *Kirkpatrick v. South Australian Insurance Co.*, 11 App. Cas. 178.

34. Victoria.

1. *Generally* (and see p. 746).

254. For provisions as to bills of lading, see the Bills of Lading Act, No. 863 of 1885.

254a. As to cases in the English courts relating to Victoria, see as to the powers of the Victoria legislature, *Harris v. Davies*, 10 App. Cas. 279; as to the Lands Compensation Act, 1869, *Harding v. Board of Land and Works*, 11 App. Cas. 209; as to the Common Law Procedure Act, *Duffet v. McCay*, 54 L. J. P. D. A. 25; as to construction of agreement, *Marshall v. Machure*, 10 App. Cas. 325.

2. *Supreme Court* (and see p. 747).

255. For further provisions as to the Supreme Courts, see No 844 of 1885.

3. *Inferior Courts.*

(d) *County Courts and Magistrates* (and see p. 748).

256. For further provisions as to county courts, see No. 844 of 1885, and as to justices of the peace, see No. 850 of 1885.

4. *Vice-Admiralty Court* (and see p. 749).

257. It may be presumed that the procedure in the Vice-Admiralty Court of Victoria is so far analogous to that in the maritime courts of Great Britain and Ireland, that a shipwright of Melbourne would be entitled to arrest a British ship and detain her until his legal demands upon her were satisfied. *The Staffordshire*, 25 L. T. 137. [IRISH.]

35. Western Australia.

1. *Generally* (and see p. 749).

258. For further regulations for the port of Freemantle, see No. 14 of 1883.

37. Tasmania.

1. *Generally* (and see p. 751).

259. See further as to local marine boards, No. 19 of 1884.

260. For further provisions as to customs, see No. 12 of 1884, and No. 1 of 1885.

261. For further provisions as to evidence, see No. 22 of 1885.

4. *Courts for Small Debts and Magistrates* (and see p. 752).

262. For further provisions as to courts for small debts, see No. 24 of 1885.

263. As to the appointment of district justices of the peace, see No. 7 of 1883, and No. 1 of 1884.

38. New Zealand.*

1. *Generally* † (and see p. 753).

264. This colony is divided into nine provincial districts, viz., in the north island, Auckland, Hawke's Bay, Taranaki, and Wellington; and in the south island, Nelson, Marlborough, Canterbury, Otago, and Westland. See Act, No. 21 of 1875, ss. 34, 35.

265. The provisions of the Imperial Merchant Shipping Acts of 1854 and 1862, which are not by those acts themselves made applicable to all her Majesty's dominions, viz., the second part of the Act of 1854, relating to British ships, their ownership, measurements, and registry, and the ninth part of the same act, and sects. 54 and 56 of the Act of 1862, relating to the liability of shipowners, are, with the exceptions noted below, *mutatis mutandis*, reproduced in the colony. See the Shipping and Seamen's Act of 1877, No. 54, and the Mercantile Law Act of 1880, No. 12, ss. 29—40.

265a. Exceptions—As to the particular procedure in the matter of inquiries into wrecks and casualties, and the cancelling

or suspending of certificates (Part VIII. of Imperial Act of 1854), see the above Shipping and Seamen's Act of 1877, No. 54, ss. 119—122, and ss. 237—248.

266. As to Part V. of the Imperial Act of 1854, relating to pilots and pilotage, and Part VI., relating to lighthouses, see the Colonial Marine Acts, Nos. 32 of 1867, 42 of 1870, 32 and 33 of 1874, and 37 of 1883.

267. The code of civil procedure of New Zealand is amended by the Supreme Court Practice and Procedure Amendment Act, No. 23 of 1884.

268. The Mercantile Law Act, 1880, referred to in No. 1251 on p. 754, is amended by the Mercantile Law Act (1880) Amendment Act, No. 4 of 1885.

269. In cases of collision between vessels when both are in fault, the rules of the Vice-Admiralty Court are to prevail. See the Law Amendment Act, No. 31 of 1882.

270. The Shipping and Seamen's Act, 1877, referred to in Nos. 265, 265a, *supra*, and in No. 1245 on p. 753, is amended by the Shipping and Seamen's Act (1877) Amendment Act, No. 15 of 1885.

271. As to the coasting trade, see the Custom Law Consolidation Act, No. 55 of 1882, ss. 177—190.

272. For further provisions as to customs, see Nos. 17 and 58 of 1885.

273. As to the oyster fisheries, see No. 71 of 1874; and as to the seal fisheries, No. 43 of 1878.

274. For further provisions as to fisheries, see No. 48 of 1884, and No. 16 of 1885.

275. As to bills of exchange, see the Bills of Exchange Act, No. 8 of 1883. ‡

* (39) Kindly contributed by J. Channon Lee Bassett, Esq., of Auckland, New Zealand, barrister-at-law.

† (39a) The laws of England as they existed on the 14th January, 1840, are in force in New Zealand, so far as they are applicable to the colony, and subject to subsequent enactments by the colonial legislature, see Act 2 of 1858. The main departures by subsequent legislation are:—1. Real estate in cases of intestacy devolves in the same way as personal property. 2. Mortgage of land does not convey the legal title, but this principle does not apply to other mortgages. Foreclosure does not exist. 3. Vendor has no lien for unpaid purchase-money. 4. Deposit of title deeds, with or without a memorandum, does not create an equitable mortgage. 5. A voluntary conveyance is not defeasible by the conveyor. 6. Conveyance for valuable consideration without qualification imports a warranty of title. 7. Marriage

with deceased wife's sister is allowed. 8. Children may be adopted so as to have the rights of natural-born children. 9. Power of attorney continues in force after death of donor till the donee has actual notice of such death. 10. Ship is liable for cost of maintenance of any infirm, incapable, or imbecile emigrant, and master must give bond. 11. All lands may be brought under the Land Transfer Act after investigation, and title thereto and subsequent dealings therewith (duly registered) are absolutely indefeasible and guaranteed by the government. 12. All conveyances must be registered, and priority of title is given according to priority of registration.

(40) The civil courts are the appeal court, the supreme court, the district courts, and the resident magistrate's courts.

‡ (41) This act is almost a transcript of the English Act of 1882.

276. As to arbitrations, see the Supreme Court Practice and Procedure Act, No. 18 of 1866, ss. 12—18.

277. As to the law applicable to guaranties, see the Mercantile Law Act, 1880, No. 12.

278. As to the conveyance of real and personal property, and choses in action, see the Property Law Consolidation Act, No. 29 of 1883; the Land Transfer Act, No. 57 of 1885; the Deeds Registration Act, No. 51 of 1868. As to bailments, mortgages, pledges, leases, and securities of personal property, including stock, crops, wool, and whale oil, see the Chattels Securities Act, No. 19 of 1880, and No. 9 of 1883.

279. As to the devolution of property, whether real or personal, see the Administration Act, No. 49 of 1879, and No. 62 of 1885. (N.B.—This last act is reserved for her Majesty's approval.)

280. As to grants, leases, and licences of crown lands, see the Land Act, No. 56 of 1885.

281. As to marriage, see the Marriage Act, No. 21 of 1880, and the Deceased Wife's Sister Marriage Act, No. 57 of 1880.

282. As to the rights, powers, and liabilities of married women, see the Married Women's Property Protection Act, No. 14 of 1880, and the Married Women's Property Act, No. 10 of 1884.

283. As to the custody of children, see the Law Amendment Act, No. 31 of 1882. As to the adoption of children, see No. 9 of 1881. As to the introduction into the colony of maimed, imbecile, or infirm persons, see No. 58 of 1882. As to restrictions on the introduction into the colony of the Chinese, see No. 47 of 1881.

284. The acts, No. 10 of 1880, and No. 17 of 1882, as to the naturalization of aliens are set forth in 15 Hertlet's Collection of Treaties, pp. 1010, 1014.

285. As to the management of the property of intestates, lunatics, absent, or unknown owners, see the Public Trust Office Acts, No. 26 of 1882, No. 27 of 1873, and No. 43 of 1876.

286. As to administration suits, see Administration Act, No. 49 of 1879, and Law Amendment Act, No. 31 of 1882.

287. As to the importation of cattle, see No. 4 of 1881, ss. 34—44.

288. As to criminal law and courts, see the District Court Act, No. 30 of 1858; the Resident Magistrates Act, No. 13 of 1867; and the Justices of the Peace Act, No. 15 of 1882, and No. 44 of 1885.

3a. District Courts.*

289. The civil jurisdiction of the district courts extends to all suits between £20 and £100, and may be extended by the governor to £200, except—(1) when title to real property is in question; (2) when validity of a devise is in question; (3) cases wherein a limitation under a bill or settlement is disputed; (4) cases of malicious prosecution; (5) libel; (6) slander; (7) crim. con.; (8) seduction; (9) breach of promise. And by consent of both parties these courts have jurisdiction in the excepted cases. See No. 4 of 1865; No. 5 of 1866; No. 12 of 1867; No. 14 of 1879.

290. District courts, where no Supreme Court Judge resides within the district, have also jurisdiction as to probate and administration. See Act No. 33 of 1880, s. 4.

4. Courts of Bankruptcy.

291. For further provisions as to the Bankruptcy Court, see the Bankruptcy Act, 1883; Amendment Act, No. 29 of 1884; and No. 22 of 1885.

292. District courts within the limits of their jurisdiction are local courts of bankruptcy, unless specially excluded by the governor in council. See Act No. 10 of 1883, s. 6.

4a. Magistrates' Courts.†

293. The civil jurisdiction of the resident magistrates' courts is limited to suits of £20, unless where the same is extended to £50 or £100 by the governor, and is subject to the same exceptions as that of the district courts. See No. 13 of 1867; No. 24 of 1870; No. 27 of 1872; and No. 28 of 1879.

294. For provisions as to magistrates, see the Justices of the Peace Act, 1882, amended by No. 44 of 1885.

* (42) The practice of the civil district courts is almost identical with that of the county courts in England.

† (43) The civil practice of resident magistrates' courts is very similar to that of the county courts in England.

5. *Courts for Gold Mining Districts**
(and see p. 756).

295 (in lieu of No. 1286 on p. 756). As to the powers to the governor to establish gold mining districts, and to appoint inspectors to visit the mines, see the Gold Mining District Act, No. 48 of 1873, and the Mines Act, No. 42 of 1877, ss. 6 *et seq.*

296. The district judge has concurrent original jurisdiction with the warden in cases over £100. See the Mines Act, No. 42 of 1877, ss. 157 *et seq.*

297. The appeal from the warden is to the district court, if there be one, otherwise to the Supreme Court. *Ibid.* ss. 145 *et seq.*

298. For further provisions as to gold mining districts, see the Gold Mining Districts Act, 1873, Amendment Act, No. 36 of 1885.

39. Fiji.

1. *Generally* (and see p. 756).

299. See further as to customs, No. 14 of 1885.

300. See further as to Indian immigrants, No. 11 of 1884.

301. As to Polynesian immigrants, see No. 7 of 1885.

40. The Western Pacific Islands.

1. *Generally* (and see p. 759).

302. The Order in Council of Sept. 6, 1880, referred to in Nos. 1356—1360 on p. 760, is set forth in 15 Hertslet's Collection of Treaties, p. 752.

4. *Tonga.*

302*a.* For the treaty of friendship of November 29, 1879, ratified July 3, 1882, between Great Britain and Tonga, see 15 Hertslet, 396.

302*b.* If any British subject is charged with a criminal offence cognizable by British law, such charge may be tried by the court of her Majesty's high commissioner for the Western Pacific Islands. *Ibid.* Art. 3 (a).

302*c.* If any British subject is charged with an offence against the municipal law of Tonga, not cognizable as such under British law, he shall be amenable to the jurisdiction of the Tonga courts, the proceedings of which shall be conducted in

public, and the records thereof shall be public and accessible. *Ibid.* Art. 3 (b).

302*d.* Every civil suit which may be brought in Tonga against any British subject in Tonga, shall be brought in and tried by the court of her Majesty's high commissioner. *Ibid.* Art. 3 (d).

302*e.* The expression "British law," according to which warrants or summonses to appear as witnesses are to be issued, includes any regulations duly made and issued by the high commissioner for the Western Pacific Islands. *Ibid.* Art. 3 (f).

Part III.—BRITISH COURTS IN FOREIGN COUNTRIES.

2. Foreign Jurisdiction Acts (and see p. 762).

303. The Evidence by Commission Act, 1859 (c. 20), referred to in p. 762, No. 1397, is amended by the Evidence by Commission Act, 1885 (c. 74).

3. British Courts in the Ottoman Dominions.

3. *Her Majesty's Supreme Court of Constantinople.*

(a) *Generally* (and see p. 764).

304. The Order in Council of May 3, 1882, as to the Supreme Court of Constantinople, referred to on p. 764, Nos. 1414, 1419, is set forth in 15 Hertslet's Collection of Treaties, p. 429.

305. Vice-Admiralty jurisdiction, except as to prize or booty, was conferred on the Supreme Consular Court for Constantinople, and on the provincial consular courts in the Ottoman Dominions. See Order in Council of January 9, 1863. *The Hochung, The Lapwing*, 5 Asp. 29, n.

4. Regulations as between British Subjects and Foreigners in China and Japan (and see p. 768).

306. For provisions for the government of British subjects in China and Japan, see Order in Council of October 25, 1881, in 15 Hertslet, 97.

* (44) The Mines Act is likely to be more used than the Gold Mining District Act.

307. Where a foreigner desires to institute or take a suit or proceeding of a civil nature against a British subject, or a British subject desires to institute or take a suit or proceeding of a civil nature against a foreigner, the Supreme Court for China and Japan, and the court for Japan, and a provincial court, according to the respective jurisdiction of the court, may entertain the suit and hear and determine it; and if all parties desire it, by trial with a jury or assessors. *Ibid.* Art. 47 (a).

308. See for further regulations in such suits, *Ibid.*

309. A provincial court cannot order the attendance of a British subject to give evidence, or for any other purpose connected with the administration of justice, required in a Chinese or Japanese court, or before a Chinese or Japanese authority, beyond the limits of its particular jurisdiction; but the Supreme Court may do so. *Ibid.* Art. 48.

6. *Her Majesty's Court for Japan* (and see p. 772).*

9. Consular Courts.

2. *Borneo* (and see p. 773).

310. For the provisions of the charter granted to the British Borneo Company, dated November 1, 1881, see 15 *Hertslet*, 85.

311. For provisions that in the administration of justice by the company to the people of Borneo or any of the inhabitants thereof, careful regard shall always be had to the customs and laws of the class, tribe, or nation to which the parties respectively belong, especially with respect to the holding possession, transfer and disposition of lands and goods, and testate and intestate succession thereto, and marriage, divorce, legitimacy and other rights of property and personal rights, *Ibid.* Art. 9.

312. In case provision is made by

Order in Council for the exercise of her Majesty's extra-territorial jurisdiction and authority in Borneo, and the appointment of the company's officers to discharge judicial or other functions, the expenses shall be borne by the company. *Ibid.* Art. 11.

313. The company shall freely afford all facilities requisite for her Majesty's ships in the harbours of the company. *Ibid.* Art. 12.

3. *Corea* (and see p. 773).

315. As to the Corean ports to be opened to British commerce, the powers to British subjects to acquire land in Corea, to import and export goods, the duties thereon, tonnage dues, &c., see the Treaty of Friendship and Commerce between Great Britain and Corea of Nov. 26, 1883, Arts. 1, 4 and 5, in 15 *Hertslet*, 880.

316. For the regulations under which British trade is to be conducted in Corea, *Ibid.* Arts. 5, 6 and 7.

317. Jurisdiction over the persons and property of British subjects in Corea is vested exclusively in the duly authorized British judicial authorities. *Ibid.* Art. 3, sub-s. 1.

318. Complaints of British subjects against Corean subjects are to be tried by Corean authorities. *Ibid.*

319. Complaints of Corean subjects against British subjects are to be tried by the British judicial authorities. *Ibid.*

5. *Madagascar* (and see p. 774).

320. Art. 5 of the Treaty with Madagascar of June 27, 1865, is abrogated, and in lieu thereof provision is made for British subjects renting on lease land, houses and warehouses, and all other kinds of property within all parts of the dominions of the Queen of Madagascar, under the control of a governor duly appointed by the Malagasy authorities. But all such leases are to be registered at the British consulate, and also by a

* (45) For the scheme now under consideration at the conference at Tokir between the principal European states and Japan for the abolition of the consular jurisdiction of European courts in Japan, and the establishment in lieu thereof of Japanese courts of civil and criminal jurisdiction over the subjects of such states, and presided over by judges composed, as to half their number, of Europeans; as to the other half, of natives of Japan; but all

appointed by the Japanese Government, and administering justice according to civil and criminal codes, modelled after the best European systems, to come into operation in the beginning of 1889, and last for twelve years, with special safeguards and protection for such foreigners, and for the opening of Japanese territory to foreign intercourse. See *The Times* newspaper of August 28, 1886.

Malagasy official appointed for the purpose. See Declaration of Feb. 16, 1883, between Great Britain and Madagascar, in 15 Hertslet, 1029.

8. *Siam* (and see p. 775).

321. For provisions abrogating the Treaty between the Government of India and the King of Siam dated Jan. 14, 1874, (in 15 Hertslet, 349), and providing for the extradition of criminals, the establishment of a British consul or vice-consul at Chiengmai, and the appointment by the king of Siam of a commissioner or judge at Chiengmai to exercise civil and criminal jurisdiction, in cases in which British subjects are interested, according to Siamese law, with a right of transfer in case both parties are British subjects to the British consular court at Chiengmai, and a right of appeal to the Siamese authorities and the British consul-general in consultation at Bangkok, see the Treaty of September 3, 1883, between Great Britain and Siam for the Promotion of Commerce and Prevention of Crime, in 15 Hertslet, 811.

322. The interests of British subjects at Siam are placed under the control of a British consul or vice-consul resident in Chiengmai, with power to exercise civil and criminal jurisdiction in accordance with the provisions of Art. 2 of the Supplementary Agreement of May 13, 1856, and Art. 8 of this Treaty. *Ibid.*

323. As to the civil and criminal jurisdiction of Siamese commissioners or judges in Chiengmai, in cases arising there, or in Lakon and Lamphoonchi, between British subjects, or between them and foreigners, but the British consul or vice-consul is to be present, and to have certain powers, and on his written requisition in cases in which both parties or the defendant or accused is British, the cause is to be transferred to the British consular court at Chiengmai, *Ibid.* Art. 8.

324. As to the right of appeal, where British subjects are parties, from the Siamese judges at Chiengmai to the Siamese authorities and British consul-general at Bangkok, *Ibid.* Art. 9.

325. The time of appeal is one month. *Ibid.*

326. As to evidence and witnesses, *Ibid.*

9. *Zanzibar* (and see p. 776).

327. The Order in Council of April 1,

1881, providing for the exercise of British consular jurisdiction in the dominions of the Sultan of Zanzibar, and referred to on p. 776, No. 1612, is set forth in 15 Hertslet, 494.

Part IV.—FOREIGN COURTS.

4. Brazil.*

1. *Generally* (and see p. 781).

328. The written maritime law of Brazil is very similar to that of Portugal, and is contained in Part II. of the Commercial Code, published in 1850, and a variety of laws and regulations subsequent thereto; commercial usage also forms part of the law. Decree, No. 737 of 1850, Art. 2.

329. Merchant ships are not allowed to leave port after sunset or before sunrise, Decree, No. 447 of 1846, Art. 20. The above decree is relaxed so far as to allow vessels to leave Maranham before sunrise, Order, No. 204 of 1852. And see as to vessels belonging to regular lines of Transatlantic steamers, Decree, No. 4955 of 1872, Art. 8.

2. *Courts.*

330. The jurisdiction of the courts in commercial and maritime matters, and the procedure in such cases, are regulated by the Commercial Code, and Decree, Nos. 737 and 738 of November 25, 1850, and No. 1597 of 1855.

331. All rights and obligations which are subject to the enactments of the Commercial Code are within the jurisdiction of the judge of the commercial court if one of the parties is a trader, that is, a person legally engaged in commercial affairs. Art. 18, C. C. P., Decree, No. 737 of 1850, Art. 10.

332. The courts take cognizance of foreign law so far as concerns the legal capacity of a foreigner to enter into a contract, Decree, No. 737 of 1850, Art. 3.

333. All commercial actions for less than 100 mil reis (say £10), and all actions for seamen's wages and necessities, may be determined summarily. *Ibid.* Art. 236.

334. Ships may be arrested and detained for privileged debts, except in exceptional cases. Art. 479, C. C.; *Ibid.* Art. 338.

335. There is an appeal in cases over 200 mil reis (say £20), and a further

* Kindly contributed by Dr. Raikes.

appeal to the Supreme Court in cases over 5,000 mil reis. Decree, No. 737 of 1850, Art. 646, 665; No. 1597 of 1855, Art. 82.

336. The composition of the tribunals of commerce is settled by Decree, No. 1597 of 1855.

3. Arrest and Detention of Ships.

337. A ship cannot be arrested or detained for the unproved debt of the owner when she has got as much as a quarter of her cargo on board. Art. 481, C. C.

338. Foreign vessels cannot be arrested or detained in a Brazilian port for debts contracted outside Brazilian territory, unless secured by a bottomry bond or bill of exchange, payable within the empire. Arts. 482, 651, C. C.

4. Owners of Ships.

339. Foreigners cannot own ships under the Brazilian flag. If the whole, or a share in a Brazilian ship is found to belong to a foreigner, or even that a foreigner has an interest in it, it is forfeited and sold, half the proceeds of sale going to the informer, and the other half to the treasury of the tribunal of commerce. Art. 457, C. C.

340. The tribunal of commerce is not competent to order this forfeiture. Order in Council, Oct. 15, 1873.

341. Every part owner or owner is liable *in solido* for the debts which the captain has contracted for repairing, refitting or provisioning the ship, and for damages caused to third parties by his negligence, but can free himself from further liability by abandoning the ship and freight, except in the case when the owner or part owner is also master. Art. 494, C. C.

5. Rights of Owners *inter se*.

342. The majority in value decide as to the employment of the ship, but if the minority are of opinion that she should be repaired, they can have an official survey, and if the surveyors are of opinion that the repairs are needed, they are carried out at the common expense of all the owners. Art. 484, C. C.

6. Managing Owner or Ship's Husband.

343. It is necessary that an owner, or one or more of the part owners (or if all concerned agree in the appointment of a

person who is not an owner), who has the necessary qualification for persons engaged in commerce, as laid down by law, should be appointed managing owner, or ship's husband. Arts. 484, 491, 492, C. C.

344. The passing of the managing owner's accounts by the majority in value of the part owners, does not preclude the minority from suing him on them, an exception to the general rule laid down in Arts. 488, 495, C. C.

7. Masters.

345. A master who induces any person to leave another ship to join his own is liable to a fine of 100 mil reis = £11 5s. at full exchange—now, however, only about £7 10s. for each person,—and also to the costs of the other vessel's demurrage, if she is in consequence of loss of hands unable to get away. Art. 500, C. C.

346. A master must, before leaving port, examine the cables, anchors, sails and rigging, in the presence of the mate and boatswain, and draw up a declaration of their condition which is signed by the master, mate and boatswain. Art. 506, C. C.

347. A master can only bottomry ship and cargo, or sell cargo for necessary repairs, and, either in the absence of the owners or their agents or with their consent, and under the authority of the court. Art. 515, C. C.

8. Security for Costs.

348. A foreign plaintiff, even if he has a commercial domicile (*i. e.*, place of business) in Brazil, must give security for costs if, in fact, he is resident beyond the limits of the empire. *Rozo, Lemos & Co. v. Charles Roulina*, J. D. I. P. 1880, p. 515. Court of Appeal, Rio de Janeiro, Oct. 21, 1878.

9. Carriage of Goods.

349. If a master dies or is discharged after signing bills of lading and before sailing, the shippers can require the bills to be re-signed by his successor, who may compare them with the cargo; if he signs without comparing them he is liable for losses which the shippers sustain. The expense of comparing them is borne by the shipowner if the master dies or is wrongfully discharged, by the master if

his discharge was his own doing. Art. 581, C. C.

350. A contract of affreightment of a foreign ship, to be performed in Brazil, must be construed and adjudicated upon in accordance with this code, whether the freight is payable within the realm or elsewhere. Art. 628, C. C., and Decree No. 737 of 1850, Art. 6.

10. Mortgage.

351. The Brazilian law recognizes mortgages (hypothecas) of ships as distinct from contracts of bottomry or respondentia (*contrato de emprestimo a risco* or *cambio maritimo*). A mortgage is invalid unless witnessed by a notary (*per cocriptura publica*), and entered at the Registry of the Tribunal of Commerce and noted on the shipping register. Arts. 468, 472, 474, 633, 873, 876, 879, C. C. Decree No. 738 of 1850, Art. 58, and Memo. No. 96 of 1866.

11. Salvage.

352. Masters and other members of the crew are entitled to salvage reward in addition to their wages. Art. 737, C. C.

353. Salvage reward is settled by arbitrators, having regard to the danger and nature of the service, the promptitude with which it was rendered, and the care taken of the goods salvaged. Art. 736, C. C.

353a. Public servants are entitled to extra remuneration out of the proceeds for salvage services. Decree No. 5865 of 1875.

12. Wages.

354. No member of the crew can bring an action for his wages before the end of the voyage, except in case of ill-treatment, when he can demand the rescinding of the contract. Art. 557, C. C.

355. No wages are due if the vessel is captured or lost in the course of the voyage. Art. 558, C. C.

356. Nor in such case can advances be reclaimed by the owner. *Ibid.*

357. The crews, however, have a claim for their entire wages if the vessel is recovered after capture, and in preference to other claims against wreck saved. Art. 559, C. C.

358. No defence to an action for seamen's wages when the voyage is completed is allowed, except the defendant pays the amount of the claim into court. Art. 564, C. C.

4a. The Congo Free State.

1. Generally.

359. Complete freedom of trade is accorded to all nations in all the regions forming the basin of the Congo and its outlet, in the littoral of the Atlantic Ocean, from Sette Canuna to the mouth of the Lage, and in the zone of territory stretching eastwards from the Congo basin to the Indian Ocean, as respectively therein defined. See the General Act of the West African Conference signed at Berlin, February 26, 1885, by the representatives of Germany, Austria, Belgium, Denmark, Spain, the United States, France, Great Britain, Italy, Holland, Portugal, Russia, Sweden, Norway, and Turkey, c. I. Art. 1.

360. For provisions for the protection of natives, missionaries, and travellers, and for the free and public exercise of all forms of Divine worship, *Ibid.* Art. 6.

361. The convention of the universal postal union, as revised at Paris, June 1, 1878, is applied to the conventional basis of the Congo. *Ibid.* Art. 7.

362. For provisions for prohibiting slavery and the slave trade throughout the conventional basis of the Congo, *Ibid.* c. II. Art. 9.

363. As to the neutrality of the territories comprised in the conventional basis of the Congo, *Ibid.* Arts. 10, 11, and 12.

2. International Commission.

364. For the institution of an international commission charged with the execution of the provisions of the General Act, *Ibid.* c. IV. Art. 17.

365. As to the powers of the International Commission generally, and for construction of works, fixing pilotage tariff, navigation dues, and superintending quarantine establishments, *Ibid.* c. IV. Arts. 18—25.

3. Act of Navigation for the Congo and its Affluents.

366. As to the act of navigation of the Congo and its affluents, and its being open to merchant ships of all nations equally, and the establishment of harbour dues and pilotage dues, *Ibid.* c. IV. Arts. 13—16.

4. Act of Navigation for the Niger and its Affluents.

367. As to the act of navigation for the Niger, and its being open to mer-

chant ships of all nations equally, *Ibid.* c. V.

8. France.

1. Generally (and see p. 782).

368. The French courts are not generally held to be competent, even in commercial matters, except by the consent of both parties, in suits between two non-domiciled foreigners, except where such suits may be brought under Art. 420 of the Code of Procedure which gives jurisdiction to the court of the locality where the promise was made and has been executed, and to that of the locality where the contract was to be carried out. D. A. vo. Droit Civil, No. 339 (an article which has been held to apply to collision in the French waters between two foreign vessels). See Caumont, vo. Competence, Nos. 51 and 74 to Average Adjustments; D. A. and *ibid.* No. 345, and to actions for wages, where all the mariners are foreigners and not of the same country. See, upon the question, D. A. Nos. 339 *et seq.*, and Caumont, No. 71 *et seq.*, and the authorities therein.

369. The authorities are not agreed as to whether, in cases where the French judges are not authorized to decide upon the action, they are entitled to authorize provisional measures of protection, such as an attachment. See, for the authorities *pro* and *con*, D. A. *ibid.* Nos. 331 and 332, and Caumont, vo. Competence.

370. Questions of damage arising out of loss of life and personal injury, and those from maritime causes in particular, are not provided for by any special law. They come under the general rules as to damage caused by fault or negligence, which are laid down by the Articles 1382 to 1386 inclusive of the Code Civil.

371. Where they are not attributed expressly or by implication to another jurisdiction, they are to be adjudicated upon by the civil tribunals of the First Instance, and the Courts of Appeal. D. A. vo. Responsabilité, No. 771. Their jurisdiction is the rule. See D. A. vo. Competence Civile, &c., Nos. 5 and 215, and Responsabilité, Nos. 771 and 796.

372. *Held*, that for personal injuries affecting mariners employed in commercial navigation, where they have occurred in the course of their duties, such a jurisdiction exists by virtue of the principle laid down by the Code of Commerce with respect to actions brought against the

shipowner or ship's husband, where the injury has been caused by imprudent orders given by the officers to the mariners. Their actions in such a case arising out of a contract which the law considers as commercial. Rouen, August 14, 1872; J. H. 1873:2:13; Cassation, July 9, 1873; J. H. 1874:2:103. But *held, contra*, by the judgment of the civil tribunal of Havre, of February 15, 1872; J. H. 1872:2:89.

373. The Tribunal of Commerce shall take cognizance, 1st, of suits concerning engagements and transactions between merchants, tradesmen and bankers; 2nd, of suits between partners concerning commercial partnerships; 3rd, of suits concerning commercial dealings between all persons. C. C. Art. 631.

374. Among the dealings which are to be held as commercial are, All contracts for the building, and all purchases, sales and resales of vessels for internal or external navigation; all maritime adventure; all purchases or sales of spars, apparel and victuals; all freightings or charterings, lendings or borrowings on bottomry or respondentia; all insurances or other contracts concerning maritime trade; all agreements and contracts for the hire and salaries of seamen; all engagements of seamen for the service of commercial vessels. C. C. Art. 633.

375. Appeals from Tribunals of Commerce shall be carried before the Courts (of Appeal) within the jurisdiction of which they are situate. C. C. Art. 644.

376. In maritime suits in which the parties are not domiciled in France, and in those concerning apparel, provisions, equipments, and caulking of vessels, ready to sail, and other urgent and provisional matters, a citation from day to day and from hour to hour may be given without the authorization of the president, and judgment by default may be given immediately. Code of Civil Procedure under title of "The Procedure before the Tribunals of Commerce."

377. Concerning the attachment or provisional seizure of a vessel without judgment, under a mere order of the president of the tribunal of commerce which Article 417 of the Code of Procedure allows on "movable effects" in cases which require celerity, the law has said nothing. Some authors (see Dutruc, vo. Navire, No. 196), from the omission of vessels in that article, and in that of provisional seizure in the article immediately following, which specially concerns them, are

of opinion that that measure is not applicable to vessels. The majority of authorities, however, decide the contrary. Dutruc, vo. Navire, No. 196; Caumont, vo. Navire, No. 57.

378. The seizure of a vessel on the point of sailing is interdicted, except for debts contracted for the voyage it is undertaking, and then not if the debt is bailed. The vessel is to be considered as on the point of sailing if the master is provided with his papers for the voyage. C. C. Art. 215; Caumont, vo. Navire, No. 67.

379. *Held*, that all creditors, not privileged as well as privileged, may prevent the departure of the vessel by lodging an opposition with the captain of the port against the delivery of its "billet de sortie" (Rennes, February 17, 1813, D. A. No. 99), provided such opposition be notified to the captain of the port before the master of the vessel has his papers for the voyage. *Rebecquis' case*, Aix, August 22, 1819; *Ibid*.

379a. *Held*, that though in cases which require expedition the provisional seizure of the vessel and cargo may take place under an order of the President of the Tribunal of Commerce, the sale cannot be made without a judgment of the Tribunal. Rennes, May 22, 1867, J. H. 1868:2:52.

380. Whether the prohibition laid by Article 215, C. C., against seizing the vessel when on the point of sailing applies to foreign vessels is a moot question. For the affirmative, see Caumont, vo. Navire, No. 68; *contra*, D. A. No. 112. For other authorities, *pro* and *con*, see Caumont, *Ibid*.

380a. For the agreements of January and February, 1878, between Great Britain and France respecting the independence of the New Hebrides group, see 15 Hertslet, 915.

3. Tunis (and see p. 784).

381. The Decree of 5 May, 1883, of the Bey of Tunis, respecting French jurisdiction in Tunis, is set forth in 15 Hertslet, 1062; and the French law of 27 March, 1883, for the organization of French jurisdiction there, is set forth in 15 Hertslet, 1059.

11. Holland * (and see p. 787).

382. The superior courts in Holland are the Court of Justice and the National Court. These colleges are judges either in the first instance or on appeal. See Vanderlinden's Manual of the Law Practice and Mercantile Law of Holland, translated by Juta, anno 1884, p. 249.

383. An appeal lies to the National Court from all judgments in cases heard in the first instance in the provincial or departmental courts. *Ibid*.

384. As to the original jurisdiction of such court, *Ibid*.

385. The court of justice of Holland is chiefly a court of appeal. *Ibid*. p. 251.

386. As to its original jurisdiction, *Ibid*. pp. 251—253.

387. The general rule in the institution of all suits is that the plaintiff must follow the court of the defendant, and consequently no one can be sued in the first instance except before his ordinary daily and competent judge. The College of Schepenen must generally be regarded as such court in the towns and villages. *Ibid*.

388. At the head of this college there is generally a sheriff (*schoot*), whose duty consists principally in superintending the due administration of justice, convoking the College of Schepenen, holding the court, &c. *Ibid*.

389. As the College of Schepenen, especially in the large towns, was inadequate to settle all the cases which came before it, and as many of the small cases, often of importance, were delayed, inferior courts were established at various places. Thus, at Haarlem there is an inferior court of justice; at Enkhuizen a court for small cases; at Rotterdam, a college of arbitrators, with jurisdiction up to 300 guilders (£25); at Leyden, a college of arbitrators, before which all the cases, without exception, must first be brought, in order to attempt to bring about an amicable settlement; at Dordrecht there is a college of water jurisdiction; at Amsterdam there are various similar colleges, such as commissioners of matrimonial causes, commissioners of the insolvent estates, chambers, commissioners of the insurance and maritime causes, &c. *Ibid*.

390. The authority of the Schepenen, however, is limited to cases which affect

rights of private persons. They are incompetent to interfere with municipal matters. *Ibid.*

391. All suits connected with maritime matters and averages must be brought before the board of maritime law or commissioners of maritime causes at Dordrecht, Amsterdam, or Rotterdam. *Ibid.* 259.

19. Turkey.

3. Egypt.

(a) *Generally* (and see p. 797).

392. The existence of the mixed courts is prolonged to Feb. 1, 1889. See the Decree of the Khedive of January 19, 1884, in 15 Hertslet, 166.

392a. As to the international commission at Alexandria for dealing with the claims arising out of the insurrections in Egypt in June, 1882, see Decrees of the Khedive of 13 January and 4 February, 1883, in 15 Hertslet, 586.

21. African Kings and Chiefs.

393. For treaties of commerce, navigation, &c., between Great Britain and the

king of Kaloum of October 31, 1848, see 12 Hertslet, p. 43.

394. Of August 26, 1852, with the chiefs of the Kaffir bullons. *Ibid.* p. 52.

395. Of April 19, 1855, with the king and chiefs of Kanabak. *Ibid.* p. 64.

396. Of December 3, 1856, with the king of Mambolo. *Ibid.* p. 67.

397. Of February 27, 1857, with the kings and chiefs of the Timmanee. *Ibid.* p. 68.

398. Of February 18, 1858, with the chiefs of Battairé. *Ibid.* p. 71.

399. Of June 1, 1859, with the chiefs of Bompey. *Ibid.* p. 73.

400. Of July 8, 1859, with the chiefs of the Cameroons rivers. *Ibid.* p. 74.

401. Of April, 1860, with the king or chief of Lokkoh Massammah. *Ibid.* p. 75.

402. Of November 24, 1860, with the king of Akedo. *Ibid.* p. 77.

403. Of November 27, 1860, with Angiana. *Ibid.* p. 78.

404. Of November 9, 1861, with Bendo Session. *Ibid.* p. 88.

405. Of February 28, 1862, with Dikole Town Bimbra. *Ibid.* p. 93.

406. Of May 5, 1862, with native traders of Old Calabar. *Ibid.* p. 94.

407. Of January 18, 1866, with the chiefs of Jacqua. *Ibid.* p. 114.

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1. Generally (and see p. 808).

1. As to liens in respect of the carriage of goods, see tit. GOODS, CARRIAGE OF—p. 2415.

3. Priority.

8. *Bottomry and other Liens.*

(b) *Sale* (and see p. 818).

2. A purchaser without notice, held, entitled to payment in priority to a bottomry bondholder who was in laches in putting his bond in suit. *The Three Brothers*, Marsden, p. 336.

(c) *Wages and Disbursements of Master.*

(aa) *Generally* (and see p. 818).

3. Claim of master for wages of crew paid by him, held, entitled to payment in priority to a bottomry bond. *The Three Brothers*, *Ibid.* p. 336.

(p) *Wages and Allowances of Seamen* (and see p. 819).

4. Wages, held, entitled to payment in priority to a bottomry bond. *The Amity's Desire*, *Ibid.* p. 331.

9. *Costs and other Liens.*

(a) *Generally* (and see p. 820).

5. Where there are several claimants against the proceeds of a vessel, and she has been sold at the suit of one,—a claimant having an inferior lien,—the costs of such sale will be allowed him before all other claims, as those costs were for the benefit of all the claimants. *The Panthea*, 25 L. T. 389.

19. *Shipwright in Possession and other Liens* (and see p. 830).

6. A shipwright's possessory lien is not determined by the arrest of the vessel. *The Acacia*, 42 L. T. 264.

22. *Master's Wages and Disbursements and other Liens.*

(g) *Sale* (and see p. 831).

7. Dr. Lushington's ruling in *The Mary Ann*, see p. 831, No. 190a, followed by the President of this Division, and held, that the master was entitled to claim for his disbursements in priority to the claim of a purchaser of the ship. *The Ringdove*, 13th July, 1886. See also *The Fairport*, p. 828, No. 171.

23. *Seamen's Wages and other Liens.*

(a) *Generally* (and see p. 832).

8. Wages of seamen on a subsequent voyage, held, entitled to payment in priority to those of seamen on a preceding voyage. *Young v. Lawrence*, *The Elizabeth and Catherine*, Marsden, p. 288.

4. Release or Extinction.

1. *Generally* (and see p. 832).

9. The master received a portion of his wages, and elected to allow the balance to remain in the hands of the managing owners at interest. Held an extinction of his lien on the ship. *The Rainbow*, 5 Asp. 479.

5. Foreign Law.

4a. *Italy.*

10. In cases of collision damages for loss of life or personal injury have priority over claims for damage to property. Merc. Mar. Code, Art. 661.

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Part II.—THE CONTRACT.

2. Form.

1. *Generally** (and see p. 849).

Part III.—INSURERS.

3. Mutual Clubs and Associations.

3. Rules.

- (b) *Liability* (and see p. 870).

1. Where a mutual ship insurance company—the practice of which was that after the expiration of the first time policy no new policy was issued, but instead thereof stamped receipts were given

for calls—duly passed resolutions, with its members' assent, transferring its business and effects to a new company, on the terms of the new company paying all the debts and liabilities of the old, and one of the members of the old company continued to keep his vessels on the books of the new company, but in accordance with the practice of the old company he received no policy of insurance, such member is liable to the new company for calls as moneys paid at his request, notwithstanding the fact that no stamped policies of insurance had been given him. *Barrow-in-Furness Mutual Ship Insurance Company v. Ashburner*, 5 Asp. 443, 527.

5. *Stamps* (and see p. 874).

See No. 1, *supra*.

* (1) See a form of policy of assurance, anno 1692, in Marsden, Rep. p. 267. Also a still

older form in the Appendix to Lowndes on Marine Insurance (2nd ed.).

Part VI.—AGENTS.

2. Of the Assured.

2. *Liability* (and see p. 886).

2. Where goods are consigned to persons who, knowing that the consignor is acting for an undisclosed principal, insured the goods whilst on their voyage in their own names for the benefit of all parties interested, and on the ship carrying the goods being totally lost receive the money due on the policy, the undisclosed principal is entitled to recover this money (less expenses in respect of insurance) against the consignees, who cannot set it off against the balance of their general account with the consignor. *Mildred, Goyeneche & Co. v. Maspons y Hermano* (H. L.), 8 App. Cas. 874; 5 Asp. 182; 49 L. T. N.S. 685; 53 L. J. Q. B. 33; affirming (C. A.), 9 Q. B. D. 530; 47 L. T. N.S. 318; 51 L. J. Q. B. 604.

Part VII.—SUBJECTS OF INSURANCE.

3. Description of Subject-matter insured.

3. *Freight*.(a) *Generally* (and see p. 888).

3. A charter-party provided for the payment of freight at a specified rate, and contained the clause "if any portion of the cargo be delivered sea-damaged, the freight on such sea-damaged portion to be two-thirds of the above rate." Plaintiffs, the charterers, effected an insurance "to cover only the one-third loss of freight in consequence of sea-damage as per charter-party." A portion of the cargo became sea-damaged, and one-third of the freight payable in respect of that portion was deducted by plaintiffs from the whole freight. *Held* (affirming Denman, J.), that the policy sufficiently described the subject-matter insured, which was the one-third loss in consequence of sea-damage and not the whole freight, and that plaintiffs were entitled to recover the loss of freight. *Griffiths v. Bramley-Moore*, 4 Asp. 66; 4 Q. B. D. 70.

Part VIII.—INSURABLE INTEREST.

2. In Ship.

2. *Of Mortgagee and Mortgagee* (and see p. 895).

4. When mortgagees of a ship by

agreement with their mortgagors effect a policy on ship at the mortgagor's expense, and hold it as part security, they have an insurable interest entitling them to sue thereon, even if the mortgage has been paid off, where they have been compelled, by reason of their own default, to pay the value of the ship to the mortgagors who have ceded to them their rights under the policy on receipt of such payment. *Levy v. Merchants' Marine Ins. Co.*, 5 Asp. 407; 52 L. T. N.S. 263.

3. In Cargo.

1. *Of Vendor and Purchaser* (and see p. 896).

5. Where goods are shipped f. o. b., even although mixed with other goods of the same sort, and not specifically appropriated to the buyer, if it appear that it was the intention of the parties in the ordinary course of business that the goods should be at the risk of the buyer, the buyer has an insurable interest in them. *Inglis v. Stock* (H. L.), 10 App. Cas. 263; 5 Asp. 422; 52 L. T. N.S. 821; affirming (C. A.) 10 Q. B. D. 504; 5 Asp. 295; 51 L. T. N.S. 449; and reversing (Q. B.) See Nos. 430, 431, p. 897.

5a. *D. & Co.*, sugar merchants of London, agreed, in writing, to sell to the plaintiff, a merchant at Bristol, 200 tons of sugar of a certain quality, as regards saccharine matter, at the price of 21s. 9d. per cwt. f. o. b. Hamburg. The sugar was to be shipped from Hamburg to Bristol, and payment was to be made by cash in London in exchange for bills of lading. *D. & Co.*'s agents at H., in performance of this contract, and also of another Bristol contract for another 200 tons of sugar shipped thence per steamer *C. of D.*, 400 tons of sugar, and consigned the same to Bristol. *D. & Co.*'s usual course of business was (as plaintiffs knew) not to apportion particular bags of sugar to particular buyers at the time of shipment, but to apportion the various bags and bills of lading, representing them between their various buyers at a particular port after the sugar had been shipped, and after *D. & Co.* had received the bills of lading. This was done in order that *D. & Co.* might, with comparative accuracy, make up to each buyer the amount of saccharine matter contracted for by him. The *C. of D.* was lost on the voyage from H. to B. before

any appropriation of sugar had been made by D. & Co., but D. & Co. afterwards appropriated 200 tons to the plaintiff, and sent him an invoice, and the plaintiff thereupon paid for the sugar so appropriated by him. The plaintiff had a floating policy on goods, and on hearing of the loss declared thereunder in respect of these 200 tons of sugar in the C. of D. *Held*, in an action on such policy, that the plaintiff had an insurable interest in such sugar, because, although the property had not passed to him, the words f. o. b. in the contract made between the parties, having regard to their knowledge of the course of business, showed it to be their intention that the 200 tons bought by the plaintiff should be at his risk, and that he should be liable to pay for it whether it arrived or not. *Stock v. Inglis*, L. R. 12 Q. B. D. 564; 5 Asp. 295; 51 L. T. N.S. 449; affirmed (*Inglis v. Stock*), L. R. 10 App. Cas. 263; 5 Asp. 422; 52 L. T. N.S. 821; and reversing Q. B. See Nos. 430, 431, p. 897.

Part XI.—RE-INSURANCE.

(And see p. 916.)

6. Plaintiffs, a marine insurance company, entered into an agreement with the defendants, a fire insurance company, that defendants should re-insure them against loss by fire only by all coal-laden ships which should be insured by plaintiffs between certain ports, so long as the agreement remained in force; and successive policies to cover risks insured against by ships as might be declared were subscribed and issued by defendants to plaintiffs. It was admitted that in marine insurances in open policies on ships to be declared, there was a usage of merchants and underwriters that such policies attached to the goods as soon as, and in the order in which, they were shipped, in which order the assured were bound to declare them; and in case of mistake, the assured should be bound to rectify the declaration which was sometimes done after loss. *Held*, that the admitted usage with regard to marine insurance applied, though there-insurance was against fire only, it being a contract of fire insurance in respect of a marine risk. *Maritime Marine Insurance Co. v. Fire Re-insurance Corporation*, 4 Asp. 71; 4 C. P. D. 166.

See also Nos. 15—17, p. 2454.

Part XII.—VOYAGE POLICIES.

3. Duration of Risk.

1. *On Cargo.*

(f) *In Lighters.*

7. A policy of insurance on goods which includes "all risk of craft until the goods are discharged and safely landed," does not cover the risk on the goods while waiting on lighters at the port of delivery for transhipment into an export vessel. *Houlder Bros. & Co. v. Merchants' Marine Insurance Co.*, 17 Q. B. D. 354.

Part XIII.—TIME POLICIES.

3. On Freight (and see p. 945).

8. A time policy on chartered freight for six calendar months provided for payment of loss of hire, which may arise in clause 6 of charter-party for accidents occurring between the 15th April and the 15th October. The charter, after fixing the vessel for six months certain, with the option to the charterers of continuing the charter for a further period, provided by clause 6, "that, in the event of loss of time by deficiency of men, collision, break down of engines, and the vessel becomes incapable of proceeding on her voyage, payment of hire should cease until the vessel is able to resume her voyage (the act of God, the Queen's enemies, &c., excepted). During the currency of the policy the vessel sustained injury, but was able to complete her voyage; owing, however, to the injury sustained the charterers, who had exercised their option of extending the charter, refused to pay hire for the vessel during this extended time until she was fit to resume her employment. In an action by the shipowner under the policy to recover the loss of freight for the extended time, *held*, that, although the accident occasioning the loss had occurred during the currency of the policy, the loss of freight had occurred subsequent to that time, and such loss was not covered by the policy. *Hough v. Head*, 5 Asp. 447, 505; 52 L. T. N.S. 861; 54 L. J. Q. B. 294.

Part XV.—PREMIUM.

3. Recovery.

3. *By Charterers.*

9. Premiums paid for the insurance of cargo are recoverable by the charterers

from the shipowners for breach of the contract of carriage in not delivering the goods, the value of the cargo at the port of destination, including all the reasonable mercantile expenses of taking it there, among which are premiums of insurance. *The Great Indian Peninsular Railway Co. v. Turnbull*, 5 Asp. 465; 53 L. T. N.S. 325.

Part XVII.—CONCEALMENT.

1. Generally (and see p. 961).

10. All facts which a prudent and experienced underwriter would take into consideration in estimating the premium are material, and ought to be disclosed. *Tate v. Hyslop*, 53 L. T. N.S. 581; 5 Asp. 487; 15 Q. B. D. 368.

10a. The London lightermen have two contracts as to the carriage of goods, the one as common carriers, the other on the terms that they will not be liable for loss unless caused by negligence, and the rates of premium on goods carried under the latter contract being greater than that under the former. *Held*, that the fact of the goods being carried under the latter contract is material, and ought to be disclosed to the underwriters, and its concealment will avoid the policy. *Ibid*.

2. By the Assured or his Agents (and see p. 962).

11. Where an agent who is employed to effect an insurance for his principal deliberately omits to communicate to that principal material facts which, in the course of his employment, have come to his knowledge, and which it is his duty to disclose to his principal, there is a concealment which will have the effect of vitiating an insurance subsequently effected by such innocent principal through another agent, who is unaware of any such concealment of material information. *Blackburn, Low & Co. v. Vigors*, 5 Asp.; 54 L. T. N.S. 852.

Part XXI.—PERILS INSURED AGAINST.

3. Excepted Risks.

2. The Common Memorandum.

(f) *Five per Cent. and Three per Cent.*
(and see p. 1026).

11a. A ship was insured with a war-

ranty free from average under 3 per cent. unless general or the ship be stranded. Her sternpost was damaged by perils of the seas, causing a leak, but such injury was not at first discovered. Subsequently the ship was docked to have her bottom scraped, cleaned and painted, and on survey the injury to the sternpost was discovered. She was in dock for seven days; the painting, &c. could have been completed in about three days; the repairs to the sternpost occupied the whole seven days. In an action against the underwriters for an average loss, the plaintiffs contended that the whole cost of docking was to be charged to the repairs of the sternpost, and that, as this was over 3 per cent., they were entitled to recovery. The defendants contended that the cost should be apportioned, in which case the sternpost repairs would have been less than 3 per cent. *Held* (by Brett, M. R., and Fry, L. J., Baggallay, L. J., dissenting), that the proper mode of dividing the expense was halving it between the painting, &c., and the sternpost repairs, and as this brought the cost over 3 per cent., the underwriters were liable. *China Transpacific Co. v. Marine Ins. Co.*, C. A. July 9, 1885.

Part XXII.—LOSSES BY PERILS INSURED AGAINST.

10. By other Perils and Misfortunes.

1. *To Ship* (and see p. 1042).

12. The bursting of the chamber of the donkey-engine through the pressure of the cold water, whilst being used for the purposes of the voyage in the ordinary course of the navigation of the ship is *ejusdem generis* with a peril of the sea, and is covered by a general clause against "all the perils, losses and misfortunes that had or should come to the hurt, detriment, or damage of the aforesaid subject-matter (vessel and machinery) of insurance, or any part thereof." *Hamilton, Fraser & Co. v. Thames and Mersey Marine Insurance Co.*, C. A. (Lindley and Lopes, L.J.J., Lord Esher, M. R., dissenting, and distinguishing *West India Telegraph Co. v. Home and Colonial Insurance Co.*), April 24, 1886.

Part XXIII.—PARTICULAR AVERAGE AND PARTIAL LOSS.

5. Adjustment.

2. On Ship.

(a) *Generally* (and see p. 1050).

13. A ship was insured by a time policy, free from average under three per cent. unless general, or the ship be stranded, sunk, or burnt. Several separate and distinct voyages were made, and particular average losses incurred, each loss being under three per cent., but in the aggregate amounting to more than three per cent. *Held*, that in a time policy on ship, the amount of the particular average loss must be calculated at the end of each separate and distinct voyage, and the losses incurred on the different voyages cannot be added together, and therefore the underwriters were protected from liability under the warranty. *Stewart & Co. v. Merchants' Marine Insurance Co.*, 5 Asp. 506; L. R. 16 Q. B. D. 619.

Part XXIV.—TOTAL LOSS.

2. Absolute.

1. *Generally* (and see p. 1054).

14. A policy against absolute total loss only covers any such loss of the thing insured as is sufficiently complete to entitle the owners to recover without notice of abandonment. So, where a ship is driven ashore, and by the continuous action of the perils of the seas becomes a total loss, the assured may recover, although when first driven ashore she was but a constructive total loss. *Levy v. Merchants Marine Ins. Co.*, 5 Asp. 407; 52 L. T. N.S. 263.

4. Abandonment.

1. *Generally* (and see p. 1081).

15. Notice of abandonment need not be given to the underwriters of a policy of re-insurance upon a constructive total loss of the ship insured. *Uzielli v. Boston Marine Ins. Co.*, 15 Q. B. D. 11; 5 Asp. 405; 52 L. T. N.S. 787; 54 L. J. Q. B. 142.

7. Effect on Ownership.

(c) *Of Freight* (and see p. 1086).

16. Freight which has not been earned is not an incident of the ownership of a

vessel, and does not pass to the underwriters on ship upon abandonment, hence where shipowners insure ship with one set and freight with another set of underwriters, and whilst proceeding to her port of loading under charter-party, and before she has earned freight, she is sunk by another ship, and her owners recover damages for loss of ship and for loss of freight, the underwriters on ship have no right to the freight on abandonment. *Sea Insurance Co. v. Hadden*, 5 Asp. 230; 13 Q. B. D. 706; 50 L. T. N.S. 657; 53 L. J. Q. B. 252.

Part XXVI.—SUE AND LABOUR CLAUSE.

1. *Generally* (and see p. 1098).

17. Underwriters under an ordinary Lloyd's policy on a ship containing a suing and labouring clause in favour of the assured, their "factors, servants, and assigns," reinsured with the plaintiffs, who further reinsured with the defendants for £1,000, subject to the same terms as those contained in the original policy but to cover total loss only. The ship having gone ashore, her owners gave notice of abandonment to the original underwriters alone, who, having refused to accept the notice, floated the ship at considerable cost, and ultimately settled with her owners at eighty-eight per cent. The plaintiffs having paid the original underwriters this eighty-eight per cent., plus the expenses of floating the vessel, making in all a loss of twelve per cent., sought to recover the same from the defendants. *Held*, that, notwithstanding the settlement come to between the shipowners and the original underwriters, there had been a constructive total loss, that notice of abandonment to the defendants was unnecessary, that the defendants having insured only to the extent of £1,000, they were liable for no more, and that they incurred no liability under the suing and labouring clause, because the original underwriters who had floated the vessel were not the "factors, servants, or assigns" of the defendants. *Uzielli v. Boston Marine Insurance Co.*, 15 Q. B. D. 11; 5 Asp. 405; 52 L. T. N.S. 787; 54 L. J. Q. B. 142.

17a. Where in an action by the shipper of goods against the shipowner for non-delivery the defendant admits that the

goods were not delivered, and alleges that he was prevented from delivering them by the perils excepted in the bill of lading, interrogatories for the purpose of showing that the ship was unseaworthy when she left port, and sank soon afterwards in consequence of a cock being left open, are inadmissible, the interrogatories not being based on facts which must inevitably occur in the ordinary course of the voyage, and there being nothing to show that they were not purely hypothetical, as well as being objectionable on the ground that the plaintiff's case was complete on the admission of non-delivery, and that they were administered merely for the purpose of anticipating the defendant's case. *Grumbrecht v. Parry*, 5 Asp. 176; 49 L. T. N.S. 570.

Part XXVIII.—FOREIGN LAW.

1. France.

1. Generally.

18. In French law, three elements are essential to the contract of insurance,—an insurable object; a maritime risk to which the object is liable at least in the opinion of the parties at the time of the loss; a premium paid or promised to the person who takes upon himself the risk insured. Arts. 336, 337, 349, 365, 383. D. A. 1427. Caumont, *vo. Assurance Maritime*, Nos. 6 and 7.

18a. The most absolute good faith is essential therein. Caumont, No. 11. Any misstatement or concealment or difference between the policy and the bill of lading, of a nature to diminish the opinion of the risk, avoids the policy. Art. 348, C. C.

18b. The insured must have an interest in the property. Wager policies are void. Caumont, No. 7.

18c. Maritime insurance is a contract of indemnity, it must not procure a profit to the insured. Arts. 336, 347, 348, C. C. D. A. 1429.

19. The deterioration, deficiency, and loss occurring from the inherent vice (*vice propre*) of the subject insured, and the damage caused by the act and fault of the owners, freighters, or shippers, are not chargeable upon the underwriters. Art. 352, C. C.

19a. The underwriter, except with respect to the acts of the assured himself, which it is not lawful for him to cover

(D. A. 1867), may by special agreement extend his liability.

19b. He may also restrict it. A very frequent stipulation to that effect is the clause "*franc d'avaries*," free of average. D. A. 1941.

2. What may be Insured.

20. Save the exceptions stated in Art. 347 (for which see No. 10), all things which may be the object of a commercial transaction are insurable when submitted to maritime risks. Art. 334, C. C. See in the same article an enumeration of the principal subjects of maritime insurance.

20a. Article 335 permits the insurance of "all and any of those subjects jointly or separately in time of peace or in time of war, before or pending the voyage of the vessel for both the voyage out and the return, or either singly, for the whole voyage or for a limited time" for all voyages and carriage by sea, rivers, and navigable canals.

20b. Article 347, C. C., declares void the insurance of the profit expected on the goods on board, of freight not yet earned, of the maritime interest of the sums lent, and of the capital borrowed on bottomry or respondentia, and of the wages of the ship's company. Art. 347, C. C.

20c. Where it is optional for the carrier to discharge the goods at a certain port or to convey them further at an increased freight, it is a moot question whether, after having left the first port behind him, the carrier may insure that proportion of the freight which he would have received had he discharged the goods there. D. A. 1580.

21. The ship's company may insure the goods on which they have invested the advance or instalments of wages they have received during the voyage. D. A. 1584.

21a. Whether enemy's property may be insured is a question which has been variously decided. D. A. 1574.

21b. It is generally admitted that where objects of which the law prohibits the insurance are covered by the same policy with others of which the insurance is lawful, the contract is not void *in toto*, but stands with respect to the latter. D. A. 1607.

3. Who may Insure.

(a) Generally.

22. The property in risk may be insured as well by an agent as by the party

interested, the authority to insure need not be express. D. A. 1438.

22a. The agent should execute literally the order to insure. D. A. 1448.

22b. The policy may be made in the name of a given person, or to order or to bearer. D. A. 1545; P. Caumont, No. 24.

22c. The title of a policy to order can be transferred only by a regular endorsement, dated and naming the value. D. A. 1546; Caumont, Nos. 154, 155.

(b) *Agent and Principal.*

23. The agent need not name his principal, but he may act for the account of whom it may concern (*pour le compte de qui il appartiendra*), in which case the benefit of the insurance may be claimed by any legitimate bearer of the bill of lading. D. A. 1439.

23a. Where the conditions have not been specified by the principal, the agent is justified in insuring according to the usage of the port, for example, at Marseilles, free of average (*franc d'avaries*). D. A. 1451.

23b. The agent is not answerable for the insolvency of the underwriter unless he has undertaken so to be, or unless such insolvency was known to the broker or notorious in the place. D. A. 1452.

23c. But should the underwriter fall into a state of bankruptcy the broker might be made liable, if he neglected to secure the interests of his principal by the means afforded in Art. 346, C. C., which allows the insured, if the underwriter should fall into bankruptcy before the risk is terminated, to demand security or the rescission of the contract, and gives the same right to the underwriter in case of bankruptcy of the assured.

(c) *Agent and Underwriter.*

24. The authorities are generally agreed that though the agent has disclosed his principal in the policy, he is, notwithstanding, personally liable to the underwriters. D. A. 1440.

24a. But the agent may plead the defences peculiar to the contract of insurance, though the principal in consequence of *mala fides* may be disqualified from claiming that protection. Thus, where an agent, deceived by his principal, has procured for him a policy on goods not laden, for the account of whom it may concern, and subsequently disclosed his principal, he may plead the limitation of five years

of Art. 432, C. C., against the action of the underwriter in recovery of the indemnity paid by him, though the principal, from his bad faith, is incapacitated from taking advantage of this short limitation which the law has established for the contract of insurance, and has no other protection than the general limitation of thirty years. D. A. 1440.

25. But the agent, by agreement with the underwriters, may exonerate himself from all personal liability for the execution of the policy. D. A. 1441.

(d) *Principal and Underwriter.*

26. Where the agent has rejected all personal liability the party liable to the underwriters for the premium is the principal, unless he has paid the premiums to the agent. D. A. 1443.

4. *The Premium.*

(a) *Generally.*

27. A premium is essential to the contract of insurance; it is usually in money, but might be a share of profit, a quantity of goods, or any other valuable consideration. D. A. 1539.

28. Insurances are frequently made at one premium denominated "*prime li  *" for the voyage out and home.

29. The underwriter is entitled to the premium only when the risk has begun. D. A. 1738.

30. But however short the duration of the risk, should it have lasted only a moment, the underwriter is entitled to the entire premium agreed on, except in policies out and home under one single premium for the round voyage (*prime li  *). *Ibid.*

31. In such a case where there is no return the underwriter is entitled only to two-thirds of the premium agreed on for the round voyage. Art. 356, C. C.

31a. Where the return voyage has only been partially performed, the underwriter is entitled to a share of the whole premium for the return voyage, proportionate to the quantity of cargo loaded, and to two-thirds of the premium upon the cargo deficient. *Ibid.* D. A. 1998.

32. "If the voyage be given up before the departure of the vessel, even by the will of the assured, the assurance is avoided, and the underwriter receives as indemnity one-half per cent. on the sum insured." Art. 349, C. C., and see *infra*, No. 36.

33. In such a case the premium must be returned by the underwriter, should he have received it, *minus* the indemnity of one-half per cent. D. A. 1733.

34. The indemnity of one-half per cent. is due to the underwriter though the voyage be given up from necessity, for example, in consequence of a fire. D. A. 1778; Caumont, 244.

35. *Secus*, if the voyage be prevented by act of authority, interdiction of commerce or embargo before the commencement of the risk, in such a case no indemnity can be claimed by the underwriters. D. A. 1780; Caumont, *Ibid.*

36. The expression used by Art. 349 is "before the departure of the vessel;" but it should be construed to mean "commencement of the risk." D. A. 1777.

37. For though the vessel has not left the port the risk may have begun in consequence of the agreement of the parties, or the subject of the policy (for instance, where the insurance is on goods, Arts. 341—358, C. C.). Caumont, 124, and the authorities therein.

(b) War.

38. Where a policy underwritten in time of peace has stipulated that, in case of war pending the insurance, the premium shall be increased, without the rate being specified, Art. 343, C. C., rules that it shall be settled by the court taking into account the risk, the circumstances, and the agreement in each policy.

5. The Contract.

(a) Legal Essentials.

(aa) Writing.

39. Art. 332, C. C., rules that the contract of insurance is to be reduced into writing, bearing the date of the day on which it has been subscribed, and the mention whether before or after noon. It may be under private hand. It should contain no blank. It should state the name and domicile of the party who applies for the insurance, and whether he acts as owner or agent; the name and description of the vessel, the name of the master, the place where the goods have been or are to be loaded, the place from which the vessel has sailed or is to sail, the places where it has to load and discharge, the ports where it has to call, the nature and value or the estimate of the

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value of the property insured, the date at which the risk is to begin and end, the sum insured, the premium on the insurance, the reference to arbitrator (if so agreed); and generally all the agreements entered into between the parties. Art. 232, C. C.

40. *Semble*, that no omission of the particulars required by the article is fatal, if the object and the risk are determinable in the degree necessary for the contract contemplated by the parties.

41. The subject of the insurance and its value need not be specified beyond the degree necessary for its determination, according to the contract between the parties. D. A. 1527—1530.

42. Art. 332 (for which see No. 39) is not drawn with scientific precision. It has not determined, or given any clue to determine, the effect of the omission of any of its requirements. Many are not essential, and in practice are disregarded; several are not applicable to all descriptions of maritime insurance. Notwithstanding the peremptory terms of the first paragraph of Art. 332, "*le contrat d'assurance est rédigé par écrit*," several authorities have held that a writing might be dispensed with. D. A. 1459, 1460; Caumont, 26 *et seq.*

43. In the view which dispenses with a writing, see, for the evidence admissible, D. A. 1464 and 1465.

(bb) Duplicates.

44. For the question whether the contract must be made in two copies, in accordance with the rules of the Code Civile, see D. A. 1465.

(cc) Date.

45. Where there are several distinct insurances in the same policy the date of each should be mentioned. D. A. 1479, 1480.

46. But neither the date nor the hour is essential to the validity of the policy. D. A. 1480, 1481; Caumont, 44—48.

(dd) Draftsmen.

47. If not under private hand, policies of assurance may be drawn by *courtiers d'assurance* (official insurance brokers), notaries and chancellors of the French consulates abroad. D. A. 1468.

48. They may be received in authentic

form by the two latter officers. D. A. 1468.

(b) *Name of Ship and Master.*

49. The name of the vessel is essential in the policy where it is on the ship. But a mistake therein is not fatal where there is no doubt as to the identity of the vessel. D. A. 1494; Caumont, No. 102. The policy should state whether the ship is laden or not, and in time of war the flag it sails under. Caumont, No. 106.

50. A mistake in the description of the vessel is fatal only where it is likely to diminish the opinion of the risk. Caumont, No. 104; D. A. 1503.

51. Where the insurance is on the goods the specification of the ship is not essential to the contract, for the ship may not be material in the minds of the parties. D. A. 1493.

52. Article 337 has expressly permitted insurance in which neither the vessel nor the master are named in cases of shipments for Europe from other parts of the world, and in practice the requirement is not regarded. Caumont, No. 164.

53. Where there is a doubt as to the name of the vessel, or that of the master, the insured frequently adds the clause "*ou tel nom qui plus exact sera,*" or words to that effect, which words prevent the underwriter from taking advantage of the mistake. D. A. 1494—1497; Caumont, No. 105.

54. The name of the master need not be specified, but if specified is material. Should the master be changed without absolute necessity, the underwriter would be discharged from liability. To avoid difficulty and reserve the liberty of changing the master, the clause "*ou autre pour lui*" is often inserted after his name. D. A. 1513; Caumont, No. 109.

55. The clause "*ou tel nom qui plus exact sera*" is also often employed to provide for a mistake in the name. Caumont, No. 105.

56. Notwithstanding the clause "*ou autre pour lui,*" if the master substituted were not a French master properly qualified, the underwriter might refuse to bear the loss if caused by the want of skill of the master. D. A. 1517.

(c) *Name of Goods.*

57. The policy should specify the goods when the insured is aware of their na-

ture if they are particularly liable to deterioration or diminution, such as those enumerated in Art. 355, C. C.

58. Unless it bears the clause "*en quoi que tout consiste ou puisse consister,*" or any other to the same effect. D. A. 1534.

59. If the policy does specify the goods insured, the insurance is void if those loaded are not of the description stated. D. A. 1532.

(d) *Names of Terminus a quo and ad quem.*

60. Many policies do not specially mention the port of loading, and simply specify the port of departure for the voyage insured. D. A. 1519.

61. Where the port of loading has been mentioned, the policy is voidable if the goods have been loaded in another port. Caumont, No. 112.

62. The omissions of the terminus *a quo* and the terminus *ad quem* do not affect the validity of the policy, if the limits of the risk may be determined, and if the underwriters have not been deceived. D. A. 1522—1524.

6. *Construction of Contract.*

63. Where the meaning of a clause is doubtful, it should be in general interpreted in favour of the underwriter, who is the obligee, unless it has been introduced on his behalf, it being his duty to explain his intention clearly. D. A. 1549, 1550.

64. For the same reason the construction of the clauses introduced by the assured should, where doubtful, be settled in favour of the underwriter. D. A. 1551.

7. *Duration of Risk.*

65. By Art. 341, C. C., where the policy has not determined the duration of the risk, it shall be defined according to the rules laid down for bottomry and respondentia by Art. 328, C. C., namely: for the vessel and its appurtenances, from the time of its sailing till that of its anchoring or mooring in the port of destination; for the goods, from the time when they are loaded on board the vessel or the boats which are to convey them there, till the time when they are landed.

8. *Particular Stipulations in Policies.*(a) *Right of transhipping.*

66. The party who insures the goods may in specifying the vessel reserve the freedom of transhipping on other vessels left indeterminate, D. A. 1507; Caumont, No. 108; or specified, D. A. 1508.

(b) *Liberty to touch and stay.*

67. The policy should specify not only the ports at which the vessel is bound to call for any purpose, but also those where it will be likely to do so, unless the policy contains a clause giving the vessel a general licence to touch and stay at any port on the road (clause *de faire echelle*). D. A. 1525.

(c) *Liberty to deviate.*

68. See p. 2463, Nos. 132—134.

9. *Particular Policies.*(a) *Time and Voyage,*

69. Both time and voyage policies are known to the law of France. D. A. 332, C. C.; D. A. 1524; Caumont, 124, 373.

70. Time policies are inoperative if the date from which the risk is to begin has not been fixed before the loss. Caumont, No. 131.

(b) *Valued and open,*(aa) *Generally.*

71. The statement of a specific sum limiting the liability of the underwriter is not essential, it may be determined by the subsequent valuation of the object insured. D. A. 1536.

72. The valuation, whether of ship or goods, is not necessary for the validity of the policy on either side. *Ibid.*

72a. Where the value is not stated, the policy in France, as in England, receives the name of open policy (*police ouverte*). An insurance may be made on ship alone (*sur corps*), or both ship and cargo (*sur corps et facultes*), or on the goods (*sur facultes*), but an insurance (*sur facultes*), would not cover the goods loaded during the voyage unless the policy contained an agreement to that effect, or permission to visit ports of call, and it would not include goods purchased at the port of destination for the outward voyage nor for the voyage home, unless

the policy were on the voyage out and home. D. A. 1527.

73. If the insurance be made on the "*facultes chargées ou à charger*," it covers the goods loaded or to be loaded in the ports designated in the policy or during the voyage, if the liberty to touch and stay has been reserved. D. A. 1531.

74. Art. 339 provides that if the value of the goods be not stated in the policy it may be established by the invoices or the books; and failing these, by the market value at the place of loading, adding the duties paid and the expenses incurred.

75. The underwriter may insure all the goods loaded for the account of the insured on a specified ship, without determining the amounts beforehand; but the insurance then covers only the goods on board at the date of the policy. D. A. 1531.

76. Article 338 rules that, where the goods have been valued in foreign currency, the value is to be reckoned at the rate of the foreign currency in French money at the date of the signature of the policy.

77. Article 340 rules that, where the subject of the insurance consists of goods from a land where trading is carried on exclusively by barter, and there is no valuation of the goods in the policy, they are to be estimated at the value of those given in exchange, adding the expense of carriage.

78. Article 357, C. C., rules that a policy underwritten for a value exceeding that of the goods insured, if the exaggeration has been fraudulent on the part of the assured, is voidable at the suit of the underwriters alone. Art. 357, C. C.

79. Should the exaggeration be innocent, the contract is valid to the extent of the value of the goods; for the excess, no premium is allowed to the underwriters, but only half per cent. of the sum insured. Art. 358, C. C.

(bb) *Value agreed.*

80. The clause *valeur agréée* (value agreed) in the policy proves the value of the subject insured, but only *primâ facie*. Caumont, 152, 153.

81. Held that, notwithstanding such clause, the underwriters are entitled to prove the exaggeration of the value stated and to have them valued by experts. Marseilles, April 24, 1856, J. H. 1856:2:149; Paris, April 15, 1857, J. H. 1857:2:117; Havre, August 28, 1858,

J. H. 1858 : 1 : 180 ; Rouen, April 9, 1859, J. H. 1860 : 2 : 64.

82. But, *held*, that the evidence adduced by the underwriters must prove such exaggeration in the most unequivocal and positive manner. Cassation, February 20, 1873, J. H. 1873 : 2 : 79.

(c) *Floating and continuing Policies.*

83. A policy which insures to the extent of a given sum all the goods of a nature specified which the assured may, within a specified time, load from and to the designated ports, goes by the name of "*police flottante.*" D. A. 1537 ; Caumont, 166.

84. Continuing insurance policies, by means of which the assured is permanently covered against certain habitual risks, are not unfrequently contracted by navigation companies and others. The policy in such cases goes by the name of *police d'abonnement* (continuing policy). The vessel need not be specified, nor the master nor the goods. Caumont, No. 174.

85. *Held* that, in a floating policy (*police flottante*), the underwriter and the assured are finally bound for the amount and the time determined by the contracts, and that the policy produces all its effects without its being necessary to declare to the underwriter each lot of goods loaded. *Held*, that the goods are covered by the mere fact that they are on board, though unknown to the assured, and independently of any declaration. The only requisite in that respect is, that the assured should inform the underwriter of the loading as soon as he is himself aware of it. Havre, September 11, 1866, J. H. 1866 : 1 : 226.

(d) *On Goods, for Account of whom it may concern.*

86. A policy made "*pour le compte de qui il appartiendra*" on goods, without any specification, is applicable to any goods belonging to the insured on board, though they may not be those for which, in his intention, the policy was entered into. D. A. 1487.

87. The lawful holder of a policy made "*pour le compte de qui il appartiendra,*" may claim the benefit thereof for any goods on board for his account, and should it cover the whole value of those goods, he is entitled to cancel (*ristourner*) a policy taken by him upon the goods on board the same ship, after the date of

the first, and though he may have become holder of the latter subsequently to contracting the second insurance. D. A. 1488.

88. The clause "*pour compte de l'assureur et de ses intéressés*" has not so extensive an effect as the clause "*pour compte de qui il appartiendra.*" The former applies only to the goods on board belonging to the insured and the parties in interest with him, but not to the goods merely consigned to him, and in case of loss he has to specify or prove the reality of the interests connected with his own in the policy. See D. A. 1489, and the case therein.

(e) *On Goods in whatever Ship they may come.*

89. Insurances are frequently made in France on goods in whatever ship they may come—insurances "*in quovis,*" as they are called. D. A. 1504 ; Caumont, No. 164—174.

89a. The goods also may be left undetermined. Caumont, No. 163.

(f) *On Goods in several Vessels.*

90. A policy may be made insuring goods on several vessels, but it should state whether the insurance be on such vessels jointly or separately. In the latter case the sum on each vessel should be specified. In the former the first vessel sailing extinguishes the insurance to the extent of the amount loaded. Caumont, No. 108.

91. Should several of the vessels leave together the insurance applies proportionately to the goods on board each vessel. D. A. 1511.

10. *Perils insured against.*

(a) *Generally.*

92. Where there is no agreement to the contrary, the losses chargeable on the underwriter are "All losses and damages which are suffered by the subject insured from storms, wreck, stranding, accidental collision, compulsory change of course of voyage or vessel, and from jettison, fire, capture, pillage, arrest by order of a government, declaration of war, reprisals, and generally by any maritime event." Art. 350, C. C.

93. As a rule, the policy only covers such losses as occur on the water, or are the immediate consequence of perils of

the sea; as where goods discharged to allow of the vessel being repaired could not subsequently be reloaded in consequence of a storm which drove the vessel to sea; Caumont, No. 287; or in consequence of their having been stolen. D. A. 1823, 1824.

94. But such land risks must be the immediate consequence of the perils of the sea, D. A. 1824; and the policy must have attached on the property by the risk having begun upon it. *Ibid.*

(b) *Land Risks.*

95. Policies may, and not unfrequently are, made which extend the liability of the underwriters to certain land risks resulting from the circumstances of the voyage insured.

96. *Held*, that, where in a policy on goods destined for Panama, which were to be carried to a port to be transhipped for their destination, the underwriters had made themselves liable for all risks of land and transhipment whatsoever, this includes not only those of the conveyance across the isthmus, but also those of landing in the port of transhipment, such as a fire in the custom's warehouse. Seine, November 19, 1856; J. H. 1857: 2: 2; and see Nos. 93, 94, *supra*.

(c) *Thieves.*

97. Same decision as to losses from thieves, though the assured does not prove at what point of the voyage the thefts were committed, provided he establishes the reality of the loading and of the theft of the goods. Seine, 9 Sept. 1857; J. H. 1857: 2: 241; Paris, 6 Aug. 1858; J. H. 1858: 2: 249.

(d) *War.*

98. The clause excluding the risks of war is not to be construed as exonerating the underwriters from the losses caused by sedition or civil war. Marseilles, 29 June, 1858; J. H. 1859: 2: 34; Aix, 27 July, 1859; J. H. 1859: 2: 282.

(e) *Consequential Loss.*

99. The underwriter is liable not only for such losses as are the immediate and material effect of the accident, but for the depreciations in the value of the property resulting from the peril for which the underwriter is liable (with the exception of the expected profit where the policy is on goods, which profit is not

insurable); such as the difference between the price fetched by the sale at a port of refuge and their value at the time of loading. D. A. 1820.

100. The same rule applies whatever the peril by which such a depreciation occurs (D. A. 1820), war excepted. D. A. 1822; *contra*, D. A. 1821.

101. So also the underwriter is liable for extraordinary expenditure of which the perils may have been the cause (D. A. 1819). Cassation, 23 Dec. 1857, J. H. 1858: 2: 1.

102. To come under the policy, the loss must be a direct consequence of the perils accepted or included. Rouen, 1 August, 1855, J. H. 1855: 2: 127; 2 April, 1856, J. H. 1856: 2: 91; Cassation, 11 August, 1858, J. H. 1859: 2: 56.

103. *Held*, that the loss of a vessel from a deviation determined upon to avoid the enemy which was approaching the port, was not to be considered as a loss from war. Rouen, 14 March, and 1 May, 1872; J. H. 1872: 2: 85, and 129.

104. *Sed contra*, that stranding occurring after a change of destination in consequence of a declaration of war, was not chargeable on the underwriter on a policy excluding the risk of war. Nantes, 6 Oct. 1860, and 22 May, 1861; J. H. 1862: 2: 55.

105. A commentary on Art. 350, which settles the liability of the underwriter supported by cases, is to be found in D. A. 1817 *et seq.* Caumont, No. 282 *et seq.*

11. *Notification of Casualty to Underwriters.*

106. Art. 374, C. C., requires the assured to notify to the underwriters within three days from its reception, all news concerning the accidents for which the underwriters are liable.

107. But in practice such notice is often dispensed with where the accident is not of a nature to justify the abandonment to the underwriters. D. A. 1743.

108. No particular form is dictated by the law for the purpose. Caumont, No. 490.

109. To the limit of three days is to be added, the term granted by Article 1033 of the Code of Procedure, allowing for the distance from the place from which the order is to be sent, to that where the notice is to be made. D. A. 1748.

110. The right of the assured is not

forfeited by the omission of the notice, but he is liable in damages. D. A. 1745; Caumont, No. 488.

12. Avoidance of Contract.

(a) By Concealment.

111. The assured should not deceive the underwriter as to the risk he is to undertake, Article 348 enacts that "every concealment, or misrepresentation on the part of the assured, or difference between the policy and the bill of lading, which may diminish the opinion of the risk, or change the subject thereof, avoids the insurance. The insurance is void, even where the concealment, the false statement, or the difference has not had any influence on the damage, or the loss of the property insured." The effect is the same, whether they are innocent or fraudulent, for the error and fraud are equally fatal to the contract. D. A. 1679; Caumont, Nos. 421 and 451; Paris, June 14, J. H. 1885 : 2 : 123.

112. And this though the insurance has been made with the clause "*sur bonnes et mauvaises nouvelles.*" *Aguirevengoa's case*, Bordeaux, April 7, 1835. D. A. 1679.

113. For example, where the assured did not disclose to the underwriter that the vessel had been away for two months and a half on a voyage which is generally of not more than six weeks' duration. Caumont, No. 426; Rouen, February 6, 1866; J. H. 1866 : 2 : 40.

114. But the concealment or misrepresentation to avoid the insurance should be really of a nature "to diminish the opinion of the risk." D. A. 1680; Rennes, Dec. 26, 1871; J. H. 1873 : 2 : 198; Bordeaux, March 8, 1873; J. H. 1873 : 2 : 117.

115. Art. 365, C. C., rules that "every insurance made after the loss or the safe arrival of the property insured is void, if there be a presumption that before the signature of the contract the assured may have been informed of the loss, or the underwriter of the arrival, of the property insured."

116. Art. 366, ruling that "such a presumption exists, if, reckoning three-quarters of a myriameter per hour, without prejudice to other proofs, it is established that from the place of the arrival or of the loss of the vessel, or from the place where the first news thereof has arrived, the news of such arrival or loss may have been brought to the place where the contract

of insurance has been made, before the signature of the contract."

117. The presumption of knowledge established by Art. 366 is absolute, and cannot be rebutted by any proof, but is not admitted where the policy is "*sur bonnes et mauvaises nouvelles.*" D. A. 1802, 1807, Art. 367, C. C.

118. Where the case does not admit of the presumption, evidence of actual knowledge may be produced, Art. 366 expressly allowing of "other proofs." D. A. 1806.

119. Such proofs may be produced to set aside an insurance "*sur bonnes et mauvaises nouvelles,*" there being a distinction between such an insurance and the others only with reference to the exclusion of the presumption. Art. 367, C. C.

120. Art. 368 rules that where the knowledge of the loss is proved against the assured, he shall pay a double premium to the underwriter; and where the knowledge of the safe arrival is proved against the latter, he shall pay to the assured an equal amount; and that in either case the delinquent shall be prosecuted before the Tribunal of Correctional Police.

(b) By Change of Risk.

121. The liability of the underwriters cannot be enforced if the assured does not conform to the essential stipulation of the insurance. D. A. 1870.

122. The assured forfeits his right to indemnity if there is a change, without necessity, in the vessel, or destination, or track of the voyage, specified in the policy (A. 351, C. C.), without the insertion of the necessary clauses to permit such substitution.

123. The unauthorized change of the ship named in the policy rescinds the insurance, though the substituted ship be as good as that specified in the policy, or better; and the premium is returned by the underwriter if such change occurs before the commencement of the risk. If such a change is made at any time after the commencement of the risk, and it is a change which, though for the better, is without necessity, and unauthorized by a clause of the policy or by the underwriter, the underwriter is discharged *ipso facto* from all liability, but is entitled to the premium. D. A. 1895 and 1896.

124. There is a change of voyage within the meaning of A. 351, C. C.,

where the vessel, after having gone a certain way in the direction of the terminus specified by the policy, has turned off and sailed for another destination. Such a change puts an end to the underwriter's liability, though the voyage made be shorter and less dangerous than that contemplated by the policy. D. A. 1874 and 1875.

125. *Held*, that where the vessel has cleared out from the *terminus a quo*, with a cargo for a destination different from that specified in the policy, the voyage insured is to be considered as given up, and the underwriter is entitled to one-half per cent. under Art. 349, C. C., though such destination be nearer than that in the policy, if out of the direction of the risk. *Arnaud's case*, D. A. 1784.

126. In such a case the assured can claim no indemnity from the underwriter, though the loss occurred before the vessel left the track which leads to both destinations. D. A. 1891.

(c) *By voluntary Deviation.*

127. Voluntary deviation, unauthorized by the underwriter, puts an end to his liability. Art. 351, C. C.; D. A. 1871.

128. It is a deviation whenever the vessel swerves from the course for the port of destination specified in the policy, though the vessel afterwards resumed the authorized course. D. A. 1871.

129. And where the policy does not determine the course to be followed by the vessel, there is a deviation where it has travelled out of the usual track. D. A. 1872.

130. But *held*, that compulsory deviation does not put an end to the liability of the underwriter, even if it takes place when the vessel has already entered the harbour of the port of destination;—at least in a policy on goods, the risk on which terminates only when the goods are landed.

131. And *held*, that running from such harbour in consequence of the port being threatened by the enemy's force, is a case of compulsory deviation. Rouen, 1st May, 1872; J. H. 1872: 2: 129.

132. The usual clauses which authorize deviation are that which gives the liberty to go backwards (*retrograder*), that which allows the vessel to go to the right and to the left of the usual track (*aller adroite et d gauche*), and, that which gives the liberty to touch and stay (*faire echelle*), the second licence does not imply the first, nor the third the two others; the liberty to touch and stay only permitting the vessel

to enter the ports which are on its onward track. D. A. 1879 *et seq.*

133. Nor does either allow of changing the destination of the voyage. D. A. 1878.

134. Usage may be appealed to for the construction of such clauses; thus *held* by the court of Bordeaux, that according to the usage of that port, the various ports of the island of La Réunion were to be considered as one *lieu d'escale* (place of call), and that liberty to call at that island implied that of visiting all the ports of the island, and not merely those on the course of the voyage. *Assurance v. Foussat*, Bordeaux, 11 April, 1837; D. A. 1883, 1884.

135. Should there be no deviation nor change in the direction or destination, but merely an abridgment of the voyage, the policy stands unimpaired. Art. 364, C. C.

136. Intended change of destination prepared in one of the ports on the road in which the vessel was at liberty to call, by taking out a conditional policy for another destination, if such intention be abandoned in the authorized port of call, does not affect the assurance. *Chiusses's case*, D. A. 1878.

(d) *By Barratry, unless specially insured against.*

137. Barratry of the master or crew is expressly excluded from the perils covered by the general effect of the insurance. A special agreement is necessary in the policy to extend its protection to that risk. Art. 353, C. C.

138. In French law an act to be accounted barratry need not be either fraudulent, criminal, or grossly neglectful; "*baraterie*" includes not only crime and fraud, but also neglect, imprudence, and want of proper skill. The term "*baraterie de patron*" applies as well to the faults of the ship's company as to those of the master, for which the owner of the vessel is made liable. D. A. 1918; Caumont, *vo. Baraterie*, No. 13 *et seq.*

139. See, for barratry in French law, D. A. 1918—1920 *et seq.*; Caumont, *vo. Baraterie*, No. 13 *et seq.*

140. *Held*, that deviation by the master, unauthorized by the owner, is a case of barratry, which, where the policy covers the assured against barratry, justifies him in abandoning to the underwriters, where the vessel has been lost after such deviation on the road to the port of

destination. Havre, Nov. 28, 1871; J. H. 1872: 1: 26.

141. The epithet "*fortuit*" (accidental) added in Article 350 to the word "*abordage*" (collision), is not to be taken as an absolute restriction of the liability of the underwriter to that particular class of collision, but as implying that he has always, and, by the mere effect of the policy, to bear the loss resulting from such collisions, without recourse against any other person. As to other collisions, where attributable to the master of the vessel covered by the policy, they come under the head of barratry, for which the underwriter is not liable (see *supra*), except under a special clause (Art. 353), and such a special clause does not prohibit the underwriter from making the master reimburse to him the loss he has made good to the owner, and where attributable to the fault of the master or crew of the other vessel, the underwriter can cover himself by making its owner responsible for his agent, under Art. 216, C. C., subject to his right of abandonment. *Ibid.* D. A. 1828 *et seq.*

142. A distinction similar to that implied with reference to collision by Art. 350, exists as already remarked (see *supra*) with reference to such other perils which may befall the subject insured as are caused by the fault of man. If by that of the master or crew of the insured vessel, they amount to barratry for which the underwriter is not liable, unless expressly included among the risks covered by the policy.

143. Thus, where a loss has been caused by fire on board which is attributable to the fault of the master or crew. D. A. 1835, 1836.

144. When the cause of the fire is unknown or doubtful, many authorities have contended that the underwriter is not liable, fires being generally caused or allowed to increase by the fault or neglect of those on board, or by the inherent vice of the thing itself, and the onus of proof resting on the assured, who must establish not that the loss has been caused by fire, in the abstract, but by such a fire as will come under the policy. See the argument and cases *pro* and *con* in D. A. 1837 *et seq.*; Caumont, Nos. 313 *et seq.*; 318 *et seq.*

145. *Held*, that the consequence of the very comprehensive character of barratry in French law is that, however completely a loss from the nature of its cause would come under the protection

of the policy, it is withdrawn from the pale of the insurance by the operation of Article 353, C. C., if attributable to the fault or neglect of the master or crew, unless the insurance be extended to it by a clause covering risk of barratry.

146. *Held*, that a policy covering "*baraterie de patron*" makes the underwriter liable for damages given by the court against the owner at the suit of the owner of another vessel for damages caused to that vessel by a collision attributable to the fault of the master of the vessel insured. Cassation, December 28, 1857, J. H. 1858: 2: 2; March 4 and February 12, 1861; D. P. 61: 1: 163; Marseilles, Feb. 28, 1859, J. H. 1859: 2: 230; Aix, Jan. 20, 1859, J. H. 1860: 2: 102. But *contra*, Paris, June 23, 1855, J. H. 1855: 2: 117; Tribunal of Commerce of Rouen, Jan. 22, 1858, J. H. 1858: 2: 68.

13. Collision.

See Nos. 141, 142, 146, *supra*.

14. Abandonment and Recovery.

See Arts. 369, 370, 371, 373, 375, 377, 387, 389, 390, 394 and 432, C. C.; and Caumont, Nos. 557, 598.

2. Portugal.

147. The assurer is bound to communicate without delay to the assured, or the first signatory, all intelligence he may receive as to any disaster to the vessel or goods assured, otherwise he will be responsible for damage. See C. C. Art. 1778.

148. Until abandonment, the assurer is bound, in case of shipwreck, stranding, capture, or hostile arrest, to employ all diligence to save the articles insured. It is not necessary for this purpose that the assured should hold the power of attorney of the assurers, and he may demand the advances necessary to meet his expenses for such purpose, though his efforts may have been fruitless. *Ibid.* Art. 1779.

149. On the assurer paying the damage sustained, he becomes, *pleno jure*, subrogated to the rights of the assured, who is responsible if he prejudices the rights of the assurer. *Ibid.* Art. 1788.

3. Russia.

150. For provisions as to the commer-

cial code of Russia as to marine insurance, see *The Nautical Magazine* for February, 1885, Vol. 54, No. 2, p. 191.

151. For provisions of the commercial code of Russia, that all difference between assurer and assured shall be examined, adjudged, and decided by two arbitrators selected by the disputants from merchants carrying on wholesale exterior trade, with

power to appoint an umpire, and that the decision of the arbitrator and umpire shall be final and without appeal, *Ibid.* Art. 1233, p. 190.

152. As to what matters may be the subject of marine insurance, *Ibid.* s. 1234, p. 191.

153. As to what insurances are void, *Ibid.* ss. 1235, 1236, p. 191, 192.

MASTERS.

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1. **Generally** (and see p. 1116).

1. As to the grant of certificates of competency to masters, see tit. TRADE, BOARD OF—, p. 2251.

1a. As to the expenses of masters injured or dying in service of ship, see M. S. Act, 1854 (c. 104), ss. 228, 229, and tit. SEAMEN, Pt. IV. p. 2170, Nos. 285, 286, and p. 2173, note 171a.

2. **Appointment** (and see p. 1117).

2. As to the sufficiency of the appointment of masters abroad for the purpose of giving valid bottomry bonds, see tit. BOTTOMRY, Pt. I. p. 118, No. 123a, and p. 2349, Nos. 6—11.

3. **Dismissal*** (and see p. 1118).

3. *Held*, in an action by the majority of owners, against the master and part owner, that the master must be removed, and order made against him accordingly. *Adams v. Crouch*, Marsden Rep. anno 1771, p. 117.

3a. As to effect of wrongful discharge, see tit. WAGES, p. 2296.

5. **Authority** (and see p. 1120).

4. A master has no authority to bind his owners by writing forward to a broker in a foreign port, prior to the ship's arrival there, authorizing the broker to charter his ship. The authority of a master to bind his owners by charter-party arises when he is in a foreign port, and his owners are not there, and there is difficulty in communicating with them. *The Fanny*, *The Matilda*, 5 Asp. 75; 48 L. T. 771. (C. A.)

5. A master is not the agent for his owners to hold out a person as authorized to charter his ship, so as to bind the owners. *Ibid.*

6. If the master makes a particular engagement or warranty relating to the conveyance of merchandise, according to the usual employment of the ship, the owners will be bound thereby, although made without their consent. *Ringuist v. Ditchell*, 3 Esp. 64; 2 Camp. 556, n.

7. A captain of a ship has no authority, as such, to agree to the substitution of another voyage in the place of one agreed upon between his owners and the freighters in England, and on which he

* (1) A master who institutes an action for his wages and disbursements, is taken to have thereby indicated that he considers his connexion with the ship determined. *The Carolina*, No. 7383, April, 1876. R. & M. *The Ernst Merck*, No. 2663, December, 1865. R. & M.

(1a) A master having caught a fever

which infected the ship, went ashore for medical advice, and remained there until another master was, with his consent, appointed. *Held*, that he had thereby assented to his own discharge. *The Cornelia Henrietta*, No. 2881, January 1866, R. & M., and for further facts, see p. 1727, note 43.

has sailed to a foreign country. *Burgon v. Sharpe*, 2 Camp. 529.

8. Where the owner has let the ship to freight for a specific voyage, the master is the agent of the freighter. *James v. Jones*, 3 Esp. 27.

9. The master only becomes agent for the owners of the cargo, *ex necessitate rei*. *Durants v. Hart, The Hamburgh*, 10 Jur. N.S. 600; 33 L. J. Adm. 116; 12 W. R. 628; 10 L. T. N.S. 200, P. C. See also tit. GOODS, CARRIAGE OF—, Pt. XI. p. 611, Nos. 1202, 1203.

9a. As to the mate's authority as representing the master, when the latter is on shore, see *The Northampton*, 1 Spinks' Eccl. & Adm. Rep. 157, and tit. OWNERS, p. 1232, No. 478.

10. The master is not a fellow-servant of the sailors, but is the agent or representative of the owners of the vessel during the voyage, and the owners are responsible for the injury to or death of a sailor resulting from the negligence of the master during the voyage. *Ramsay v. Quinn*, 8 C. L. 322. [IRISH.]

11. See further, as to the acts of masters entailing responsibilities on owners, tit. OWNERS, Pt. II. p. 1231.

11a. As to the powers of correction of seamen by masters, see tit. SEAMEN, Pt. IV. p. 2160.

6. Duties and Responsibilities.

1. *Generally* (and see p. 1122).

12. For provisions as to the duty of masters to answer inquiries and produce documents on request of every officer of the Board of Trade, commissioned officer on full pay, British consular officer, superior officer of customs, superintendent of a mercantile marine office, or the registrar-general of seamen, having reason to suspect that any law relating to merchant seamen and navigation are not complied with, penalty for breach not exceeding £20, see M. S. Act, 1854 (c. 104), s. 13.

13. Personal action by owner against master in a cause of damages. *Taylor v. Thompson*, anno 1714; Marsden, Rep. p. 302.

13a. As to forfeiture of or deductions from wages, see tit. WAGES, pp. 2303, 2307, 2308.

14. As to master's responsibility in reference to damage to submarine telegraph cables, see tit. OWNERS in Addenda, Pt. II. c. 10a, p. 2475.

14a. As to the suspension and cancellation of masters' certificates in respect

of shipping casualties, see tit. SHIPPING CASUALTIES INVESTIGATIONS, p. 2205; in respect of unsafe ships, see tit. OWNERS, Pt. III. p. 1258, and *Ibid.* in Addenda, p. 2477; and in respect of deck cargoes and grain-laden ships, *Ibid.* Pt. V. p. 1323, and *Ibid.* in Addenda, p. 2494.

7. Accounts.

2. *Under M. S. Act, 1854* (and see p. 1125).

15. A master, with the assent of the owners, drew bills on the charterers for necessaries supplied. The charterers having failed, the holders, in July, 1881, obtained judgment against the master during his absence at sea. The owners sold the vessel to the defendants in October, 1881. On the 23rd November, 1881, the master, without having satisfied the judgment, issued a writ against the vessel, and bail was put in. *Held*, that the action would lie, and that there had been no laches to prevent the master from maintaining it. *The Fairport*, 8 P. D. 48; 52 L. J. P. D. 21; 5 Asp. 62, 349.

15a. Where a master has incurred a liability to pay for necessaries supplied to the ship, such liability is a disbursement within section 10 of the Admiralty Court Act, 1861, and gives a maritime lien. *Ibid.*

16. By charter-party, it was agreed that the owners of the ship should provide and pay for provisions and wages, and that the charterers should provide and pay for coals and other expenses. The master was to be appointed by, and was to follow the instructions of the charterer. The master, with notice of the charter-party, ordered and made himself liable for provisions and coals for the vessel at a foreign port. These were necessary for the voyage. *Held*, in an action by the master against the vessel, that he was entitled to recover for the provisions, but not for the coals, as, by the terms of the charter-party, he had no power to pledge the owner's credit in respect of them. *The Turgot*, 11 P. D. 21.

17. A ship was chartered under a charter-party which provided that the master should be appointed by the charterers, that the owners were to provide and pay for all provisions and wages of the master and crew, and for the necessary equipment and working of the ship, and that the master was to be dismissed by the owners, if he did not give

satisfaction. The charterers were to provide and pay for all coals, pilotages, port charges, &c. *Held*, that the master was still the servant of the shipowners, and had a right *in rem* for his wages, and for repayment of such disbursements as were necessary for the navigation of the ship, and which the charterers had not undertaken to pay. *The Beeswing*, 53 L. T. 554. (C. A.)

18. *Semble*, where the master is the servant of the charterers, and not of the shipowners, he has no claim against the owners in respect of wages and disbursements. *Ibid.*

19. A master on his appointment agreed with the managing owner that he the master should find the provisions for the officers and crew at a certain rate per day. The master subsequently agreed with the managing owner, who was also a ship's storedealer, that the managing owner should supply the provisions, and should charge them against moneys of the master which he held in his hands. The managing owner, however, debited his co-owners with the costs of the provisions, and fraudulently applied the money to his own purposes. *Held*, in an action *in rem* against the owners by the master to recover wages and disbursements, that the master was entitled to credit for such an

amount in the settlement of his accounts with the owners, the fraudulent application of his money by the managing owner being a wrong done to the co-owners for which he was not responsible. *The Dora Tully*, 5 Asp. 550.

20. A ship was chartered under a charterparty, providing that the master was to be appointed and dismissed by the charterers, that the shipowners were to provide and pay for all provisions and wages of the master and crew, and for the necessary equipment for the efficient working of the ship, and that the charterers were to pay for all coals, port charges, and other expenses. The master brought an action *in rem* against the ship in respect of disbursements for provisions and coals, and in respect of which latter item gave a draft on the shipowners, which draft was dishonoured. *Held*, that the master, having notice of the charterparty, was agent for both owners and charterers in respect of the liabilities of each as determined by the charter, and that therefore the owners were liable in respect of the provisions but not in respect of the coals. *The Turgot*, 11 P. D. 21; 5 Asp. 548.

21. As to the priority over other liens of the master's liens for his accounts, see tit. LIENS, p. 831; and *Ibid.* in Addenda, p. 2448, Nos. 3 and 7.

MORTGAGE.

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16. Practice. See tit. PRACTICE, Pt. III. p. 1682.

17. Costs. See tit. COSTS, pp. 405, and p. 2398, in Addenda.

1. Generally (and see p. 1129).

1. In reference to a sale of a mortgaged vessel, *held*, that the mortgagee had so acted as to suppress the mortgage, and could not therefore claim as against the purchaser. *Hooper v. Gumm, McLellan v. Gumm*, 2 Chanc. 282. For further particulars see tit. OWNERS, No. 5, p. 1180.

2. As to the rights of mortgagor and mortgagee in reference to part owners, see tit. OWNERS, p. 1421, Nos. 2341—2344.

2. Jurisdiction (and see p. 1132).

3. A mortgagee sold the vessel under his power of sale contained in his mortgage deed, but by mistake a discharge of

the original mortgage was indorsed on the mortgage deed, and when the purchaser presented his bill of sale registration of it was refused. The mortgagee and vendee instituted an action to have the vendee pronounced to be the sole owner. The court *held*, it had jurisdiction to entertain the case and subsequently decreed as prayed. *The Rose*, L. R. 4 A. & E. 6; 42 L. J. Adm. 11; 1 Asp. N.S. 567.

16. Practice.

4. See tit. PRACTICE, Pt. III. p. 1682.

17. Costs.

5. See tit. COSTS, p. 405, and *Ibid.* in Addenda, p. 2398.

NECESSARIES, REPAIRS, AND SUPPLIES.

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Part II.—FRENCH LAW.

1. Owner's Liability.

1. The owner is personally and directly liable to the creditor for necessaries for the ship, though the master may have ordered them in his own name. D. A. 201. But this is subject to the owner's right of abandonment, as to which, see 42—44, *infra*.

2. *Held*, that an action by the material man lies against the owner of a new vessel, when the material man has furnished the vessel with necessaries for the fitting out of the vessel, at the order of the master, or according to accounts settled by him, even though in the place of residence of the owner. Such liability is not impaired by the fact that the contractor for the building and fitting out of the vessel, had engaged to provide the necessaries in question, if the material man was in ignorance of the contract. Havre, February 8, 1869, J. H. 1869 : 1 : 110.

3. The dealers who furnished victuals to the men, before sailing, without the order or the consent of the master, have neither privilege nor action against the owners, unless they prove that no victuals were provided on board. D. A. 258.

4. *Held*, that an action lies against the owner of a vessel for necessaries furnished to the master at sea at a moment of distress, although at the time the vessel was in the employment of a charterer, but this is subject to recourse by the owner against the charterer. Marseilles, July 7, 1865, J. H. 1866 : 2 : 119.

2. Master's Authority.

5. The master is the agent of the owner in the employment of the ship. As such, by virtue of his functions, he has authority to bind the owner for all that is requisite for the vessel and the voyage, except in the places of residence of the owner or his agent. See Articles 223, 232, 233, 321, C. C. ; D. A. 200 ; Caumont, vo. Capitaine, Nos. 41—45.

6. *Held*, by several decisions, that the owner is bound to pay bills of exchange drawn in the course of the voyage by the master, "Value in settlement of the accounts of the vessel." See the authorities in Caumont, vo. Capitaine, Nos. 47, 48. See D. A. 201.

7. The master in the place of residence of the owners and their agents cannot, without their special permission, order repairs to the hull, purchase sails, ropes, tackle, or other things for the ship, nor borrow money on the ship, nor charter it. See C. C. Art. 232.

8. The master is considered as "in the place of residence of the owners and their agents for the purpose of Art. 232, C. C., when he is within the 'arrondissement maritime,' " in which they have their domicile or present residence. D. A. 361.

9. The "arrondissement maritime" is a territorial division of considerable extent, limiting the jurisdiction of the respective maritime authorities.

10. It follows from A. 232, C. C., that the material man who has dealt knowingly with the master contrary to its prohibition, is not, by the operation of the contract itself, entitled to a direct action

against such owners as were personally or by an agent present within the limits of the "arrondissement maritime" in which the port is situate. D. A. 362.

11. But if the material man were kept in ignorance of their residence there, he would have his action against the owners, and the owners would be entitled to recover against the master. *Ibid.*

12. Moreover, the material man, though aware of the residence there of the owners or their agents, would be entitled to recover against them to the amount of the benefit they have received from necessary work, materials or victuals provided by him. *Ibid.*

13. The master, if he has paid the material man, would have the same remedy. *Ibid.*

14. Beyond the arrondissement maritime of the residence of the owner or his agent referred to in Article 232, C. C., the master requires no special authority to enable him to order work or necessaries for the vessel. So far as outsiders are concerned, he derives the requisite authority from his office of master.

15. Article 234, C. C., which requires certain forms to be observed where the master bottomries the vessel, or sells or pledges the goods, is no derogation from such authority. That article is generally considered as intended to provide him with special and conclusive means of justifying his conduct where he has thought it necessary or expedient to do so. Caumont, vo. Capitaine, No. 45.

3. Master's Liability.

16. The master, unless he has personally bound himself (D. A. 201, Caumont, vo. Capitaine, 49, 50) for the payment of the debt, is not liable to the creditor for debts lawfully contracted within the limits of his authority, and in the fulfilment of his duty. For example, the master cannot be condemned personally to pay bills of exchange dishonoured by the owner, and which had been drawn by him, the master, as master only, to the knowledge of the creditor. D. A. 201, Caumont, vo. Capitaine, Nos. 47, 48.

16a. The vessel, though chartered, is subject to the abandonment of the owner, liable to the material men who have given credit to the apparent owner, and have a privileged claim upon the vessel. Caumont, vo. Abandon Maritime, No. 37.

17. *Held*, however, by several courts, that it is otherwise where the creditors

were aware that the vessel was chartered, and the voyage was not for the account of the owner. See the authorities in Caumont, *Ibid.* No. 38. *Contra*, Caumont, *Ibid.*

4. Privileged Claims in the Nature of Liens.

1. Generally.

18. The privileges established by Article 191 on the vessel are secured by no special lien. They reach the vessel through the owner, and are, in point of remedy and process, not more favoured than any of the other claims against him when prosecuted against the vessel. Though a vessel, from being a movable (*meuble*) is classed as personal property, it has, in consequence of its value and importance, character, and employment, been submitted by the Code de Commerce for the protection of the creditors, to a temporary *jus in re*, which allows them to follow it until the claims against it have been extinguished or expunged in the proper manner. Arts. 190, 193, C. C.

See also No. 20, *infra*.

2. Proof.

19. Art. 192, C. C., disallows the privileges granted by Art. 191, where the creditors do not produce and prove their claims in the manner which it requires.

3. Creation and Ranking.

20. Art. 191, C. C., grants a privilege of preference, ranking No. 7, for "the sums lent to the master for the wants of the vessel during the last voyage, and for the price of the goods sold by him for the same object," and ranking No. 8 for "the sums due to the vendors, material men, and workmen employed in the building of the vessel if it has made no voyage, and for the sums due to creditors for materials for work and labour, for caulking, victualling, fitting out and equipment, before the departure of the vessel, if it has already made a voyage." See the Order of ranking of liens in Art. 191, C. C.

21. The terms of No. 7 are to be construed liberally. The privilege is admitted as well in favour of simple loans as for bottomry or respondentia loans, and in whatever lawful form they may appear, and without the creditor having to prove, that the credit he has given has been properly employed, D. A. 246.

It is extended also to the creditors, who, by order of the master, have provided the men in the course of the voyage with lodging, victuals, washing, attendance, medicines, &c., in case of sickness, all which are considered as loans to the master for the last voyage, coming under No. 7, D. A. 246 and 247.

22. It may be said to apply also to all necessaries furnished during the course of the voyage, but this privilege of No. 7 exists only for the credit given during the last voyage, and not for those previous to the voyage, nor for any preceding voyage. See Art. 191, C. C. No. 7, and D. A. 246.

23. The creditors applying for the privilege of No. 7 need not prove that the necessaries or money for which they claim have been properly employed, but only that they were necessary; whatever use may have been made of them, innocent creditors should not suffer by the dishonesty of the master. D. A. 246 and 250.

24. Art. 291, C. C., substituting under preference No. 8, where the vessel has made a voyage, the creditors for necessaries to the vendor, builders, etc., would seem to have been drafted under the impression that repairs, victuals, &c. would never be required for the vessel before it has been to sea; such is, however, not always the case, especially where the vessel has remained a long time in the port where it has been built. Where any of the creditors coming under the two sets ranking under No. 8 happen to concur, they are to be marshalled together *pro rata* on the whole price of the vessel. D. A. 254.

25. But though the claims mentioned in Art. 191, C. C., would always be marshalled in the same order respectively, they may occupy a more remote rank in the distribution than is given to them in Art. 191. The special privileges on the ship enumerated in that article come in the distribution after the general privileges of Art. 2101 of the Civil Code; Caumont, *vo. Navire*, No. 17.

26. The order in which the privileged claims obtain preference is that established by the law, which depends upon the favour they deserve, except as to the privileged claims No. 7. It is questionable whether such as are in the same rank are to be marshalled together or by order of date. See Dutruc, *vo. Navire*, No. 115.

27. But each successive loan or credit for necessaries is considered as having

preserved the common security of the preceding creditors. The later the claim, therefore, the more worthy of preference, if incurred for successive necessities (in successive ports, says Caumont, *vo. Navire*, No. 31). Should different credits have been given for the same repairs they would be marshalled in the same rank, and be paid *pro rata*. D. A. 249.

28. Should the vessel be broken up by wreck, or any other cause, the claims enumerated in Art. 191, C. C., have their privileges on its remains, but after the salvage dues and expenses, which take precedence over all the other privileges. D. A. 282.

4. Arrest.

29. Whether a vessel may be provisionally arrested, as other movables (*meubles*) may be, is a question which is not decided by any text of law of France, and upon which the authorities differ, the majority, however, inclining to consider the arrest as lawful. Confer D. A. 99 *et seq.*, Caumont, *vo. Navire*, 57 and 67.

30. A vessel on the point of sailing cannot be arrested except for debts contracted for the voyage on which it is sailing, and, even in that case, giving bail for the debts prevents the seizure. The vessel is accounted to be on the point of sailing when the master has his papers for the voyage. Art. 215, C. C.

5. Extinction.

(a) *By Judicial Sale.*

31. A judicial sale accomplished according to the forms prescribed under the second title of the second book of the Code of Commerce extinguishes, *ipso facto*, all claims upon the vessel, and gives a clean title to the purchaser. Art. 193, C. C.

(b) *By Voluntary Sale.*

32. A voluntary sale of the vessel in the course of a voyage is entirely inoperative as against the creditors; but where the vessel is not in the course of a voyage when sold, the sale effects an inchoate exclusion of the rights of the creditors. To complete this exclusion, the vessel must have accomplished, under the name and at the risk of the purchasers such a voyage as will satisfy Art. 194, C. C. See Art. 193, C. C., D. A. 286, 300 *et seq.*; Caumont, *vo. Navire*, 42; Dutruc, *vo. Navire*, 171 *et seq.*

33. The law does not require the sale

to take place in the port of registry. If a sale takes place in a port where the voyage is to begin, or where it has ended, Art. 193, C. C., will apply; D. A. 300; Dutruc, vo. Navire, 181.

34. A voyage of thirty days, under the name, and at the risk of the purchaser, is accounted sufficient by Art. 194, C. C., if it has begun and ended in two different ports, otherwise an absence of sixty days or more is necessary. When that term has elapsed, without opposition of the creditors, their lien is expunged, whether the voyage has or has not terminated, or whether the vessel has or has not entered port. Art. 194, C. C.

35. Entering a neighbouring port for repairs is not accounted ending the voyage. Dutruc, *Ibid.* No. 179.

36. But the distance, however short, between the two ports, is immaterial. Dutruc, *Ibid.* No. 178.

37. For the voyage to be accounted as having been made in the name, and at the risk of the purchaser, according to Art. 198, C. C., in such a manner as to give the creditors an opportunity of protecting their rights, the instrument of sale must be endorsed on the certificate of registry (*Acte de Francisation*), and the *congé* necessary before leaving port must have been applied for and obtained in the name of the purchaser. Caumont, vo. Navire, No. 42, and the authorities therein; and Francisation, No. 7.

38. Held, however, that the *congé* need not mention the name of the purchaser if it appear on the *Acte de Francisation*. *Collin v. Tamisie*, D. A. 288.

39. An apparent or fictitious sale, made for the purpose of creating a lien on the vessel, operates as well as a real sale for the purpose of expunging the privileges when followed by the requisite voyage, Dutruc, *Ibid.* 171.

40. The voluntary sale of a vessel is required by the first paragraph of Art. 195, C. C. "to be made in writing; it may be either by a notarial, or a private contract." This requirement, however, is not to be construed as absolute, except with reference to outsiders. D. A. 91.

41. So far as the creditors are concerned, a sale not in writing is inoperative, so, also, where the sale has not been inscribed on the certificate of registry (*Acte de Francisation*), Caumont, vo. Navire, No. 45.

(c) *By Abandonment.*

42. The owner who has not bound him-

self personally may exonerate himself from all liability for the acts and engagements of the master concerning the vessel, except for the premium of insurance on the vessel (Caumont, vo. Abandon Maritime, No. 39), by abandoning to the creditors the vessel and the freight (Art. 216, C. C.); it is otherwise if he has given special authority (see D. A. 209, Caumont, vo. Arma-teur, No. 45, Abandon, Nos. 33, 34, 35), or expressly ratified the engagement. Caumont, *Ibid.* Nos. 33, 52; D. A. 209.

43. If the master is part owner, abandonment discharges him for the proportion exceeding that of his interest in the vessel. D. A. 206; Caumont, vo. Arma-teur, 45.

44. The abandonment of the vessel by the owners to the creditors, under Art. 216, C. C., does not include that of the indemnity due to the owner by the underwriter, which, notwithstanding the abandonment, the owner is entitled to retain. The effect of the abandonment to the creditors of an insured vessel, which the assured has likewise abandoned to the underwriters is to charge the underwriter who has accepted it, and does not himself abandon the vessel to the creditors, with the liabilities which have to be discharged out of the value of the vessel. D. A. 220, 221; Caumont, vo. Abandon Maritime, Nos. 3, 19, 57, and vo. Assurances Maritimes, No. 521.

5. Limitation of Actions.

1. Generally.

45. All actions for victuals provided by the order of the master, as for wood or other necessaries furnished for the building, equipment and victualling, are limited by the lapse of one year from the time when they have been furnished. Art. 433, C. C.

46. But several authorities contend that the defendant may be required to make oath that the debt has really been paid. D. A. 2268.

2. Acknowledgment.

47. The limitation may be extended by the issue of proper legal process or by a voluntary acknowledgment of the debt. Whether the term requisite for limitation, after such an interruption, is the same as before, namely, one year, or whether it is the general term of thirty years is not yet settled. D. A. 2269.

OWNERS.

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Part I.—TITLE AND REGISTRATION.**1. Title generally.****2. As against Pirates.**

1. A pirate ship, not taken from other persons, sold to a *bond fide* purchaser for valuable consideration, will, on seizure by the crown, be restored to the purchaser. *The Telegrapho*, L. R. 3 P. C. 173; 40 L. J. Adm. 18; 8 Moore, P. C. C. N.S. 43.

2. Goods piratically seized and afterwards recovered will be restored to the original owners, if applied for in reasonable time, even though they have come into the hands of third persons. *The Hercules*, 2 Dodson, 253.

2a. As to the property of pirates being droits of Admiralty, see tit. *WÆCK*, p. 2326, Nos. 80—86.

3. Registration of British Vessels.**6. Measurement.***

- (a) *Generally* (and see p. 1188).

2. Limitations under M. S. Acts—cont.

14. *Practice* (and see p. 1347). See tit. *PRACTICE*, p. 1683.

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Part VIII.—PART OWNERS.**3. Actions of Restraint.**

1. *Generally* (and see p. 1418) 2503

4. Actions for Accounts (and see p. 1420) 2503**6. Managing Owner or Ship's Husband.**

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9. Deck and Load-Lines.

- (a) *Generally* (and see p. 1195).

3. As to the report of Sir J. E. Reed's load-line committee as to freeboard, with tables of freeboard recommended by the committee, amended for steam and sailing ships, see Board of Trade Instructions to Surveyors as to Freeboard, of Jan. 1886.

3a. The rules and tables give minimum freeboards applicable to ships of the highest class only, and no ships except of the highest class are to be loaded so deeply as those rules and tables allow. See notice of the Board, in Board of Trade Instructions to Surveyors as to Freeboard, of January, 1886, p. 2.

3b. For suggestions and agreements between the Board of Trade and the Committee of Lloyd's, as to the construction and application of certain of the load-line rules, see notes to the tables of freeboard. *Ibid.*

4. The Board of Trade will not assign a load-line for any ship, whether classed or unclassified. *Ibid.* p. 1.

* (1) For the declaration of June 9, 1882, between the British and Russian governments on the subject of tonnage measurement, see 15 Hertslet's Collection of Treaties, p. 326.

(1a) For regulations of March 12, 1878, as to tonnage measurement for the navigation of the Suez Canal, *Ibid.* p. 905.

4a. Ships having insufficient freeboards, and ships having freeboards according to the above tables, but which freeboards, having regard to the time of year or voyage are deemed by Board of Trade surveyors insufficient, will be liable to detention. See notice of the Board, in Board of Trade Instructions to Surveyors as to Freeboard, of January, 1866, p. 2.

26. *Non-qualified Owner becoming entitled.*
(a) *Order for Sale* (and see p. 1205).

5. The court ordered the sale of a British ship, the property in which had become vested in a person not qualified under the M. S. Act, 1854 (c. 104), to be the owner. *The Meggie*, L. R. 1 A. & E. 77.

8. Sale of Ship.

2. *From Builder* (and see p. 1215).

6. The principles applicable to the sale of part of a ship are equally applicable to the sale of part of any *corpus manufactum* in course of construction, and it follows that it is competent for parties to agree for a valuable consideration that a specific article shall be sold and become the property of the purchaser as soon as it has reached a certain stage, but it is a question of construction in each case at what stage the property shall pass, and a question of fact whether that stage has been reached. On the other hand, materials provided by the builders as portions of the fabric, whether wholly or partially finished, cannot be regarded as appropriated to the contract or as "sold," unless they have been "affixed," or, in a reasonable sense, made part of the *corpus*. *Seath v. Moore*, 11 App. Cas. 350—H. L.

6a. See the cases of *Wood v. Bell* in tit. OWNERS, Pt. I. p. 1216, No. 331, and *Woods v. Russell*, *Ibid.* p. 1217, No. 342 (except as to rudder and cordage); *Clark v. Spence*, No. 7, *infra*, and *Tripp v. Armitage*, 4 M. & W. 687, as to the building of a hotel, reviewed and approved in *Seath v. Moore*, 11 App. Cas. 350—H. L.

7. P. contracted with a shipbuilder to build him a ship for a certain sum, to be paid by instalments as the work proceeded. An agent for P. was to superintend the building, and all the materials were approved by him before they were used. Two instalments became due and were paid, and the builder subsequently became bankrupt, but his assignees

finished the vessel, and the subsequent instalments were tendered. In an action of trover by P. against the assignees of the builder, *held*, that on the first instalment being paid the property in the portion then finished became vested under the contract in P., subject to the builder's right to retain it to complete the ship, that each material subsequently added became, as it was added, the property of P. as the general owner, and that under these circumstances the ship did not pass to the assignees as in the order and disposition of the bankrupt. *Clarke v. Spence*, 4 Ad. & Ell. 448.

6. *What Property passes* (and see p. 1216).

8. The decisions in *Woods v. Russell* as to rudder and cordage, No. 342, p. 1217, in tit. OWNERS, Pt. I., disapproved in *Seath v. Moore*, 11 App. Cas. 350—H. L.

Part II.—GENERAL AND SUNDRY RESPONSIBILITIES OF OWNERS AND THEIR REPRESENTATIVES.

6. *Acts of Harbour and Dock Masters* (and see p. 1233).

9. The R. was anchored in Falmouth outer harbour, having to be beached in the inner harbour. S., the harbour-master, instructed the master where the R. was to beach, and came on board her the next morning before she left the outer harbour. To reach the spot where she was to beach, the R. had to proceed over water out of the jurisdiction of the harbour commissioners. While in such water, S. ordered the lowering of her anchor, and the R. grounded on it. In an action against the harbour commissioners and S., *held*, that S. was guilty of negligence, that he was acting within the scope of his authority as harbour-master, and that, therefore, the commissioners were liable as well as S. *The Rhosina*, 10 P. D. 24; *Ibid.* C. A. 131; 54 L. J. P. D. 42; 5 Asp. 350. *Held*, further, by the court below, that S. was personally liable even though a volunteer. *Ibid.*

7a. *Under the Employers' Acts.*

10. O., a labourer, was in the service of the defendants for a considerable period, and in September, 1882, was acting as fireman on board a screw steamer

belonging to them and employed on the Firth and Clyde canal, and perished in a collision between that steamer and another vessel. Action for damages by the widow of O. against the owners of the steamer; defence, that O.'s death was caused by the fault of his fellow-servants, and that the Employers' Liability Act, 1880 (c. 42), did not apply. *Held*, overruling the decision of the court below, that the term "seaman" in the M. S. Act, 1854 (c. 104), did not apply to a person employed on board a vessel plying in a canal or artificial water, and that such person was a labourer within the meaning of the Employers' Liability Act, 1880 (c. 42), for that the word ship, as defined in the M. S. Act, 1854 (c. 104), meant every description of vessel used in navigating the seas. *Oakes v. The Monkland Iron Co.*, Court of Session, 21 February, 1884.

See also tit. SEAMEN, p. 2176.

10. Steam-tugs (and see p. 1235).

11. As to the owner's exemption, under the terms of the passenger's ticket, from loss of life or injury to a passenger, see *Haigh v. Royal Mail Steam Packet Co.*, 52 L. J. Q. B. D. 395; *Ibid.* C. A. 640; 5 Asp. 47, 189, and for particulars of the case, p. 191, No. 69 d.

10a. Submarine Telegraph Cables.

1. Generally.

12. For the convention between Great Britain and Germany, the Argentine Confederation, Austria, Belgium, Brazil, Costa Rica, Denmark, the Dominican Republic, Spain, the United States, Colombia, France, Guatemala, Greece, Italy, Turkey, the Netherlands, Luxemburg, Persia, Portugal, Roumania, Russia, Salvador, Servia, Sweden, Norway, and Uruguay, for the protection of telegraphic communication by submarine telegraphs, see the Convention annexed to and confirmed by the Submarine Telegraph Act, 1885 (c. 49), s. 2.

12a. The convention applies outside territorial waters to all legally established submarine cables landed on the territories, colonies, or possessions of one or more of the high contracting parties. *Ibid.* Art. 1.

13. It is a punishable offence to break or injure a submarine cable, wilfully or by culpable negligence, so that it might interrupt or obstruct telegraphic com-

munication, wholly or partially, except in saving life or property, and after necessary precautions. *Ibid.* s. 2.

13a. As to the punishment for such offences being without prejudice to any civil action for damages, *Ibid.*

14. As to the punishment of such offences when committed by British subjects, *Ibid.* s. 3.

14a. If any vessel engaged in the laying or repairing of a submarine cable to which the convention for the time being applies, interferes contrary to the regulations or articles with any vessel engaged in fishing, or if the operations of any vessel in connection with any such submarine cable are wilfully delayed so as to interfere with sea fishing, the master of the vessel, or the owner thereof, if he was in fault, is guilty of a breach of the regulations, and may be punished accordingly. *Ibid.* s. 5 (2).

15. As to the provisions of this act being in addition to and not in derogation of other provisions for the protection of submarine cables, but so that no person shall be punished or required to pay compensation twice for the same offence or injury, *Ibid.* s. 10.

15a. The convention remains in force for five years, and afterwards and until denounced twelve months before its expiration, it shall continue in force for a year, and so on from year to year. If one of the signatory powers denounce the convention, such denunciation shall have effect only as regards that power. See the Convention Act, Art. 16.

16. The convention is applicable to the colonies and possessions of her Britannic Majesty, with the exception of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, and New Zealand. *Ibid.* (Add. Art.).

17. But the stipulations of the convention shall be applicable to any of the above-named colonies on whose behalf notice is given by Great Britain to the French Minister for Foreign Affairs. *Ibid.*

18. Each of the colonies which may have acceded to the convention may withdraw from it. *Ibid.*

2. Jurisdiction.

19. As to the tribunals competent to take cognizance of infractions of the convention being those of the country to

which the vessel on board of which the offence was committed belongs; or, where this cannot apply, by each of the contracting states in accordance with their laws or international treaties, see the Convention Act, Art. 8.

19a. As to prosecutions being in the name of the state, and being summary, *Ibid.* Arts. 9 and 11.

20. As to the officers empowered to enforce the convention, penalties for obstruction or disobedience, the limitation of actions against them, tender of amends, the courts in which such actions are to be brought, and the application thereto of Part X. of the M. S. Act, 1854 (c. 104), and the enactments amending the same, *Ibid.* s. 6.

3. Master deemed Offender.

21. As to the master of the vessel or boat by means of which the offence was committed being deemed the offender until some other person is shown to have been in charge of and navigating the vessel or boat, *Ibid.* s. 9.

4. Evidence.

22. As to documents drawn up in pursuance of Arts. 7 or 10 of the convention being admissible in evidence in any proceedings civil or criminal, and as to the punishment for forgery thereof, *Ibid.* s. 8.

23. As to the evidence in proof of offences, and the right to demand from the master official documents proving the nationality of the vessel, *Ibid.* Art. 10.

5. Compensation for Losses in avoiding Telegraph Cables.

24. Owners of ships or vessels who can prove that they have sacrificed an anchor, a net, or other fishing gear in order to avoid injuring a submarine cable shall receive compensation from the owner of the cable. *Ibid.* Art. 7.

24a. As to the statement confirming the claim supported by the evidence of the crew to be drawn up immediately after the occurrence, and to the declaration to be made by the master within twenty-four hours after his return to, or next putting into port, and to the communication of the information to the consular authorities of the country to which the owner of the cable belongs, *Ibid.*

11. Sea-going Fishing Vessels.

1. Generally* (and see p. 1235).

25. As to the registry of sea fishing boats, see the Sea Fisheries Act, 1883 (c. 22), s. 8.

25a. As to the lettering, numbering, and registering of British sea-going fishing vessels, see Order in Council of 3rd May, 1884, in 15 Hertslet's Collection of Treaties, p. 649.

26. For the purpose of giving jurisdiction to courts under this act, a sea fishing-boat shall be deemed to be a ship within the meaning of any act relating to offences committed on board a ship, and every court shall have the same jurisdiction over a foreign sea fishing-boat, within the exclusive fishery limits of the British Islands, and persons belonging thereto, as such court would have if the boat were a British sea fishing-boat. See the Sea Fisheries Act, 1883 (c. 22), s. 18.

26a. If any convention, treaty, or arrangement respecting sea fisheries is made between her Majesty and any foreign state, her Majesty may, by Order in Council, direct that all or any of the provisions of this act shall apply to the fishing vessels of such foreign state, and they shall apply accordingly. *Ibid.* s. 23.

26b. When the provisions of this act are so applied to any convention in substitution of the convention in the first schedule to 6 & 7 Vict. c. 79, the convention in such schedule shall, after the date fixed by such Order in Council, be repealed, but until then shall continue in force within the limits therein mentioned. *Ibid.* s. 24.

27. As to the application of the act generally, and so far as regards foreign sea fishing-boats outside of the exclusive fishery limits of the British Islands, and persons belonging thereto, and to foreign sea fishery officers, *Ibid.* s. 25.

27a. As to who may be British and foreign sea-fishery officers under this act, and as to the powers of British sea fishery officers, *Ibid.* ss. 11—14.

27b. Any compensation specified in a document signed in accordance with Art. 33 of the first schedule to this act, or fixed by a sea fishery officer in accordance with any submission to arbitration, may be recovered as a simple contract debt,

* (2) The principal Sea Fisheries Acts are the 6 & 7 Vict. c. 79; the Sea Fisheries Act)

1868 (c. 45); the Act of 1875 (c. 15); the Act of 1883 (c. 22); and the Act of 1885 (c. 70).

and in England may also be recovered as a civil debt before a court of summary jurisdiction. *Ibid.* s. 15, sub-s. 2.

28. In a proceeding against any person for the recovery of such compensation, the formal document referred to in Art. 33, or an award of a sea fishery officer, in pursuance of a submission to arbitration signed by the person liable to pay such compensation, shall be sufficient evidence that such person is liable to pay the compensation specified in such document or award. *Ibid.* s. 15.

28a. As to service of process, evidence, and the recovery of fines and forfeitures in proceedings under the act, *Ibid.* ss. 17, 19, 20.

28b. As to the courts in which offences under this act may be prosecuted (in England, before a justice or justices, under the Summary Jurisdiction Act, 42 & 43 Vict. c. 49); in Scotland, Ireland, and the Isles of Man, Guernsey, Jersey, Alderney, and Sark; and as to the right of appeal where imprisonment is awarded without the option of a fine, or the sum adjudged exceeds £5; and as to the courts of appeal (in England, quarter sessions), see the Sea Fisheries Act, 1883 (c. 22), p. 16.

29. Where, on the conviction of any person under this act for an offence, it appears to the court that any injury to person or property has been caused by the offence, the court may by such conviction adjudge the person convicted to pay, in addition to any fine, a reasonable sum as compensation for such injury, and such sum may be recovered as a fine under this act, and when recovered shall be paid to the person injured. *Ibid.* s. 15, sub-s. 1.

29a. As to the rights of owners of fishing vessels suffering damage through the laying of submarine telegraph cables, see Nos. 13 and 24, *supra*.

2. Lights (and see p. 1237).

30. See tit. COLLISION in Addenda, Pt. V. pp. 2365—2367.

47. Anchors and Chain Cables

(and see p. 1293).

31. As to the application of the Chain Cables Acts, 1864—1874, to all contracts for the sale of chain cables, and not merely to contracts for their sale for the use of British ships, see *Hall v. Billingham & Sons*, 5 Asp. 538.

31a. See also tit. BOARD OF TRADE, Pt. II. c. 13, p. 2258.

Part III.—UNSAFE AND UNSEAWORTHY SHIPS.

1. Unsafe Ships (British).

14. Inquiries.

(a) Generally.

32. For the statutory provisions as to unsafe British ships, and their detention for survey, see tit. OWNERS, Pt. III. p. 1258.

32a. As to courts of survey, *Ibid.* p. 1265.

33. As to the wreck commissioner's and other courts for inquiries into casualties to ships, see tit. SHIPPING CASUALTIES INVESTIGATIONS, c. 3, p. 2198.

33a. As to the cancellation or suspension of the certificates of masters and mates generally, *Ibid.* p. 2204.

34. As to explosions of coal gas in ships, *Ibid.* p. 2213.

34a. As to spontaneous combustion of coal in ships, *Ibid.* p. 2225.

35. The three-masted iron ship B., of 1,429 tons gross register, laden with 1,700 tons of jute and twenty-five tons of linseed, and bound from Calcutta for Dundee, on her way through the Bay of Bengal, and as well before as after passing the Cape, experienced severe weather, and laboured and strained considerably, and she had a strong list to starboard, although there was no water in the well. Search was made, and the middle soil pipe (the vessel had six water-closets, three on each side) on the starboard side was found to be broken through, with the exception of about three-quarters of an inch at the top; and a large quantity of water was coming through the tube into the between decks. The pipe was cut and the outlet plugged, and the inflow of the water stopped. The pipes of the other four water-closets were found more or less damaged and letting the water through, and they were all plugged. There was but one sound pipe. It took the crew seven days to get at and plug the five pipes, and they had to throw overboard from 1,400 to 1,500 bales of jute out of 9,800 bales, the damage sustained by the cargo being between £8,000 and £9,000. *Held*, that the fracture of one of the soil pipes which caused the principal damage was due

partly to the working and straining of the ship, and partly to the force of the waves beating into the open mouth of the pipes. No blame was attributed to the owners, master, or officers for the casualty, but the court was of opinion that when the outlets of the soil pipes are under water or awash, the lower parts thereof, for a length of about 18 inches, should be of iron or gun metal, and that the outlets should be protected by storm-valves placed inside the pipes 9 or 10 inches from the outside. *The Broomhall*, 7th March, 1877.

35a. Loss with all hands of the iron screw steamer E., of 356 tons gross register. She left London in February for Portsmouth with a cargo of machinery and boilers, of the estimated weight of about 426 tons, and twenty-six tons of bunker coal. Two of the six boilers carried as part of the cargo were stowed on deck over the forward hatchways, extending to within 15 inches of the bulwarks, and with their tops reaching 10 or 11 feet above the deck. The other four boilers were stowed in the after part of the main hold, one of them riding on two others, and rising out of the main hatchway to a height of 9 feet above the deck. Other portions of the cargo were also stowed in this hatchway and on each side of it filling up the whole space between the bulwarks and coamings, the whole forming a mass extending about 40 feet forward of the bridge. To enable the crew to work the vessel three planks 9 inches wide were placed along the various pieces of this cargo. There was nothing to prevent the cargo from getting adrift when the vessel pitched heavily, there being no eye bolts in the deck to secure it. *Held*, that the vessel was seaworthy as to hull, equipments, and machinery, but that her deck cargo was not properly placed or secured, inasmuch as it prevented the crew from getting about the deck, obstructed the view from the bridge, and was liable in a seaway to get adrift; that the vessel's freeboard of about 1 foot 2 inches or 1 foot 4 inches in salt water was wholly insufficient; that it was not possible, with the cargo stowed as it was, to put the tarpaulins on the hatchways, so as to prevent the water from getting into the hold, and that this, with the ship's low freeboard and small stability, was an element of great danger; that the vessel was unstable as laden, and that the owner was to blame for having sent the ship to sea in such a

condition, but the court would not condemn him in costs, considering it a wholly inadequate punishment for his offence. *The Elephant*, 14th May, 1884.

36. In April, 1881, the A., a wooden brig of 201·63 tons register, loaded at Cardiff a cargo of 300 tons of steel rails, but when the loading was completed she was found to be making water. She was therefore placed on the mud for examination, and an open seam being found it was caulked and payed with coal tar instead of pitch. Several other bad places had also to be repaired. On the 30th April the A. was towed to Penarth Roads, still making water, and on the 10th May she sailed for Caravalles, Brazil. On the 25th May the vessel began to leak more, and continued to do so, and on the 6th June the water had increased so rapidly that the master and crew were compelled to abandon the ship, which shortly afterwards foundered. *Held*, that the A. was not in a good and seaworthy condition when she left Newport, nor when she sailed from Penarth Roads, and that the leaks discovered were not properly repaired; also that the freeboard (2 feet 3 inches) was not sufficient, and that the cargo, having regard to its nature and to the construction and condition of the vessel, was too heavy. *Held*, also, that the master was not justified in proceeding to sea with the vessel in her then condition, and to be blamed for not taking her into port. The master's certificate suspended for six months. *The Eron Vale*, July 25, 1881.

36a. Loss by stranding of the iron screw steamer F., of 1,160 tons gross register, bound from Bona, in Algiers, for Leith, with a cargo of between 600 and 700 tons of barley and compressed hay. The F., having fallen short of coals, was steered for Corunna, but while on her way ran on the Pedrido reef, and subsequently became a total wreck. The F. was insured for £21,000, and her value was £14,000. *Held*, that the casualty was caused by the wrongful if not wilful default of the master, and his certificate was suspended for twelve months. *Held*, further, that *bond fide* efforts were not made to get the vessel off, although this might easily have been accomplished, and that there were circumstances of grave suspicion pointing to the existence of a conspiracy on the part of the owner, and his brother, the master, to throw away the vessel. The owner, having endeavoured to throw obstacles in the way of

the inquiry, was condemned to pay £70 towards the costs of the inquiry, and £50 towards the costs of the underwriters. *The Furius*, 11th February, 1886.

37. As to inquiries into machinery and boilers, see tit. SHIPPING CASUALTIES INVESTIGATIONS, c. 4, pp. 2203.

37a. As to insurance connected with inquiries into shipping casualties, *Ibid.* p. 2204.

(b) *Instability.**

38. A vessel of good proportions, having a beam of 21·2 feet as against 9·8 feet depth of hold, and whose masts were afterwards reduced four feet, and her iron bulwarks taken away, *held*, to have had, under the circumstances, sufficient stability. *The Adina*, 22nd November, 1880.

39. Mr. W. E. Smith, a naval architect, examined the plans and calculated the vessel's stability, and found that at the time of her leaving New York on her last voyage, "her meta-centre was only six inches above the centre of gravity, and that consequently her margin of stability was extremely small . . . much too small, seeing that she was about to cross the Atlantic." Evidence quoted, with approval, by the Wreck Commissioner, in *The Joseph Pease*, 9th July, 1880.

40. Mr. White, the author of the well-known treatise on marine architecture, and one of the highest authorities on the subject of the stability of vessels, stated that "he had gone very carefully through the plans and drawings of the vessel, and had made the most minute and careful calculations of her stability when she left San Francisco. Having taken the weights and disposition of the cargo, as deposited to by the master, giving the ship in every instance the benefit of

the doubt, they gave as the result that the vessel, when she left San Francisco, had a meta-centric height of only six inches, whereas, in order that she should be reasonably safe, she ought to have had a meta-centric height of from 1 foot to 15 inches; that her angle of maximum stability was 27 degrees, and that at an angle of 49 degrees her stability disappeared; that her maximum righting moment was 1,315 tons; that heeled over to an angle of 16 degrees, which would be the angle of inclination with the gunwale touching the water, 60 tons of water on her deck would be sufficient to balance the righting moment; that with the same angle of heel the quantity of water on her deck might be 180 tons; and that with the rail under she would have a heel of 32 degrees, which was more than the angle of maximum stability, and from which, therefore, it would be impossible for her to right herself." Per the Wreck Commissioner, in *The Escambia*, 28th November, 1882.

41. A question was raised as to whether a vessel had not as laden so much stability as to make her uneasy and laboursome in a seaway, and evidence was produced as to her having a meta-centric height of 4·4 feet. The vessel, however, had never been inclined, and consequently it was quite impossible to say with accuracy where her centre of gravity was; and without that the meta-centric height would be more or less guess work. An adjournment, therefore, was arranged to allow of the vessel being inclined, and it was subsequently shown that by the disposal and weight of her cargo the meta-centric height would, as estimated, be over four feet. The Wreck Commissioner, being advised that with merchant vessels when laden the meta-centric height ought not to exceed 3 to 3½ feet, *held*, that the

* (3) The French investigator, Bouguer, nearly a century and a-half ago, in his *Traité de Navire*, introduced the word meta-centre into the nomenclature of naval science. See the *Treatise on the Stability of Ships*, by Sir E. J. Reed, anno 1885, p. 14. Griffin, & Co., Strand.

(4) For a full consideration of the meta-centre of ships. *Ibid.* cc. 1 and 2.

(5) As to the flotation and stability of ships, *Ibid.* cc. 1 and 3.

(6) As to the relation of loci of centres of buoyancy and of pro-meta-centres to stability, *Ibid.*

(7) As to the determination of position of meta-centres and pro-meta-centres, shift of

centre of gravity, and expression for the height of meta-centre above centre of buoyancy, *Ibid.*

(8) As to the displacement and buoyancy of ships, their statical stability, and their oscillations in still water, and among waves, see *Manual of Naval Architecture* by W. H. White, Chief Constructor of the Royal Navy, anno 1882, cc. 1—6.

(9) As to the stability of ships, see evidence of H. C. Rothery, Esq., Wreck Commissioner, before the Royal Commission on Loss of Life at Sea, First Report and Evidence, Sess. Paper, 1885, c. 4577, pp. 185, 186.

charge of want of stability against this vessel was substantiated. *The Palgrave*, 15th March, 1886.

42. Mr. White, the naval architect, states that on an average 39 cubic feet of sugar in bags equal in weight 1 ton; 42 cubic feet of coal equal in weight 1 ton; 45 cubic feet of wheat in bulk equal in weight 1 ton; 48 cubic feet of wheat in bags equal in weight 1 ton, therefore a vessel laden with wheat in bags would have its centre of gravity higher, and therefore have less stability than if laden with either wheat in bulk, or with coal, or with sugar in bags. Quoted, with approval, by the Wreck Commissioner in *The Escambia*, 28th November, 1882.

43. The stability of a vessel depends of course upon the height of the meta-centre above the centre of gravity. *The Ballina*, per the Wreck Commissioner, 29th March, 1882.

44. The cargo should be so disposed that the ship may be duly poised, and maintain a proper equilibrium, neither too stiff nor too crank—qualities equally pernicious. If too stiff she may carry much sail, whilst her masts are endangered by sudden jerks and excessive labouring. If too crank she will be unfit to carry sail, without the risk of over-setting. Stevens on Stowage, quoted, with approval, by the Wreck Commissioner in the case of *The Emblehope*, Feb. 14, 1880.

45. Loss by abandonment of the iron screw steamship L., of 878 tons net register, which left the Tyne on a voyage to Genoa with a cargo of 1,773 tons of coal, besides 198 tons of bunker coal. She encountered very strong gales, and on the 28th commenced making water rapidly. The fires were put out, the boats were carried away, and on the 29th the vessel lying on her beam ends, her master and crew abandoned her. *Held*, that, having regard to the season of the year, and the nature of the intended voyage, to the fact that the vessel had somewhat less than three feet of free-board, and that she was poop-decked, the L. was very greatly overladen; that considering her construction, her high centre of gravity, and her consequent lack of stability, she was not qualified to carry such a cargo, and that the leakage was due to the weight of the cargo and bunker coal in the poop sinking her below the tonnage or main deck for a great part of her length. *Held*, further, that the loss was attributable to her in-

stability, and to her being too deeply laden. *The Lufra*, Feb. 13, 1880.

46. Loss with all hands of the iron screw steam ship R., of 1,382 tons register. In January she sailed from Cardiff for Bombay with a cargo of coal, and has not been heard of since. *Held*, that no means were taken to ascertain the stability of the ship, and the position at which the load-line should be placed; that looking to the construction of the vessel, and the depth to which she was laden, it was very doubtful whether she had sufficient stability for a winter voyage; that she had not sufficient free-board for a voyage across the Bay of Biscay; that her load-line should not have been placed at four feet; but that there was no evidence to show the precise cause of loss. *The Rathmore*, July 23, 1880.

47. Loss with all hands but one of the iron screw steamship P., of 517 tons net register, bound from Newport, Monmouthshire, for Havre, with 983 tons of coal, and about 124½ tons of bunker coal, of which about 24 or 25 tons was placed on the bridge above the bunker hatches. The weather became stormy, and early the next day the vessel took a sudden list to port, and finally went down. *Held*, that the casualty was due to the vessel having fallen over on her side, probably owing to the large amount of bunker coal which was stowed on the bridge deck, that the master was chiefly to blame for allowing the coal to be so stowed, and that the managing owner was also to blame for not having taken steps to prevent the coal being so placed. *Held*, also, that with the bunker coal on her bridge she must have had insufficient stability. *The Pelton*, April 25, 1882.

48. Loss with all hands of the iron screw steamer E., of 676 tons register, laden with coals, and bound from Cardiff for Marseilles. *Held*, that the stowage of the cargo was defective for want of shifting boards, and that the facts that the water ballast tank was at least two feet eight inches above the floors, that the 'tween decks were laid throughout, and that the cargo was stowed close to the upper deck, tended to show that the vessel's stability in heavy weather was questionable, but that the evidence was not sufficient to prove how the loss of the vessel actually took place. *The Estepona*, Dec. 31, 1880.

49. Loss with all hands of the iron screw-steamer K. She sailed in Novem-

ber from the Mersey, bound for Havannah, with cargo and bunker coal on board weighing 2,038 tons. On the afternoon of that day the pilot left her off the Bar Light, and she has not been heard of since. *Held*, that the load-line which was placed at four feet from the deck, without any calculation being made as to the depth to which the vessel might be safely laden, was not placed in the proper position; that the vessel was overladen, her freeboard being four feet six inches; that looking to the construction of the vessel and depth of loading, and the nature of the cargo, she had not sufficient stability, having a beam of 33 feet, as against a depth of hold of 22·4 feet, and a deck house amidships. *The Kensington*, March 22, 1880.

50. As to whether owners are bound at their own cost to incline their vessel with a view to prove its stability, see *The Palgrave*, March 15, 1886.

See also No. 35, *supra*, Nos. 64, 72, 73, 82, 83, *infra*, and Nos. 116—119, p. 2495, and No. 128a, p. 2499.

(c) *Insufficient Freeboard.**

51. Loss by foundering with loss of twelve lives, of the steamer C., of 635 tons, which sailed from Cardiff, bound for Malta, with 1,376 tons of coal. The vessel was much injured by a heavy sea, and was thrown on her starboard beam ends. The water came into the engine room, and the fires were put out, and the C. taking a sudden lurch, foundered, and twelve seamen perished. *Held*, that the steamer was overladen when she left Cardiff, and that her freeboard in salt water which would be 2 feet 1 inch, was insufficient. *The Constance*, 18th March, 1880.

52. Loss by foundering of an iron screw steamer, the G., of 386 tons net register, which left Swansea on the 28th November, 1882, for Nantes, with a cargo of 100 tons of copper in ingots, and 525 tons of coal besides what she had in her bunkers, her total amount being 685 tons. Her mean draught of water was 12 feet 6 inches. The following morning a heavy gale came on, during which the tarpaulins of the after hatch were washed away, and the water got into the vessel. At 7 a.m. the vessel was settling down by the stern, and the lifeboat was therefore got out. Eight of the crew got into her, but the re-

mainder went down with the vessel. *Held*, that the vessel was sent to sea too deeply laden, and too much down by the stern; that the upper tarpaulin of the after hatchway was too short, and on its being washed away the water found its way into the hold, and caused the vessel to sink. The managing owner was censured for having without due care and consideration raised the position of the load-line, so that, if loaded down to it, the vessel would have had only 18 inches of freeboard, when she should have had at least 2 feet or more of freeboard, and that she had only about 1 foot 8 inches. He was also blamed for striking out of the charterparty the usual words authorizing the master to supervise the stowage of the cargo, the result being that 100 tons of copper ingots were stowed in the centre of the after-hold, which put the vessel two feet by the stern, giving her a freeboard aft of not more than 9 to 12 inches. *The St. George*, 5th January, 1883.

53. Abandonment and loss of the wooden vessel, P. T., of 198·88 tons register, built in 1872. In December she sailed from Tucacas with a cargo of 391 tons of copper ore. On the 4th January she encountered a heavy gale, which increased to a hurricane. Gales of more or less violence continued until the 19th, and the vessel being seriously damaged by the heavy seas which struck her, the master and crew abandoned her. *Held*, that when the vessel left Tucacas her equipment was defective, as she had no spare spars on board; that considering her age, build, and tonnage, and the nature of the voyage, she ought not to have taken so heavy a dead weight cargo as 390 tons of copper ore; that the freeboard was not sufficient, being scarcely 2½ inches to each foot depth of hold, and the master and owner were censured for the overloading. *The Penelope Tutton*, 4th March, 1881.

54. *Held*, further, that in vessels engaged in ore trade, some difference of load-line should be insisted upon during the winter months. *Ibid*.

55. Damage with loss of life to the iron barque P., of 588 tons register. She sailed in October from Liverpool for New Zealand with a general cargo of 1,062 tons, 716 of which was dead weight,

* (10) As to load-lines and cases of overladen and unseaworthy ships, Evidence of H. C. Rothery, Esq., Wreck Commissioner, pp. 94, 97, 183, 202, 203, 225, 226.

consisting of iron goods, being 64 per cent. above the gross tonnage. Shortly after a strong gale came on, and the vessel began to labour heavily. The crew refused work and demanded that she should be put back, and the master returned to Queenstown, where the men were prosecuted and sentenced to six weeks' imprisonment. The P. then proceeded on her voyage. From the 14th November she encountered a succession of heavy gales, in which she sustained considerable damage. The master had retired to his cabin on the plea of illness, leaving the navigation practically to the first mate, who on a persisted application from the crew put back for the Lizard. On the 23rd the mainmast broke and went overboard, carrying with it four men who were aloft, and two were drowned. On the 24th the P. arrived in Mounts Bay, and was shortly afterwards grounded off Penzance. Before the vessel sailed from Liverpool the owners' overlooker raised the load-line about three inches above where it had been placed. In 1879 the load-line was altered from 3 feet 5 inches to 3 feet 6 inches, and subsequently to 3 feet 8 inches. *Held*, that the vessel was overladen and had not sufficient freeboard, and that the owners were responsible for the act of their agent in raising the load-line; that the damage sustained, though partly due to stress of weather, was also attributable to the great weight of cargo which the vessel had and the depth to which she was sunk, which caused her to roll more heavily than she would have done, and led to the straining and parting of the lanyards, and to the mast going over the side. The owners condemned to pay £100 towards costs. *The Pampero*, 11th December, 1881.

56. Loss of the iron screw steamer *E.*, of 759 $\frac{2}{3}$ tons register. In February she left the Tyne for Hamburg, with 1,357 tons of cargo coal besides bunker coal, and has not been heard of since. *Held*, that there was no evidence to show the cause of the loss of the vessel, but that her freeboard of 2 feet 2 inches was not sufficient for a vessel on such a voyage. *The Elsie*, 2nd June, 1880.

57. The iron schooner *A.*, of 106 tons gross register, built in 1878, left Glasgow bound for Exeter, laden with 176 tons of coal, and was not afterwards heard of. The load-line was put 17 inches below the top of the deck, and the cargo would sink her in salt water about 10 feet

1 inch, leaving a freeboard of about 16 inches. Her co-efficient of fineness was 58°, and according to Mr. Martell's tables her freeboard should have been 18 $\frac{1}{2}$ inches at least. *Held*, therefore, that her freeboard was wholly insufficient; that she was consequently overladen, and that this was the cause of her loss. *The Adina*, 22nd Nov. 1880.

See also Nos. 3 and 4, p. 2473, and Nos. 35, 36, 46, and 49, *supra*, and Nos. 60, 62, 64, 65, 67, 71, 74, 75, 83 and 84, *infra*.

(d) *Overladen.*

58. The legislature throws the obligation upon the master as well as upon the owner of seeing that the vessel is not overladen. *The Damietta*, No. 157, Nov. 14, 1877.

58a. If a vessel has on board a cargo more especially of steel or iron rails, to the extent of thirty-three per cent. above her registered tonnage, she is generally sufficiently laden. *The Kate*, No. 167, December 12, 1877.

59. Abandonment and loss of the screw-steamer *K.*, of 969 tons gross register. She left Barrow-in-Furness in November, with a cargo of 1,015 tons of steel rails for Riga. She drew 14 ft. 4 forward, and 17 ft. 9 aft, and had a freeboard of 2 ft. 1. Her crew consisted of eighteen hands. After passing the Downs and the Ship Wash, the vessel steered north $\frac{3}{4}$ east, going eight knots an hour. The same day a noise was heard in the low-pressure cylinder, and the engines were brought to a stand. The cover of the cylinder was removed, and it was found that a portion of the guard plate 8 in. long by 1 $\frac{1}{2}$ in. broad and $\frac{1}{8}$ in. deep, had occasioned the noise. The master then ordered the jibs and square foresails to be set, a squall however caught her and carried away the sails, and the vessel broached to and fell into the trough of the sea. The cargo shifted to port, and there was a space of six or seven inches between the cargo and the side. Attempts were made to fill up this space with planks and pieces of wood, but owing to the rolling of the ship these got smashed up almost as soon as they were put in, the cargo shifting from side to side as the vessel rolled. The engineers got the engines to go ahead again, but the piston rod became bent, the piston jammed in the cylinder, and the engines stopped. All efforts to get them to move were unavailing. They then dis-

connected the low pressure from the high pressure cylinder and worked the engines by the high pressure for two or three turns, until the condenser became heated, when they again stopped. Signals of distress were hoisted, the vessel drifting helpless before wind and sea. The H. came up and began towing the K. ahead. Two hawsers parted, but after some difficulty two others were passed, and thirty fathoms of chain attached to each. Some hours after the donkey engine stopped, probably choked with coal from the bilges. The ship was then abandoned, and on the following day disappeared. *Held*, that, considering the time of the year in which the vessel left port, she was much too heavily laden. *Ibid*.

60. Loss by abandonment with all but one of the crew of the iron-screw steamship W., of 1,247 tons, which left Odessa on the 29th October, 1882, for Rotterdam, with a cargo of 11,880 quarters of wheat and rye. At Gibraltar she took in 110 tons of coal. *Held*, that on leaving Odessa, the freeboard was 3 ft. 4 in., and on leaving Gibraltar 3 ft. 7 in., and that the vessel was greatly overladen, which was the cause of the loss. *Held*, further, that the managing owner was to blame for the load-line being placed at 3 ft. 8 in., and that it was his duty to have told the master not to load the vessel down to that mark when bound on a winter voyage, and across a stormy sea. *The Winton*, January 23, 1883.

61. Abandonment of the iron-screw steamer L., of 1,365 tons gross register, laden with a cargo of 1,773 tons of coal, besides 198 tons of bunker coal. She left the Tyne in February for Genoa with a crew of twenty-one hands. She met with severe weather, and about the 5th day of her voyage the water was making rapidly in the engine-room. Shortly afterwards a heavy sea struck her astern, carrying away the afterwheel and smashing in the companion and cabin doors. She continued to labour and strain, and the water was found to be gaining on her. There were no suction pipes to either of the holds, but only sluices at each end of the engine-room, and on each side of the ship. There was no water coming into either of the holds. The port and starboard after boats were soon carried away, and the starboard lifeboat stove. The same afternoon the remaining boat — the port lifeboat — was smashed to pieces. Every effort was made to discover where the water

was coming in, but without effect; in the chief engineer's room it came in in great quantities, and continued to gain. The fires were put out. The sails were blown away in an attempt to set them, and the ship was lying on her beam ends, the scuppers being nearly on a level with the water. The crew then patched up the starboard lifeboat, which had been stove, and all got in, but were upset and obliged to regain the ship. On the following day an English barque took them off. *Held*, that the ship was overladen, having regard to the season of the year and to the nature of her intended voyage; that all proper measures were taken by the master to find out the whereabouts of the leaks. The court was not asked to deal with any certificates, or to make any order as to costs. *The Lufra*, No. 517, February 14, 1880.

62. The iron ship D., of 1,163 tons register, left San Francisco for Queenstown on 18th August, with a cargo of 1,745 tons of wheat in bags. When three days out she encountered bad weather, and a heavy sea carried away the hatch over the after peak, filled the cabin and lazarette with water, killed one of the crew, injured another, and threw the vessel on her beam ends. Part of the cargo was jettisoned, such of the rest as had shifted was re-trimmed, and the vessel recovered. In subsequent gales the cargo shifted and was re-trimmed five times. The vessel reached Queenstown, but, in attempting a further voyage to Bristol with the same cargo, was driven to the north, narrowly escaped running ashore on Grassholme Island, and eventually took shelter in Holyhead. *Held*, that the vessel was not seaworthy on leaving San Francisco, as she had a defective rudder, had no spare rigging, and the davits of her boats had been unshipped and put below; that two out of her four boats were also unfit for use; that the cargo was very well fitted with strong and substantial shifting boards, but the bags of grain were not "married," nor were any special precautions taken to prevent the upper tiers of bags going over to leeward when the ship rolled heavily; that the vessel was too deeply laden, having a freeboard of only 4 feet 14 inches, whereas Lloyd's Rules required 5 feet 3 inches. She was insured very much beyond her value, and her freight was fully insured. The master and managing owner censured. *The Derbyshire*, March 21, 1884.

63. The iron screw steamer T., of 395 tons gross register, left Blyth, in Northumberland, in October, for Drontheim, in Norway, with a crew of twelve hands and a cargo of 484 tons of coal, besides sixty-four tons in her bunkers. Meeting with bad weather, she put into Aberdeen and again into Cromarty before crossing over to Invergordon. The whole of the able seamen, four in number, and one fireman refused to go in her to Drontheim unless they went coastwise. They were discharged, and new hands sent from Aberdeen. The vessel then proceeded on her voyage, but has not been heard of since. *Held*, that the ship was overladen and undermanned, and not in a fit state for crossing the North Sea at that time of the year, and that the managing owners were responsible for having so sent her to sea. The court made no order as to costs. *The Thames*, No. 2411, December 27, 1884.

64. Loss with all hands of the iron screw steamer M., of 2,308 tons gross register, bound from Cardiff with a cargo of coals to Genoa, with a crew of twenty-five hands. After passing Nash Point her pilot left her, and she was not afterwards seen or heard of. *Held*, that the ship was overladen, that she was not sufficiently manned, and had not sufficient stability; that 4 feet was not a sufficient freeboard, that the load-line was placed 4 feet below the upper deck by order of the managing owner, who was held to blame for her being overladen and undermanned. The court condemned him in £250 *nomine expensarum*. *The Marlborough*, No. 565, March 23, 1880.

65. Loss by foundering of the wooden sailing vessel C., of 156 tons register, which on the 13th January, 1881, sailed from Cardiff bound for Lisbon, with a cargo of 264 tons of railway bars. When off the Portuguese coast bad weather set in, during which the cargo shifted, giving the vessel a list to starboard. The water rapidly gained and the ship soon became unmanageable, and finally the master and crew took to the boat and reached Vigo. The C. foundered shortly after her abandonment. *Held*, that the vessel was overladen, and that her freeboard of 22 inches was insufficient for a winter voyage, that the central spaces should have been tightly wedged to prevent any lateral movement of the cargo, and that the owners were responsible for the vessel being overladen and not having sufficient freeboard. They were ordered to pay a

sum of £20 towards the costs. *The Commodore*, February 25, 1881.

66. On the 18th October, 1882, the schooner J., of 90·84 tons register, sailed from Garston for Drogheda, with 167 tons of coal on board, and has not since been heard of. *Held*, that there was no evidence as to the cause of the casualty, but that the vessel on leaving Garston was not in a good and seaworthy condition so far as hull and equipments were concerned; and also, that in her condition she could not at any time have carried so heavy a cargo as she did without considerable risk. The managing owner found in default, and ordered to pay £20 towards costs. *The Joseph*, January 29, 1883.

67. Foundering, with loss of life, of the iron screw steamer C., of 1,449 tons gross register, bound from Odessa to Bremerhaven, with a crew of twenty-two hands, six passengers, and a cargo of 1,717 tons of barley. When between the entrance to the Tagus and the Burlings, on the 19th of October, the wind at the time blowing a moderate gale, with a heavy sea upon the port quarter, she took a heavy list to starboard. After having twice to heave the vessel to, the links of the wheel chains broke, and the vessel took a heavy list to port. The gale increased, and on the same day the vessel went down by the head with all her passengers and crew, except one man. *Held*, that the C., on leaving Odessa, had a freeboard of only 2 feet 6 inches, which was wholly insufficient for a vessel making a winter voyage, that she was overladen as well as insufficiently provided with shifting boards for the voyage, and that the managing owner of the vessel was responsible for her being so overladen. The court accordingly condemned him in the sum of £100 *nomine expensarum*. *The Calliope*, No. 1236, January 13, 1882.

68. Abandonment, in March, and loss of the wooden vessel P. L., of 99·63 tons register, which left Newport bound for Gijon, in Spain, and having a cargo of 175 tons 4 cwt. 13 lbs. of steel rails, and 4 tons 15 cwt. of points and crossings. On reaching the mouth of the English Channel the vessel, which was rolling and labouring much, was struck by a heavy sea, and the cargo began to shift in the hold, subsequently it was found that the shores were all down, and the cargo was completely adrift and could not be secured, the vessel was evidently

settling down, and the master and crew abandoned her. *Held*, that, considering the nature of the cargo, the time of the year, and the nature of the voyage, the vessel was very much overladen; that although the cargo was properly stowed it was not properly secured, hence it shifted, and the vessel was consequently strained and made water. The master found in default for neglecting to see that the vessel was not overladen, and that the cargo was properly secured, and his certificate suspended for six months. *The Phæbe Lewis*, June 2, 1881.

69. Loss of the wooden sailing ship O., of 647 tons register, built in 1869, laden with 900 tons of pig iron, and bound from the Tees to Philadelphia. *Held*, that considering the nature of the cargo, the materials of which the vessel was built, and her age, she was much overladen. *The Othere*, May 10, 1880.

70. The B. was an iron screw steamer of 925 tons register. She left Liverpool for Demerara on the 29th of September, having 1,255 tons of general cargo and 588 tons in her bunkers, making altogether a dead weight of 1,843 tons. On the 1st October a heavy gale sprang up, during which the ports on the starboard side became jammed, and the vessel being well-decked, the water had no means of escaping. The vessel was severely damaged by the heavy seas which swept over her, and finally the master and crew abandoned her. *Held*, that the loss of the vessel was due to her being overladen, and to the water which came on deck not being able to get away owing to the jamming of the ports, and that the managing owner was responsible for having sent the vessel to sea overladen, and the master for having taken her to sea in that state. *The Bendigo*, 7th November, 1882.

71. The iron screw steamer L., of 673·29 tons register, sailed from Nico-laeff in November with a cargo of 6,400 quarters of linseed in bulk, bound for Western Europe. At Gibraltar she took in eighty tons of bunker coal, and sailed for Dunkirk, and after leaving Gibraltar nothing was heard of her. *Held*, that the condition of the L. was satisfactory, but that 2 feet $\frac{3}{4}$ of an inch was not a sufficient freeboard at that season of the year; that a ship so constructed, with a well deck with solid bulwarks, capable of holding at least 100 tons of water, would, in case the ports were not open at the time, be unequal to contend against exceptionally heavy

weather. Notwithstanding this vessel had previously carried similar cargoes under similar conditions, the court strongly condemned the practice of loading vessels of this class to the utmost possible limit. *The Llanedarne*, 12th April, 1880.

72. Loss, with all hands, of the wooden barque H., of 1,112 tons gross register, bound from San Francisco with a crew of sixteen men and a cargo of 1,727 tons of wheat, in bags, to Queenstown. The pilot left her about seven miles outside the port, and there was some evidence that she was in company with an American barque, the S. L. some fourteen days afterwards, but from that time nothing more was heard of her. *Held*, that her loss was probably due to her having been overladen and undermanned, and to her want of stability. The court made no order as to costs. *The Hildegarde*, No. 1826, 7th June, 1883.

73. Foundering, with loss of life, of the iron screw steamer L., of 2,319 tons gross register, bound from Newcastle for Port Said with a crew of twenty-four hands, and a cargo of 2,543 tons of coals, besides 616 tons in her bunkers. The day after passing Ushant she suddenly took a heavy list to port, putting the lee rail under water, and continued to go over till she lay on her beam ends, and water coming down the port ventilators put out the four lower fires. The shrouds on the starboard side were cut, and the foremast went overboard, but the mainmast remained standing. The three boats on the port side had been carried away, and as the vessel still continued to lay over on her port side, and was fast filling, the starboard life-boat was got out, and all hands, with the exception of the second engineer and two firemen, got into her, and had hardly pushed off before the vessel foundered. *Held*, that the loss of the vessel was due to her being overladen and unstable; that she was insufficiently manned, and that the managing owner and the master were responsible for her being at sea in that condition. The court was not asked to deal with the master's certificate, and made no order as to costs. *The Linhope*, No. 2242, 18th July, 1884.

74. On an investigation into the loss of an iron schooner of 92 tons register, on a voyage from the Clyde to Exeter, laden with coals, *held*, that the loss was due to the vessel being overladen, her freeboard being from 1 foot $3\frac{1}{2}$ inches to 1 foot 4 inches only, and wholly in-

sufficient. *The Adina*, November 22, 1880.

75. Loss of a wooden brig of 201 tons register, laden with steel rails, and bound from Cardiff for Brazil. *Held*, that the cargo was too heavy for the vessel in the leaky and unseaworthy state in which she left Cardiff; that her freeboard of 2 feet 3 inches was insufficient; that the master was not justified in going to sea with a vessel in such a condition, and ought to have taken her into port. His certificate suspended for six months. *The Aeron Vale*, July 25, 1881.

76. Loss, with the lives of the crew, of the iron screw steamer *M.*, of 2,005 tons gross. She left Garston, in the Mersey, in January, bound for Havannah, with a cargo of 2,712 tons of coal, including bunker coal. She put into Holyhead on the 28th January to land her pilot, sailed again, and since that time nothing has been heard of her. *Held*, that the vessel was seaworthy as to hull, equipments, and machinery, and that her cargo was properly stowed and ventilated, but that she was overladen, and to this cause the loss was to be attributed. *The Mangerton*, *ibid.* p. 40, 2nd July, 1883.

77. Loss, with twenty-two men, of the iron screw steamship *B. C.*, of 1,376 tons gross register, bound from Alexandria for Hull with a crew of twenty-two hands, a cargo of 1,804 tons of cotton seed and beans, and about 140 tons of coal in her bunkers. At Malta she took in 45 tons more, and at Gibraltar 115 tons. She was afterwards signalled from point Carvoeiro near the Burlings, but from that time nothing more was heard of her. *Held*, that she was overladen and probably foundered in the heavy gale prevailing in the Bay of Biscay when she was crossing it. *The Bywell Castle*, No. 1807, May 23, 1883.

78. Abandonment and loss, with loss of life, of the iron screw steamship *B. T.*, of 3,096 tons gross register, bound from Baltimore to Liverpool, with a crew of thirty hands, two stowaways, and a cargo of 3,773 tons, of which 2,035 tons were grain, besides about 500 tons of coal in the bunkers. About the seventh day of the voyage the wind blew with hurricane force, several seas broke over the *B. T.*, the steam steering gear parted, two of the hands were washed overboard, and

the vessel broached to and fell off into the trough of the sea; all the boats were smashed, and water was coming into the engine-room through the sides, between the seams and at the butts, and continued to gain on the vessel for a day and a night. The crew of the *B. T.* then left her. *Held*, that her loss was partly due to the violence of the gale and partly to her being overladen and undermanned, that the owner was responsible for having sent her to sea in that state, and that no blame attached to the master or officers for the abandonment. *The Benwell Tower*, No. 2740, November 26, 1885.

79. Loss of the master of the *H.*, an iron screw steamship of 1,693 tons gross register, bound from Gibraltar for Amsterdam, with a crew of twenty-one hands and a cargo of 2,120 tons of rye. Off Cape Finisterre it blew a strong gale, the vessel shipped much water forward, and heavy seas broke over her, causing her to take a list to port, and while the master and mate were engaged in repairing a forelock of one of the block pins of the steering gear, the master was washed overboard, the mate saving himself by clinging to one of the ventilators. The sea was running so high it was impossible to lower a boat or put the ship about, two lifebuoys were thrown to him but he failed to reach them, and in a short time sank and was not seen again. *Held*, that the ship was too deeply laden, and that the loss of the master was due partly to the violence of the gale and partly to her being so deeply laden. *The Hathersage*, No. 2837, Feb. 27, 1886.

See also Nos. 45, 49, 51, 53, 55, 57, *supra*; and Nos. 94, 98, 100, 104, 105, 110, 111, 114, 118, 123, *infra*.

(e) *Undermanned.**

80. Loss, with all hands, of the iron sailing ship *S.*, of 1,621 tons register, built in 1833. She left the East India Doeks on January 17, 1885, with a crew of twenty-eight hands, the master's wife, and a cargo of about 2,200 tons of general merchandize, bound to Calcutta, and at Gravesend took in about five tons of gunpowder which was placed in a magazine specially constructed for the purpose. *Held*, that the ship when she left this country was not sufficiently manned, but

* (11) As to cases of undermanned ships, see the evidence of H. C. Rothery, Esq., Wreck Commissioner, in First Report and

Evidence of the Royal Commission on Loss of Life at Sea, Sess. Paper, 1885, c. 4577, pp. 224, 225.

that there was nothing to show how she was lost. *The Shannon*, Feb. 12, 1886.

80a. Abandonment and loss of the iron screw steamship B., of 128 tons gross register, bound from the Tyne to Amsterdam, with a crew of five hands all told, and a cargo of 112 tons of machinery. On the second day of the voyage, the wind blowing a hard gale, the cargo shifted, and the vessel had a list to starboard. Soon afterwards the engine-room skylight with the tarpaulin attached was washed away, and the water came down into the engine-room in large quantities. On the following day there being 4 feet of water in the hold she was abandoned. *Held*, that she was unmanned, that the cargo was not properly secured from shifting, and that the loss of the vessel was due to the machinery in the hold having got adrift so as to damage the vessel causing her to make water, and that the abandonment was justifiable. *The Blanche*, No. 2740, November 26, 1885.

81. The C. was a British ship of 1,554 tons gross and 1,461 net register. She left San Francisco for Queenstown with a cargo of wheat and twenty-two hands. In the course of the voyage, the wind at the time blowing a fresh gale from the S.S.E. with a heavy cross sea, and the vessel making about nine knots an hour, while two of the crew were engaged in clearing the fore-sheet, they were washed overboard and drowned. *Held*, that the vessel was insufficiently manned. *The Cromartyshire*, Dec. 19, 1884.

See also Nos. 63, 64, 72, & 78, *supra*; and Nos. 123, 127, pp. 2497, 2498.

(f) *Cargo badly stowed.**

82. Abandonment and loss of the sailing vessel P., of 1,059.73 tons register. She left Dublin in November for Philadelphia, with 1,060 tons of old rails and 90 tons of scrap iron, 600 tons of which were placed in the lower hold, commencing at the fore part of the fore hatchway, and extending to the upper part of the after hatchway. On the between-deck beams 460 of the rails were stowed to a height of about 3½ feet, extending each way to within five feet of the extremities of the bottom of the cargo in the lower hold. On the between-deck beams, in addition

to the permanent midship stanchions, there was a stanchion on each side of the vessel under each beam of the deck, above and resting on a board laid upon the iron, and these extra stanchions were secured by cleats at top and bottom. The stanchions or shores in the lower hold from the top of the iron there to the between-deck beams were placed and secured in a similar manner, but were not put up until after 460 tons had been stowed on those beams, thus causing a heavy strain on the beam fastenings and upper works of the ship. In the beginning of December she encountered a succession of heavy gales, in which part of the cargo broke adrift, and the masts were carried away, and the vessel being thus disabled, was abandoned on the 12th December. *Held*, that the cargo was not properly stowed, nor the between-deck beams properly trimmed and supported, the cargo not being placed sufficiently high in the vessel (thus causing the centre of gravity to be too low), and the shores under the between-deck beams not being put in their places until after 460 tons of iron had been stowed on the beams. *Held*, further, that the centre of gravity being too low, led to the vessel's rolling and straining excessively in the rough weather, and the straining and leakage were aggravated by the improper shoring of the between-deck beams. The master exonerated from blame. *The Peruvian*, February 14, 1880.

83. Loss, with fourteen men, of the iron screw steamer P., of about 492 tons gross register, laden with 630 tons of pig iron, and bound from Middlesbrough for Grangemouth. She was last seen off the Souter Light, near the entrance to the Tyne, where she was afterwards found by divers. When fully loaded her draught of water was 13 ft. 10 in. forward, and 15 ft. 7 in. aft, and she had a freeboard of 1 ft. 10 in. The stowage of the pigs in the main and afterholds was proper, but in the forehold there were four tiers occupying a space of 15 to 16 ft. fore and aft of the hold. The hold was 41 ft. long, and as the tiers were placed in the after part close against the bulkhead, there would be an empty space of from 25 ft. to 26 ft. in front of them; all four tiers were of equal height, and came to within 2 ft. or 3 ft. of the maindeck; and as the height of the hold was about 13 ft., the

* (12) As to badly-stowed and badly-ballasted ships, *Ibid.* in *Ibid.* p. 81.

fore part of the tiers would stand straight up from the bottom of the hold to a height of from 10 ft. to 11 ft. The upper part of the three foremost tiers consisted of about 15 tons of pigs laid fore and aft, with the centre raised some 2 ft. above the wings, and not secured by cross bars or otherwise. *Held*, that this was a most insecure structure, and that if the vessel pitched violently, the upper part of the tiers would naturally get under way, and run into the empty space forward; but if the fore part of the tiers in the fore hold had been built in steps, like the after part of the tiers in the main hold, there would have been a better foothold, and less chance of shifting forward. The court considered it possible that the cargo in the fore hold shifted into the empty space forward, thus putting her down by the bows, and rendering it impossible for her to keep the sea against the strong gale then blowing, and making it necessary for her to run before the wind and sea for a place of shelter; that in trying to enter the Tyne she broached to, got broadside to the sea, and being unable to keep away, was overwhelmed by the heavy sea breaking at the entrance; that the vessel, with a freeboard of only 1 ft. 10 in., and a cargo which prevented her rising to the waves, would be unable to continue her course lest her cargo should shift laterally, and a sea break over her and swamp her, and unable to keep her head to sea lest the cargo in the fore hold should shift into the empty space forward, and this in a gale of wind not exceptionally violent; that the vessel was therefore not in a condition to meet the risks which she might reasonably anticipate on such a voyage and at such a season. No costs given. *The Prince*, April 23, 1877.

84. Loss of the iron sailing ship *G.*, of 1,477 tons register, laden with 2,049 tons of coal, and bound from Birkenhead for Bombay. Eight days after leaving port the vessel was struck by a heavy squall which threw her over on her port side. While the mizen mast and maintopmast were being cut away, the lower maintop-sail yard of steel fell, making a hole in the deck, through which the water poured in. The starboard lifeboat was then launched, and eight of the crew were saved, the master and remainder of the crew being lost with the vessel. *Held*, that the casualty was due to an empty space being left in the after part of the 'tween decks into which the cargo shifted; that the vessel was very fully laden, that

the cargo was not properly stowed, as there should have been a bulkhead abaft the coals in the 'tween decks to prevent them from shifting into the empty space aft, and that the freeboard of 4 feet 11 inches was hardly sufficient for a vessel of her size for a winter voyage. *The Galatea*, December 17, 1880.

85. Loss of the wooden vessel *L.*, of 889 tons register, laden with 1,200 tons of pig iron, and bound from Troon for Montreal in March. When 500 tons of the pig iron had been stowed, the captain ordered the stevedore to take in 350 tons more, and throw them down into the hold without stowing it, and 200 tons were thrown down the main hatchway, and 150 tons down the after hatchway. This was not stowed, and remained loose in two heaps. In addition, there were twenty tons of broken iron put loose under the fore hatch. On the 'tween deck beams (there being no deck laid) were stowed 350 tons of pig iron. The cargo was secured as follows:—At every beam, both in the lower hold and 'tween decks, there were four stanchions on each side of the permanent stanchion. These extra stanchions were of three-inch deal, and cleated top and bottom. Shortly after sailing, the *L.* met with strong north-westerly winds, and began to labour and roll, causing the cargo to shift on the 'tween decks, and fourteen days after leaving port she was found to be leaking in every part. Three days after she was abandoned. *Held*, that the cargo was not properly stowed, and might have been better secured, and that the master should have taken the *L.* to the nearest port when she was found to be labouring and rolling. *The Lebanon*, May 15, 1880.

86. Loss of the iron screw steamer *P.*, of 517 tons net register, bound from Newport, Monmouthshire, for Havre, laden with 983 tons of coal and about 124½ tons of bunker coal, of which about 24 or 25 tons was placed on the bridge above the bunker hatches, the bunkers being only capable of containing a little more than 100 tons. The weather became stormy, and early the next day the vessel took a sudden list to port, and finally went down, all the crew but one being drowned. *Held*, that the casualty was due to the vessel having fallen over on her side, probably owing to the large amount of bunker coal which was stowed on the bridge deck, that the master was chiefly to blame for allowing the coal to be so stowed, and that the managing owner was

also to blame for not having taken steps to prevent the coal being so placed. *The Pelton*, April 25, 1882.

87. Loss, with all hands, of the iron steamer G., of 604 tons register, bound from Gothenburg for London, with 1,200 tons of iron, stowed on a platform consisting of 2½ to 3 inch deals, upon which the iron was placed, the bars being secured from shifting by the pig iron being placed at the top of the bars. The skin of the ship was unprotected, no decks were laid, and the beams were neither tomed nor shored. *Held*, that the cargo was not properly stowed, but that there was no evidence to show the immediate cause of the loss. *The Galeed*, May 4, 1880.

88. There is great danger in constructing in the holds of vessels an upright wall of metal some ten or eleven feet high with a large open space before it and without any security against its falling forwards. *The Prince*, April 23, 1877.

89. It appeared to the wreck commissioner to be a good method of construction of vessels to carry heavy cargoes to have in the centre a trunk with the sides falling in towards the top of the hatchway, but for the trunk, instead of being close, to have open pillars ten inches apart, fitting into iron shoes fixed at the bottom and shored against the side, taking the iron high up in the ship, packed in an almost solid mass, but keeping the centre of gravity in the same place in the ship, and getting rid of all double or single chequers. *Ibid.*

90. Loss, with loss of life, of the H. B., a three-masted iron sailing ship of 1,642 tons gross register, bound from Lassem in Java to Queenstown, with a cargo of paraffin oil, in cases, and 2,532 tons of sugar. When off the east coast of South Africa, a sudden squall struck the vessel, throwing her upon her beam-ends with the lee rail under water. As she did not right herself the main and mizen topmasts were cut away, but the vessel remained in the same position till the next morning, when she turned bottom upwards and went down. Three of the crew had got into the life-boat and pushed off clear of the sinking vessel, and they picked up seven others including the master. *Held*, that the loss was due to the cargo having shifted owing to its not having been properly stowed. *The Hudson Bay*, No. 2848, March 12, 1886.

See also No. 68, *supra*; and No. 98, *infra*; and No. 127, p. 2498.

(g) *Improper Ballast.*

91. The owner and master of a ship lost from improper ballast, *held* to blame for not having seen that proper ballast was taken. The owner was ordered to pay £100 towards costs, and the master's certificate was suspended for three months. *The Golden Sea*, December 15, 1881.

92. Abandonment and loss of the wooden sailing ship, G. S., of 1,418 tons register, which left Bristol in October in ballast, on her return for St. John, N. B. On the 14th, she encountered a severe gale, during which the pumps became choked with ballast, and the vessel began to list heavily to port. The masts were cut away, but as the water increased, the master and crew abandoned the ship. The vessel was seventeen years old, and being found to be in a leaky condition, was overhauled before leaving St. John, but not in a very thorough manner. The ballast carried consisted of brick, stones, gravel, dirt, &c. This ballast being saturated with the water which got into the ship was reduced to mud, and soon choked the pumps. *Held*, that this ballast was altogether improper for a voyage across the Atlantic at that season of the year, and in a vessel with close floors without limbers, and that the master was to blame for allowing the vessel to be supplied with such ballast. The master's certificate was suspended for three months. The owner was also *held* to blame for not seeing that proper ballast was taken, and he was ordered to pay £100 towards costs. *Ibid.*

93. On an investigation into the stranding of a steamer, *held*, that the loss of the vessel was due partly to her having been sent to sea without being sufficiently ballasted, and partly to the unskilful navigation of the master. *The Beverly*, March 28, 1877.

(h) *Otherwise Unseaworthy.*

94. The S. was an iron steamer, schooner-rigged, of 397 tons gross register, with engines of fifty horse-power. She left the Tyne on the 14th October, bound for Plymouth, with a crew of fourteen hands and a cargo of 472 tons of coal, besides seventy-two tons of bunker coal, of which fifty-two tons were in the bunkers and the remainder in the fore hold. At the beginning of the voyage the master, finding that he could make no way against the wind, put back with the object of having the bottom cleaned, one of the furnace tubes bursting just as she arrived. She re-

mained there about ten days, during which time seven of the men, finding that nothing was to be done to her, refused to proceed any further, and were accordingly discharged. Fresh hands were thereupon engaged in their places, and she left Hartlepool with a crew of thirteen hands. She passed Flamborough Head, and, on the following day, the wind being from the east, she had to continue tacking to work off the Sand, and ran through Cockle Gat, being brought up at noon off Corton Church. It came on to blow harder, and water was found over the stokehole plates; both the cables then parted, and the captain ordered the engines to be started, but although they got a pressure of 25 lbs. in the boiler they could make no way against the wind and tide, and she began to drift to leeward. Ten minutes afterwards she struck on the N.E. point of the Newcome Sand, her head at the time pointing towards Lowestoft Ness Light. Signals for assistance were made by burning flares, but on the vessel striking, the captain at once ordered out the boats. They were all, however, stove in succession. One was launched, but no sooner did she touch the water than she became half-full. All the hands, with the exception of the one surviving witness, returned to the ship, under the belief that the lifeboat was coming to their assistance. The boat was afterwards upset, and the man reached the shore by swimming. The vessel herself came ashore at nearly the same place a complete wreck, and nothing more was ever seen or heard of the crew. *Held*, that the loss of the S. was due to the defective condition of her machinery, boiler, and cables, by which she was riding in Corton Roads. *Held*, further, that she was in an unseaworthy condition as regards her hull, equipments, and machinery, and was overladen, and that the managing owner was responsible for her having been sent to sea in that state. The court accordingly ordered him to pay £200 on account of the expenses of the inquiry. *The Secret*, No. 1613, December 13, 1882.

95. Loss by foundering, with loss of fourteen lives, of the iron screw-steamer M., of 408 tons register. On the previous voyage she struck something, but it was then thought no damage was done. After delivering her cargo, and being partly reladen, orders were given to pump out her after-ballast tank, which extended from the after-bulkhead of the engine-room to the run of the vessel, and formed a species of double bottom in that part.

On this being done a big dings was found in the port bilge, and the plates between the two frames were rent open wide enough to put open hands through. An unsuccessful attempt was made to stop the hole, and it was then decided to proceed on the voyage as she was. She did so; arrived at Santander, and delivered her cargo. She left Santander on the 8th of January with a crew of fifteen hands, and with 650 tons of iron ore, besides seventy tons of coal in her bunkers. On the 10th the vessel was on a N. $\frac{3}{4}$ E. course, the wind blowing a hard gale from the W.N.W. when the fore boom got adrift and swept away the bridge and ladders, and a ventilator just forward of the bridge. The captain ordered the helm hard down, which brought the ship up into the wind; and, having secured the fore boom, every effort was made to stop up the hole in the deck. Owing, however, to the quantity of water that was being shipped, it was found impossible to do so. The vessel was accordingly put before the wind, but the sea then lapped in on each side just forward of the break of the poop, washing away the men from the hole. It was afterwards found that the vessel was fast settling down, upon which she was abandoned. *Held*, that the loss of the vessel was due to the water having got into the hold through a hole made in the deck by the carrying away of one of the ventilators, but that the condition in which the vessel was sent to sea, with a hole in her bottom under the after-ballast tank, and the quantity of cargo which she had in her, in all probability contributed to the casualty, by taking away a large portion of the buoyancy of the after part, and preventing her from freeing herself, as she might otherwise have done of the water which came upon her deck; and that the owners, as well as the master, were responsible for the state in which the vessel was sent to sea, and consequently for her loss. *The Matador*, No. 2468, Feb. 18, 1885.

96. The S. was a small fishing smack of 38 tons gross register, and bound from Lowestoft on a fishing voyage in the North Sea. She left on the 18th of June, and was, on the 28th, about forty miles N.E. of the Leman and Ower lightship when the cabin floor was found to be under water. Pumping was commenced, but the water gained on the pumps, and, as the vessel was sinking, the master ordered the boat to be got out, and they had only just time to push off when the

vessel went down. *Held*, that the loss of the S. was due to her unseaworthy condition, and that the managing owner was responsible for having sent her, and the master for having taken her, to sea in that state. The court accordingly suspended the certificate of the master for twelve months. *The Superior*, No. 2243, July 19, 1884.

97. Loss, with all hands, of the iron screw steamer J., of 115 tons gross register, bound from Preston to Port Natal with a crew of ten hands, and about 61½ tons of coal on board. Having met with some strong contrary winds and stormy weather, she put in at several ports, and was last seen by a boatman belonging to the coastguard at Padstow. She was then about abreast of Trevoze Head, clear of the land; seas were breaking over her, the men on deck were running fore and aft, and volumes of steam and smoke were coming out of the funnel as if the seas had got down into the stokehole, and had partly swamped the fires. The engines had apparently been stopped, but were set on again, though she seemed to make little or no way. A heavy squall then came on; and it blew very heavily that night. The next day a ship similar to the J. was seen close to the land near St. Agnes Head; she got off Carter's rock, a little short of the next headland, and was then lost sight of. The same evening a hatch belonging to the J. was picked up in Porthcotham Bay, and a piece of a life-buoy. *Held*, that the vessel either foundered, or struck and went to pieces somewhere between St. Agnes and Trevoze Heads; that she was unfit to proceed to sea when she left Padstow, and that the owner was responsible for having sent her therefrom. He was accordingly condemned in £100, *nomine expensarum*. *The Jackal*, No. 1238, Jan. 20, 1882.

98. Loss by abandonment of the barque Y., of 298 tons register, built in 1854. On the 12th September, 1880, the Y. arrived at Shields on her return from a voyage to Spain and the Baltic, and on the 17th proceeded thence to Gloucester, her port of destination. She had on board a cargo of 250 tons of iron, and 110½ standards of deals. The 250 tons of iron consisted of square pieces two or three feet long, and laid in the bottom of the vessel on the ceiling right fore and aft, and rising only a little above the top of the keelson. After passing Beachy Head the provisions and oil ran short, and the crew was finally reduced to flour

and water. When off the coast of Cornwall a heavy gale was encountered, during which the sails were blown away, and the vessel began to leak, and was carried almost helpless up and down the coast, and on the 8th the master and crew abandoned her. *Held*, that the Y., when she left Gefe on her homeward voyage was not in a good and seaworthy condition; that her cargo was not properly stowed; that the iron should have been stowed by building it up in the centre with the deals on each side protected from the iron by wooden slabs; that the vessel was overladen; having regard to her state and condition and the weakness of her bottom; that there was not a sufficient quantity of provisions put on board at Gefe; that the vessel was not properly repaired on her arrival at Shields; that she was in the same unsatisfactory condition when she proceeded on her voyage to Gloucester; and that the master was not justified in neglecting to put into some port for repairs and provisions. The master's certificate cancelled. *Held*, also, that the owner was to blame for the casualty, and that he as well as the master was well aware of the unseaworthy condition of the vessel on leaving Shields, and he was condemned in £150 towards the costs. *The Yanikale*, November, 1880.

99. Damage by fire and stranding, and subsequent loss of the wooden barquentine F., of 318 tons gross register, built in 1864. In January, 1883, she left Greenock for Buenos Ayres with a cargo of 522 tons of coal and a crew of ten hands. The ship was delayed on her voyage, and the master was superseded by the owners while the vessel was in the port of Campbell Town. The crew on their own request were there discharged; new hands were found, but before leaving port they too asked for their discharge, as the vessel was even whilst in port making more water than she should do. The master, however, persuaded them to remain on board, and the vessel proceeded on her voyage. When near the Isle of Wight, the crew requested the captain to put back to a port of safety, as the vessel was making so much water. The captain refused, and the crew accordingly did no more work except one man at the helm. The weather became worse, and the vessel was drifting before the gale with her sails all loose, heading to the eastward. After seven hours the crew set to work again with the mate,

who agreed to steer them to port; but while they were at the pumps the captain insisted on going on to Buenos Ayres. The ship, making so much water, the crew dared not to leave the pumps. The gale increased in the night, and most of the sails were lost. The next morning the crew refused to proceed on the voyage, and the ship was brought into Loch Ryan, opposite Cairn village. There the chief officer of the coast-guard went on board. Next morning the ship was discovered to be on fire; some attempts were made by the crew to extinguish the flames, but on the smoke and fire decreasing, the captain ordered them to leave off and get out the long-boat. No attempt was made to ascertain how the fire originated, and no signal was made to the shore for assistance. On the fire again bursting out, a few things were rescued from the cabin. The custom-house officer, with some eight hands from shore, then boarded the vessel, and, after some resistance on the part of the master, took charge of her, and beached her opposite the village. Shortly afterwards, however, she slipped off the bank into deep water, and both vessel and cargo were totally lost. *Held*, that the vessel was unseaworthy; that the master and owner were responsible for her being at sea. The master's certificate was therefore cancelled for his misconduct and for drunkenness, but no order was made as to costs. *The Falcon*, No. 1744, 23rd March, 1883.

100. Abandonment of the iron screw steamer *E.*, of 137 tons gross register, bound from London for Dumfries, with a cargo of 152 tons of patent manure, and above thirty tons of bunker coal, and having a crew of seven hands. Shortly after leaving Portland, where she had put in owing to stress of weather, she began to leak, and the pumps becoming choked, the water rose a foot above the stoke-hole plates. She was accordingly steered for Falmouth, where the surveyor to the Board of Trade came on board, and, after examining the vessel, informed the captain that she was, in his opinion, too deeply laden, and that he would report her to the Board of Trade. The captain, however, got the vessel under weigh, and proceeded on his voyage. Off the entrance to Holyhead Bay the rod of the air-pump broke, and the vessel was brought up in about 10 fathoms of water near Ravensglass. The vessel having but one boat, the master and the whole of the crew got into it, and went ashore.

The master hired a steam-tug at Maryport, and on the following morning went with the tug to look for the ship, which was nowhere to be seen, and must have gone down during the night. *Held*, that it was doubtful whether the ship was in a seaworthy condition, that she was not properly found in boats, that she was overladen, and that the master was conscious of the fact. *The Express*, No. 894, February 1, 1881.

101. *Held*, further, that the master was not justified in abandoning the ship, or leaving her at anchor without a light. His certificate was accordingly suspended for six months, but he was allowed a first mate's certificate during that time. The court made no order as to costs. *Ibid*.

102. For particulars, see No. 59, p. 2482. *Held*, that the master left port without being properly supplied with sails, that he was not justified in going to sea without his foretopsail being properly repaired, and that he ought to have informed his owners if the square foresail was not in good condition. *The Kate*, No. 167, December 12, 1877.

103. The *S.* was a barque of 277 tons gross register, built in the year 1841, bound from Lisbon for Garston in the Mersey, and laden with a cargo of about 400 tons of phosphate of lime. She left Lisbon in September in fine weather, but had to be pumped out every two hours, and on encountering a gale began to make a good deal more water. Later on the mainmast with all the gear attached was carried away, and before it could be cut adrift, struck the vessel under the quarter, causing her to make still more water. The master, however, refused assistance, and the vessel was blown off the coast, but on the 22nd was off Crookhaven, when the crew came aft and requested the master to put in; he refused, and the crew, for the safety of their lives, again went to the pumps. Soon after the foretop and the foretop-gallant masts were carried away with the foremast head, and as the pumps were choked with the cargo which had got into the well; the men exhausted, and the vessel had at least 3 feet of water in her, the whole of the crew were transferred to a vessel which came up, and landed them at Newport, with the exception of the master. *Held*, that the *S.*, when she left Lisbon, was not in a good and seaworthy condition, that the master was not justified in refusing assistance off Cape Clear

and in not endeavouring to put into Crookhaven. That she was not navigated with proper and seamanlike care, that the abandonment of the vessel when it took place was justifiable, that the chief blame attached to the master who was the principal owner, and had the entire management of the ship. No order made as to costs. *The Salopian*, No. 798, November 20, 1880.

104. Loss by abandonment of the Q., a small wooden brig of 193 tons register, which, on the 2nd January, 1882, sailed from Coosaw, in the Bull River, South Carolina, for Belfast, with a cargo of about 351 tons of phosphate rock. About the 12th, bad weather set in, and the vessel began to make water, the crew having to be almost constantly at the pumps. On the 1st February, the master and crew abandoned their ship, which shortly afterwards was picked up with only 10 inches of water in her and taken to Fayal. *Held*, that the Q. was overladen, and not in a good and seaworthy condition on leaving Newport for Brazil on the outward voyage, nor on leaving Bull River on the homeward voyage, and that the master and managing owner were to blame, but no order made as to costs. *The Queen Emma*, March, 1882.

105. The iron screw steamer S., of 487 tons net register, built in 1865, was originally a double well-decked vessel, but in 1870 her after-well was covered in, and she was taken off Lloyd's list. She left the Tyne on the 11th December, 1883, bound for Cadiz, with a cargo of nearly 908 tons of coal, including bunker coal, and was not afterwards heard of. *Held*, that the sides of the space formed by covering the after-well should have been strengthened, and that the vessel left port unseaworthy, being very heavily laden, 4 feet down by the stern, and having a deck erection aft of insufficient strength. *The Staffa*, February, 1884.

106. Stranding, with loss of life, of an old wooden schooner of 57 tons, built in 1838, and bound from Sunderland to Bonar Bridge, in Sutherlandshire, with a crew of three hands, and a cargo of 84 tons of coal. She left Sunderland on Nov. 20, 1882; was seen off Roseheart Point dismasted, with a flag of distress flying from a short staff, and drifting before a gale from the N.W. She struck on the rocks west of Sandhaven, and settled down. The crew were washed overboard, the sea making a clean breach

over her, and in about half-an-hour she went to pieces. *Held*, that the loss of the ship and those on board was due to her unseaworthy condition, and that the owner was greatly to blame for having sent her to sea in that state. *The Acheen*, No. 1670, Jan. 29, 1883.

107. Loss of the wooden barque O., of 340 tons, laden with 505 tons of coal, and bound from Cardiff for Algoa Bay. During a continuance of bad weather, the vessel made a quantity of water, and on the return voyage water was found in the lazarette, coming in through a hole in the ship's side. The master was standing close by when the discovery was made, and, being suspected of an attempt to scuttle the ship, was placed under restraint by the mate and crew. *Held*, that the ship was not in a seaworthy condition when she left port, and that the owner was responsible for not seeing to her condition and remedying defects. The court ordered him to pay £100 towards costs. *The Oleander*, Feb. 1883.

108. The M. was a screw steamer built of steel, of 513 tons net register, bound from London for Singapore, with a cargo of telegraph cable and other stores, and 223 tons of coal, making a total dead weight of 708 tons. She left Greenwich with a crew of forty hands and nine passengers. The pilot left her off Portland, and she has not been heard of since. The vessel, which was to be stationed at Singapore, had been constructed with a view to being used for picking up and repairing cables on that station, and also as a residence for the officials of the telegraph company. There was consequently on the main deck, and running down the sides of the vessel, a row of houses more than a hundred feet long, with ten doors and seventeen windows on each side opening into the alley ways. *Held*, that the loss was probably due to these large openings in her sides, through which the sea would, deeply laden as she was, be liable to enter and burst in some of the doors or windows of the deck houses, and fill the ship. *The Magneta*, No. 2566, June 4, 1885.

See also Nos. 35—37a, p. 2477; Nos. 53, 62, and 66, *supra*, and Nos. 110, 124, *infra*.

108a. As to the implied warranty of seaworthiness by the ship owner for the carriage of goods, see tit. GOODS, CARRIAGE OF—, pp. 491, 520; and as to seaworthiness in reference to insurance, tit. MARINE INSURANCE, p. 987.

Part IV.—PASSENGER SHIPS.

1. Generally* (and see p. 1273).

11. *Emigration Officers* (and see p. 1281).

108*b*. As to the transfer of the powers of emigration officers to the Board of Trade, see tit. TRADE, BOARD OF—, p. 2247, No. 4.

22. *Anchors and Cables* (and see p. 1243).

109. See as to anchors and chain cables, tit. TRADE, BOARD OF—, Pt. II. c. 13, p. 2258.

26. *Ships, Boats, Rafts, and Life Buoys* † (and see p. 1295).34. *Medical Stores.*1. *Generally* ‡ (and see p. 1299).

Part V.—DECK AND GRAIN CARGOES AND DANGEROUS GOODS.

1. *Deck Cargoes.*1. *Generally* § (and see p. 1323).6. *Inquiries.*(a) *Generally.*

110. Loss of the sailing ship *B.*, of 290·96 tons register, built in 1873. In November, 1879, she was surveyed for Lloyd's and her classification was sus-

pending. In December, 1879, she sailed for Wilmington, U.S., and then loaded a cargo of 2,762 barrels of resin, 861,940 lbs. weight. She also carried a deck load of two large spars of timber, and in addition a quantity of other timber. The vessel finally sailed from Smithville on the 20th January, 1880, and has not since been heard of. *Held*, that the *B.* was not in a good and seaworthy condition when she sailed from London, and that the carrying on deck of such a heavy load, especially at such a season of the year was improper, and that with the deck load the vessel was overladen. *The Blackpool*, 25th November, 1880.

See also No. 33, p. 2478.

2. *Grain Cargoes in British Ships generally.*6. *Inquiries.*(a) *Generally.* ||

111. For the statutory provisions regulating the carriage of grain cargoes in British ships generally, and from particular parts, see tit. OWNERS, Pt. V. cc. 2 and 3, pp. 1325—1329.

111*a*. As to the wreck commissioner's and other courts for inquiries into casualties to such ships, see tit. SHIPPING CASUALTIES INVESTIGATIONS, c. 3, p. 2198.

111*b*. As to the cancellation or suspension of certificates of masters and mates generally, *Ibid.* p. 2204.

111*c*. Abandonment and loss of the steamer *D.*, of 744 tons register, which sailed from Copenhagen for London in December, with about 1,480 tons of wheat. On the 24th she encountered a heavy gale, which increased to a hurricane. On

* (13) For American provisions as to steamers carrying passengers and steamers generally, and their periodical inspection, see Regulations of Board of Supervising Inspectors, revised to February, 1886, pp. 11—42, and pp. 52—56. [AMERICAN.]

† (14) For American provisions as to life-boats, and boats to steamers, life-rafts, rafts, floats, and life-preservers, *Ibid.* pp. 25—27, and pp. 52—54. [AMERICAN.]

‡ (15) For the scale of medicines, medical stores, and instruments for passenger ships, other than steam ships engaged in the North Atlantic trade, see Board of Trade Instructions to Superintendents of Mercantile Marine Offices, revised October, 1884.

(15*a*) For the same for North Atlantic steam

ships, *Ibid.*, revised October, 1885.

§ (16) As to the duties of consuls at certain ports in North America in regard to sending to the Board of Trade reports as to deck cargoes in ships from such ports; as to the consul having no power to enforce information for such reports, but as to his duty to call a naval court if he has reason to believe a vessel is so loaded as to cause risk to human life, see Board of Trade Instructions to Consuls, of June, 1885.

|| (16*a*) As to grain cargoes, see evidence of the Wreck Commissioner before the Royal Commission on Loss of Life at Sea, First Report and Evidence, Sess. Paper, 1885, c. 4577, p. 220.

the 25th a list to port, which had already been observed, increased so much that the vessel became unmanageable, and in consequence of the severe injury which she sustained through shipping a heavy sea she was abandoned. *Held*, that the loss of the ship was due to—(1) defective construction; (2) to overloading; (3) to insufficient depth of the shifting boards; and (4) to the sluices between the engine-room and main hold having been left open. As to No. 1, the vessel had two holds, under which were ballast tanks, which (the vessel being laden) were empty. Above the tonnage deck she had erections of different kinds, with a capacity of above 203 tons, and with a tonnage under the tonnage deck of only 953 tons. The main deck, which was uncovered, was flanked with solid iron bulwarks, liable to catch any seas breaking over the bows. As to No. 2, there was a freeboard of only about 1 $\frac{3}{4}$ inches. As to No. 3, the court, from the evidence, inferred that the shifting boards extended only between 4 and 5 feet from the deck, and that in consequence of this defect the cargo shifted, and this was the proximate cause of the casualty. The wreck commissioner observed that cargo in bulk could also be prevented from shifting by having two rows of bulkheads. He also referred to the stowage regulations in force at Montreal and New York, which do not allow any ship exceeding 400 tons to be loaded entirely with grain in bulk, and he suggested that some such regulation might be necessary in the case of large Baltic steamers. As to No. 4, the court considered that it was the duty of the master to see that the sluices were in proper working order, and could be readily closed when necessary, and that he neglected to do this. *Held*, further, that for the acts and omissions which led to the loss of the vessel the master and owner were almost equally culpable. The court intimated it had no power to deal with the owner, but it considered the master greatly to blame for the overloading; for the insufficiency of the shifting boards; and for not attending to the sluices; and they therefore suspended his certificate for six months. *The Danae*, 29th January, 1878.

112. Abandonment of a vessel laden with wheat, stowed partly in bulk and partly in bags. The cargo shifted through the giving way of a temporary wooden bulkhead fitted in the main hold. The vessel had no shifting boards, and the

bags were not laid on top of the grain. *Held*, that the casualty was owing to the shifting of the cargo, and that the ship had not been properly laden as required by sect. 22 of the M. S. Act, 1876 (c. 80), and that the master was in default for fitting an insufficient bulkhead and not taking more sufficient means to prevent the cargo from shifting, and his certificate suspended for six months. *The Alfonso*, 7th January, 1880.

113. The mate reprimanded for neglecting to see that the temporary bulkhead was properly fixed before taking in cargo. *Ibid*.

114. Loss with all hands of the iron screw steamer *M.*, a well-decked ship of 882 tons register. She left New York in September bound for Marseilles, with 60,702 bushels of wheat, of which 50,503 were in bulk and 10,199 in bags, and 300 tons of bunker coal, making in all 1,927 tons of dead weight, her freeboard being 2 feet 5 $\frac{1}{2}$ inches, she has not since been heard of. *Held*, that the loss was due to her having been too deeply laden, having regard to her construction and to the well-deck with which she was fitted. *The Mildred*, 10th February, 1881.

114a. *Held*, that vessels with a "well-deck" carrying grain, are not, if deeply laden, adapted for the Atlantic trade, especially in winter. *Ibid*.

115. In the case of grain ships of over 400 tons, the load draught must be regulated by the depth of the hold, allowing three inches to every foot depth of hold, measured from the lowest line of deck amidships to the water when upright. *Held*, that a vessel with such a cargo of grain and at such a time of the year (October) ought to have had a freeboard of four feet instead of twenty-six inches. *The Damietta*, November 14, 1877.

115a. As to the carriage of bags of grain, see No. 62, p. 2483.

(b) *Instability.*

116. Abandonment of the iron screw steamer *B.*, of 1,944 tons gross register, laden with 12,760 quarters of grain, partly barley and partly rye, and bound from Sùlina to Antwerp. At Malta, the master took in about 264 tons of coal and twenty-five sacks of barley. Shortly after passing Cape Finisterre she met with bad weather, a very heavy sea broke on board, stove in the deck houses, galley and engine-room skylight, and letting tons of water down into the engine-room. Steps

were taken to stop up the hole, but the men were swept away from it, the sea making a complete breach over her. The water continued to rise in the engine-room, and the fires having been put out the vessel fell off into the trough of the sea. The crew then began to bale her and continued baling through the night. In the morning they abandoned the ship and boarded the *S. Held*, that the vessel had not sufficient stability for the carriage of a full cargo of grain; that her loss was not due to the master neglecting to secure the cargo from shifting, as required by sect. 22 of the M. S. Act, 1876 (c. 80), or to his taking the vessel to sea too deeply laden, but rather to the vessel's defective construction, and to her great depth in proportion to beam. *The Emblehope*, No. 516, February 14, 1880.

117. The *T.* was an iron screw steamer of 1,839 tons gross register, laden with 2,293 tons of cotton seed, and bound from Alexandria to Hull, with a crew of twenty-six hands. The vessel met with bad weather off Cape Finisterre and was struck by a very heavy sea. The wind and sea continued to increase in force, and the engines had to be stopped, the vessel at the time having a considerable list to port. She immediately fell off with her starboard broadside to the wind and sea. Soon afterwards water was observed coming into the engine-room, over the top of the door on the port side, showing that there was at least five feet of water in the No. 2 hold. The vessel continued to heel over more and more until she was gunwale under. The crew continued pumping during the night but without being able to clear the holds. Some of the bulwarks and stanchions on the port side were carried away, there being at the time a great weight of water on the deck. Some of the cargo was cleared away, and the vessel did not fall over any further but appeared to be somewhat lighter. On the engines, however, being stopped she again fell off into the trough of the sea, and the top of the rail was nearly on a level with the water. All hands then left her and she must have foundered soon afterwards. *Held*, that the loss of the ship was principally due to her unstable character, and to her having been too deeply laden; that the master was partly to blame for having placed additional weight above the mean centre of gravity of the ship, machinery and petty officers' quarters with seed, such

space not having been originally intended for the reception of cargo, and for neglecting to replenish his coal bunkers at Gibraltar, but his certificate was not dealt with. *The Tiara*, No. 518, February 14, 1880.

118. Loss, with all hands but one, of the iron screw steamer *H.* of 618 tons register. She left Odessa in August with a full cargo of barley, bound for Bristol. After passing Gibraltar the vessel was observed to have a list to starboard, which increased, until having shipped a very heavy sea, she heeled over with her rail under water, and subsequently turned bottom upwards. *Held*, that the shifting boards, going from the upper deck to the hold beams, were not carried sufficiently low; that the vessel was very deeply laden, having a freeboard of only one foot seven inches; that looking to the construction of the vessel as a well-decked ship, the height of her empty ballast tanks, and her low freeboard, she had not sufficient stability. *The Hardwick*, December 8, 1880.

119. The iron screw steamer *J. P.* of 1,170 tons register, sailed from New York in September, laden with grain for Marseilles, with a crew of twenty-six hands, and has not been heard of since. *Held*, that there was nothing to show that the vessel was not in good condition, or that the cargo was improperly stowed. In connexion, however, with the fact that the vessel had a very small margin of stability, the court noticed that whilst the grain in the fore and main lower holds was in bulk, that in the fore 'tween decks was in bags, and so stowed that there was no security against their falling into an empty space forward, if the vessel got into a heavy sea; and that, although there were double rows of stanchions from the upper deck to the hold, below the beams there was only a single row of stanchions, so that if the shifting boards extended below the hold beams it would be very difficult if not impossible to secure them effectually. *Held*, therefore, that, having regard to her construction, and to the height of the water ballast tank in her fore hold, the vessel as laden had not sufficient stability, and that she probably foundered in bad weather owing to this cause. *The Joseph Pease*, July 9, 1880.

See also No. 128, p. 2498.

(c) *Shifting Boards.*

120. The legislature throws the obli-

gation upon the master, as well as upon the owner, of seeing that in grain cargoes the grain is properly secured by shifting boards or bulkheads. *The Damietta*, No. 157, 14th November, 1877.

120a. In grain cargoes of ships of over 400 tons register, the shifting planks should be fitted tight under and between the beams and earlines, and should extend not less than six feet downwards. Stevens on Average, quoted, with approval, by the wreck commissioner. *Ibid.*

121. In cases where almost the whole of the cargo consists of grain in bulk, it may be questionable whether the shifting boards should not go from top to bottom; at any rate they ought not to be less than six feet downwards. *Ibid.*

121a. Six hundred tons of the wheat were stowed in bulk in the main hold, about fifty tons in the fore hold, and the remainder, about 250 tons, in the after hold. The depth of the hold from tonnage deck to ceiling amidships was 16 feet 3 inches; and the vessel had shifting boards in the main hold and in the fore part of the after hold, but none in the fore hold. Both in the main and after holds the shifting boards were composed of five planks each, from nine to ten inches broad, giving a total depth of about four feet, or four feet six inches down, instead of a minimum depth of six feet. The after hold was divided into two parts by a bulkhead across the ship, going down below the hold beams; forward of this bulkhead, grain in bulk was filled in right up to the deck, but aft of it the grain in bulk rose to about the hold beams; above this was laid one tier of grain in sacks, and above that were coils of rope and ship gear. On Friday the after hatch and the fore hatch were opened for the purpose of taking out the sails, cordage, and other things to assist the fires. At that time there was no displacement of cargo nor any list, but after this a slight list took place. *Held*, that the shifting boards and the arrangements in the after hold were defective, and were not such as would insure the cargo against shifting in such weather as might naturally be expected. *Ibid.*

122. Abandonment and loss of the ship *L.*, of 71,223 tons register, which sailed from Philadelphia in October for Limerick, with a cargo of 5,257 quarters of maize in bulk. On the 2nd November, the vessel was struck by a heavy squall, throwing her on her beam ends, and causing the cargo to shift. During the gale

which continued considerable damage was done, and the pumps becoming choked, the vessel was abandoned. The vessel had been fitted with three shifting boards between the fore and main hatches, extending from the beams about 2 ft. 6 ins. They were $1\frac{1}{4}$ to $1\frac{1}{2}$ inch boards, and nailed double on each side of the stanchions, and trimmed off at an angle of about 45° , and cleated top and bottom. In the way of the main-hatch they were shored from the bilge. There was no lower deck laid. In the 'tween decks there were shifting boards fitted from the beams to the upper deck secured in a similar manner. The cargo was not properly trimmed, as from twenty to thirty tons had to be shifted aft, leaving one empty space in the fore hold, and when the shifting boards gave way, there was nothing to prevent the grain from shifting and eventually settling. Had some of the cargo been shipped in bags and placed over the grain in bulk this might have been prevented. *Held*, that the abandonment was justifiable, but that the shifting boards were insufficient to withstand the heavy weather which might have been anticipated at that season of the year. *The Impero*, December 31, 1880.

123. For facts, see No. 67, p. 2484. *Held*, that the shifting boards in the poop and after hold did not comply with the regulations which require that there shall be longitudinal shifting boards from end to end and from top to bottom of each of the holds. The master was blamed for not having proper shifting boards. *The Calliope*, January 13, 1882.

124. Loss, with all hands, of the iron screw steamer *T.*, of 1,130 tons register. She sailed from New York in October for Antwerp with 84,314 bushels of grain (chiefly Indian corn), and has not been heard of since. *Held*, that when the vessel left New York her crank shaft was damaged, but was repaired on the voyage, and that, though repaired, she was unseaworthy in that respect. *Held*, also, that the cargo was not properly stowed, the grain in the lower hold being in bulk, whilst that in the 'tween decks was in bags, so that as the cargo settled in the lower hold it would leave an empty space immediately below the 'tween decks. *Held*, also, that the shifting boards were not sufficient, being only carried down to the hold beams instead of to the keelson, at all events, in the fore and main holds. *Held*, also, that the loss of the vessel was principally

due to her being disabled by the failure of her crank shaft, and to the shifting of cargo owing to the insufficiency of the shifting boards, and to no means having been provided to feed the lower holds as the cargo settled. *The Telford*, July 10, 1880.

125. Abandonment and loss of the iron barque *K.*, of 795 tons register, which left New York in August on a voyage to Liverpool, with 43,750 bushels of corn and 789 bales of cotton. Shortly after the vessel had sailed the cargo shifted on two or three occasions, and had to be readjusted. On the 6th October a gale came on, during which the vessel was thrown on her beam ends, and lost her main and foremasts. The cargo completely shifted, and the master abandoned the ship. She was subsequently boarded by the boatswain and three seamen of the *B.*, by whom she was taken to Falmouth. *Held*, that the cargo was not properly stowed according to the New York rules, the grain being carried wholly in bulk, and more than 12,000 bushels being stowed in one compartment; that the wooden stanchions or uprights to which the shifting boards were nailed were not secured at top and bottom, and that the shifting boards were not carried to the upper deck. The master was held responsible for the defective stowage and premature abandonment, and his certificate suspended for six months. *The Killeena*, November 24, 1880.

126. Loss of the iron screw steamer *A. A.*, of 753 tons register. On the 16th November she left Cronstadt for London with a cargo of about 1,200 tons of grain (wheat and oats) and 115 tons of bunker coal. After passing Copenhagen she encountered a heavy gale, during which she took a list to starboard, and the cargo constantly shifted. The gale increased, and the vessel was struck by a tremendous sea, which caused serious damage, and she lay over on her starboard side and was abandoned. *Held*, that the shifting boards were not sufficient for the purpose; that there was a space of from nine to ten feet long in the fore part of the fore 'tween decks, and a like space in the fore part of the after 'tween decks, where there were no shifting boards at all, and in the after part of the fore hold in the lower hold, and in the 'tween decks there were also for a length of some three to four feet no shifting boards; that the shifting boards were improperly secured, and that there were no beam fittings in the 'tween

decks. The master *held* to be in default for the defective stowage of the cargo, and his certificate suspended for six months. *The Annie Arbib*, January 6, 1882.

See also tit. OWNERS, Pt. V. p. 1326, Nos. 1240—1252.

2a. Rice.

1. Inquiries.

(a) *Bad Stowage.*

127. Loss, with all hands, of the wooden sailing ship *E.*, of 1,225 tons register, on the 28th April, 1879, bound from Bassein to Queenstown, laden with 1,679 tons of rice. She left on the 28th of April, and on the 7th May she sprang a leak, and was afterwards fallen in with by a vessel which rendered assistance towards stopping the leak, but was not heard of after the 22nd. *Held*, that the *E.* had too heavy a cargo, considering that she was about to round the Cape of Good Hope in the depth of winter; that the cargo was not properly stowed, and that the system of forming ventilating tunnels with the bags of rice without any support to the sides was not a proper or safe system; that the bags, or at least every alternate tier, should be stowed athwartships or a-burton rather than fore and aft or as longers; that box ventilators are better, and less liable to collapse and so set the cargo in motion, than ventilating tunnels without supports to the sides. That although bags of rice, if not filled quite so full, might lie closer and be less liable to shift, there is no reason why, if stowed a-burton, they should not be capable of efficient stowage. The court attributed the loss to the quantity of cargo on board, and to the mode in which it was stowed. *The Essex*, July 31, 1880.

2b. Manganese.

1. Inquiries.

(a) *Generally.*

127a. *Held*, that manganese waste is a dangerous cargo to carry without proper means to prevent its shifting. *The Bruce*, 22nd February, 1882.

128. The iron screw steamer *B.*, of 45.81 tons register, left Irvine in January for Port Dundas with 100 tons of manganese. When about one and a half miles outside the bar the master put the helm up, and on bringing the sea abeam the vessel heeled to starboard and cap-

sized. The boat into which some of the crew managed to get also capsized, and all hands were drowned except the master. *Held*, that the vessel, laden with a semi-fluid cargo, with nothing to prevent its shifting, had not sufficient stability, and that when she lurched to starboard the whole cargo must have gone bodily over to leeward. *Ibid.*

3. Grain Cargoes in British Ships from particular Ports (and see p. 1325).

7. Exemption of Ships loaded under Board of Trade Rules.

(b) *Board of Trade Rules** (and see p. 1326).

129. For the Board of Trade Official Notice of 1882 as to grain cargoes set out on p. 1326 in No. 1246, and the first and second schedules therein referred to, there have been substituted the Board of Trade Official Notices of 1886, and Schedules Nos. I.—VIII.

129a. The several regulations mentioned in note 421, on p. 1326, as contained in the first schedule of the Board of Trade Official Notice of 1882 are the same as those contained in Schedules Nos. I.—VIII. to the Board of Trade Official Notices of 1886, including the Canadian Acts for the lading of grain in ships in the ports of Montreal and Quebec, May 12, 1863, Sept. 18, 1865, April 14, 1871, and May 3, 1873. See Board of Trade Official Notices, Nos. I.—VIII. as to Grain Cargoes, 1886, pp. 5—47.

130. In all cases where the regulations as to stowage of grain cargo set forth in the first schedule do not contain the express provisions contained in this second schedule, then such of the following regulations, if any, as are not so contained must also be complied with. If such of these regulations as may not be included

in those of the first schedule are not also complied with then the precautions required by the M. S. (Carriage of Grain) Act, 1880 (c. 43), must be taken. See Second Schedule to Board of Trade Official Notices of 1886, p. 4.

130a. Shifting boards must extend to the keelson. *Ibid.*

131. There shall not be carried between the decks, or, if the ship has more than two decks, between the main and upper decks any grain in bulk, except what may be necessary for feeding the cargo in the hold, and is carried in properly-conducted feeders. *Ibid.*

131a. Grain carried in bulk must be supplied by proper feeders, or else secured by bags of grain, or other cargo. *Ibid.*

132. The Board of Trade Rules or Official Notices contained in Nos. 1246—1251, on pp. 1326—1328, are re-issued in the Board of Trade Official Notices of 1886, p. 48—54.

132a. But, with regard to the Official Notice set out on p. 1327, No. 1247, cotton seed being now shipped at Mediterranean and Black Sea ports in a cleaned instead of an uncleaned state, that notice is withdrawn as from December 1, 1885, as far as regards cotton seed, but remains in force as regards oats. See Official Notice of September 23, 1885, in Board of Trade Official Notices of 1886, p. 55. But this notice is temporarily suspended. *Ibid.*

132b. In the case of vessels, having two or more decks, loading a cargo of oats or cotton seed at a port in the Mediterranean or Black Sea and bound to ports outside the Straits of Gibraltar, oats or cotton seed may be carried in bulk between the decks, provided (1) that the between decks' hatches shall not at any time be put on; and (2) that the strakes of the deck shall be lifted, or, if the deck is an iron deck, sufficient openings shall be provided to admit of the cargo in the between decks feeding the lower hold; and (3) that the precautions specified in

* (17) For some slight amendments of the New York Underwriters' Rules since October, 1876; for the Rules of July, 1880, of Vining's Bureau of Inspection for vessels loading grain and general cargoes in the ports of New York, Baltimore, Philadelphia, and Boston, under such inspection; for the regulations of February, 1874, of the Orient Mutual Insurance Company of Baltimore as to loading grain from United States, Atlantic ports, to ports of Europe; for regulations of Septem-

ber, 1879, of the Phoenix Insurance Company of Boston for vessels loading grain from and to such ports; for the regulations of July, 1876, of the Board of Underwriters of Philadelphia for vessels loading grain, see Rules and Regulations for the stowage of grain cargoes, published by Ainsley, South Shields.

(17a) For the specifications for hiring vessels for grain in bulk in Montreal, see Board of Trade Official Notices of 1886, p. 44.

sections 4 (c) and 4 (d) of the M. S. (Carriage of Grain) Act, 1880 (for which see Nos. 1242 and 1243, on p. 1326), be adopted. See Official Notice of January 1, 1886, No. 314 of 1886, in Board of Trade Official Notices of 1886, p. 56.

133. The last-mentioned notice remains in force until December 31, 1886, when it will be continued or modified as circumstances may require. It suspends the Official Notice of September 23, 1885, in No. 132*a*, *supra*.

133*a*. For the regulations of November 13, 1879, in force in Adelaide, South Australia, for loading in the ports of that country grain and flour cargoes, see Board of Trade Official Notices of 1886, p. 57.

133*b*. For extracts from German rules—Koenigsberg—as to loading ballast or loose cargoes, and for the Berlin rules of the International Underwriters' Association as to stowage of cargoes of grain and general merchandize, see Board of Trade Official Notices of 1886, pp. 58—63.

4. Explosive Substances and Dangerous Goods.

1. Generally* (and see p. 1329).

* (18) For further provisions as to the carriage of explosives in ships, and embodying previous instructions thereon, the definition of explosives into classes, the particulars of such classes, and the general rules for packing them, see Board of Trade Instructions to its principal officers of August, 1877.

(19) Dynamite in small quantities, and when it is in the ordinary plastic state, may be burned without the occurrence of an explosion; the flame produced by it being, however, an extremely fierce one. In a frozen state, and it freezes in very moderate cold weather, *i. e.*, considerably above 32° F., even very small quantities are liable to explode when set fire to. Large quantities of dynamite, if exposed to an intense heat, would be very likely to explode violently, and it is consequently desirable to stow dynamite in the most easily accessible part of a ship, proper precautions being taken to keep it dry. Minute by Professor Abel in Board of Trade Instructions to principal detaining and other officers, January, 1886.

(20) Dynamite should be stowed in the square of the [hatch] hatches. It should be efficiently covered with tarpaulins, and every other necessary precaution should be taken to keep it dry. In the event of such pre-

9. Inquiries.

(a) Gunpowder.

134. The composition of gunpowder and patent wood gunpowder fully considered in *The Great Queensland*, 21st July, 1877.

134*a*. Loss, with all hands, of the three-masted iron sailing ship the *G. Q.*, of 1,793 tons gross register. She left the East India Docks on a voyage to Melbourne, laden with a cargo of about 2,300 tons of general merchandise, twelve second, and twenty-one steerage passengers, and a crew of thirty-six hands. Off Gravesend she took in about thirty-four tons of gunpowder, and on the 6th of August proceeded on her voyage, and was last seen in about latitude 48° N. and longitude 9° W. The gunpowder and the explosives which she had on board consisted of about thirty tons of ordinary black gunpowder, two tons of patent wood powder, four kegs of fuses, three kegs of percussion caps, four kegs of foreign detonators, and two small packages of sample detonators. The fuses, caps, and sample detonators were stowed in the 'tween decks. The four kegs of detonators were placed in the berth of one of the cabins in the saloon under the control of

cautions not being taken, the vessel is to be deemed improperly loaded, and provisionally detained as unsafe. *Ibid*.

(21) The attention of the Board of Trade has recently been called to the practice existing, it appears, chiefly on the Clyde, of stowing dangerous acids under deck in vessels carrying inflammable and other cargoes, although the greatest care may be exercised in the stowage of dangerous acids in a vessel's 'tween decks; the practice is one likely to endanger the safety of the ship, and may render the ship liable to be provisionally detained as unsafe. Board of Trade Official Caution Handbill, No. 66, May, 1885.

(22) For provisions as to combustible and dangerous goods, their conveyance, loading, and unloading, for the marking, removal, and guarding thereof in the Mersey Docks, see the Mersey Docks Acts Consolidation Act, 1858, c. 92, L., and the Bye-Laws of the Mersey Docks and Harbour Board thereon, of January 25, 1882.

(23) As to the regulations of the Sharpness New Docks and Gloucester and Birmingham Navigation Company under the Explosives Act, 1875, and the Petroleum Acts, 1871—1879, see Bye-Laws of those Authorities, of June, 1876, and October, 1881.

the steward. The ordinary black gunpowder was in ordinary kegs or barrels, and was stowed in a compartment the sides of which were composed of floor boards laid flat one on the other across and fore and aft, and projecting from $3\frac{1}{2}$ to 4 ft. from each side, the two ends being composed of measurement goods, jams and pickles, and London goods. The patent wood powder was contained in 183 square cases, and was stowed in the fore part, on the port side. The rest of the powder was packed all over the remainder of the compartment, the barrels being laid on their bilges. *Held*, that the gunpowder compartment was fairly well constructed, and that the loss of the vessel was not to be attributed to any defect in the construction of the chamber containing it, but that a regularly-constructed magazine would have been better considering the large amount of powder on board; that the loss of the vessel with all on board was probably due to the spontaneous combustion of the two tons of wood powder; that the ignition of the powder was caused by the impure state in which it was when shipped, and for which the gunpowder company were alone to blame, and that the owners were also to blame for having, in violation of the 49th Article of the Thames Conservancy Bye-Laws of January, 1876, shipped the powder, which was a nitro compound, in the same ship and in the same space or compartment with thirty tons of ordinary black powder. No costs. *Ibid*.

Part VI.—EXEMPTIONS FROM, AND LIMITATION OF LIABILITY OF SHIPOWNERS.

2. Limitations under M. S. Acts.

1. Generally* (and see p. 1336).

135. If the loss is occasioned by the actual fault of one of the part owners, his co-owners are not thereby precluded from claiming a limitation of their liability. *The Spirit of the Ocean*, Br. & Lush. 336.

135a. The word "owners" in the 54th section of the M. S. Act Amendment Act, 1862 (c. 63), includes unregistered as well as registered owners. *Ibid*.

136. On 24th July, Cary, junr., a registered part owner of a vessel, transferred his shares by bill of sale to Cary, sen. The bill of sale was not registered until after 22nd November, on which day a collision took place, Cary, junr., being on board and in command of the vessel as master. It was not denied that Cary, junr., was personally in fault. In an action for limitation of liability instituted by Cary, sen., and other registered owners, but not including Cary, junr., *held*, that all the plaintiffs were entitled to claim limitation. *Ibid*.

136a. Where a ship is held liable for a collision caused by a defect in her machinery, and such defect is due, not to her master or crew but to the default or negligence of other persons who are employed by the shipowner to repair the machinery on shore before the commencement of the voyage, and for the purposes of the voyage, the collision is occasioned by improper navigation within the meaning of the M. S. Act Amendment Act, 1862 (c. 63), s. 54, sub-s. 4, so as to entitle the owner to limit his liability under the provisions of that act. *The Tyne Steam Shipping Co. v. The British Owners Co.*, 77 L. T. 176. (C. A.)

136b. In an action of collision an order was made by consent that the action be "discontinued without costs on the ground of inevitable accident." An action was afterwards brought by the owners of cargo on the plaintiff's vessel against the defendant in respect of the same collision, and both ships were found to blame. The defendants limited their liability and paid the statutory amount into court. The plaintiffs in the first action, then with the defendant's consent, obtained a judge's order setting aside the discontinuance, and claimed against the fund in court. On objection by the cargo owners, *held*, that the claim was valid, as the agreement and order operated as a discontinuance and not as a release of the first action. *The Ardandhu*, 11 P. D. 40; 55 L. J. Adm. 9; 54 L. T. 469. See also *The Stormcock*, p. 1837, No. 538. But see *The Belcairn*, No. 1405a, p. 1344.

* (24) For Canadian statutory provisions analogous to those of the M. S. Act Amendment Act, 1862 (c. 63), s. 54, for which see p. 520, Nos. 1337, 1338, limiting the shipowners'

liability to 32 dollars 92 cents., equivalent to £8 per ton as therein mentioned, see the Canadian Act, 43 Vict. c. 27, in 15 Hertslet's Collection of Treaties, 973.

2. *The Crown* (and see p. 1339).

137. *The Crown*, if it elects to do so, may come in with other suitors and claim rateably against the fund in court in a limitation action. *The Zoe*, 11 P. D. 72.

7. *Notice to Board of Trade before Action* (and see p. 1341).

138. A refusal by the Board of Trade to institute an inquiry under the M. S. Act, 1854 (c. 104), s. 512, is not a condition precedent to an action *in rem* against a foreign ship. *The Vera Cruz* (No. 1), 9 P. D. 88; 53 L. J. P. D. 33; 5 Asp. 254.

9. *Proceedings for limiting Liability.*(c) *Calculation of Tonnage* (and see p. 1345).

139. The owners of a foreign ship having on the upper deck a closed-in space solely appropriated to the berthing of the crew, are entitled in limiting their liability to deduct such space under the M. S. Act, 1854 (c. 104), s. 21, sub-s. 4, though the provisions of the M. S. Act, 1867 (c. 124), s. 9, have not been complied with. *The Palermo*, 10 P. D. 21; 54 L. J. P. D. 46; 5 Asp. 369.

14. *Practice.*

See tit. PRACTICE, Pt. III. p. 1683.

Part VII.—COMPULSORY PILOTAGE.

13. *Trinity House, Newcastle-upon-Tyne.*1. *Generally* (and see p. 1375).

140. The judgment in the case of *The Johan Sverdrup* in the Newcastle County Court, mentioned in note 522, p. 1375, reversed on appeal to the P. D. & A. Division, the provisions of sect. 6 of the local act, 41 Geo. 3, c. lxxxvi. relied on in the court below having been held to be superseded by a provisional order of the Board of Trade as to the Tyne confirmed by the Tyne Pilotage Order Confirmation Act, 1865. *The Johan Sverdrup*, 11 P. D. 49.

26. *Port of Liverpool* (and see p. 1381).

141. For provisions as to pilots and pilotage for the port of Liverpool, see Bye-laws thereon of the Mersey Docks and Harbour Board of February, 1885.*

38. *Pilot in Charge.*1. *Generally* (and see p. 1398).

142. Collision in the Thames between the dumb barge K. and the steamer O. The O., with her stem and anchor, struck and sunk the K. The O., in breach of the rule, was carrying her anchor hanging from the hawsepipe, stock awash. *Held*, that the collision was caused by the O., and the damage by the O.'s anchor, which was hanging from the hawsepipe with the stock above water, in such a position that the pea of the fluke penetrated the K.'s side, and that for this breach of the Thames Conservancy Rules the owners of the O. were responsible, notwithstanding there was at the time a duly licensed pilot on board the O. by compulsion of law, and in charge of her. *The Odiel*, Dec. 2, 1885.

142a. Collision between the H. and the A. Both ships held to blame, but the fault on board the H. held to be solely that of the compulsorily taken. *Held*, that the H. should contribute nothing, but should receive half her damages. *The Hector*, 8 P. D. 218; 52 L. J. P. D. 51; 5 Asp. 101; 48 L. T. 890; 31 W. R. 881.

142b. See as to pilot not being allowed to take the helm, Nos. 1990, 1999, and 2023, pp. 1393—1395.

3. *Master and Crew generally* (and see p. 1402).

143. A vessel compulsorily in charge of a pilot was got under way when the weather was foggy and hazy, but vessels could be seen at 300 yards distant. *Held*, that this was not so manifestly dangerous as to call for the master's interference, and that the owners were not liable for damage caused by the vessel under weigh. *The Oakfield*, 11 P. D. 34; 55 L. J. Adm. 11; 51 L. T. 578; 34 W. R. 687.

5. *Interference with Pilot* (and see p. 1403).

144. *Held*, that the exhibition of a stern

* (25) These provisions are now under consideration, with a view to extensive revision.

light contrary to the regulations, although the ship was under the orders of the pilot compulsorily taken and in charge, did not exempt the owners from responsibility, as the master should not have permitted an infringement of the regulations. *The Ripon*, 10 P. D. 65; 54 L. J. P. D. 56; 5 Asp. 365.

144a. The master of a vessel compulsorily in charge of a pilot, expressed the opinion that it would be proper to starboard and go across another vessel's bows. The pilot adopted this opinion, and thereby brought about a collision. *Held*, that this was not such an interference by the master as to render his owners liable. *The Oakfield*, *supra*, No. 143.

Part VIII.—PART OWNERS.

3. Actions of Restraint.

1. *Generally* (and see p. 1418).

145. Action by one part owner against another to oblige him to give security for ship's safe return, *Grove v. Hedges*, Holt, 470, 471, cited in *Adams v. Crouch*, Marsden, 118.

145a. Bail given for the safe return of the ship to Newcastle. The ship returned

to Hartlepool, when the majority of the owners designing her for another foreign voyage, the minor owners again arrested her. *Held*, that the security in the first action still attached, as the ship had not returned to Newcastle, and the second action accordingly dismissed with costs. *The Regalia*, 26th November, 1884.

4. Actions for Accounts (and see p. 1420).

146. The Admiralty Division has no jurisdiction under the Admiralty Court Act, 1861 (c. 10), s. 8, over an action *in rem*, claiming an account of the earnings and sale of a ship when the ship is registered at the Port of Guernsey, and not at any port in England or Wales. *The Robinsons* and *The Satellite*, 5 Asp. 338.

6. Managing Owner, or Ship's Husband.

1. *Generally* (and see p. 1424).

147. *Quære*, Is a managing owner under ordinary circumstances entitled to judgment against his co-owners in respect of sums of money due to third parties on account of the ship, but which he has not paid? *The Charles Jackson*, 5 Asp. 399.

PILOTS.

1. *Generally* (and see p. 1430) 2503

1. *Generally* * (and see p. 1430).

1. Cause of damage brought by the master of a vessel against the pilot. Marsden, 307.

8. Mersey Docks and Harbour Board (and see p. 1442).

2. As to the pilotage and pilot boat

8. Mersey Docks and Harbour Board (and see p. 1442) 2503

rates for pilots, both compulsory and voluntary, for the port of Liverpool, including Birkenhead, see Return of Harbour Authorities, ordered by House of Commons to be printed August 17, 1883, Sess. Paper, 313, p. 270.

3. For provisions as to pilots and pilot boats in the port of Liverpool, see By-laws thereon of the Mersey Docks and Harbour Board of February, 1885.†

* (1) Every coastwise sea-going steam vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the inspectors of steamboats. See Revised Statutes of United States,

tit. LII. c. 1, p. 4401. [AMERICAN.]

(2) For American regulations as to pilots, see Regulations of Board of Supervising Inspectors, revised to February, 1886, pp. 33—36. [AMERICAN.]

† (3) The regulations as to pilots and pilotage for the port of Liverpool are under review with a view to extensive revision.

PRACTICE.

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Part I.—COURTS, JUDGES, OFFICERS AND OFFICES.

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Part II.—IN THE HIGH COURT.

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Part I.—COURTS, JUDGES, OFFICERS AND OFFICES.

2. Trinity Masters (and see p. 1466).

1. In an action of wages which involved questions as to the state of machinery of a steamship, engineer assessors were summoned to assist the court. *The Marina*, 29 W. R. 580.

2. As to the judge not being bound by the opinion of the Trinity Masters or assessors, see the cases cited in the Editor's note to *The Beryl*, 5 Asp. 322 n.

2a. Assessors.

3. As to assessors in the Privy Council, see tit. APPEAL, p. 32; in her Ma-

esty's Court of Appeal, *Ibid.* p. 55; in the Probate Division and Admiralty Division, see the previous chapter, and p. 1466; in the investigation of shipping casualties, see tit. SHIPPING CASUALTIES INVESTIGATIONS, p. 2199; in courts of survey, see tit. OWNERS, p. 1267.

Part II.—IN THE HIGH COURT.

19. Bail.

8. *To Counterclaim or in Cross Actions* (and see p. 1548).

4. When the owners of a ship which has sunk, and the owners of the cargo laden on board her, join in an action against another ship for damages sustained by collision, the court will order

the claim by the owner of the ship to be dismissed, unless security for the counter-claim is given, but will allow the owner of cargo to proceed without security. *The Carnarvon Castle*, 38 L. T. 736; 26 W. R. 876.—C. A.

5. The power of the Admiralty division under sect. 34 of the Admiralty Court Act, 1861 (c. 10), to order an action to be stayed until bail has been given to answer a cross-action or counter-claim, does not extend to making an absolute order to give bail; and in a damage action in which the plaintiffs had discontinued after the defendants had counter-claimed, the court refused to enforce an order made by the registrar to give bail to answer such counter-claim. *The Alexander*, 48 L. T. 797.

6. In an action and cross-action, if the proceedings are *in personam*, and the ship has not been arrested, nor bail given in the principal cause, the court cannot stay the proceedings in the cross-action until the plaintiff in the principal cause has given security for costs as defendant in the cross cause. *The Amazon, The Osprey*, 36 L. J. Adm. 4.

22. Proceedings by Default.

8. *In rem*.

(j) *In Actions of Bottomry* (and see p. 1566).

7. The holder of a bottomry bond on ship, freight, and cargo is upon the conclusion of the proceedings by default against ship and freight, entitled as of course to have the full freight due upon delivery of the cargo paid to him, in order to satisfy the sum secured by the bond, with costs: and the owner of the cargo who has paid the freight into court is not entitled to a reference of the amount due on the bond, notwithstanding that, before the execution of the bond, part of his cargo was sold by the master, and the proceeds applied to the ship's expenses. *The Gem of the Nith*, B. & L. 72.

24. Interlocutory Proceedings.

3. *Particulars of Demand* (and see p. 1570).

8. Where a ship was lost by collision the court, at the instance of the defendants and contrary to its usual previous practice, ordered the plaintiffs to deliver

particulars of demand. *The N. P. Neilson*, 34 L. T. 588; 24 W. R. 324.

9. Motions.

(a) *Generally* (and see p. 1573).

9. The adjournment of the hearing of a motion for the convenience of counsel does not preclude the parties making the motion from filing and using a further affidavit on the motion. *The Thuringia*, 41 L. J. Adm. 29; 25 L. T. 605.

31. Estoppel.

1. *Generally* (and see p. 1581).

10. Collision between the schooner J. M. S. and a tug and her tow. Agreement between the owner of the J. M. S. and her tug, *held*, no bar to an action against the tow. (For particulars, see p. 1837, No. 538.) *The Stormcock*, 5 Asp. 470; 53 L. T. 53.

33. Preliminary Acts.

2. *Amendment* (and see p. 1589).

11. Where the questions in the preliminary act are improperly answered, the court is disposed to view that party's case with suspicion; and if they are intentionally so answered, the court will scrutinize the case most closely, and approach it with the gravest suspicion. *The Godiva*, 11 P. D. 20; 5 Asp. 524; 55 L. J. P. D. 13; 54 L. T. 55.

12. Art. 9 of the defendants' preliminary act, which stated that "the L. (the plaintiffs' vessel) when first seen was at anchor," was ordered to be amended, as not containing a proper statement of the distance and bearing of the L. when first seen. *Ibid*.

13. The defendant, in his preliminary act, in answer to the question as to his vessel's course and speed answered, "manœuvring to get alongside the S. at anchor." The court, at the hearing, of its own motion, objected to this answer as insufficient, and it was then and there altered. *The Portugueselete*, August 11, 1884.

34. Pleadings.

6. *Statement of Defence and Counter-claim*.

(a) *Statement of Defence* (and see p. 1593).

14. In a cause of damage by a collision, alleged to have been caused by

the acts of the owners, and their servants, of the vessel proceeded against, a general denial in answer was pleaded, with a special defence that the damage complained of had already been adjudicated upon in an action at law, and judgment obtained and satisfied. It was proved by the principal defendant at law that the damage was occasioned by acts done by him on his own responsibility, and in the assertion of a right claimed by him as consignee for the sale of the vessel, and not as agent of the owners. *Held*, that the action could not be maintained; but as the defence thus disclosed had not been specially pleaded, defendants were refused their costs, and not allowed to go into the special defence, though the judgment of the court thereon was asked for. *Held*, on appeal, that the general traverse and denial of the averments in the petition was sufficient to justify the evidence produced; and that the defendants were entitled to have the judgment of the court on the special defence pleaded. *The Orient*, 8 Moore, P. C. C. N.S. 74.

35. Proofs.

28. *Examination of Witnesses out of Court before Trial.*

(b) *By Commission* (and see p. 1621).

15. Where, in any civil proceeding in any court of competent jurisdiction, an order for the examination of any witness or person has been made, and a commission, mandamus, order, or request for the examination of such witness or person is addressed to any court or to any judge of a court, in India or the Colonies, or elsewhere in her Majesty's dominions, beyond the jurisdiction of the court ordering the examination, it shall be lawful for such court or the chief judge thereof, or such judge to nominate some fit person to take such examination, and any deposition or examination taken before an examiner so nominated shall be admissible in evidence to the same extent as if it had been taken by or before such court or judge. The Evidence by Commission Act, 1885 (c. 74), s. 2.

16. For provisions applying 22 Vict. c. 20 (for taking evidence in proceedings before tribunals in her Majesty's dominions in places out of their jurisdiction), to proceedings under this act, for making rules as to costs of examinations under this act, and allowing the taking of the

oaths or affirmations of the witnesses, according to the law in force at the place of their examination, and as to such examination in criminal proceedings, *Ibid.* es. 3—6.

38. Trial.

8. *With or without Jury* (and see p. 1636).

17. Ord. XXXVI. r. 6, gives no absolute right to a jury in actions which, before the Judicature Act, 1873, would have been tried without a jury; and, therefore, an action *in rem* for disbursements in the Admiralty Division falls within Ord. XXXVI. rr. 4 and 7a, and there is a discretionary power only to allow trial of such an action by a jury. *The Temple Bar*, 11 P. D. 6.

18. In an action *in personam* for damage to cargo, the President granted an application for the cause to be tried by a special jury. *Schroeder, Gebruder & Co. v. Myers, Son & Co.*, May 26, 1886.

39. Judgments and Orders.

6. *By Consent* (and see p. 1644).

19. Final as well as interlocutory decrees and orders may be obtained by consent, without an order of the judge in person, but the consent must be express. *The Buenos Ayres*, 17 W. R. 627.

40. References.

1. *Generally* (and see p. 1648).

20. As to the bottomry holder's right to freight after the conclusion of proceedings by default, without a reference, at the instance of the cargo owner, part of whose cargo has been sold, see *The Gem of the Nith*, B. & L. 72, No. 6.

18. *Objections to report.*

(a) *Generally* (and see p. 1655).

21. The report of the registrar amended on motion by adding items for which no vouchers had been produced at the reference. *The Englishman*, 38 L. T. 756.

22. As to objections to the report of a district registrar, see *Gowan v. Spratt*, 5 Asp. 288; 51 L. T. 266, in No. 1958, p. 1658.

43. Writs of Execution.

15. *Levy.*

(b) *Interest* (and see p. 1662).

23. On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the court or a judge otherwise orders, and the taxing officer may compute such interest without any order for that purpose. Ord. LVIII. r. 19, No. 883.

44. Appraisement and Sale.

8. *Sale.*

(a) *Generally* (and see p. 1673).

24. The court ordered the sale of a

foreign ship, on the report of the marshal that it was desirable she should be sold, but subject to the filing of an affidavit verifying the cause of action, and stating that no appearance had been entered. *The Hercules*, 11 P. D. 10; 5 Asp. 545.

25. Sale of vessel by decree of the Court of Admiralty restrained in order to ascertain the respective priorities of material men and mortgagees before the sale. *Hamilton v. Harland, The Acacia*, 4 Asp. 229; 41 L. T. (C. A.) 741.

REGISTRAR AND MERCHANTS.

Part II.—MEASURE OF DAMAGES.

2. In Actions of Damage to Cargo.

1. *Generally* (and see p. 1738) p. 2507

Part II.—MEASURE OF DAMAGES.

2. In Actions of Damage to Cargo.

1. *Generally* (and see p. 1738).

1. In an action against a shipowner by the vendor of goods sold "to arrive" for the loss of the goods, the measure of the damages is the price at which the goods were sold, and not the market price at the port of destination on the day on which the ship would in due course have arrived. *Rodoconachi v. Milburn*, 17 Q. B. D. 316.

2. A cargo of seed was shipped by the plaintiffs on the defendants' ship under a charterparty, which provided, *inter alia*, that the master was to sign bill of lading at any rate of freight, and, as customary at port of loading, without prejudice to the stipulations of the charterparty; sufficient cash for ship's disbursements, to be advanced, if required, to the captain by charterers on account of freight, subject to insurance only. The bill of lading

contained an exception, which was not in the charterparty, protecting the owners from liability for any act, neglect, or default of the master. Money was advanced under the charterparty, at the port of loading, for disbursements. The plaintiffs did not insure this sum. The cargo was lost by the negligence of the master. *Held*, that the defendants were liable, that the clause in the bill of lading limiting their liability could not control the contract contained in the charterparty, but that the plaintiffs were not entitled to deduct from the freight due to the defendants the sum advanced, subject to insurance, for that the meaning of that clause was that the shipowners were to allow to the shippers a sum equal to the premium payable on the insurance of the advanced freight, and that the plaintiffs could not, if they did not insure, deduct the money so advanced from the freight due to the defendants. *Ibid.*

See also *tit. GOODS, CARRIAGE OF—*, in *Addenda*, p. 2413, Nos. 26 and 27.

SALVAGE.

Part I.—IN ENGLISH COURTS.

1. Generally (and see p. 1781).....p. 2508

5. Salvors.

12. *Officers and Crews of H. M. Ships*
(and see p. 1809).....p. 2508
(a1) *Transports* 2508

Part I.—IN ENGLISH COURTS.

1. Generally (and see p. 1781).

1. Where salvors, in answer to a request for assistance, render services which, through no fault of theirs, are ineffectual, and leave the vessel in distress in a worse position than they found her, they are entitled to no reward, even though the vessel is ultimately saved by other salvors. *The Cheerful*, 11 P. D. 3; 5 Asp. 525.

2. The C. broke down and was then in a position of risk. The H. took the C. in tow, but after towing some time the hawsers parted, and the C. then anchored and was in a position of greater danger than when the H. took her in tow. The H. was unable to make fast a hawser again and left the C. The C. was then brought into safety by two tugs. *Held*, that as no actual benefit was conferred by the H. she was not entitled to salvage. *Ibid*.

3. On grounds of public policy it is most important, and particularly so at the present time, that awards of salvage should be made which will tend to counteract an inducement to owners of large Atlantic steamers to decline rendering salvage services, except where life is in imminent danger. *The Cephalonia*, 14th April, 1886.

4. Both the salving vessel, the V., and the salved vessel, the C., were large Atlantic steamers of great value. The C., in mid Atlantic, with seventy-five passengers on board, broke and lost her shaft, and was proceeding under sail. The weather was moderate, but the wind was adverse, though it afterwards became favourable, and the weather worse. The C. was drifting out of the track of

North Atlantic steamers. The V. towed the C. for six days, a distance of 600 miles. The V., in doing so, committed a deviation in law, but there was no great deviation. The values of the C., her cargo and freight, were £110,000. A tender was made of £2,500. The court, under the circumstances, and on grounds of public policy, awarded £3,500. *Ibid*.

5. Salvors.

12. *Officers and Crews of H. M. Ships*
(and see p. 1809).
(a1) *Transports*.

5. Action by the owners, master, and crew of the steamship D. C. for salvage services to the steamship B. The D. C., which was under charter by the government as a transport, and lying at Suakim, laden with forage, when she was ordered by the officer of transports to proceed to the assistance of the B. which was aground on a reef about twenty miles to the northward of Suakim, and having taken on board an officer and forty-five seamen of the Royal Navy she left Suakim, found the B., and after several trials, and with much difficulty, towed her off the reef. The defendants contended that the plaintiffs were not entitled to salvage on the ground that the D. C. was bound to render the services as a government transport, and under the terms of her agreement with government, relying on Art. 35 of the Regulations for the Transport Service. But *held*, that the plaintiffs were entitled to recover, and on a value of £16,000 award made of £560. *The Bertie*, June 3, 1886.
See also The Nile, p. 1811, No. 271.

WAGES.

1. Generally (and see p. 2279) 2509

14. Claims in the nature of—

5. Compensation for Delay in Payment.

(a) Ten Days' Double Pay.

(aa) Masters (and see p. 2297) 2509

15. Lien.

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4. Period of (and see p. 2313) 2509

28. French Law.

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9. Loss of Vessel 2511

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11. Seaman made Prisoner 2512

12. Seaman's Death 2512

13. Dismissal 2512

14. Limitation of Actions 2512

1. Generally (and see p. 2279).

1. Held, that a master appointed by the owners, and by the terms of the charter-party the charterer's agent, is, as between the owner and the seamen, the owner's agent for engaging them, and that the seamen are not bound to look into the title of the master to ascertain whether he is the agent for the owner or the charterer in engaging them. *Re The Great Eastern Steamship Co., Claim of Williams and others*, 5 Asp. 511.

14. Claims in the nature of—

5. Compensation for delay in Payment.
- (a) Ten Days' Double Pay.
- (aa) Masters (and see p. 2297).

2. Action by master for his wages and disbursements. At the institution of the suit accounts were outstanding between the owners and the plaintiff, and within two days afterwards the wages were paid. Held, that the owners had not refused to pay without sufficient cause within the meaning of sect. 187 of the M. S. Act, 1854 (c. 104), and that therefore the plaintiff was not entitled to recover ten days' double pay. *The Turgot*, 5 Asp. 548.

15. Lien.

1. Generally (and see p. 2298).

3. Seamen engaged by the owners or their agent for a voyage on board a foreign-

going ship, are entitled to a lien on the ship and the proceeds of its sale for their wages, although the engagement of the seaman was not in writing, and the ship did not proceed on the voyage. *Re The Great Eastern Steamship Company, Claim of Williams and others*, 5 Asp. 511.

19. Payment.

4. Period of (and see p. 2313).

4. In the case of foreign-going ships, the owner or master of the ship shall pay to each seaman on account, at the time when he lawfully leaves the ship at the end of his engagement, £2, or one-fourth of the balance due to him, whichever is least; and shall pay him the remainder of his wages within two clear days (exclusive of any Sunday, fast day in Scotland, or bank holiday) after he so leaves the ship. See Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 4, sub-s. 1.

5. In the event of the seaman's wages, or any part thereof, not being paid or settled as in this section mentioned, then, unless the delay is due to the act or default of the seaman, or to any reasonable dispute as to liability, or to any other cause not being the act or default of the owner or master, the seaman's wages shall continue to run and be payable until the time of the final settlement thereof. *Ibid.* sub-s. 4.

6. The words "at the end of his en-

agement," mentioned in the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 4, sub-s. 1, as the time of payment of the seaman's wages, mean the time at which his actual service terminates, and include the natural effluxion of the agreement as well as the discharge of the seaman on breach of the contract, so that to entitle the seaman to wages it is not necessary that the whole term of his engagement should have expired, but it is sufficient if his actual service on board has ended. *Re The Great Eastern Steamship Co., Claim of Williams and others*, 5 Asp. 511.

7. The period of "final settlement" up to which seamen are entitled to wages

* (1) The men may be engaged either by the month, the voyage, or *à la part*, in which last case their salary is either a certain proportion of the freight, or a certain share in the profits, according as they are engaged *à la part de fret*, or *à la part de profit*. D. A. 630, 631.

(2) *Held*, that the men who are engaged at a salary contingent on the profits of the voyage (*à la part*), are joint owners of the freight, and that their share is to be delivered to them, notwithstanding any attachment of the creditors of the master, even for a bottomry bond. D. A. 682; Dutruc, Gens de l'Equipe, No. 54.

(3) No change can take place in the agreement between the master and a seaman unless in the presence of the commissary of classes, and a reduction of wages agreed to by a seaman not in the presence of that officer would not be binding on the seaman. D. A. 638; Dutruc, *ibid.* No. 10.

(4) As a rule, seamen's wages cannot be attached unless the debt be for house rent, food, or clothing of the seamen and their families, and with the authority of the commissary of classes. Art. 37 of the Ord. of Nov. 1, 1745; Caumont, vo. Gens de Mer, No. 20; Dutruc, vo. Gens de l'Equipe, No. 34, or for alimony under Arts. 203, 205, and 214, C. Civ.

(4a) The same rule applies to the officers. Decree of March 4, 1852; Dutruc, *ibid.* No. 41.

(5) All rules made for seamen's wages are applicable to the officers and other members of the ship's company. C. C. A. 272.

† (6) It is usual that just before the departure of a vessel for a long voyage (*voyage de long cours*—the opposite of a coasting voyage), the crew should receive three months' advance on their wages; and they may claim the same should their engagement show nothing to the contrary. *Renaud and others*, Dutruc, *ibid.* 32.

‡ (6a) The wages of the seamen, or their share, if *à la part*, cannot be insured. C. C. A. 347.

under the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (c. 16), s. 4, sub-s. 4, is, in cases of litigation, the date of the chief clerk's certificate in Chancery or the report of the registrar in Admiralty. *Ibid.*

28. French Law.

1. Generally.*

2. Advances.†

3. Insurance and Respondentia Bond.‡

4. Abandonment of Voyage.§

(7) Nor be hypothecated under a *respondentia* contract (*contrat à la grosse*). *Ibid.* 319.

(7a) Unless there have been accounts stated, or bill given, or notice of action (*citation*). *Ibid.* 434.

§ (8) Should the voyage for which the men are hired be voluntarily given up by the owner, charterer, or master before the commencement of the voyage, the men, where engaged by the month or by the voyage, are to be paid for the time during which they have been employed in the equipment of the vessel. And as indemnity for the non-execution of the contract, they are entitled to retain the advances which have been made to them. Where they have received none they may claim one month's wages. Art. 252, C. C. If they have been hired for the voyage, the wages agreed for it are to be divided by the number of months of its probable duration, and one month at that rate allowed. The indemnity is sometimes fixed by local usage. D. A. 696; Dutruc, *Ibid.* 70; Caumont, *Ibid.* No. 33.

(9) And they would be entitled to that indemnity though they were engaged immediately for another vessel, and had therefore suffered no loss from the breaking up of the voyage. D. A. 695.

(10) Should the voyage last a shorter time than expected, or the cargo be landed at a nearer port by the free will and act of the master, no reduction shall be made in the wages of the men hired by the voyage. C. C. A. 256; D. A. 698.

(11) Should the voyage be voluntarily given up after it has begun, the men who are hired by the voyage are entitled to the whole of their wages. C. C. A. 252; D. A. 696. The abandonment of the vessel made by the owner to exonerate himself from liability is tantamount to a voluntary breaking up of the voyage. So, also, if the voyage is abandoned, in consequence of unseaworthiness from the fault of the owner. Dutruc, *Ibid.* No. 75.

(12) Seamen, where hired by the month,

5. *Prevention of Voyage.**
 6. *Interruption of Voyage.†*
 7. *Prolongation of Voyage.‡*

8. *Owner's Abandonment of Ship and Freight.§*
 9. *Loss of Vessel.||*

are entitled to their wages for the time that has elapsed, and to an indemnity besides, amounting to their wages for half the probable duration of the voyage. C. C. A. 252. In both cases they are entitled to expenses back to the port of departure. C. C. A. 252 (see *infra*, Notes 19, 20). But for their labour in equipping the vessel they can claim nothing but their food. Dutruc, *Ibid.* No. 74.

(13) The voyage is considered as begun when the vessel has been on its way for twenty-four hours. D. A. 696; Dutruc, *Ibid.* 73.

(14) A mere change of destination is not to be considered as a breaking up of the voyage, and men engaged for a particular voyage cannot be compelled to make a different one; but should they break off they can claim no indemnity. D. A. 698; Dutruc, *Ibid.* No. 76.

* (15) Should the voyage be prevented before its commencement by *vis major*, such as an interdict of commerce or an act of the authorities, the men hired by the month or voyage are entitled to nothing but wages for their labour in equipping the vessel. C. C. A. 253. The men engaged *à la part* can claim nothing. C. C. A. 257.

(16) Should an interdict of commerce take place in the course of the voyage, the same distinction is applicable; the men engaged by the voyage or month may claim for the time elapsed, the men *à la part* receive neither wages nor indemnity. C. C. A. 254, 257.

(17) An arrest of princes after the voyage has begun entitles the men engaged by the month to claim half the stipulated wages for the time of the suspension. C. C. A. 254.

(18) Those by the voyage can claim the sum agreed for the same, and those *à la part* nothing beyond their shares. *Ibid.*

† (19) The men hired by the voyage, or by the month, if the voyage be interrupted, may claim their expenses back at the rate settled by the regulations (Dutruc, *ibid.* No. 127), unless their passage is procured for them in another vessel back to their *quartier*.

(19a) *Held*, that the men are not to be understood to have given up the right to the allowance for their journey back, though their engagement states that the vessel may be unloaded at any other port than that originally intended. Dutruc, *ibid.* 81.

(20) *Held*, however, by the tribunal of Marseilles that, where the voyage was stopped by the owner, the men were entitled to their return expenses, though engaged on another vessel. Dutruc, *ibid.* No. 79.

(20a.) Should the breaking up, stoppage, or

prolongation of the voyage be attributable to those who make up the cargo, the men engaged *à la part* may claim their due proportion of the indemnity paid to the vessel, as if it were freight. If they are caused by the master or owner they are liable for the indemnity to the men engaged *à la part*. C. C. A. 257.

‡ (21) Should the voyage be prolonged, not by accident, but by the free will of the master or owner, the men engaged by the voyage are entitled to a proportionate increase of the wages agreed (C. C. A. 255); those by the month are, of course, paid at the rate of the duration of the voyage. Dutruc, *ibid.* No. 89. Should the prolongation be without satisfactory reason they would be entitled to damages. Dutruc, *ibid.* No. 91.

§ (22) The owner cannot exonerate himself from the payment of the wages to which the ship's company are entitled by the abandonment of the ship and freight. Caumont, *ibid.* No. 72; Dutruc, *ibid.* No. 145.

|| (23) When there is a total loss of the vessel and the cargo through capture or wreck, the men, whatever be the nature of their engagement, can claim no wages; but they are entitled to retain what they have already received. C. C. A. 258.

(24) When the vessel has been lost on the return voyage, it has been doubted whether the crew was entitled to wages for the previous voyage, but the generally-received opinion now is that the loss of the vessel destroys their claim only with respect to the wages of the last voyage. See the authorities in Dutruc, *ibid.* No. 103.

(25) Should any portion of the vessel have been saved, the men engaged by the month or voyage are to be paid their wages out of the produce of the sale of the same, and they have a privileged claim thereon, deducting costs and salvage. C. C. A. 259; D. A. 732.

(25a) If there are no remnants of the vessel saved, or if they are insufficient, or if goods only are saved, the men engaged by the voyage, by the month, and *au fret*, have a privileged claim on the freight due. *Ibid.* But this privileged claim is only for the wages of the last voyage. C. C. A. 191; Arts. 259, 260; Caumont, *ibid.* No. 44; Dutruc, *ibid.* No. 109.

(26) But their right is forfeited if they refuse to assist in the salvage, *ibid.*; Dutruc, *ibid.* No. 112; but see the authorities, *contra, ibid.* Whatever be the nature of the engagement of the men, they are entitled to a salary for their labour in salving the wreck and goods. C. C. A. 261.

10. *Seaman wounded or Sick.**11. *Seaman made Prisoner.†*12. *Seaman's Death.‡*13. *Dismissal.§*14. *Limitations of Actions.||*

* (27) The men are entitled to their wages though ill during the voyage; and also if they are wounded, provided the wounds have been incurred in the service of the vessel, or in fighting with enemies or pirates. C. C. A. 262, 263. They are also similarly entitled to their food and medical expenses. *Ibid.*

(28) It is immaterial whether the wound has been received before the sailing of the vessel. It is otherwise with sickness. Should a man fall ill after his engagement, and before sailing, he can claim nothing but his wages for the work he has done in loading the vessel. D. A. 736; Dutruc, *ibid.* 148.

† (29) If a man is made prisoner on board, and put into slavery, he is entitled to his wages till the day he was captured, should the vessel not be taken or lost. C. C. A. 266; Dutruc, *ibid.* No. 177.

(30) The seaman who, when sent out of the vessel for the service of the ship, has been captured, and put into slavery, may claim the whole amount of his wages. He may likewise claim an indemnity for his redemption should the vessel arrive in safety. C. C. A. 267.

(31) The indemnity is due from the owners of the vessel if the seaman has been sent out of the vessel on the service of the vessel only; and jointly by them and the owners of cargo, if the seaman has been sent on shore in their common interest. C. C. A. 268. The same distinction applies to the wages falling due after the capture. D. A. No. 763; Dutruc, *ibid.* Nos. 179, 180.

(32) The indemnity shall amount to six hundred francs. C. C. A. 269; Dutruc, *ibid.* No. 181.

‡ (33) Should a seaman engaged by the voyage die on the voyage out, his heirs and successors may claim half the stipulated wages; should he die on his way back, they may claim the whole. C. C. A. 265. But if

his death be caused by his own fault, damages to the owner or charterer may be deducted. D. A. 754; Dutruc, *ibid.* No. 170. The wages are due for the whole voyage if the man is killed in defending the vessel, and it arrives safely. C. C. A. 265; Dutruc, *ibid.* 171.

(34) If he has been engaged by the month, his representatives are entitled to his wages up to the day of his death; if *à la part*, they may claim the whole of his share, though he died at the very outset of the voyage. C. C. A. 265.

§ (35) The master cannot dismiss a French seaman in a foreign country. Dutruc, *ibid.* No. 185; C. C. A. 270.

(35a) Should the master dismiss (after the closing of the *role d'équipage*), in French territory, a seaman without proper cause before the beginning of the voyage, the seaman may claim a third of his wages. C. C. A. 270; Dutruc, *ibid.* 189.

(36) If his engagement is *à la part*, his share should be valued at the rate fixed by Art. 270, C. C.; Dutruc, *ibid.* 192.

(37) Should the dismissal occur out of the home of the man, he can claim his return expenses. Dutruc, *ibid.* 189.

(38) If he proves that he has been dismissed without cause in the course of the voyage, he may claim the whole amount of the stipulated wages and the expenses of his return home. C. C. A. 270.

(39) The captain in the above case shall have no action against the owners for the return of the indemnity he may have had to pay. *Ibid.*

(40) The dismissed seaman who has received the proper indemnity, is not entitled to wages for his labour in equipping the vessel. Dutruc, *ibid.* 189.

|| (41) All actions for payment of wages are limited to one year from the end of the voyage. C. C. A. 433.

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No. 1.

International Regulations for preventing Collisions, issued under Order in Council of August 11, 1884.*

Art. 1. In the following rules every steam ship which is under sail and not under steam is to be considered a sailing ship; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

Art. 2. The lights mentioned in the following Articles, numbered 3, 4, 5, 6, 7, 8, 9, 10, and 11, and no others, shall be carried in all weathers, from sunset to sunrise.

Art. 3. A seagoing steamship when under way shall carry—

(a) On or in front of the foremast, at a

height above the hull of not less than 20 feet, and if the breadth of the ship exceeds 20 feet, then at a height above the hull not less than such breadth, a bright white light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 20 points of the compass, so fixed as to throw the light 10 points on each side of the ship, viz., from right ahead to two points abaft the beam on either side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles.

(b) On the starboard side, a green light so constructed as to show an uniform and unbroken light over an arc of

* These regulations came into force on the 1st of September, 1884. See the Order in Council of 14th August, 1884.

the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to 2 points abaft the beam on the starboard side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.

(c) On the port side, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to 2 points abaft the beam on the port side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.

(d) The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

Art. 4. A steamship, when towing another ship, shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than three feet apart, so as to distinguish her from other steam ships. Each of these lights shall be of the same construction and character, and shall be carried in the same position, as the white light which other steam ships are required to carry.

Art. 5. (a) A ship, whether a steam ship or a sailing ship, which from any accident is not under command, shall at night carry, in the same position as the white light which steam ships are required to carry, and, if a steam ship, in place of that light, three red lights in globular lanterns, each not less than 10 inches in diameter, in a vertical line one over the other, not less than three feet apart, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles; and shall by day carry in a vertical line one over the other, not less than three feet apart, in front of but not lower than her foremast head, three black balls or shapes, each two feet in diameter.

(b) A ship, whether a steam ship or a sailing ship, employed in laying or in picking up a telegraph cable, shall at night carry in the same position as the white light which steam ships are required to carry, and, if a steam ship, in place of that light, three lights in globular lanterns each not less than 10 inches in diameter, in a vertical line over one another, not less than six feet apart; the highest and lowest of these lights shall

be red, and the middle light shall be white, and they shall be of such a character that the red lights shall be visible at the same distance as the white light. By day she shall carry in a vertical line one over the other not less than six feet apart, in front of but not lower than her foremast head, three shapes not less than two feet in diameter, of which the top and bottom shall be globular in shape and red in colour, and the middle one diamond in shape and white.

(c) The ships referred to in this Article, when not making any way through the water, shall not carry the side lights, but when making way shall carry them.

(d) The lights and shapes required to be shown by this Article are to be taken by other ships as signals that the ship showing them is not under command, and cannot therefore get out of the way. The signals to be made by ships in distress and requiring assistance are contained in Article 27.

Art. 6. A sailing ship under way, or being towed, shall carry the same lights as are provided by Article 3 for a steam ship under way, with the exception of the white light, which she shall never carry.

Art. 7. Whenever, as in the case of small vessels during bad weather, the green and red side lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

Art. 8. A ship, whether a steam ship or a sailing ship, when at anchor, shall carry, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light, in a globular lantern of not less than 8 inches in diameter, and so constructed as to show a clear uniform and unbroken light visible all round the horizon, at a distance of at least one mile.

Art. 9. A pilot vessel, when engaged on her station on pilotage duty, shall not carry the lights required for other vessels, but shall carry a white light at the mast-

head, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

A pilot vessel, when not engaged on her station on pilotage duty, shall carry lights similar to those of other ships.

Art. 10. Open boats and fishing vessels of less than 20 tons net registered tonnage, when under way, and when not having their nets, trawls, dredges, or lines in the water, shall not be obliged to carry the coloured side lights; but every such boat and vessel shall, in lieu thereof, have ready at hand a lantern with a green glass on the one side and a red glass on the other side, and on approaching to or being approached by another vessel, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

The following portion of this Article applies only to fishing vessels and boats when in the sea off the coast of Europe lying north of Cape Finisterre:—

(a) All fishing vessels and fishing boats of 20 tons net registered tonnage, or upwards, when under way and when not required by the following regulations in this Article to carry and show the lights therein named, shall carry and show the same lights as other vessels under way.

(b) All vessels when engaged in fishing with drift nets shall exhibit two white lights from any part of the vessel where they can be best seen. Such lights shall be placed so that the vertical distance between them shall be not less than 6 feet and not more than 10 feet; and so that the horizontal distance between them, measured in a line with the keel of the vessel, shall not be less than 5 feet and not more than 10 feet. The lower of these two lights shall be the more forward, and both of them shall be of such a character, and contained in lanterns of such construction as to show all round the horizon, on a dark night with a clear atmosphere, for a distance of not less than three miles.

(c) A vessel employed in line fishing with her lines out shall carry the same lights as a vessel when engaged in fishing with drift nets.

(d) If a vessel when fishing becomes

stationary in consequence of her gear getting fast to a rock or other obstruction, she shall show the light and make the fog-signal for a vessel at anchor.

(e) Fishing vessels and open boats may at any time use a flare-up in addition to the lights which they are by this Article required to carry and show. All flare-up lights exhibited by a vessel when trawling, dredging, or fishing with any kind of drag net shall be shown at the after part of the vessel, excepting that, if the vessel is hanging by the stern to her trawl, dredge, or drag net, they shall be exhibited from the bow.

(f) Every fishing vessel and every open boat, when at anchor between sunset and sunrise, shall exhibit a white light, visible all round the horizon at a distance of at least one mile.

(g) In fog, mist, or falling snow, a drift net vessel attached to her nets, and a vessel when trawling, dredging, or fishing with any kind of drag net, and a vessel employed in line fishing with her lines out, shall, at intervals of not more than two minutes, make a blast with her fog-horn and ring her bell alternately.

Art. 11. A ship which is being overtaken by another shall show from her stern to such last-mentioned ship a white light or a flare-up light.

Sound Signals for Fog, &c.

Art. 12. A steamship shall be provided with a steam whistle or other efficient steam sound signal, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog-horn to be sounded by a bellows or other mechanical means, and also with an efficient bell.* A sailing ship shall be provided with a similar fog-horn and bell.

In fog, mist, or falling snow, whether by day or night, the signals described in this Article shall be used as follows; that is to say,—

(a) A steam ship under way shall make with her steam whistle, or other steam sound signal, at intervals of not more than two minutes, a prolonged blast.

(b) A sailing ship under way shall make with her fog-horn, at intervals of not more than two minutes, when on the starboard tack one blast, when on the port tack two blasts in succession, and

* In all cases where the regulations require a bell to be used, a drum will be substituted on board Turkish vessels.

when with the wind abaft the beam three blasts in succession.

(c) A steam ship and a sailing ship, when not under way, shall at intervals of not more than two minutes ring the bell.

Speed of Ships to be moderate in Fog, &c.

Art. 13. Every ship, whether a sailing ship or steam ship, shall, in a fog, mist, or falling snow, go at a moderate speed.

Steering and Sailing Rules.

Art. 14. When two sailing ships are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz. :—

(a) A ship which is running free shall keep out of the way of a ship which is close-hauled.

(b) A ship which is close-hauled on the port tack shall keep out of the way of a ship which is close-hauled on the starboard tack.

(c) When both are running free with the wind on different sides, the ship which has the wind on the port side shall keep out of the way of the other.

(d) When both are running free with the wind on the same side, the ship which is to windward shall keep out of the way of the ship which is to leeward.

(e) A ship which has the wind aft shall keep out of the way of the other ship.

Art. 15. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This Article only applies to cases where ships are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are, when each of the two ships is end on, or nearly end on, to the other; in other words, to cases in which, by day, each ship sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each ship is in such a position as to see both the side lights of the other.

It does not apply, by day, to cases in which a ship sees another ahead crossing her own course; or by night, to cases where the red light of one ship is opposed

to the red light of the other, or where the green light of one ship is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

Art. 16. If two ships under steam are crossing, so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Art. 17. If two ships, one of which is a sailing ship, and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship.

Art. 18. Every steam ship, when approaching another ship, so as to involve risk of collision, shall slacken her speed or stop and reverse, if necessary.

Art. 19. In taking any course authorized or required by these Regulations, a steam ship under way may indicate that course to any other ship which she has in sight by the following signals on her steam whistle, viz. :—

One short blast to mean "I am directing my course to starboard."

Two short blasts to mean "I am directing my course to port."

Three short blasts to mean "I am going full speed astern."

The use of these signals is optional, but if they are used the course of the ship must be in accordance with the signal made.

Art. 20. Notwithstanding anything contained in any preceding Article, every ship, whether a sailing ship or a steam ship, overtaking any other shall keep out of the way of the overtaken ship.

Art. 21. In narrow channels every steam ship shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such ship.

Art. 22. Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course.

Art. 23. In obeying and construing these rules due regard shall be had to all dangers of navigation, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

No Ship, under any Circumstances, to neglect proper Precautions.

Art. 24. Nothing in these rules shall

exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Reservation of Rules for Harbours and Inland Navigation.

Art. 25. Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland navigation.

Special Lights for Squadrons and Convoys.

Art. 26. Nothing in these rules shall interfere with the operation of any special rules made by the government of any nation with respect to additional station

and signal lights for two or more ships of war or for ships sailing under convoy.

Art. 27. When a ship is in distress and requires assistance from other ships or from the shore, the following shall be the signals to be used or displayed by her, either together or separately; that is to say,—

In the daytime—

1. A gun fired at intervals of about a minute;

2. The international code signal of distress indicated by N C;

3. The distant signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball.

At night—

1. A gun fired at intervals of about a minute;

2. Flames on the ship (as from a burning tar barrel, oil barrel, &c.);

3. Rockets or shells, throwing stars of any colour or description, fired one at a time, at short intervals.

No. 2.

International Regulations made as to Fishing Vessels under Order in Council of Dec. 30, 1884.

(Extract from Order in Council.)

Her Majesty, by virtue of the powers vested in her by the said act, and by and with the advice of her Privy Council, is pleased to direct that on and after the **1st day of January, 1885**, the regulations contained in the schedule to the said recited Order in Council of the 11th day of August, 1884, shall, as regards British fishing vessels and boats when in the sea off the coast of Europe, lying north of Cape Finisterre, be modified and added to as follows, viz. :—

(Steam Trawlers under way.)

As regards steam vessels engaged in trawling when under steam, such vessels, if of 20 tons gross register tonnage or up-

wards, and having their trawls in the water, and not being stationary in consequence of their gear getting fast to a rock or other obstruction, shall, between sunset and sunrise, either carry and show the lights required by the said recited Art. 3 of the regulations aforesaid, or shall carry and show in lieu thereof and in substitution therefor, but not in addition thereto, other lights of the description set forth in Part I. of the schedule hereto:

(Sailing Trawlers under way.)

As regards sailing vessels engaged in trawling, such vessels, if of 20 tons net register tonnage or upwards, and having their trawls in the water, and not being

stationary in consequence of their gear getting fast to a rock or other obstruction, shall, between sunset and sunrise, either carry and show the lights required by the said recited Art. 6 of the regulations aforesaid, or shall carry and show in lieu thereof and in substitution therefor, but not in addition thereto, other lights of the description set forth in Part II. of the schedule hereto.

(*Steam and Sailing Trawlers under way.*)

The red and green lights, which are by this order permitted as aforesaid to be carried in lieu of the lights required by Arts. 3 and 6 of the said recited regulations respectively, shall be of such a character as to be visible at a distance of not less than two miles on a dark night, with a clear atmosphere.

And her Majesty is pleased further to

direct that steam vessels of 20 tons gross register tonnage or upwards, and sailing vessels of 20 tons net register tonnage or upwards, engaged in trawling, when under way between sunset and sunrise, but not having their trawls in the water, shall, if steamships, carry and show the lights required by Art. 3 above recited, and if sailing ships, shall carry and show the lights required by Art. 6 above recited.

Proviso.

Provided, however, that the modifications and additions set forth in Parts I., II. of the schedule hereto shall not be applicable to the fishing vessels and boats of any foreign country, unless and until the same shall have been made applicable thereto by Order in Council.

SCHEDULE.

PART I.—STEAM VESSELS.

(*Trawlers.*)

(1) On or in front of the foremast head, and in the same position as the white light which other steamships are required to carry, a lantern showing a white light ahead, a green light on the starboard side, and a red light on the port side; such lantern shall be so constructed, fitted, and arranged as to show an uniform and unbroken white light over an arc of the horizon of four points of the compass, an uniform and unbroken green light over an arc of the horizon of ten points of the compass, and an uniform and unbroken red light over an arc of the horizon of ten points of the compass, and it shall be so fixed as to show the white light from right ahead to two points on the bow on each side of the ship, the green light from two points on the starboard bow to four points abaft the beam on the starboard side, and the red light from two points on the port bow to four points abaft the beam on the port side; and (2) a white light in a globular lantern of not less than 8 inches in diameter, and so constructed as to show a clear, uniform, and unbroken light all round the horizon; the lantern containing such white light shall be carried lower than the lantern showing the green, white, and red lights as aforesaid, so, how-

ever, that the vertical distance between them shall not be less than 6 feet nor more than 12 feet.

(PART II.—SAILING VESSELS.)

(*Trawlers.*)

(1) On or in front of the foremast head a lantern having a green glass on the starboard side and a red glass on the port side, so constructed, fitted, and arranged that the red and green do not converge, and so as to show an uniform and unbroken green light over an arc of the horizon of twelve points of the compass, and an uniform and unbroken red light over an arc of the horizon of twelve points of the compass, and it shall be so fixed as to show the green light from right ahead to four points abaft the beam on the starboard side, and the red light from right ahead to four points abaft the beam on the port side; and (2) a white light in a globular lantern of not less than 8 inches in diameter, and so constructed as to show a clear uniform and unbroken light all round the horizon; the lantern containing such white light shall be carried lower than the lantern showing the green and red lights as aforesaid, so, however, that the vertical distance between them shall not be less than 6 feet and not more than 12 feet.*

* But see No. 3, *infra*.

No. 3.

International Regulations as to Fishing Vessels made under Order in Council of June 24, 1885.

(*Extract from Order in Council.*)

Whereas the Admiralty and the Board of Trade have, in pursuance of the said recited act, jointly recommended to her Majesty that the regulations contained in the schedule to the said recited Order in Council of August 11, 1884, shall, as regards sailing vessels when engaged in trawling, be further modified and added to in manner following; that is to say,—

(*Sailing Trawlers under way.*)

As regards sailing vessels engaged in trawling, such vessels having their trawls in the water and not being stationary in consequence of their gear getting fast to a rock or other obstruction, if they do not carry and show the lights required by Art. 6 of the Regulations aforesaid, or the other lights of the description set forth in Part 2 of the Schedule to the said recited Order in Council of Dec. 30, 1884, shall carry and show in lieu of the lights required by Art. 6 of the Regulations aforesaid, or the other lights of the description set forth in paragraph 2 of the schedule to the said recited order, other lights as follows; that is to say,—

A white light in a globular lantern of not less than eight inches in diameter, and so constructed as to show a clear uniform and unbroken light all round the horizon, and visible on a dark night,

with a clear atmosphere, for a distance of at least two miles; and also a sufficient supply of red pyrotechnic lights which shall each burn for at least thirty seconds, and shall, when so burning, be visible for the same distance under the same conditions as the white light. The white light shall be shown from sunset to sunrise, and one of the red pyrotechnic lights shall be shown on approaching, or on being approached by, another ship or vessel in sufficient time to prevent collision.

Now, therefore, her Majesty, by virtue of the powers vested in her by the said act, and by and with the advice of her Privy Council, is pleased to direct that on and after **June 24, 1885**, the regulations contained in the schedule to the Order in Council of August 11, 1884, shall, as regards British sailing fishing vessels and boats, when in the sea off the coast of Europe lying north of Cape Finisterre, be further modified and added to accordingly; that is to say, such sailing vessels shall, whatever be their tonnage, be at liberty to carry the substituted lights hereinbefore described in lieu of, and in substitution for, but not in addition to, the lights prescribed to be carried by such sailing vessels by the Orders in Council dated respectively August 11, 1884, and December 30, 1884.

No. 4.

International Regulations for preventing Collisions at Sea, under Order in Council of August, 1879 (now annulled).

Preliminary.

Art. 1. In the following rules every steam ship which is under sail and not under steam is to be considered a sailing ship; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

Art. 2. The lights mentioned in the

following articles, numbered 3, 4, 5, 6, 7, 8, 9, 10, and 11, and no others, shall be carried in all weathers, from sunset to sunrise.

Art. 3. A seagoing steam ship when under way shall carry:—

(a) On or in front of the foremast, at a height above the hull of not less than twenty feet, and if the breadth of the ship exceeds twenty feet then at a height above the hull not less than such breadth,

a bright white light, so constructed as to show an uniform and unbroken light over an arc of the horizon of twenty points of the compass; so fixed as to throw the light ten points on each side of the ship, viz., from right ahead to two points abaft the beam on either side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles.

(b) On the starboard side, a green light so constructed as to show an uniform and unbroken light over an arc of the horizon of ten points of the compass; so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.

(c) On the port side a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of ten points of the compass; so fixed as to throw the light from right ahead to two points abaft the beam on the port side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.

(d) The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

Art. 4. A steam ship, when towing another ship, shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than three feet apart, so as to distinguish her from other steam ships. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light which other steam ships are required to carry.

Art. 5. A ship, whether a steam ship or a sailing ship, when employed either in laying or in picking up a telegraph cable, or which from any accident is not under command, shall at night carry, in the same position as the white light which steam ships are required to carry, and, if a steam ship, in place of that light, three red lights in globular lanterns, each not less than ten inches in diameter, in a vertical line one over the other, not less than three feet apart; and shall by day carry in a vertical line one over the other, not less than three feet apart, in front of but not lower than her foremast head, three black balls or shapes, each two feet in diameter.

These shapes and lights are to be taken by approaching ships as signals that the ship using them is not under command, and cannot therefore get out of the way.

The above ships, when not making any way through the water, shall not carry the side lights, but when making way shall carry them.

Art. 6. A sailing ship under way or being towed shall carry the same lights as are provided by Article 3 for a steam ship under way, with the exception of the white light, which she shall never carry.

Art. 7. Whenever, as in the case of small vessels during bad weather, the green and red side lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for use; and shall on the approach of or to other vessels be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

Art. 8. A ship, whether a steam ship or a sailing ship, when at anchor shall carry, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of not less than eight inches in diameter, and so constructed as to show a clear, uniform and unbroken light visible all round the horizon, at a distance of at least one mile.

Art. 9. A pilot vessel, when engaged on her station on pilotage duty, shall not carry the lights required for other vessels, but shall carry a white light at the mast-head, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

A pilot vessel, when not engaged on her station on pilotage duty, shall carry lights similar to those of other ships.

Art. 10. (*By successive Orders in Council the operation of this Article was suspended until the Regulations of 1884 came into force.*)

(a) Open fishing boats and other open boats, when under way, shall not be obliged to carry the side lights required for other vessels; but every such boat shall in lieu thereof have ready at hand a lantern with a green glass on the one

side and a red glass on the other side; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

(b) A fishing vessel, and an open boat when at anchor, shall exhibit a bright white light.

(c) A fishing vessel, when employed in drift net fishing, shall carry on one of her masts two red lights in a vertical line one over the other, not less than three feet apart.

(d) A trawler at work shall carry on one of her masts two lights in a vertical line one over the other, not less than three feet apart, the upper light red, and the lower green, and shall also either carry the side lights required for other vessels, or, if the side lights cannot be carried, have ready at hand the coloured lights as provided in Article 7, or a lantern with a red and green glass as described in paragraph (a) of this Article.

(e) Fishing vessels and open boats shall not be prevented from using a flare-up in addition, if they desire to do so.

(f) The lights mentioned in this Article are substituted for those mentioned in the 12th, 13th and 14th Articles of the Convention between France and England, scheduled to the British Sea Fisheries Act, 1868.

(g) All lights required by this Article, except side lights, shall be in globular lanterns, so constructed as to show all round the horizon.

Art. 11. A ship which is being overtaken by another shall show from her stern to such last-mentioned ship a white light or a flare-up light.

Sound Signals for Fog, &c.

Art. 12. A steam ship shall be provided with a steam whistle or other efficient steam sound signal, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog horn to be sounded by bellows or other mechanical means, and also with an efficient bell.* A sailing ship shall be provided with a similar fog horn and bell.

In fog, mist, or falling snow, whether by day or night, the signals described in this Article shall be used as follows; that is to say,

(a) A steam ship under way shall make with her steam whistle, or other steam sound signal, at intervals of not more than two minutes, a prolonged blast.

(b) A sailing ship under way shall make with her fog horn, at intervals of not more than two minutes, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.

(c) A steam ship and a sailing ship when not under way shall, at intervals of not more than two minutes, ring the bell.

Speed of Ships to be moderate in Fog, &c.

Art. 13. Every ship, whether a sailing ship or steam ship, shall, in a fog, mist, or falling snow, go at a moderate speed.

Steering and Sailing Rules.

Art. 14. When two sailing ships are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz. :—

(a) A ship which is running free shall keep out of the way of a ship which is close-hauled.

(b) A ship which is close-hauled on the port tack shall keep out of the way of a ship which is close-hauled on the starboard tack.

(c) When both are running free with the wind on different sides, the ship which has the wind on the port side shall keep out of the way of the other.

(d) When both are running free with the wind on the same side, the ship which is to windward shall keep out of the way of the ship which is to leeward.

(e) A ship which has the wind aft shall keep out of the way of the other ship.

Art. 15. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This Article only applies to cases where ships are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are, when each of the two ships is end on, or nearly end on, to the other; in other words, to cases in which, by day, each

* In all cases where the regulation require a bell to be used, a drum will be substituted on board Turkish vessels.

ship sees the masts of the other in a line, or nearly in a line with her own; and by night, to cases in which each ship is in such a position as to see both the side lights of the other.

It does not apply by day to cases in which a ship sees another ahead crossing her own course; or by night, to cases where the red light of one ship is opposed to the red light of the other, or where the green light of one ship is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green or red lights are seen anywhere but ahead.

Art. 16. If two ships under steam are crossing, so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Art. 17. If two ships, one of which is a sailing ship, and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship.

Art. 18. Every steam ship, when approaching another ship, so as to involve risk of collision, shall slacken her speed or stop and reverse, if necessary.

Art. 19. In taking any course authorized or required by these Regulations, a steam ship under way may indicate that course to any other ship which she has in sight by the following signals on her steam whistle, viz. :—

One short blast to mean "I am directing my course to starboard."

Two short blasts to mean "I am directing my course to port."

Three short blasts to mean "I am going full speed astern."

The use of these signals is optional; but, if they are used, the course of the ship must be in accordance with the signal made.

Art. 20. Notwithstanding anything con-

tained in any preceding Article, every ship, whether a sailing ship or a steam ship, overtaking any other shall keep out of the way of the overtaken ship.

Art. 21. In narrow channels every steam ship shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such ship.

Art. 22. Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course.

Art. 23. In obeying and construing these rules due regard shall be had to all dangers of navigation, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

No Ship, under any Circumstances, to neglect proper Precautions.

Art. 24. Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Reservation of Rules for Harbours and Inland Navigation.

Art. 25. Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland navigation.

Special Lights for Squadrons and Convoys.

Art. 26. Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for ships sailing under convoy.

No. 5.

Regulations for preventing Collisions at Sea, under Order in Council of January, 1863.

Preliminary.

Art. 1. In the following rules every steam ship which is under sail and not under steam is to be considered a sailing ship; and every steam ship which is under

steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

Art. 2. The lights mentioned in the following Articles, numbered 3, 4, 5, 6, 7,

8, and 9, and no others, shall be carried in all weathers, from sunset to sunrise.

Art. 3. Sea-going steamships when under way shall carry :

(a) At the foremast head, a bright white light, so fixed as to show an uniform and unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the ship, viz., from right ahead to two points abaft the beam on either side ; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles :

(b) On the starboard side, a green light, so constructed as to throw an uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles :

(c) On the port side, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles :

(d) The said green and red side lights shall be fitted with inboard screens, projecting at least three feet forward from the lights, so as to prevent these lights from being seen across the bow.

Art. 4. Steam ships, when towing other ships, shall carry two bright white masthead lights vertically, in addition to their side lights, so as to distinguish them from other steam ships. Each of these masthead lights shall be of the same construction and character as the masthead lights which other steam ships are required to carry.

Art. 5. Sailing ships under way, or being towed, shall carry the same lights as steam ships under way, with the exception of the white masthead lights, which they shall never carry.

Art. 6. Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition ; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient

time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens.

Art. 7. Ships, whether steam ships or sailing ships, when at anchor in roadsteads or fairways, shall exhibit, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light, in a globular lantern of 8 inches in diameter, and so constructed as to show a clear uniform and unbroken light visible all round the horizon, and at a distance of at least one mile.

Art. 8. Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a white light at the masthead, visible all round the horizon, and shall also exhibit a flare-up light every fifteen minutes.

Art. 9. Open fishing boats and other open boats shall not be required to carry the side lights required for other vessels ; but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side ; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition, if considered expedient.

Rules concerning Fog Signals.

Art. 10. Whenever there is fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every five minutes ; viz. :—

(a) Steam ships under weigh shall use a steam whistle placed before the funnel, not less than eight feet from the deck :

(b) Sailing ships under weigh shall use a fog horn :

(c) Steam ships and sailing ships when not under weigh shall use a bell.

Steering and Sailing Rules.

Art. 11. If two sailing ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Art. 12. When two sailing ships are crossing so as to involve risk of collision, then, if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side; except in the case in which the ship with the wind on the port side is close-hauled and the other ship free, in which case the latter ship shall keep out of the way; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward.

Art. 13. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Art. 14. If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Art. 15. If two ships, one of which is a sailing ship, and the other a steam ship, are proceeding in such directions as

to involve risk of collision, the steam ship shall keep out of the way of the sailing ship.

Art. 16. Every steam ship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam ship shall, when in a fog, go at a moderate speed.

Art. 17. Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel.

Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the following Article.

Art. 19. In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.

Art. 20. Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

No. 6.

American Pilot Rules for Lake and Seaboard.

RULES AND REGULATIONS for the government of pilots navigating seas, gulfs, lakes, bays, sounds or rivers, *except rivers flowing into the Gulf of Mexico* and their tributaries. Revised and adopted by the Board of Supervising Inspectors, June 10, 1871, as authorized by Act of Congress, "to provide for the better security of life on board of vessels propelled in whole or in part by steam, and for other purposes." Approved, Feb. 28, 1871; to take effect Jan. 1, 1872 (and in force in 1886).

Rule I. When steamers are approaching each other "head and head," or nearly so, it shall be the duty of each steamer to pass to the right, or port side of the other; and the pilot of either steamer may be first in determining to pursue this course, and thereupon shall give as a signal of his intention one short and distinct blast of his steam whistle, which the pilot of the other steamer shall answer promptly by a similar blast of

his steam whistle, and thereupon such steamers shall pass to the right or port side of each other. But if the course of such steamers is so far on the seaboard of each other as not to be considered by pilots as meeting "head and head," or nearly so, the pilot so first deciding shall immediately give two short and distinct blasts of his steam whistle, which the pilot of the other steamer shall answer promptly by two similar blasts from his

steam whistle, and they shall pass to the left or on the starboard side of each other.

Note.—In the night, steamers will be considered as meeting “head and head,” so long as both the coloured lights of each are in view of the other.

Rule II. When steamers are approaching each other in an oblique direction (as shown in diagram of the 4th situation) they shall pass to the right of each other, as if meeting “head and head,” or nearly so, and the signals by whistle shall be given and answered promptly as in that case specified.

Rule III. If when steamers are approaching each other the pilot of either vessel fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam whistle; and if the vessels shall have approached within half a mile of each other both shall be immediately slowed to a speed barely sufficient for steering way until the proper signals are given, answered and understood, or until the vessels shall have passed each other.

Rule IV. When steamers are running in a fog, or thick weather, it shall be the duty of the pilot to cause a long blast of the steam whistle to be sounded at intervals not exceeding one minute.

Steamers when drifting, or at anchor, in the fair way of other vessels in a fog or thick weather, shall ring their bells at intervals of not more than two minutes.

Rule V. Whenever a steamer is nearing a short bend or curve in the channel, where, from the height of the banks, or other cause, a steamer approaching from the opposite direction cannot be seen for a distance of half a mile, the pilot of such steamer, when he shall have arrived within half a mile of such curve or bend, shall give a signal by one long blast of the steam whistle, which signal shall be answered by a similar blast, given by the pilot of any approaching steamer that may be within hearing. Should such signal be so answered by a steamer upon the farther side of such bend, then the usual signals for meeting and passing shall immediately be given and answered; but if the first alarm signal of such pilot be not answered, he is to consider the channel clear, and govern himself accordingly.

Rule VI. The signals by the blowing of the steam whistle shall be given and

answered by pilots in compliance with these rules, not only when meeting “head and head,” or nearly so, but at all times when passing or meeting at a distance within half a mile of each other, and whether passing to the starboard or port.

Rule VII. When two steamers are approaching the narrows known as “Hell Gate,” on the East river at New York, side by side, or nearly so, running in the same direction, the steamer on the right or starboard hand of the other (when approaching from the west), when they shall have arrived abreast of the north end of Blackwell’s Island, shall have the right of way, and the steamer on the left or port side shall check her way and drop astern. In like case, when two steamers are approaching from the east, and are abreast at Negro Point, the steamer on the right or starboard hand of the other, shall have the right of way and shall proceed on her course without interference, and the steamer on the port side of the other shall keep at a safe distance astern (not less than three lengths), until both steamers have passed through the difficult channel.

Rule VIII. When steamers are running in the same direction, and the pilot of the steamer which is astern shall desire to pass on the right or starboard hand of the steamer ahead, he shall give one short blast with the steam whistle as a signal of such desire and intention, and shall put his helm to port, and the pilot of the steamer ahead shall answer by the same signal, or if he prefer to keep on his course, he shall give two short and distinct blasts of the steam whistle, and the boat wishing to pass must govern herself accordingly, but the boat ahead shall in no case attempt to cross her bow or crowd upon her course.

N.B. The foregoing rules are to be complied with in all cases except when steamers are navigating in a crowded channel or in the vicinity of wharves; under such circumstances steamers must be run and managed with great caution, sounding the whistle as may be necessary to guard against collision or other accidents.

Section 4233, Revised Statutes.—Rule 24. In construing and obeying these rules, due regard must be had to all dangers of navigation, and to any special circumstances which may exist in any particular case, rendering a departure from them necessary in order to avoid immediate danger.

Rule IX. All double-ended ferry boats on lakes and seaboard shall carry a central range of clear, bright, white lights showing all round the horizon, placed at equal altitudes forward and aft, also such side lights as specified in section 4233, Revised Statutes, Rule III., paragraphs B. & C.

Local inspectors in districts having ferry boats shall, whenever the safety of navigation may require, designate for each

line of such boats a certain light, white or coloured, which shall show all around the horizon, to designate and distinguish such lines from each other, which light shall be carried on a flagstaff amidship, 15 feet above the white range lights.

The line dividing jurisdiction between Pilot Rules on western rivers and lakes, and seaboard at New Orleans, shall be the lower limits of the city.

No. 7.

American Pilot Rules for Western Rivers.

RULES AND REGULATIONS for the government of pilots of steamers navigating the *rivers flowing into the Gulf of Mexico* and their tributaries. Revised and adopted by the Board of Supervising Inspectors, June 12, 1871, as authorized by Act of Congress "to provide for the better security of life on board vessels propelled in whole or in part by steam, and for other purposes." Approved, Feb. 28, 1871; to take effect Jan. 1, 1872. Amended, Jan. 1875, and Feb. 1880 and 1883, to take effect Sept. 3, 1883 (and in force in 1886).

Rule I. When steamers are approaching each other from opposite directions, the signals for passing shall be one blast of the steam-whistle to pass to the right, and two blasts of the steam-whistle to pass to the left. The pilot on the ascending steamer shall be the first to indicate the side on which he desires to pass; but if the pilot on the descending steamer shall deem it dangerous to take the side indicated by the pilot of the ascending steamer, he shall at once indicate with his steam whistle, the side on which he desires to pass, and the pilot on the ascending steamer shall govern himself accordingly, the descending steamer being deemed to have the right of way. But in no case shall pilots on steamers attempt to pass each other, until there has been a thorough understanding as to the side each steamer shall take. The signals for passing must be made, answered, and understood, before the steamers have arrived at a distance of 800 yards of each other.

Rule II. If from any cause the signals for passing are not made at the proper time, as provided in Rule I., or should the signals be given, and not promptly understood, from any cause whatever, and either boat become imperilled thereby, the pilot on either steamer may be the first to sound the alarm, or danger signal, which shall consist of three or more short blasts of the steam-whistle, in quick suc-

cession. Whenever the danger signal is given, the engines of both steamers must be stopped, and backed until their headway has been fully checked, nor shall the engines of either steamer be again started ahead, until the steamers can safely pass each other.

Rule III. When two boats are about to enter a narrow channel at the same time, the ascending boat shall be stopped below such channel until the descending boat shall have passed through it; but should two boats unavoidably meet in such channel, then it shall be the duty of the pilot of the ascending boat to make the proper signals, and, when answered, the ascending boat shall lie as close as possible to the side of the channel the exchange of signals may have determined, as provided by Rule I., and either stop the engines or move them so as only to give the boat steerage way, and the pilot of the descending boat shall cause his boat to be worked slowly until he has passed the ascending boat.

Rule IV. When a steamer is ascending and running close on a bar or shore, the pilot shall in no case attempt to cross the river when a descending boat shall be so near that it would be possible for a collision to ensue therefrom.

Rule V. When any steamer, whether ascending or descending, is nearing a short bend or point, where from any cause a steamer approaching in an oppo-

site direction cannot be seen at a distance of 600 yards, the pilot of such steamer when he shall have arrived within 600 yards of that bend or point, shall give a signal of one long sound of his steam whistle as a notice to any steamer that may be approaching, and should there be any approaching steamer within hearing of such signal it shall be the duty of the pilot thereof to answer such signal by one long sound of his steam whistle, when both boats shall be navigated with the proper precautions as required by the preceding rules.

Rule VI. When a steamer is running in a fog or thick weather, it shall be the duty of the pilot to sound his steam whistle at intervals not exceeding one minute.

Rule VII. When steamers are running in the same direction, and the pilot of the boat astern shall desire to pass either side of the boat ahead, he shall give the signal, as in Rule I., and the pilot of the boat ahead shall answer by the same signal; or if he prefer to keep on his course, he shall make the necessary signals, and the boat wishing to pass must govern herself accordingly; but the boat ahead shall in no case attempt to cross her bow or crowd upon her course.

Rule VIII. When boats are moving from their docks or berths, and other boats are liable to pass from any direction towards them, they shall give the same signal as in case of boats meeting at a bend; but immediately after clearing the berths, so as to be fully in sight, they shall be governed by Rule I.

Rule IX. All barges in tow of steamers between sunset and sunrise shall have their signal lights, as required by law, placed in a suitable manner on the starboard bow of the starboard barge, and on port bow of the port barge, which lights shall not be less than 10 feet above the surface of the water.

Rule X. Signal lights for steamers under way are provided by law as follows, the same to be carried between sunset and sunrise.

For ocean steamers and steamers carrying sail, a bright white light at the foremast head, to throw the light through ten points of the compass on each side of the ship, viz., from right ahead to two points abaft the beam, and to be visible at least five miles. On the starboard side a green light, and on the port side a red light, each to throw the light through ten points of the compass on their respective sides,

viz. from right ahead to two points abaft the beam, and to be visible at least two miles. These coloured lights are to be fitted with inboard screens, projecting at least three feet forward from the light, to prevent them from being seen across the bow.

For steamers navigating waters flowing into the Gulf of Mexico and the Red River of the North, a red light on the outboard side of the port smoke-pipe, and a green light on the outboard side of the starboard smoke-pipe, these lights to show both forward and abeam on their respective sides.

For coasting steamers and those navigating bays, lakes, or other inland waters, other than ferry boats and those above provided for, the red and green side-lights as prescribed for ocean steamers, and a central range of two white lights, the after light being carried at an elevation of at least 15 feet above the light at the head of the vessel; the head-light to show through twenty points in the compass, viz. from right ahead to two points abaft the beam on either side of the vessel, and the after light to show all around the horizon.

For steamers towing other vessels, the coloured lights will be the same as prescribed for ocean steamers, and two white mast lights shall be also carried vertically, to distinguish them from other steamers; the white lights to show through twenty points of the compass, viz., from right ahead to two points abaft the beam on either side of the vessel, white lights shall also be placed on the extreme sides of the tow on either hand, and also on the extreme after part of the same.

Rule XI. A bright white light, not exceeding 20 feet above the hull, shall be exhibited by all steamers when at anchor between sunset and sunrise, in a globular lantern of 8 inches in diameter, so placed as to throw a good light all around the horizon.

Rule XII. Steam ferry boats with chimneys shall in all cases carry the same signal lights as passenger steamers.

Rule XIII. All other steamers, ferry or otherwise, having but one chimney, shall have brackets securely fastened to each side of the same, so as to carry the red and green lights the same as passenger steamers.

Rule XIV. The line dividing jurisdiction between the Pilot Rules on western rivers and lakes and seaboard at New Orleans, shall be the lower limits of the city.

No. 8.

American Rules of Supervising Inspectors in force in 1886, recommending certain Fog-signals to be observed by Steamers, Sailing Vessels, and other Craft.

Every steamer, when under way, shall use a steam whistle. Sailing vessels, and all other craft propelled by sails, shall use a fog-horn.

Whenever there is a fog, whether by day or night, the fog-signals described below shall be sounded.

Sailing vessels, and every craft propelled by sails upon the ocean, lakes and rivers, shall, when on their starboard tack, sound one blast of their fog-horn; when on their port tack, they shall sound two blasts of their fog-horn; when with the wind free or running large, they shall sound three blasts of their fog-horn; when lying to or at anchor, they shall sound the bell. In each instance the above signals shall be sounded at intervals of not more than two minutes.

Sailing vessels, when not under way, and anchored or moored in the channel

or fairway of commerce, shall sound the bell-signal at intervals of not more than two minutes; and all steamers navigating in a fog or thick weather shall, by the rules governing pilots, sound their steam whistle at intervals of not more than one minute.

Sailing vessels shall at all times, on the approach of any steamer during the night time, show a lighted torch upon that point or quarter to which such steamer shall be approaching. And upon any craft navigating rivers without being in tow of a steamer, such as rafts, flat-boats, wood-boats, and other light craft, they shall sound a fog-horn at intervals of not more than two minutes.

It shall at all times be the duty of steamers to give to the sailing vessel, or other craft propelled by sails, every advantage, and keep out of her way.

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